

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.629 OF 2018
WITH
ORIGINAL APPLICATION NO.956 OF 2018**

DISTRICT : SOLAPUR

ORIGINAL APPLICATION NO.629 OF 2018

Smt. Tai Bhimrao Vhanmane.)
Age : 33 Yrs., Occu. : Police Patil,)
R/o At : Village Kalubaluwadi,)
Tal.: Sangola, District : Solapur.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue Department, Mantralaya,)
Mumbai – 400 032.)
2. The Sub-Divisional Officer.)
Mangalvedha Division, Mangalvedha,)
District : Solapur.) **...Respondents**

WITH

ORIGINAL APPLICATION NO.956 OF 2018

Smt. Nandatai D. Shinde.)
Age : 41 Yrs., Occu.: Household,)
R/o. At Kalubaluwadi, Post : Junoni,)
Tal.: Sangola, District : Solapur.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Collector & District Magistrate,)
District : Solapur.)
3. The Sub-Divisional officer.)
Mangalvedha Sub-Division,)
Mangalvedha, District : Solapur.)
4. The Tahasildar.)
Tal.: Sangola, District : Solapur.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant in O.A. 629/2018.

Mr. N.Y. Chavan, Advocate for Applicant in O.A. 956/2018.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.08.2019

JUDGMENT

1. Both these Original Applications pertains to the appointment of Police Patil and being arising from common facts, disposed of by the common Judgment.

2. Shortly stated facts giving rise to these O.As. are as under :-

The Applicants in both these O.As are the residents of Village Kalubaluwadi, Tal.: Sangola, District : Solapur. The Sub-Divisional Officer (SDO), Mangalvedha, District : Solapur had published Advertisement on 08,11,2017 to fill-in the post of Police Patil of Village Kalubaluwadi, which was reserved for Open Female Category. The

Applicant in O.A.629/2018 viz. Smt. Tai Bhimrao Vhanmane as well as Applicant in O.A.956/2018 viz. Smt. Nandatai D. Shinde, both applied for the post and participated in the process. Smt. Tai B. Vhanmane had secured 60 marks whereas Nandatai D. Shinde had secured 59 marks. Accordingly, the S.D.O, Mangalvedha by order dated 30.12.2017 appointed Tai B. Vhanmane to the post of Police Patil and she assumed the charge.

3. However, later Nandatai D. Shinde lodged complaint with S.D.O, Mangalvedha on 08.02.2018 alleging that her rival Tai B. Vhanmane is not the resident of Village Kalubaluwadi, but she had secured false Certificates showing her resident of Kalubaluwadi, and therefore, requested for enquiry. The S.D.O, Mangalvedha thereon called report from Tahasildar, Sangola. Accordingly, Tahasildar, Sangola made enquiry and submitted report dated 08.06.2018 to S.D.O, Mangalvedha stating that with following conclusion.

“प्रकरणी समाविष्ट करणेत आलेल्या कागदपत्रावरून सामनेवाला श्रीमती ताई भिमराव व्हनमाने यांचे पतीकडील नाव श्रीमती ताई अशोक बोरकर आहे व त्यांचे पतीचे दिनांक २०.८.२०१२ रोजी निधन झालेनंतर त्यांनी संगायो येजनेअंतर्गत मिळणारी पॅन्शन पतिच्या नावे म्हणजे मौजे किडबिसरी येथील रहिवासी पुराव्याचे आधारे लाभ घेतलेला दिसून येतो. सामनेवाला यांनी पोलीस पाटील भरतीकामी अर्ज दाखल करताना पतीच्या नावे अर्ज दाखल करणे जरूरीचे होते परंतु तसे न करता त्यांनी वडीलांचे नावे म्हणजेच श्रीमती ताई भिमराव व्हनमाने यांचे नावे अर्ज व कागदपत्रे दाखल करून शासनाची फसवणुक केलेचे निदर्शनास येते त्यामुळे त्यांना देणेत आलेला नियुक्ती आदेश रद्द करणेत यावा असे इकडील मत आहे तथापी पुढील आदेशार्थ सविनय सादर. ”

4. The S.D.O, Mangalvedha on receipt of report of Tahasildar passed impugned order dated 29.06.2018 thereby accepting report of Tahasildar and observed that Smt. Tai. B. Vhanmane is not the resident of Village Kalubaluwadi but the resident of Village Kidebisari, but she has suppressed this fact, and therefore, cancelled her appointment order dated 30.12.2017 to the post of Police Patil of Village Kalubaluwadi.

