

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1220 OF 2019

DISTRICT : PUNE

Smt. Rupali Rohit Jagtap.)
Occu.: Nil, Residing at Khandukhairevadi,)
Tal.: Baramati, District : Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Collector, Pune.)
3. Sub-divisional Officer, Baramati,)
District : Pune.)
4. Kiran Kundalik Khaire.)
Occu.: Advocate, residing at)
Khandukhairevadi, Tal.: Baramati,)
District : Pune.)...**Respondents**

Mrs. Rekha Musale, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents 1 to 3.

Mr. D.B. Khaire, Advocate for Respondent No.4.

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

DATE : 06.07.2021

JUDGMENT

1. The Applicant has challenged the order dated 27.08.2019 whereby her appointment to the post of Police Patil of Village Khandukhairevadi

Tal.: Baramati, District : Pune stands cancelled on the ground of breach of conditions in appointment order, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Respondent No.3 – Sub-Divisional Officer (SDO), Baramati, District Pune had published Notification/Advertisement on 06.06.2017 to fill-in the post of Police Patil of Village Khandukhairevadi as a Group Gram Panchayat for the villages viz. Khandukhairevadi, Chandgudevadi and Dhandevadi. In pursuance of Advertisement, the Applicant participated in the process and was appointed on the post of Police Patil by order dated 16.12.2017. Accordingly, she started discharging her duties as Police Patil. Later, Respondent No.4 who is resident of Village Khandukhairevadi had lodged complaint on 10.07.2019 with SDO, Baramati stating that Applicant is doing private service at two places and thereby contravened condition No.8 of appointment order which prohibits Police Patil from doing Government, Semi-Government or private service. On receipt of complaint, the Respondent No.3 – SDO issued Show Cause Notice to the Applicant and after hearing, the Applicant as well as Respondent No.4 by order dated 27.08.2019 cancelled the appointment of the Applicant on the ground that Applicant has committed breach of Condition No.8 of appointment order and has suppressed material information while applying for the post of Police Patil. The Applicant has challenged the cancellation of appointment to the post of Police Patil in the present O.A.

3. The Respondent No.3 – SDO as well as Respondent No.4 filed Affidavit-in-reply inter-alia contending that Applicant was doing private service at two places and thereby committed breach of Condition No.8 and sought to justify the impugned action of cancellation of appointment of the Applicant.

4. Before advertng the factual aspects, at this juncture, it would be apposite to reproduce Condition No.8 of the appointment order, which is as follows :-

“८. नियुक्ती झालेल्या पोलीस पाटील यांनी कोणत्याही प्रकारची शासकीय/निमशासकीय/खाजगी नोकरी करता कामा नये अगर् राजकारणात भाग घेता कामा नये तसे आढळून आलेस त्याची नियुक्ती आपोआप रद्द समजण्यात येईल.”

5. The appointment to the post of Police Patil are governed by Maharashtra Village Police Patil (Recruitment, Pay and Allowances and other Conditions of Service) Order, 1968 (hereinafter referred to as ‘Order of 1968’ for brevity). The Clause No.8 of ‘Order of 1968’ is as under :-

“8. **Engagement in business or trade** :- Notwithstanding anything contained in this Order, a Police Patil may cultivate land or engage in local business or trade in the village, in such manner as is not detrimental to the performance of his duties as Police Patil, but he shall not undertake any full-time occupation elsewhere.”

6. Indisputably, the Applicant was appointed as “अशा स्वयंसेविका” for Village Chandgudevadi by Taluka Health Officer, Panchayat Samiti, Pune on 24.02.2009 (Appointment order is at Page No.104 of Paper Book). The perusal of appointment order reveals that appointment was made in the light of scheme viz. National Rural Health Mission, which was implemented from April, 2005. Under the said Scheme, Asha Workers have been appointed as Accredited Social Health Activists for implementing National Rural Health Mission for promoting immunization and to facilitate other health services to the villagers. Admittedly, as per appointment order, she was to get honorium.

