

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.484 OF 2018

DISTRICT : Solapur

Shri Chetan Raiba Gore,)
Age : 35 years, Occ. Advocate,)
R/at A/P. Chikharde, Tal. Barshi,)
Dist. Solapur.)...**Applicant**

Versus

1. Sub-Divisional Magistrate, Sub-)
Division, Gadhinjglaj,)
Dist. Kolhapur.)

2. The State of Maharashtra, through)
Department of Rural Development,)
Having its office at Mantralaya,)
Mumbai – 32.).....**Respondents**

Shri A. V. Bandiwadekar , Advocate for Applicant.

Ms N. G. Gohad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 23.03.2021

JUDGMENT

The Applicant has challenged the order dated 13.04.2018 passed by the Respondent No.1 –S.D.O. Solapur thereby rejecting candidature of the Applicant for the post of Police Patil of village Chikharde, Tal. Barshi, Dist. Solapur on the ground of pendency of criminal case invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant is resident of village Chikharde, Tal. Barshi, Dist. Solapur. The Respondent No.1-S.D.O. Solapur by Advertisement / Notification dated 20.11.2017 invited applications to fill in the post of Police Patil of village Chikharde from other backward reserved category. One of the material conditions of Notification was to submit the Character Certificate from police. Accordingly, the Applicant had participated in the process and got highest marks in written examination. As per Character Certificate submitted by him, a Criminal Case for the offences under Section 447,427, 323, 504, 506 read with 34 of I.P.C. vide Criminal Case No.123/2012 was subjudice in criminal court. The Respondent No.1-S.D.O. Solapur, therefore, issued notice to him and called his explanation. Accordingly, he submitted his explanation stating that he is falsely implicated in the Criminal Case and was sure of acquittal on merit. He further stated that in future he is convicted and will tender resignation. He, therefore, requested to issue appointment on the post of Police Patil. However, Respondent No.1 by impugned order dated 13.04.2018 held that in view of registration of crime and pendency of criminal case against him, he is not eligible and suitable for the post of Police Patil in terms of Maharashtra Village Police Patil (Recruitment, Pay and Allowances & Other Conditions of Services) Order, 1968 (hereinafter referred to as 'Order 1968' for brevity). The Applicant has challenged the order dated 13.04.2018 in the present Original Application.

3. Respondent No.1 resisted the O.A. by filing Affidavit-in-Reply contending that in view of the provisions of 'Order 1968' because of pendency of the Criminal Case, the Applicant is not eligible and suitable for employment of Police Patil and to discharge the duties cast upon him under the provisions of Maharashtra Village Police Act,

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1967 and the order rejecting the candidature of the Applicant is legal and valid.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned order dated 13.04.2018 contending that mere pendency of criminal case itself would not incur disqualification for the post of Police Patil. He has further pointed out that at the time of participating in the process, the Applicant did not suppress this fact and had submitted Character Certificate disclosing that Criminal Case is pending against him. The Applicant was allowed to participate in the process and got highest marks. He, therefore, submits that the impugned order rejecting the candidature and refusal to issue appointment order of the Applicant is illegal and totally unsustainable in law. According to him, it is only in case of conviction, the candidate can be said ineligible for appointment but mere pendency of Criminal Case *ipso facto* does not render him ineligible for appointment to the post of Police Patil. In this behalf, he cited certain decisions to support his contentions which will be dealt with during the course of discussion.

5. Per contra, learned P.O. supported the impugned order contending that in view of admitted position of criminal prosecution, the Applicant is not eligible and suitable for the post of Police Patil in terms of provisions of 'Order 1968'.

6. Indisputably, at the time of participating in the process, the Applicant had submitted Character Certificate issued by Police Inspector, Pangari Police Station stating that the Criminal Case for the offences under Section 447, 427, 423, 504 and 506 read with 34 of IPC is pending before the learned Judicial Magistrate First Class, Barshi. As such, admittedly there is no suppression of fact. In reply to the notice issued by the S.D.O. before passing impugned order, he

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has stated to have been implicated falsely in Criminal Case and claimed to be innocent. However, material question is whether he was eligible and suitable for appointment to the post of Police Patil in the light of the provisions of 'Order 1968' read with Maharashtra Village Police Act, 1967.

7. The appointment to the post of Police Patil is governed by Maharashtra Police Patil Recruitment Order 1968 and Clause No.3(e) of it is material which is as under:-

"3(e): Is adjudged by the competent authority after a summary inquiry to be of bad character or has, in the opinion of that authority, such antecedents as render unsuitable for employment as Police Patil."

Whereas Clause 6 of 'Order 1968' which is referred in impugned order as well as reiterated in reply is as under:-

"6: Temporary appointment - In the case of a casual vacancy occurring in the office of a police-patil by reasons of suspension, absence on leave or any other cause the competent authority or such other officer, not below the rank of Tahsildar, authorized by it in this behalf, may without inviting applications under sub-clause (1) of clause 5, make a temporary appointment of any person who may appear to it or him to be best suited to carry out the duties of a Police Patil.

