

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1099 OF 2017

DISTRICT : KOLHAPUR

Shri Vinayak Shivaji Patil.)
Age : 37 Yrs., Occu.: Farmer,)
Residing at Village Kothali, Tal.: karveer,)
District : Kolhapur.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The District Collector, Kolhapur.)
Collector Office, Nagala Park,)
Kolhapur.)
3. Sub-Divisional Officer.)
Karveer Division, Karveer Collector)
Office Area, Nagala Park, Kolhapur.)
4. Sanjay K. Patil.)
Age : 34 Yrs., Occu.: Service,)
R/o. Village Kothali, Tal.: Karveer,)
District : Kolhapur – 416 001.)
5. Digambar R. Kadam.)
Age : 40 Yrs., Occu.: Police Patil,)
A/P. Kothali, Tal.: Karveer,)
District : Kolhapur.)...Respondents

Mr. N.P. Dalvi with Mr. V.R. Kolekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents 1 to 3.

Mr. K.R. Jagdale, Advocate for Respondent No.4.

None for Respondent No.5 though served.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 15.03.2019

JUDGMENT

1. The Applicant sought to challenge the Advertisement dated 13.11.2017 as well as appointment of Respondent No.5 on the post of Police Patil vide order dated 01.01.2018 and declaration for his appointment to the post of Police Patil invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant is resident of Village Kothali, Tal. Karveer, District Kolhapur. Initially, on 13.11.2015, the Respondent No.3 (S.D.O.) had issued Advertisement to fill-in the post of Police Patil of Village Kothali, Tal. Karveer, District Kolhapur from O.B.C. Category. Accordingly, the Applicant as well as Respondent No.4 participated in the process. The Respondent No.4 stood first in the order of merit, whereas the Applicant was second in the merit list. Accordingly, the Respondent No.3 appointed Respondent No.4 for the post of Police Patil. The Applicant contends that the Respondent No.4 was in full time employment with Toolex Engineering Private Limited, Kolhapur but suppressed this fact while applying for the post of Police Patil. Therefore, the Applicant made complaints to Respondent No.2 as well as Respondent No.3 and enquiry was conducted in that behalf. Realizing the consequences of furnishing false information, the Respondent No.4 tendered resignation on 25.07.2016. The Applicant contends

that, in view of resignation of Respondent No.4, he being second in the list, entitled to be appointed to the post of Police Patil. However, the Respondent No.3 issued fresh Advertisement on 13.11.2017 reserving the post of Police Patil of Village Kothali for VJ(A)/NT(B). Whereas, as per earlier Advertisement dated 23.11.2015, it was reserved for O.B.C. The Applicant has, therefore, approached this Tribunal to set aside the Advertisement dated 13.11.2017 and prayed for direction to appoint him to the post of Police Patil in view of resignation tendered by Respondent No.4.

During the pendency of the application, the Respondent No.3 in pursuance of Advertisement dated 13.11.2017 completed process to fill-in the post of Police Patil and appointed Respondent No.5 to the post of Police Patil of Village Kothali. In view of this subsequent development, the Applicant amended the application and also prayed to set aside the order dated 01.01.2018 whereby the Respondent No.5 came to be appointed to the post of Police Patil.

3. The Respondent No.3 resisted the application by filing Affidavit-in-reply (Page Nos.65 to 80 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the appointment on the post of Police Patil. The factual aspect of earlier Advertisement dated 23.11.2015, the appointment of Respondent No.4 in pursuance of the said Advertisement as well as his resignation on 25.07.2016 is not disputed. As regard the claim of the Applicant, the Respondent No.3 contends that in view of resignation tendered by Respondent No.4 on 25.07.2016, fresh Advertisement was required to be issued to fill-in the vacancy and there is no provision to appoint a candidate who stood second in the list. The process undertaken in pursuance of Advertisement dated 23.11.2015 had come to an end, and therefore, the Applicant's claim for the appointment being second in the list is not maintainable. Consequently, the Respondent No.3 issued fresh Advertisement on 13.11.2017 and considering the population of Village, reserved the post of Police Patil for VJ(A)/NT(B) category. Accordingly, the

process was completed and Respondent No.5 was appointed to the post of Police Patil. As per G.R. dated 22.08.2014, the select list was to be prepared for one post and it was valid only for one year, and therefore, the Applicant's claim is unsustainable.

