IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.1085 OF 2017

DISTRICT : SOLAPUR

Shri Dattatraya Tukaram Nawle.)
Age : 31 Yrs., Occu. : Agriculture,)
R/o : At Nagorli, Tal. Madha,)
District : Solapur.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary,)
Revenue Department, Mantralaya,)
Mumbai – 400 032.)

2. The Secretary.)
Home Department, Mantralaya,)
Mumbai – 400 032.)

3. The District Collector, Solapur.)

4. The Sub-Divisional Officer.)
Madha Division, Kurduwadi,)
Tal.: Madha, District : Solapur.)

5. Shri Sunilkumar N. More.)
At Nagoli, Post Adegaon, Tal. Madha,)
District : Kolhapur.)**...Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents 1 to 4.

Respondent No.5 though served did not appear.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 15.12.2020

JUDGMENT

1. The Applicant has challenged the proclamation dated 03.11.2017 and 08.11.2017 issued by Respondent No.4 to fill-in the post of Police Patil and also challenged the order dated 05.07.2018 whereby Respondent No.5 was appointed as Police Patil of Village Nagorli, Tal. Madha, District Solapur invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant is resident of Village Nagorli and belongs to Open category. The Respondent No.4 had issued Advertisement dated 03.11.2017 to fill-in 136 posts of Police Patil as per reservation policy adopted by Government in terms of G.R. dated 16.02.2008. As per the said Advertisement, 25 posts were reserved for Scheduled Caste category. The Respondent No.4 accordingly issued Advertisement/Jahirnama on 08.11.2017 to fill-in the vacant post of Police Patil and invited the applications from eligible candidates. The Applicant contends that total vacancies for the post of Police Patil were 227 but Respondent No.4 advertised only 136 posts which according to him is in contravention of G.R. dated 16.10.2008. He contends that while applying reservation policy, it should have been applied to all 227 posts in one go in terms of G.R. date 16.10.2008 and having not done so, the calculation of number of vacancies vis-à-vis reservation are incorrect. As such, the number of posts of Police Patil restricted to 25 posts from Scheduled Caste category as determined by Respondent No.4 is contrary to law. The Applicant raised objection on 15.11.2017 that the reservation of Police Patil of Village Nagorli from SC category is illegal, but he same was not responded.

3. The Respondent No.4 accordingly proceeded with the process to fill-in the post of Police Patil of Village Nagorli wherein Respondent No.5 was appointed as Police Patil by order dated 05.07.2018. The Applicant

further contends that the population of Village Nagorli if considered caste-wise, the population of Open category is more than Scheduled Caste category, and therefore, the act of Respondent No.4 declaring Village Nagorli reserved from Scheduled Caste category is illegal. The Applicant, therefore, sought to challenge the Advertisement and Notification dated 03.11.2017 and 08.11.2017 and also challenged the appointment of Respondent No.5 to the post of Police Patil of Village Nagorli.

4. The Respondent No.4 – S.D.O, Madha resisted the O.A. by filing Affidavit-in-reply on behalf of Respondent No.4 inter-alia denying that there is any illegality of reservation of Village Nagorli from S.C. category. The Respondent contends that the reservation was decided in terms of G.R. dated 16.10.2008 vis-à-vis Bindunamavali. In this behalf, the Respondent further contends that in terms of G.R. dated 24.01.1992, the post of Police Patil which was already filled-in and in existence were excluded and for remaining 136 posts, the elections were held in the manner prescribed by G.R. dated 16.10.2008. The total population of Village Nagorli is 1608 out of which population of SC category was 366 (in terms of percentage 22.76) and accordingly, the post of Police Patil of Village Nagorli was reserved for Scheduled Caste candidate in terms of roster and G.R. dated 14.10.2008. The Respondents thus denied that there is any illegality in reservation of Village Nagorli for SC category as well as in the appointment of Respondent No.5 as Police Patil.