7. Secondly, the Applicant was admittedly appointed as ‘केंद्र चालक’ to run ‘आपले सरकार सेवा केंद्र’ by letter dated 28.04.2017 (Page No.113 of P.B.). For that post also, she was to get honorium for running ‘आपले सरकार सेवा केंद्र’ at Village Bhondvevadi.

8. Ms. Rekha Musale, learned Advocate for the Applicant sought to assail the impugned order of cancellation of appointment of the Applicant *inter-alia* contending that the engagement of the Applicant as 'आशा स्वयंसेविका' and 'केंद्र चालक' cannot be equated with Government service and it was purely private Part Time job which cannot be held disqualification for the post of Police Patil. She further submits that all that prohibited is Government or Semi-Government service and Full Time job. She has further pointed out that Rule No.16 of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules of 1979' for brevity) does not apply to the post of Police Patil. As per Rule 16 of 'Conduct Rules of 1979, no Government servant shall except with the previous sanction of the Government engaged directly or indirectly in any trade or business or undertake any other employment. Thus, the sum and substance of her submission is that the post of Police Patil is not civil post and Police Patil can engage himself in local business or trade in the Village as permitted under Rule 8 of Police Patil Appointment Order, 1968. On this line of submission, she submits that the impugned order of cancelling the appointment of the Applicant to the post of Police Patil is totally illegal and there is no breach of any Rules on the part of Applicant.

9. Per contra, Shri A.J. Chougule, learned Presenting Officer for Respondents 1 to 3 and Shri D.B. Khaire, learned Advocate for Respondent No.4 submit that the Applicant was doing private service at two places in the capacity of 'आशा स्वयंसेविका' as well as 'आपले सरकार सेवा केंद्र' and thereby committed breach of Condition No.8 of appointment order. They further pointed out that at the time of filling application for the post of Police Patil, the Applicant has suppressed this aspect, which was surfaced during the enquiry conducted by SDO and her appointment is rightly cancelled.

10. Thus, admittedly, at the time of appointment, the Applicant was working as 'आशा स्वयंसेविका' for Village Chandgudevadi and was also working

as 'केंद्र चालक' to run 'आपले सरकार सेवा केंद्र'. In so far as her assignment as 'आशा स्वयंसेविका' is concerned, she has tendered resignation of that post on 03.10.2018 i.e. after her appointment to the post of Police Patil.

11. As regard 'Asha Worker', it is rightly pointed out by learned Advocate for the Applicant that by virtue of said post, she was not holding office of profit and she was getting honourarium for the said post. She was appointed as 'Asha Worker' under National Rural Health Mission Scheme as a Social Health Activities for promoting various health schemes of the Government and to make awareness in the public about various health scheme of the Government. In this behalf, she referred to the decision of Hon'ble High Court at Patna in **Civil Writ Petition No.9994/2012 (Mira Devi Vs. State of Bihar & Ors.) decided on 14.12.2012** and **Civil Writ Petition No.13545 of 2013 (Veena Devi Chaudhary Vs. State Election Commission, Bihar) decided on 15.05.2014** wherein issue was whether Asha Worker and Anganwadi Sevika are holding the office of profit and were ineligible to context Panchayat Samiti Elections. Hon'ble Patna High Court held that Asha Worker and Anganwadi Sevika does not hold the office of profit under Panchayat since they get remuneration from the funds of National Rural Health Mission and cannot be treated employee of State Government nor of the Panchayat.

12. As such, having regard to the nature of duties as Asha Worker, in my considered opinion, such functioning cannot be said regular full time employment so as to detrimental to the performance of duties as Police Patil and could not be the ground to cancel her appointment on the post of Police Patil.