4. The Respondent No.4 filed his Affidavit-in-reply (Page No.100 of P.B.) and denied that he was full time employee, and therefore, not entitled to the appointment on the post of Police Patil. According to him, he was not full time employee. However, he was not willing to continue on the said post, and therefore, tendered resignation.

5. The Respondent No.5 though appeared, did not file any Affidavit-in-reply. On 25.10.2018, he was present in person and made a statement that he does not want to file separate reply and adopting the reply filed by Respondent No.3. Thereafter, he did not appear or participate in the proceedings.

6. Shri N.P. Dalvi, learned Advocate for the Applicant sought to contend that, admittedly, the Applicant was second in the select list prepared in pursuance of Advertisement dated 23.11.2015, and therefore, in view of resignation tendered by Respondent No.4 on 25.07.2016, the Applicant is entitled for the appointment to the post of Police Patil. He strenuously urged by reserving the post of Police Patil for VJ(A)/NT(B), the statutory right of the Applicant for appointment to the post of Police Patil being second in the list has been violated. He further canvassed that the decision of Respondent No.3 to issue fresh Advertisement on 13.11.2017 without laying any foundation for reserving the post for Reserved Category is illegal. He has also pointed out that, on 13.12.2017, the Tribunal has passed order that, appointment if made during the pendency of O.A. shall be subject to outcome of the proceedings. Therefore, the appointment of Respondent No.4 to the post of Police Patil during the pendency of this application by order dated 01.01.1980 is contrary to the principles of law and the

rights accrued in favour of Applicant cannot be defeated. To drive home point, he placed reliance on certain decisions rendered by the Tribunal in relation to the appointment of Police Patil, which will be dealt with little later.

7. Per contra, Smt. A.B. Kololgi , leaned Presenting Officer reiterated the stand taken in reply and pointed out that in terms of G.R. dated 22.08.2014, the select list was valid only for one year and on completion of one year it lapses. Furthermore, there is no provision to appoint second candidate in the contingency of resignation of first appointed candidate particularly where such candidate worked for a considerable period of six months and tendered the resignation. She emphasized that, in such situation, the vacancy needs to be filled-in by issuing fresh Advertisement in terms of Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other conditions of Services) Order, 1968 (hereinafter referred to as 'Police Patil Recruitment Order 1968' for brevity). She, therefore, canvassed that the theory of violation of right of the Applicant is misconceived and challenged to the appointment of Respondent No.5 is devoid of merit.

8. Shri K.R. Jagdale, learned Advocate for Respondent No.4 submitted that his client has not suppressed material fact, so as to invite disqualification for the appointment to the post of Police Patil and fairly stated that having tendered the resignation on 25.07.2016, he is out of process. He has also pointed out that the learned Advocate for the Applicant has given up the prayer to investigate the matter of suppression of material fact by Respondent No.4, and therefore, the dispute remains only in between the Applicant and Respondent No.5 to be adjudicated by the Tribunal.

9. It needs to be noted that the appointments to the post of Police Patil are regulated by 'Police Patil Recruitment Order 1968' which inter-alia provides for eligibility, term of office, selection process, etc. At this juncture to appreciate the

matter in issue, it would be useful to refer relevant provisions of 'Police Patil Recruitment Order 1968' as well as G.R. dated 22.08.2014. Here, we are concerned with Clause 5 of 'Police Patil Recruitment Order 1968', which is as follows :

“5. Selection of Police-Patils.-(1) Whenever a vacancy occurs in the office of a Police Patil, the competent authority shall invite applications for the post by issuing a proclamation in the village by beat of drum stating the date upto which and the place at which applications will be received. A copy of the proclamation shall also be affixed on the village Chawdi. On receipt of the applications, the competent authority shall after making such enquiries as it may deem necessary, select from amongst the applicants eligible for appointment, a person who in its opinion is best suited for the appointment.