5. The Respondent No.5 though served did not appear.

6. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for Respondents 1 to 4.

7. In view of submissions advanced at the Bar, the question posed for consideration is whether the reservation of post of Police Patil of Village

Nagorli for SC category and the appointment of Respondent No.5 to the post of Police Patil as SC candidate suffers from any illegality.

8. At the very outset, it would be useful to see the contents of G.R. dated 16.10.2008 which *inter-alia* laid down the procedure for determining reservation caste-wise, which is as follows :-

"शासन निर्णय : पोलीस पदावरील आरक्षणाबाबतचे यापूर्वीचे शासन आदेश अधिक्रमित करुन व मा. उच्च न्यायालय मुंबई यांनी रिट याचिका क्र. 4175/2007 तसेच 4202/2007 वर दिनांक २५.०६.२००७ रोजी दिलेला निकाल विचारात घेऊन पोलिस पाटिल पदांसाठीचे आरक्षण धोरण खालीलप्रमाणे विहीत करण्यात येत आहे :

अ) पोलीस पाटील हे पद एका गावात एकच असते. त्यामुळे या पदाच्या आरक्षणासाठी एका महसूल उपविभागाचा एक गट समजण्यात यावा व आरक्षण बसविण्याच्या प्रयोजनार्थ त्या उपविभागातील पोलीस पाटील या संवर्गातील पदे विचारात घ्यावीत.

ब) प्रत्येक उपविभागातील पदांची संख्या विचारात घेऊन अनुसुचित जाती, अनुसुचित जमाती, जाती (अ), भटक्या जमाती (ब) भटक्या जमाती (क), भटक्या जमाती (ड), वि.मा.प्र. व इतर मागास वर्ग या सर्व प्रवर्गासाठी सामान्य प्रशासन विभाग अधिसूचना क्र. बीसीसी-२००१/१८९७/प्र.क्र. ६४/२००१/१६-ब, दिनांक २९.०१.२०१४ नुसार ठरवून दिल्याप्रमाणे ५२ टक्के आरक्षण ठेवण्यात यावे.

क) आरक्षित तसेच अनारक्षित प्रवर्गातील पदे भरतांना महिलांसाठी समांतर ३० टकके पदे आरक्षित ठेवण्यात यावीत.

ड) आरक्षणासाठी सामान्य प्रशासन विभागाच्या दिनांक १८.१०.१९९७ च्या शासन निर्णयासोबतची सरळ सेवा भरतीचा १०० बिंदू नामावली विचारात घ्यावी. तसेच मागास प्रवर्गासाठी आरक्षित करावयाची पदे ही खालीलप्रमाणे ठरविली जातील.

आरक्षणाची पदे ठरवितांना अनुसुचित जाती, अनुसुचित जमाती विशेष मागासवर्ग, विमुक्त जाती (अ), भटक्या जमाती (ब) भटक्या जमाती (क), भटक्या जमाती (ड) व इतर मागास प्रवर्ग या क्रमानुसार पदे निश्चित करण्यात सुरुवात करावी व प्रत्येक प्रवर्गातील पदे आरक्षित करण्यासाठी त्या प्रवर्गाची लोकसंख्येची टक्केवारी ही ज्या गावात सर्वात जास्त असेल त्या गावापासून सुरुवात करुन उतरत्या क्रमानने त्या प्रवर्गातील गावे ठरवावीत."

9. Thus, as per this G.R, the reservation was to be restricted upto 52% and in terms of Clause 'd' of G.R. while deciding number of posts of reserved category, it should be done in descending mode starting from Scheduled Caste category upto OBC category. Another important aspect is that while deciding the reservation, the posts should be reserved for the category of which population is more.

