

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1112 OF 2018

DISTRICT : SOLAPUR

Shri Audumbar M. Mali.)
Occu.: Student, R/at Malevadi,)
Tal.: Mangalvedha, District : Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Revenue Department, Mantralaya,)
Mumbai.)
2. The Sub-Divisional Magistrate,)
Mangalvedha, Mangalvedha Division))
Tal.: Mangalvedha, Dist. : Solapur.)
3. The Collector.)
District : Solapur.)
4. Shri Revansiddh M. Nyamgonde.)
Occu.: Service, R/at Malevadi,)
Tal.: Mangalvedha, Dist : Solapur.)...**Respondents**

Mr. S.B. Thorat, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents 1 to 3.

Ms. Sangeeta Dongare holding for Shri D. Pagare, Advocate for Respondent No.4.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 19.08.2019

JUDGMENT

1. This is the second round of litigation pertaining to the post of Police Patil of Village Malevadi, Taluka Mangalvedha, District Solapur. The Applicant as well as Respondent No.4 participated in the process in terms of Advertisement issued by Respondent No.2 – Sub-Divisional Magistrate (SDM) and both secured equal marks i.e. 74 out of 100. However, the Respondent No.4 being senior in age, he was appointed to the post of Police Patil in terms of Government decision dated 22.08.2014. Accordingly, the appointment order dated 30.12.2017 was issued in favour of Respondent No.4. Thereafter, the Applicant made representation on 17.01.2018 to SDM and raised grievance that he ought to have been given 75 marks instead of 74 marks as his answer to Question No.26 was correct. According to the Applicant, the correct answer of Question No.26 was option 'D'. Whereas, as per Model Key, the correct answer was stated option 'C'. The Applicant has pointed out to the SDM that the correct option is 'D', and therefore, he ought to have been given one mark for the same and in result, his total marks goes to 75 which is more than Respondent No.4, and therefore, he should have been appointed to the post of Police Patil. However, his representation was rejected primarily on the ground that the appointment order is already issued in favour of Respondent No.4. Significantly, no specific answer was given about the correct answer of Question No.26. It is on this background, the Applicant had earlier filed O.A.779/2018 before this Tribunal which was disposed of on 27th August, 2018 thereby giving directions to the Respondents to consider the representation made by the Applicant on 17.01.2018 and to take decision on merit. However, the Respondent No.3 by order dated 15.10.2018 informed to the Applicant that the decision appointing Respondent No.4 is correct. Significant to note that while doing so, the Respondent No.2-SDM did not address the main grievance raised by the Applicant about the correct answer of Question No.26. Indeed, he was under obligation to

decide the correct answer of Question No.26 and to pass further appropriate orders. However, he skirted the main issue involved in the matter. It is on this background, the Applicant has again filed this O.A.

2. The learned Advocate for the Applicant submits that the correct answer of Question No.26 is option 'D' i.e. 73 amendment in the Constitution of India relating to the powers of Gram Panchayat. As such, according to him, the Applicant was entitled to one more mark and his total marks then would go to 75 and eligible for appointment on merit having secured highest marks. He, therefore, prayed to allow the O.A.

3. The learned Advocate for Respondent No.4 requested for time but the same is rejected. She did not make any statement on merit.

4. The learned C.P.O. sought to contend that the Respondent No.2-SDM had already rejected the representation made by the Applicant, and therefore, the O.A. is without any merit. However, she fairly concede that in communication given by Respondent No.2 – SDM, there is no reference as to which is correct answer of Question No.26 which is main grievance of the Applicant in the present matter.

5. Admittedly, the Applicant as well as Respondent No.4 had secured 74 marks and Respondent No.4 being senior in age, he was appointed to the post of Police Patil in terms of Government Resolution dated 22nd August, 2014. However, the main issue involved in the process pertains to the correct answer of Question No.26, which is not answered either way by Respondent No.2 while rejecting the Applicant's representation. Even after the directions issued by this Tribunal in O.A.779/2018, the Respondent No.2 – SDM did not address the main issue about the correct answer of Question No.26. According to the Applicant, as per Answer Key option 'C' was

the correct answer. However, he pointed out that the Answer Key itself is incorrect and as per the Constitution of India, the correct answer is option 'D'. He has also pointed out the same by in reference to the amendments to the Constitution of India.

6. In view of above, basically, it is for Respondent No.2 – SDM to find out which was the correct answer to Question No.26 and if the answer given by the Applicant is found correct, then he is required to proceed further in the matter for passing subsequent orders of appointment to the candidate who found secured highest marks. This exercise is required to be done by Respondent No.2 – SDM.

7. In view of above, the O.A. deserves to be disposed of with suitable direction to the Respondent No.2 – SDM. It is for him to decide which is the correct answer to Question No.26 and then proceed further in the matter.

8. In view of above, the O.A. is disposed of in terms of following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent No.2-SDM is directed to decide which is the correct answer of Question No.26 of Written Examination paper for the post of Police Patil and if the Applicant's answer is found correct, then he should pass further appropriate order about the cancellation as well as appointment of appropriate person to the post of Police Patil on the basis of marks on merit.
- (C) The Respondent No.2-SDM is further directed to give hearing to the Applicant as well as Respondent No.4 and

to decide the issue as stated above within a month from today and shall pass further appropriate order.

(D) No order as to costs.

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

Mumbai
Date : 19.08.2019
Dictation taken by :
S.K. Wamanse.

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