(2) In making the selection, the competent authority shall take into consideration whether the applicant is known to the villagers, is acquainted with all the circumstances of the village, and is possessed of landed property in the village.”

10. Whereas, the Government of Maharashtra had issued guidelines pertaining to the appointment of Police Patil by G.R. dated 22.08.2014. Clause No.4 of G.R. is important, which is as follows :

“निवडसूची एक वर्षासाठी वैध राहिल. त्यानंतर ती व्यपगत होईल. निवडसूची तयार करताना एका पदासाठी एक उमेदवार या प्रमाणात तयार करण्यात यावी.”

11. The crux of the matter is, whether the Applicant had acquired any indefeasible right of appointment to the post of Police Patil and is entitled to the appointment in view of vacancy arose because of resignation tendered by Respondent No.4 and answer is in negative for the reasons to follow.

12. At the very outset, as noted from 'Police Patil Recruitment Order 1968', there is no such provision or Rule to appoint second candidate on the post of Police Patil where first candidate appointed enjoyed the post and tendered the resignation after a considerable period. Admittedly, there is no such provision or

rule. On the contrary, Clause 5 of 'Police Patil Recruitment Order 1968' specifically provides how vacancy is required to be filled-in. Admittedly, the recruitment process undertaken by virtue of first Advertisement dated 23.11.2015 was culminated in the appointment of Respondent No.4 to the post of Police Patil. The Respondent No.4 was appointed by order dated 29.01.2016 and he worked and enjoyed the post till his resignation on 25.07.2016. This being the admitted position, the necessary corollary is that the first process initiated by Advertisement dated 23.11.2015 came to an end in all respect. One can understand, if in the same process the appointment of the candidate selected to the post of Police Patil is challenged and his appointment is set aside for one or the other reasons, in which the appointment of second candidate who stood second in the select list is made. It cannot be forgotten that there is vast and material difference in the situation where the appointment is set aside by the Tribunal or Court necessitating the appointment of candidate who stood second in the list and the situation where the process of appointment came to an end by appointing a person who worked for six months and then tendered resignation. Suffice to say, once the process came to an end and person appointed to the post of Police Patil worked for a considerable period and then tendered resignation, such vacancy needs to be filled-in by issuing fresh Advertisement and there is no subsisting enforceable right in favour of person who stood second in the list to seek appointment on the vacancy occurred due to resignation by a person appointed earlier. Suffice to say, the submission advanced by the learned Advocate for the Applicant in this behalf is misconceived.

13. The learned Advocate for the Applicant sought to place reliance on the decision rendered by this Tribunal in ***O.A.No.324/2017 (Krishna T. Kharat Vs. The State of Maharashtra) decided on 23.11.2017, O.A.No.725/2016 (Shyam C. Kotkar Vs. The State of Maharashtra) decided on 15.01.2018 and O.A.No.542/2016 (Vaishali A. Kathar Vs. The Divisional Commissioner, Aurangabad) decided on 30.11.2017.*** I have gone through these Judgments and

found the decisions rendered are on totally different facts. In O.A.324/2017, a person who was selected being first in list did not join, and therefore, a person who was second was directed to be appointed to the post of Police Patil. In O.A.725/2016, the dispute was about age of the person who was selected to the post of Police Patil. He was found above age of 45 years which is more than prescribed age, and therefore, second person in the list was ordered to be appointed. Whereas in O.A.No.542/2016, a person selected was a member of Gram Panchayat which was disqualification for the appointment to the post of Police Patil and in that situation, the second person in the list was ordered to be appointed. Similar is the situation in the Judgment of Hon'ble High Court in ***Writ Petition No.14191/2017 (Gnyaneshwar B. Solunke Vs. Divisional Commissioner, Aurangabad) decided on 16.07.2018.*** As such, these decisions are of no assistance to the Applicant in the present situation.