13. However, in so far as appointment as 'केंद्र चालक' is concerned, it has different prospective and implications. The said appointment was made in pursuance of G.R. dated 11th August, 2016 issued by Rural Development Department, the Government of Maharashtra whereby the

decision was taken to establish 'आपले सरकार सेवा केंद्र' (ASSK) at all Gram Panchayat levels throughout Maharashtra under common services, centers, special purpose vehicles scheme sponsored by Central Government. Clause No.3 of G.R. dated 11th August, 2016 is important, which is as under :-

३. आपले सरकार सेवा केंद्रातून पुढील प्रमाणे सेवा अपेक्षित आहे.

३.१ ग्रामपंचायतीच्या प्रशासनाचे संगणकीकरण (G2G)करणे :

३.१.१ ग्रामपंचायतीच्या लेखा संहिता २०११ मधील दैनंदिन कामकाजाचे १ ते ३३ नमुने संगणकीकृत करणे.

३.१.२ ई-पंचायत कार्यक्रमांतर्गत NIC आज्ञावली वापरणे.

१. नॅशनल पंचायत डिरेक्टरी/लोकल गवर्नमेंट डिरेक्टरी
२. नॅशनल पंचायत प्रोफाईलर/एरिया प्रोफाइलर
३. प्लॅन प्लस
४. प्रियसॉफ्ट
५. अॅक्शन सॉफ्ट
६. अॅसेट डिरेक्टरी
७. सर्विस प्लस
८. ट्रेनिंग मॅनेजमेंट
९. सोशल ऑडिट व मीटिंग मॅनेजमेंट
१०. नॅशनल पंचायत पोर्टल
११. बेसिक GIS प्रणाली

३.२ ग्रामपंचायत द्वारा देण्यात येणारे दाखले/प्रमाणपत्र (G२C) संगणकीकृत करणे व वितरित करणे.

| क्र. | दाखले/प्रमाणपत्र |
|------|---|
| १ | जन्मनोंदणी व प्रमाणपत्र |
| २ | मृत्यूची नोंदणी व प्रमाणपत्र |
| ३ | रहिवासाचा दाखला व प्रमाणपत्र |
| ४ | विवाहाचा दाखला |
| ५ | नोकरी व्यवसायासाठी ना हरकत प्रमाणपत्र |
| ६ | मालमत्ता आकारणी प्रमाणपत्र |
| ७ | मालमत्ता फेरफार प्रमाणपत्र/प्रत |
| ८ | नादेय प्रमाणपत्र |
| ९ | बेरोजगार प्रमाणपत्र |
| १० | वीजेच्या जोडणीसाठी ना हरकत प्रमाणपत्र |
| ११ | कोणत्याही योजनेचा फायदा घेतला नसल्याचे प्रमाणपत्र |
| १२ | शौचालय दाखला |
| १३ | जॉब कार्ड |

| | |
|----|--------------------------------|
| १४ | बांधकामासाठी अनुमती प्रमाणपत्र |
| १५ | नळजोडणीसाठी अनुमती प्रमाणपत्र |
| १६ | चारिच्याचा दाखला |
| १७ | निराधार योजनेसाठी वयाचा दाखला |
| १८ | दारिद्र्य रेषेखालील प्रमाणपत्र |
| १९ | हयातीचा दाखला |

३.३ ग्रामपंचायतीची संबंधित नसलेल्या व लोकांसाठी उपयोगी इतर सेवा (B२C) संगणकीकरणामार्फत उपलब्ध करणे.

उदा. रेल्वे, बस आरक्षण, डीटीएच रिचार्ज, बँकिंग सेवा, आर्थिक समोवशन, ई-कॉमर्स, पॅन कार्ड, आधार नोंदणी, विमा हप्ते भरणे, पासपोर्ट, बिल भरणे, पोस्ट विभागाच्या सेवा इ. सर्व बाबी आपले सरकार सेवा केंद्राद्वारे राबविण्यात येतील.’’