10. In so far as Scheduled Caste category is concerned, the Respondent No.4 determined 25 Villages reserving the post of Police Patil of the said Villages from SC category having considered the population of Scheduled Caste category in these Villages in descending manner. On Page No.20 of the O.A, there is a Chart showing the position, which is as under :-

"पोलिस पाटील भरती २०१७ साठी गावनिहाय प्रवर्गनिहाय लोकसंख्येबाबतची माहिती

अ. क्र.	तालुका	गावाचे नांव	एकूण गावाची लोकसंख्या	अनुसुचित जाती लोकसंख्या	टक्केवारी
१	माढा	उजनी टे	६१८	२१४	३४.६२७८
२	करमाळा	दिलमेश्वर	३२७	१०४	३१.८०४३
३	माढा	शिराळ मा	१७२०	५४३	३१.५६९८
४	करमाळा	वडगाव द.	७६२	२३६	३०.९७११
५	माढा	रुई	१२६२	३८५	३०.५०७१
६	माढा	माळेगांव	२००७	६१२	३०.४९३३
७	करमाळा	भाळवणी	१५७७	४८०	३०.४३७५
८	करमाळा	मंगी	१९८९	५६८	२८.५५७१
९	माढा	निमगांव मा	१००४	२५९	२५.७९६८
१०	माढा	नगोर्ली	१६०८	३६६	२२.७६१२
११	करमाळा	आवाटी	१८७२	४२३	२२.५९६२
१२	माढा	बेबळे	६८३१	१४१७	२०.७४३७
१३	माढा	जाखले	४३४	९०	२०.७३७३
१४	माढा	बारलोणी	३६९२	७५५	२०.४४९६
१५	माढा	निमगांव टे	३०५६	६०२	१९.६९९
१६	करमाळा	घोटी	३१३९	६०५	१९.२७३७
१७	करमाळा	बिटरगाव श्री	८१४	१५४	१८.९१८९

१८	करमाळा	देलवडी	१०५४	१९२	१८.२१६३
१९	करमाळा	हिवरे	१४२५	२५४	१७.८२४६
२०	माढा	शिर्गेवाडी	१६०७	२८३	१७.६१०५
२१	माढा	भोसरे	८९६१	१५६४	१७.४५३४
२२	माढा	नाडी	६८३	११७	१७.१३०३
२३	करमाळा	करंजे	१७९९	३०६	१७.००९४
२४	माढा	म्हैसगांव	४९७४	८३९	१६.८६७७
२५	करमाळा	भोसे	९३६	१५६	१६.६६६७

एकूण मंजुर पदे	२९
कार्यरत पदे	१
हंगामी भरलेली पदे	२
प्र. हंगामी भरलेली पदे	१
एकुण भरलेली पदे	४
एकुण भरावयाची पदे	२५

11. Shri A.V. Bandiwadekar, learned Advocate for the Applicant made two-fold submission.

(i) As per information received under RTI Act, the population of Open category of Village Nagorli is 1043. Whereas, the population of SC category is 366 only (Page No.89 of P.B.). This being the position, the Village Nagorli should not have been reserved for SC and it should have been left for Open category.

(ii) The total sanctioned posts of Police Patil were 227 but while deciding number of posts to be filled-in, some posts were excluded on the ground that those are already occupied by temporary Police Patils and it changed entire equations. According to him, had the position of 227 posts were considered to fill-in in one go, then the

number of posts for each category would have been different from those determined by Respondent No.4.

12. In this behalf, the learned Advocate for the Applicant referred to Chart which is at Page No.52 of P.B, which is as under :-

"१) पदाचे नाव : पोलिस पाटील एकूण मंजूर पदे : २२७
भरतीचे प्रमाण : सरळसेवा १०० टक्के टक्केवारीनुसार सरळसेवेसाठी उपलब्ध पदे : २२७
सरळसेवेच्या कोटयातील २२७ पदांचे आरक्षण पुढीलप्रमाणे
दिनांक ३०/७/२०१५ अखेर गोषवारा