14. Indeed, the present situation is covered by the decision rendered by this Tribunal in ***O.A.326/2017 (Nilkanth Jadhav Vs. State of Maharashtra) decided on 22.03.2018.*** In this matter also, a person appointed to the post of Police Patil after some period tendered resignation and person who was next to him sought appointment to the post of Police Patil. The Tribunal held that the vacancy occurred on account of resignation has to be filled-in by fresh recruitment process. Similar is the issue in the present case. I see no reason to take different view.

15. At this juncture, it would be apposite to refer the Judgment of Hon'ble Supreme Court in (2010) 2 SCC 637 (Rakhi Ray & Ors. Vs. High Court of Delhi & Ors.) which is aptly applicable to the matter in hand. Para No.24 of Judgment is as under :

"24. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be

filled up as per the statutory rules and in conformity with the constitutional mandate. In the instance case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment.”

16. The necessary corollary of aforesaid discussion is that the Applicant has no indefeasible right much less enforceable in law, so as to seek appointment to the post of Police Patil after resignation of Respondent No.4. The vacancy now required to be filled-in by issuing fresh process in accordance to Rules, which Respondent No.3 had undertaken and completed by appointing Respondent No.5 to the post of Police Patil.

17. Shri N.P. Dalvi, learned Advocate for the Applicant lastly made feeble attempt to assail Notification dated 13.11.2017 on the ground that the Respondent No.3 has not laid any foundation for converting the post of Police Patil from the category of O.B.C. to VJ(A)/NT(B). In fact, the burden was upon the Applicant to make out grounds in his pleading for challenging the conversion of post from OBC to VJ(A)/NT(B) category. However, no such pleading is forthcoming to assail the validity of Advertisement on this ground. At the fag end of argument, he has placed on record a letter dated 29.12.2017 received by the Applicant by way of information sought under the provisions of Right to Information Act, 2005. It seems that the Applicant had sought information as to how the post of Police Patil has been reserved for the post of VJ(A)/NT(B) and sought information in this behalf from the Office of Public Information Officer, Office of Sub-Divisional Officer, Karveer, Kolhapur. The information supplied is as under :

अ. क्र.	मागणी केलेल्या माहितीचा तपशिल	शेरा
१)	१ आपले कार्यालया मार्फत माझे वकील श्री योगेश जोशी यांना पाठविलेले दि. २०/११/२०१७ रोजीचे पत्र क्र. पोलीसपाटील/आस्था / वशी/ २९२८/२०१७ मधील परिच्छेद ४ मध्ये नमुद केलेल्या शासन आदेशाचा स. शि. नक्कल	महितीअधिकार अधिनियम २००५ अन्वये कार्यालयात उपलब्ध असणारी माहिती देणे बंधनकारक आहे. सदर पत्रामध्ये फक्त शासनाकडील