14. In so far as appointment of the Applicant is concerned, she was admittedly appointed as ‘केंद्र चालक’ by appointment order dated 28.04.2017. The Respondent No.4 had obtained information under R.T.I. Act from Zilla Parishad, Pune as regard nature of duties of ‘केंद्र चालक’ as seen from R.T.I. information dated 05.03.2020, which is as under :-

“विषय - आपले सरकार सेवा अंतर्गत भोंडवेवाडी ग्रामपंचायत मधील केंद्र चालकाची माहिती

संदर्भ - आपले मागणी अर्ज दि.०३ मार्च २०२०

- १) ग्रामपंचायत भोंडवेवाडी येथील केंद्र चालक सौ. रुपाली रोहित जगताप यांची नियुक्ती दिनांक २ डिसेंबर २०१६ ला करणेत आली आहे.
- २) केंद्र चालक सौ. रुपाली जगताप यांची नियुक्तीपासूनचे मानधन माहिती सोबत देत आहेत.
- ३) सदर केंद्रचालकाच्या कामकाजाची वेळ ग्रामपंचायत कार्यालयाच्या दैनंदिन कामकाजा प्रमाणेच आहे.
- ४) सदर केंद्रचालकाचे नियुक्तीपासून दरमहा कामकाजाचे दिवस सोबत जोडले आहेत.
- ५) सदर केंद्र चालक यांना CSC-SPV त्यांच्या कामकाजाच्या अनुषंगाने मानधन अदा करत आहे. त्याची माहिती सोबत जोडत आहे.
- ६) सौ. रुपाली रोहित जगताप या आज रोजी ग्रामपंचायत भोंडवेवाडी ता. बारामती येथे आपले सरकार सेवा केंद्र चालक या पदावर कार्यरत आहेत.

सदर माहिती आपले मागणी अर्जानुसार देण्यात येत आहे.’’

15. In respect of remuneration and working hours, the Respondent No.4 had obtained information under RTI Act from Gram Panchayat, Bhondvevadi by letter dated 05.08.2019, which is as under :-

“विषय :- माहितीचा अधिकार अधिनियम २००५ अंतर्गत अर्जाबाबत.
संदर्भ :- आपलेकडील दिनांक २६/७/२०१९ चा अर्ज.

वरील संदर्भीय विषयास अनुसरून आपणास कळविणेत येते की ग्रामपंचायत भोंडवेवाडी येथे सौ. रुपाली रोहित जगताप या संगणक परिचालक म्हणून काम करीत असून त्यांची काम करण्याची वेळ सकाळी १० ते ६ आहे. तसेच त्या आजरोजी कामावर कामावर आहेत. तसेच त्यांची माहे जुलै २०१९ ची हजेरी खालील प्रमाणे असे :

एकूण कामाचे दिवस - ३१
एकूण हजर दिवस - १५”

16. As such, in view of nature of work and working hours for the post of ‘केंद्र चालक’, it is explicit that the same is full time occupation. Even if she was to get remuneration on the basis of work done, the fact remains that it was full time job on par with regular occupation.

17. True, Rule 16 of ‘Conduct Rules of 1979’ does not apply to the post of Police Patil in view of its exclusion as specified under Section 1(3) of ‘Conduct Rules of 1979’. As per Rule 16 of ‘Conduct Rules of 1979’, no Government servant shall accept with the previous sanction of the Government engaged directly or indirectly in any trade or business or undertake any other employment. In other words, Police Patil can undertake any trade or business. Indeed, there is specific provision to that effect under Clause 8 for Police Patil Recruitment Order, 1968, which *inter-alia* states that Police Patil may cultivate land or engage in local business or trade in the Village in such a manner, as it is not detrimental to the performance of his duties as Police Patil. At the same time, Clause 8 further specifically provides that Police Patil, however, shall not undertake any full time occupation elsewhere. As such, Police Patil can cultivate land or engage any local business which should not be detrimental to his performance of his duties as Police Patil but there is specific bar that he shall not undertake any full time occupation elsewhere. Suffice to say, what is permitted is part time engagement in local business or trade in the Village and not full time occupation, as explicit from Clause 8 of Police Patil Recruitment Order, 1968.