Provided that, such appointment shall not be made for period exceeding two months."

8. At the very outset, it needs to be clarified that in impugned order reference is made of Clause 6 of 'Order 1968' and the same was reiterated in Affidavit-in-Reply which in fact relates to temporary appointment and not about eligibility criteria of the appointment which is stipulated in Clause No.3 of 'Order 1968'. It is thus obvious that wrong clause is referred to in the impugned order as well as in Affidavit-in-Reply without bothering to see that in fact Clause applicable would be 3(e) of 'Order 1968'. Needless to mention, quoting of wrong provision in the impugned communication will not render

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the impugned order illegal as tried to canvass by learned Counsel for the Applicant.

9. At this juncture, before adverting to the submissions made by learned Counsel for the Applicant, it would be apposite to see the duties and responsibilities of Police Patil as defined in Maharashtra Village Police Act, 1967. In this behalf, Section 6, 8, 12, 13, 14 and 15 are material which are as follows:-

- “6. 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.

8. The Police-patil shall dispose of the village establishment so as to afford the utmost possible security against robbery, breach of the peace and acts injurious to the public and to the village community, and shall report to the Executive Magistrate all instances of misconduct or neglect committed by any member of the said establishment.

12. If a crime has been committed within the limits of any village, and the perpetrator thereof has escaped or is not known, the Police-patil shall forward immediate information to the Station Officer, and shall himself proceed to

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investigate the matter, obtaining all procurable evidence relating to it which he shall forward in continuation to the Station Officer.

13. *(1) If any unnatural or sudden death occur, or any corpse be found within the bounds of any village, the Police-patil shall forthwith proceed to the place of incident and call upon two or more intelligent persons belonging to the village or neighbourhood, who shall investigate the causes of death and all the circumstances of the case, and make a written report of the same, which the Police patil shall cause to be forthwith delivered to the Station Officer.*

(2) Any person who, on being called upon by the Police-patil to hold such investigation, shall without justifiable cause refuse or neglect to do so, shall, on conviction, be punished with fine which may extend to fifty rupees.

(3) If the result of the investigation afford reason for supposing that death has been unlawfully occasioned, the Police-patil shall give immediate notice to the Station Officer, and, if the corpse can be forwarded without the risk of putrefaction by the way shall at once forward it to the nearest Civil Surgeon or other medical officer appointed by the State Government to examine corpse under such circumstances, who shall endeavour to ascertain the cause of death.

If the Police-patil is unable to forward the corpse without the risk of putrefaction rendering examination useless or dangerous. he shall nevertheless prevent the burning or burying of such corpse until the Station Officer or a Magistrate shall have assented thereto.

14. *(1) The Police-patil shall apprehend any person within the limits of his village who he may have reason to believe has committed any serious offence, and shall forward such person, together with all articles likely to be useful as evidence, to the Station Officer.*

(2) Every person so apprehended shall within twenty-four hours, be produced before the nearest Magistrate, excluding the time necessary for the journey from the place where he is apprehended to the Court of the Magistrate.

15. *(1) The Police-patil, in making any investigation coming within the scope of his duty, shall have authority to call and examine witnesses, and record their statement, and to search for concealed articles, taking care that no search be made in a dwelling house between sunset and sunrise without urgent occasion.*

(2) The Police-patil shall also have authority, in carrying out any search or any pursuit of supposed criminals, to enter and act within the limits of other villages, being bound however to give immediate information to the Police-patil thereof, who shall afford him all the assistance in his

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power, and be immediately responsible for continuing the search and pursuit.

10. It is thus explicit that the role of Police Patil in village is very important and he needs to discharge various duties so as to assist administration as well as police authorities to maintain law and order as well as public peace in the village. Therefore, verification of the character of a person to be appointed as Police Patil in the light of his antecedent is one of the important criteria to see whether he is suitable to discharge the duties cast upon him under the provisions of Maharashtra Police Village Act scrupulously in fair and transparent manner.

11. The subject of appointment of Police Patil is regulated and governed by 'Order 1968'. The Appointing Authority must be satisfied that in his opinion person to be appointed has no such antecedent which would render him unsuitable for employment as Police Patil. In other words, satisfaction of appointing authority about suitability of the candidate having regard to his antecedent is condition precedent for appointment. For this purpose only, the candidates were required to furnish character certificate from police station. In present case, undoubtedly, the Applicant has not suppressed the facts of criminal prosecution and fairly disclosed that he is facing criminal case for the offences under Section 447, 427, 323, 504, 506 read with 34 of I.P.C. which was subjudice in the court of learned Judicial Magistrate First Class.

12. True, in criminal jurisprudence, the accused is presumed to be guilty unless the charge is proved by the competent court of law. However, for appointment to the post of Police Patil antecedent of the

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candidate must be unblemished and there should not be his involvement in commission of criminal offences so as to discharge duties of Police Patil cast upon him under the provisions of Maharashtra Police Village Act, 1967 as narrated above. Apart, it is for the appointing authority to see the suitability of the Applicant for the post of Police Patil and if the appointing authority in view of admitted position of pendency of criminal case comes to conclusion that he is unsuitable for appointment then such objective assessment can hardly be questioned or interfered in the limited jurisdiction of judicial review.

13. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to refer the decision rendered by this Tribunal in **O.A.No.362/2014 (Anil R. Yadav V/s The Commandant, Indian Reserve Batalion, Kolhapur)**, decided on 04.10.2016. It was matter pertaining to appointment to the post of Police Constable and only FIR was registered against the Applicant in the matter of riot in 2009. However, there was no progress in the investigation and consequently no charge sheet was filed though the period of five years was over. It is in that context, the directions were given to appoint the Applicant to the post of Police Constable subject to outcome of criminal case if instituted later. Thus, what weighed the Tribunal was not filing of charge sheet for five years giving inference of no evidence so as to file the charge sheet in the court of law for trial. Therefore, this authority which is distinguishable and is of no assistance to the Applicant. The reference was also made to the decision of Hon'ble High Court Bench Aurangabd in **W.P. No.4977/2012 (Ishwar V. More v/s State of Maharashtra & 3 Ors.) decided on 31.08.2012**. It was the matter pertaining to cancellation of licence granted to Police Patil to run kerosene shop at village Ghodki. The Hon'ble High Court referred the 'Order 1968' particularly Rule No.8 which *inter alia* permits Police Patil to engage in the local business or trade in the village, in such

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manner as is not detrimental to the performance of his duties as Police Patil, but he shall not undertake any full time occupation elsewhere. It is in that context, the Hon'ble High Court considered the provisions of Maharashtra Civil Services (Conduct) Rules 1979 and held that running of kerosene business with licence of competent authority is in consonance and in conformity of 'Order 1968'. As such, the facts are totally distinguishable and this decision is not relevant in the present context.

14. Learned Counsel for the Applicant further referred to decision of Hon'ble High Court in **W.P. Nop.6701/2016 (The State of Maharashtra & Anr. V/s Shri Rahim J. Tumdiwale)**, decided on 19.06.2018 which was arising from the decision rendered by the Tribunal in O.A.No.352/2014 whereby directions were given to consider the case of Respondent for appointment to the post of Police Constable. In that case, appointment was not issued for the post of Police Constable because of involvement of candidate in two criminal cases in which he was already acquitted. The High Power Committee, recommended against appointment stating that acquittal was based on benefit of doubt. In judgment, the Tribunal had referred G.R. dated 13.06.1988 which provides that appointment should be offered only when there is a clean acquittal. It is in that context, after examining judgments of criminal court, the Hon'ble High Court held that it was a case of no evidence, and therefore, the decision of High Power Committee that the Applicant had tendency to commit offences repeatedly is unwarranted. In both the criminal cases, complainant himself turned hostile. Whereas, in present case, the criminal case is still subjudice.

15. Learned Counsel for the Applicant lastly referred to the decision of CAT, Delhi reported in **2006(92) SLJ 163 CAT** in that case initially appointment was given but later it was terminated due

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to pendency of criminal case without giving opportunity of hearing to the candidate. It is in that context, the order of termination held illegal.

16. True, in the said judgment, the CAT observed that mere involvement in a criminal case when trial is on, is not a mirror to reflect unsatisfactory character of a person. Whereas, in the present case, subject of appointment of Police Patil is specifically governed and regulated by provisions of Maharashtra Village Police Act, 1967 and 'Order 1968' which *inter alia* provides satisfaction of the candidate in view of his antecedent about his suitability for appointment as Police Patil. In the present case, S.D.O. having regard to the pendency of criminal case came to the conclusion that he will not be suitable for the post of Police Patil. In my considered opinion, the decision of Competent Authority to that effect cannot be said irrational or illegal much less to interfere in judicial review.

17. The submission was advanced by the learned Counsel for the Applicant that where in the matter of appointment to the post of Police Constable which is more important and regular appointment as compare to honorary appointment, pendency of criminal case is no ground to refuse appointment then in the matter of appointment to the post of Police Patil by analogy, it will have to be held that mere pendency of criminal case will not render the candidate unsuitable for the post of Police Patil. I find myself unable to accept the submission since appointment to the post of Police Patil are strictly governed by the provisions of 'Order 1968' which *inter-alia* provides that the opinion of appointing authority about suitability of a candidate to the post of Police Patil is one of the criteria. In the matter of appointment to the post of Police Constable, there is provision for placing the matter before High Power Committee for its recommendation. Whereas in present case, powers are vested with S.D.O. who is

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appointing authority and in terms of Police Patil 'Order 1968' he held that in view of antecedent of Applicant, he will not be suitable for employment and to discharge the duties cast upon him under the provisions of Maharashtra Police Village Act, 1967'

18. The totality of the aforesaid discussion leads me to conclude that challenge to the impugned order holds no water and Original Application deserves to be dismissed. Hence the following order:-

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 23.03.2020
Dictation taken by : VSM
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