तपशील	अजा	अज	विजाअ	भज ब	भज क	भज ड	विमाप्र	इमाव	खुला	एकूण
	१३%	७%	३%	२.५%	३.५%	२%	२%	१९%	४८%	१००%
आवश्यक पदे	२९	१६	७	६	८	४	५	४३	१०९	२२७
कार्यरत पदे	२	०	१	१	७	०	०	८	३३	५२
रिक्त पदे	२७	१६	६	५	१	४	५	३५	७६	१७५

पोलिस पाटील या सरळसेवा या संवर्गामध्ये मंजूर पदे २२७ असून त्यामध्ये अजा २९, अज १६, विजा ७, भजब ६, भजक ८, भजड ४, विमाप्र ५, इमाव ४३, खुला १०९ असे आरक्षण जाते. दिनांक ३०/७/२०१५ अखेर अजा २, विजा १, भजब १, भजक ७, इमाव ८, खुला ३३ अशी पदे कार्यरत असून अजा २७, अज १६, विजाअ ६, भजब ५, भजक १, भजड ४, विमाप्र ५, इमाव ३५, खुला ७६ अशी रिक्त पदे आहेत. बिंदु क्र. २२ दिनांक ३०/६/२०१५ रोजी बंद केला आहे."

The perusal of above Chart reveals that the total posts were 227 and out of it, 52 were already occupied, and therefore, excluded. Furthermore, material to note that there is bifurcation of these 52 posts as per reservation policy.

13. Whereas, the learned P.O. in reference to pleas raised in reply submits that the posts which were already occupied were excluded and in so far as SC category is concerned, out of 29 posts for SC, 44 were excluded being occupied, and therefore, 25 Villages were identified for SC category in terms of population in descending manner in terms of G.R. dated 16.10.2008. While doing so, Village Nagorli comes at Serial No.10 in descending manner and the population of SC in percentagewise found highest in the Village, it was reserved for SC category.

14. True, in so far as Village Nagorli is concerned, the population of Open category was 1043. Whereas, the population of SC was 366. However, what is important to note that in terms of G.R. dated 16.10.2008, the reservation was to apply for reserved category starting from Scheduled Caste upto OBC first and there is no such concept for reservation for Open category. What was required to be done to decide number of posts for reserved category in terms of population of reserved category from the said Village in descending manner. As 25 posts were reserved for SC category, the Village Nagorli was reserved for SC category in view of population of 366 belonging to the SC category which was highest amongst the categories of reservation. This being the position, even if the population of Open category was 1043, it is in consequential as reservation was restricted to only reserve categories and it has nothing to do with the population of Open category. Suffice to say, the submission advanced by the learned Advocate for the Applicant that Village Narogli should have been left for Open candidates is misconceived and total unsustainable, as it would have been in breach of G.R. dated 16.10.2008.

15. In so far as the submission advanced by the learned Advocate for the Applicant about not considering the position of entire 227 posts of Police Patil and its consequences/implications are concerned, it cannot be looked into in this O.A. for the simple reason that it is restricted to appointment of Police Patil of Village Nagorli only. The Applicant's claim is restricted to Village Nagorli. If he wants to assail the determination of entire number of posts determined from all the reserved categories and to challenge the same, then the persons who were appointed on the post of Police Patil from remaining Villages from all categories being likely to be effected ought to have been joined in the O.A. In their absence, the submission that the entire determination is wrong cannot be looked into.

16. Even he has not joined Police Patil of remaining 24 Villages who have been appointed from SC category in terms of Advertisement dated 03.11.2017 and 08.11.2017. The challenge being to the Advertisement and Notification dated 03.11.2017 and 08.11.2017, the other candidates appointed as Police Patil at least from remaining 24 Villages from SC category were necessary parties, but they have not been joined.