18. Whereas, in the present case, by virtue of appointment as 'केंद्र चालक', the Applicant is running center as full time occupation. Her duty hours are from 11 a.m. to 5 p.m. As such, there is element of commitment. There is essential distinction between self-business or trade and full time service. In case of business or trade, a person is free to close business at any point of time and to attend the duties entrusted to him as Police Patil. Whereas, in case of service where duty hours are from 11 a.m. to 5 p.m., the Applicant has committed to remain present throughout a day in a center, so as to provide services to the Villagers and she cannot abdicate such duties. As such, it amounts to full time occupation which is specifically prohibited under Police Patil Recruitment Order 1968.

19. The Police Patil of Village is Government's resident representative in a Village. The duties of Police Patil are defined in Section 6 of Maharashtra Village Police Act, 1967, which are as under :-

“६. Subject to the orders of the District Magistrate, the Police-patil shall,-

- (i) act under the orders of any other Executive Magistrate within whose local jurisdiction his village is situated;
- (ii) furnish such returns and information as may be called for by such Executive Magistrate;
- (iii) constantly keep such Executive Magistrate informed as to the state of crime and all matters connected with the village police and the health and general condition of the community in his village;
- (iv) afford every assistance in his power to all Police Officers when called upon by them in the performance of their duty;
- (v) promptly obey and execute all orders and warrants issued to him by a Magistrate or Police Officer;
- (vi) collect and communicate to the Station Officer intelligence affecting the public peace;
- (vii) prevent within the limits of his village the commission of offences and public nuisances, and detect and bring offenders therein to justice;

(viii) perform such other duties as are specified under other provisions of this Act, and as the State Government may, from time to time, by general or special order specify in this behalf.”

20. Thus, considering the nature of duties required to perform by Police Patil, he should be available to the Villagers at any point of time. In the present case, the Applicant is appointed as 'केंद्र चालक' to the run the center full time, and therefore, such appointment is definitely detrimental to the performance of her duties as Police Patil cast upon her under the provisions of Maharashtra Village Police Act, 1967. However, the Applicant suppressed this fact while applying for the post of Police Patil. Therefore, the cancellation of her appointment by S.D.O. cannot be faulted with.

21. The learned Advocate for the Applicant sought to refer the decision of Hon'ble High Court, Bench at Aurangabad in **Writ Petition No. 4977/2012 [Ishwar V. Mohite Vs. State of Maharashtra] decided on 31.08.2012**. In that case, the Police Patil was running business of Kerosene Dealership with the License from District Supply Officer. However, his Kerosene Retail License was cancelled on his appointment as Police Patil, which was challenged before the Hon'ble High Court. It is in that context, the Hon'ble High Court in reference to Clause 8 of Police Patil Recruitment Order, 1968 held that where Police Patil can cultivate land or engage in local business, the running of Kerosene Shop cannot be said prohibited for appointment as Police Patil. Thus, the appointment of Police Patil was found in consonance in conformity with Clause 8 of Police Patil Recruitment Order, 1968 and order of cancellation of Kerosene Retail License was quashed. Whereas, in the present case, the Applicant is engaged in full time occupation by virtue of her appointment as 'केंद्र चालक', which is definitely detrimental to her performance of duties as Police Patil. Therefore, this Judgment is of little assistance to the Applicant in the present case.

22. At the cost of repetition, it would be necessary to point out that what is permitted under Police Patil Recruitment Order, 1968 is engagement in business or trade with a rider that it should not be detrimental to the performance of his duties as Police Patil. Furthermore, there is specific bar under the said provision that Police Patil shall not undertake any full time occupation elsewhere. In the present case, the Applicant being appointed as 'केंद्र चालक', which is full time occupation, the challenge to the order of SDO cancelling her appointment holds no water.

23. In this view of the matter, I have no hesitation to sum-up that the challenge to the impugned order dated 27.08.2019 is without any merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai
Date : 06.07.2021
Dictation taken by :
S.K. Wamanse.

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