5. On the above background, O.A.629/2018 is filed by Smt. T.B. Vhanmane challenging the impugned order dated 29.06.2018.

6. Whereas, O.A.956/2018 was later filed by Smt. N.D. Shinde contending that in view of cancellation of appointment of Smt. T.B. Vhanmane, she is entitled for appointment to the post of Police Patil and prayed for direction to SDO, Mangalvedha to appoint her to the post of Police Patil being next successful candidate in the process.

7. During the pendency of these O.As, the SDO, Mangalvedha issued fresh Notification / Advertisement dated 24.06.2018 inviting applications to fill-in the post of Police Patil of Village Kalubaluwadi. In view of this subsequent development, the Applicant in O.A.956/2018 amended the O.A. and sought stay to the process initiated afresh in terms of Notification dated 24.08.2018. The Tribunal by order dated 11.09.2018 stayed the said recruitment process initiated by virtue of Notification dated 24.08.2018.

8. Shri R.M. Kolge, learned Advocate for the Applicant in O.A.629/2018 vehemently urged that the Applicant has produced voluminous documentary evidence to substantiate her claim that she is the resident of Village Kalubaluwadi, and therefore, the observation made by SDO, Mangalvedha that she has misrepresented the authority is incorrect and prayed to quash the order dated 29.06.2018. He further submits that once SDO, Mangalvedha had passed the appointment order dated 30.12.2017 in favour of his client appointing her to the post of Police Patil, the SDO has no jurisdiction or authority to review his own order. In this behalf, he sought to place reliance on the decision of Hon'ble High Court, Bench at Aurangabad in **Writ Petition No.1515/2017 (Rukhmin M. Shinde Vs. Pralhad Raner) decided on 31st March, 2017**. Whereas, Shri N.Y. Chavan, learned Advocate for the Applicant appearing in O.A.956/2018 submits that Smt. T.B. Vhanmane is the resident of Kidebisari and not of Village Kalubaluwadi. He tried to substantiate his submission on the basis of documents placed on record.

9. Per contra, Smt. A.B. Kololgi, learned Presenting Officer supported the impugned order contending that in the enquiry conducted by Tahasildar, Sangola, the Applicant viz. Smt. T.B. Vhanmane found not resident of Village Kalubaluwadi, and therefore, the impugned order cannot be faulted with. In alternate, she submits that if enquiry made by SDO held incorrect, in that event, the matter be remitted back to SDO for fresh enquiry and decision thereon afresh.

10. As regard the objection raised by Shri Kolge, learned Advocate about the jurisdiction of SDO to cancel the order and the reference of decision in Writ Petition No.1515/2017 in **Rukhmin Shinde's** case, in my considered opinion, his contention is misplaced. His contention is that once the SDO had appointed his client to the post of Police Patil by order dated 30.012.2017, then the SDO cannot review his own order by cancelling the earlier order of appointment. For this purpose he referred to the decision in **Rukhmin Shinde's** case. I have gone through the decision and found that the same is arising from different context and is of little assistance to him in the present case. In that case, after the process of appointment to the post of Police Patil was initiated before the date of interview, the Petitioner raised an objection that the Respondent No.1 is not eligible, as he has suppressed the material fact that once Crime under Sections 323, 504 and 506 of Indian Penal Code was registered against him. However, the SDO rejected his objection and at the end of process appointed Respondent No.1 to the post of Police Patil. Thereafter again, the Petitioner made another application before SDO stating that the Respondent No.1 could not have been appointed to the post of Police Patil as he suppressed the material fact and mislead the authorities. In view of objection, the SDO again called explanation and while dealing with the objection held that the Respondent No.1 had suppressed the material information of his character. Being aggrieved by it, the Respondent No.1 filed O.A. before the Tribunal. In the

meantime, the SDO issued the appointment order in favour of Petitioner. The Petitioner then carried out the amendment to the O.A. and assailed the appointment of Respondent No.1. However, on merit, the Tribunal allowed the O.A. and set aside the order of appointment of the Petitioner on the ground that once the SDO rejected the objection on the ground of suppression of fact, then he had no jurisdiction to review his own order. It is in that context, the Petitioner Rukhmin Shinde filed Writ Petition No.1515/2017 which was dismissed with the finding that once the SDO had passed the order rejecting the objection on the ground of suppression of material, he cannot sit as an Appellate Authority or to review his earlier in absence of an provision and secondly, for the reason that the earlier order passed by the SDO was not challenged by which the objection was rejected.