17. The submission was advanced by the learned Advocate for the Applicant that 4 posts excluded while determining number of posts of Scheduled Caste candidates is not explained by the Respondents, and therefore, restricting election for 25 posts only is illegal. According to him, if at least these 4 excluded posts were considered, then it would have changed the entire equations and calculations.

18. In this behalf, the perusal of record reveals that though total posts were 227, out of it 13% were reserved for SC category which comes to 29 and 4 posts were excluded having temporarily occupied, and therefore, elections were held for remaining 25% posts from reserved category, as seen from Page No.20 of P.B. 3 posts were temporary and 1 post was already occupied. In the first place, if the exclusion of 4 posts was incorrect, then it was for the Applicant to bring on record material to that effect as to how the exclusion of all those 4 posts are illegal. According to the learned Advocate for the Applicant, those posts were occupied by temporary Police Patils, who were not entitled for continuation. Here again, the Applicant has not joined those 4 Police Patils who were excluded from consideration. In their absence, it is not possible to make any comment in this behalf, as they are likely to be affected persons.

19. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to refer the decision rendered by this Tribunal in **O.A.No.340/2018 (Rajshekhar M. Shivsharan & Ors. Vs. State of Maharashtra & Ors.) decided on 14.06.2019**. In that case, the Police Patils, who were appointed temporarily had challenged the Advertisement dated

13.03.2018 and 14.03.2018 issued by SDO to fill-in regular posts. In that O.A, the Applicants contended that they were entitled for regular appointment in terms of G.R. dated 28.06.2011. However, the Tribunal noticed that as per Clause 4 of G.R. dated 28.06.2011, there must be 13 orders of temporary appointment for total period of more than two years to be eligible for regular appointment. The Tribunal recorded the finding that though the Applicants therein worked on the post of Police Patil for longer period, the orders of temporary appointment of Police Patil were less than 13 and consequently, they were not eligible for regular appointment. Accordingly, the O.A. was dismissed. This decision was referred by the learned P.O. to advance submission that the post of Police Patil excluded by SDO in the present case were in fact temporary post and those should not have been excluded while deciding number of posts reserved for SC category. In so far as reliance on O.A.340/2018 is concerned, it was decided on 14.06.2019. Whereas, the Advertisement in issue in the present O.A. is on 08.11.2017. As such, one needs to restrict the position as of 08.11.2017. Therefore, the decision in O.A.340/2018 is of no assistance in the present context. While determining number of Villages for SC category as on 08.11.2017, the SDO considered the then existing situation and excluded the posts already occupied either by regular appointment or temporary appointment in terms of Government policy.

20. Thus, the Respondents have made it clear that though total posts were 227, only 136 posts were to be only filled-in being vacant as remaining were already occupied and excluded. Out of 227 in terms of 13% reservation for SC, 29 posts were to be filled-in and out of it, 4 posts were already occupied. Therefore, 25 posts were reserved for SC and accordingly, 25 Villages were determined out of which Nagorli was amongst them in terms of population of Scheduled Caste category in Village.

21. As stated above, the entire thrust of the submission advanced by the learned Advocate for the Applicant was that the SDO ought to have considered totally 227 posts for holding elections and the Villages ought to have been reserved for reservation policy out of total 227 posts and had it done so, there would have been change in equation as number of Villages for SC category would have different. However, it is only assumption and surmises. The Applicant failed to establish that if 227 posts were considered for holding election afresh, the situation would have been certainly different and the Village Nagorli would not have fallen in the category of SC. Apart, he has not joined other persons already appointed on the post of Police Patil in view of calculation done by SDO, who were necessary parties in the event of challenge to their election on the basis of alleged wrong calculation. Suffice to say, the Applicant has failed to establish that the reservation of Village Nagorli for SC category was contrary to law and factual position. Consequently, the challenge to the election of Respondent No.4 is devoid of merit. Hence, O.A. deserved to be dismissed.

O R D E R

The Original Application stands dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 15.12.2020
Dictation taken by :
S.K. Wamanse.
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