		आदेश नमुद आहे त्यामुळे नेमका आदेश देता येत नाही.
२) दि. ०९/११/२०१७ रोजी मौजे कोथळी ता. करवीर येथील पोलीस पाटील भरतीसाठीचे आरक्षण प्रवर्ग निश्चित करणेकामी मौजे कोथळी येथील आपणास प्राप्त झालेली जातनिहाय लोकसंख्येची आकडेवारी दर्शविणा-या माहितीच्या अहवालाच स.शि. नक्कल		मुददा क्र.२ प्रत उपलब्ध करून या सोबत सादर केली आहे.
३) मुददा क्र २ मधील लोकसंख्या कोणत्या साली झालेल्या राष्ट्रीय जणगणने नुसार आहे ?		सदर लोकसंख्या ही २०११ चे जणगणनेनुसार आलेली होती.
४) दि. ०९/११/२०१७ रोजी मौजे कोथळी ता. करवीर येथील पोलीस पाटील भरती साठीचे आरक्षण प्रवर्ग निश्चित करणेकामी मौजे कोथळी येथील जातनिहाय लोकसंख्येची फेरगणना करून माहिती गोळा केली होती की ?		या मुददयाचे अनंशंगाने कागदपत्रे दिसून येत नाही तसेच प्रश्नांची उतारे देणे माहिती अधिकार मध्ये अपेक्षित नाही.
५) मुदा क्र ४ चे उत्तर होय असलेस अशी माहिती संकलित करणे संबंधित पारित करणत आलेल्या आदेशाची व संकलित झालेल्या माहितीच्या अहवालाची स.शि. नक्कल		असा कोणताही आदेश झाले बदल कागदपत्रे आढळून येत नाही.
६) मौजे कोथळी येथील जाने. २०१६ मध्ये झालेल्या पोलीस पाटील भरतीमध्ये ओ.बी.सी. प्रवर्गातून नियुक्त झालेल्या उमेदवाराने आपले पदाचा अवघ्या सहा महिन्यात राजीनाम दिला अशावेळी ओ.बी.सी. प्रवर्गातील व्यक्तीने सामाजिक आरक्षण धोरणानुसार पाच वर्षांचा कार्यकाल पूर्ण केलेला नसताना देखील सदर गावचा आरक्षण प्रवर्ग ज्या शासन नियम/ निर्णयानुसार बदलणेत आला त्या शासन नियम / निर्णयाची स.शि. नक्कल		आपण नमुद केले प्रमाणे शासन निर्णयनालेला दिसून येत नाही तसेच आपणास हव्या तशा शब्दांकनाप्रमाणे शासन निर्णय झालेचे दिसून येत नाही त्यामुळे सदर माहिती आपणास पुरविता येत नाही.

18. Whereas, the learned P.O. has tendered a copy of G.R dated 16th October, 2008 and submitted that it is on the basis of the said G.R, the post of Police Patil has been reserved for VJ(A)/NT(B) category. The said G.R. provides for reservation for the post of Police Patil on the basis of population falling in different reserved categories. The last Paragraph of G.R. is material, which is as follows :

“आरक्षणाची पदे ठरवितांना अनुसूचित जाती, अनुसूचित जमाती, विशेष मागासवर्ग, विमुक्त जाती (अ), भटक्या जमाती (ब), भटक्या जमाती (क), भटक्या जमाती (ड) व इतर मागास वर्ग मागास प्रवर्ग या क्रमानुसार पदे निश्चित करण्यास सुरुवात करावी व प्रत्येक प्रवर्गातील पदे आरक्षित करण्यासाठी त्या प्रवर्गाची लोकसंख्येची टक्केवारी ही ज्या गावात सर्वात जास्त असेल त्या गावापासून सुरुवात करून उतरत्या क्रमाने त्या प्रवर्गासाठी वरील अधिसूचनेत नमूद करण्यात आलेल्या टक्केवारीएवढी पदे पूर्ण होईपर्यंत त्या प्रवर्गासाठी गावे ठरवावीत.”

19. As such, the decision of converting the post of Police Patil for VJ(A)/NT(B) category seems to have been taken in pursuance of G.R. dated 16th October, 2008. Consequently, the challenge to the Advertisement dated 13.11.2017 fails.

20. In fact, as discussed above, the Applicant has no infeasible right much less legally enforceable right so as to seek appointment to the post of Police Patil in the present context, and therefore, he has no locus to challenge the Advertisement dated 13.11.2017. Even assuming that he has locus in view of Rule No.5 of 'Police Patil Recruitment Order 1968' the vacancy was required to be filled-in by fresh Advertisement, the process of which has been completed and culminated in the appointment of Respondent No.5. As such, no exception can be taken to the decision of Respondent No.3 and appointment of Respondent No.5.

21. The upshot of aforesaid discussion leads me to conclude that the O.A. is devoid of merit and deserves to be dismissed. Hence, the following order.

ORDER

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

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 15.03.2019

Dictation taken by :

S.K. Wamanse.

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