11. Whereas, in the present case, the facts are totally different as the SDO on receipt of complaint made by Smt. Nandatai Shinde, an enquiry was conducted through Tahasildar and passed the impugned order. Therefore, in my considered opinion, the Judgment in Writ Petition No.1515/2017 is of no assistance to the Applicant in the present situation.

12. In so far as the claim made by Smt. N.D. Shinde in O.A.956/2018 for appointment to the post of Police Patil in view of cancellation of earlier appointment order of Smt. T.B. Vhanmane is concerned, in my considered opinion, she cannot ask for appointment on the ground that she was next to Smt. T.B. Vhanmane in select list. Admittedly, the process initiated by Advertisement dated 08.11.2017 was completed and in pursuance of it, Smt. T.B. Vhanmane was appointed to the post of Police Patil having secured highest marks by order dated 30.12.2017. There is no denying that accordingly, she assumed the charge and worked for near about six months. It is on complaint made by Smt. Nandabai D. Shinde, her appointment was

cancelled by order dated 29.06.2018. In other words, the process initiated earlier was completed in all respect and selected candidate had already worked on the post for six months.

13. The learned Advocate appearing in O.A.956/2018 could not point out any provision or rule to substantiate as to how his client is entitled for appointment to the post of Police Patil in the present situation only because she was second in select list.

14. The appointment to the post of Police Patil are regulated by Police Patil Recruitment Order, 1968 (hereinafter referred to as 'Order 1968' for brevity) which *inter-alia* provides for eligibility, term of office, selection process, etc. There is no such provision therein to appoint second candidate on the post of Police Patil where first candidate appointed enjoyed the post and later after considerable period of time, his appointment is cancelled by SDO. On the contrary, Rule 5 of 'Order 1968' provides that the vacancy is required to be filled-in by issuing proclamation. As such, in absence of any such provision in 'Order 1968', the Applicant in O.A.956/2018 cannot be said ipso-facto entitled to the appointment to the post of Police Patil after cancellation of the appointment of the selected candidate. There is material difference in the circumstances wherein the process of appointment of a particular candidate is set aside by the Tribunal or Court, which necessitates the appointment of the candidate stood second in the list and the situation where the process of appointment came to an end by appointing a person and worked for six months and then his appointment is cancelled by the SDO. Suffice to say, once the process came to an end and the person appointed to the post worked for considerable period, then vacancy needs to be filled-in by issuing fresh Advertisement and there is no subsisting right in favour of second candidate to ask for appointment.

15. In this behalf, it would be apposite to refer the Judgment rendered by this Tribunal in **O.A.326/2017 (Nilkanth Jadhav Vs. State of Maharashtra) decided on 22.03.2018**. In that case, a person appointed to the post of Police Patil worked on the post and after some period, tendered resignation and next candidate sought appointment to the post of Police Patil. The Tribunal held that the vacancy occurred out of resignation has to be filled-in by fresh recruitment process. The principle laid down therein is applicable to the present case and only difference is that, in the present case, the appointment is cancelled by SDO after six months.

16. In this behalf, 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.”

17. The necessary corollary of aforesaid discussion is that the Applicant in O.A.956/2018 has no right much less enforceable in law, so as to seek appointment to the post of Police Patil, as the earlier process is already completed and the person appointed had already worked for six months.

18. Further, material to note that the Government of Maharashtra by G.R. dated 22.08.2014 issued guidelines pertaining to the appointment of Police Patil and as per Clause No.4 of G.R, the select list will be valid for one year and it will lapse on completion of one year. The Clause No.4 is as follows :-

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

Thus, the period of one year is over and select list is lapsed. On this count also second candidate cannot ask for appointment.

19. Material question is whether the Applicant in O.A.629/2018 is the resident of Village Kalubaluwadi and fulfils the requirement in this behalf in terms of Clause 3 of Notification which *inter-alia* provides that the Applicant should be the resident of concerned Village.

20. Shri Kolge, learned Advocate has invited Tribunal's attention to the various documents produced in the O.A. to substantiate that the Applicant is the resident of Village Kalubaluwadi. As regard her resident at Kalubaluwadi, in Para No.8 of O.A, it is mentioned that she was born at Village Kalubaluwadi and got married in 2012 with a person of Village Kidebisari. However, after the sudden death of her husband in 2012, she shifted to her parental home at Village Kalubaluwadi and staying with her father. It is on this pleading, she claims to be the resident of Village Kalubaluwadi.

21. Whereas, Shri Chavan, learned Advocate for the Applicant in O.A.956/2018 urged that Smt. Tai B. Vhanmane is the resident of Kidebisari and after the death of her husband, availed the benefit of Sanjay Gandhi Niradhar Yojana showing residence of Kidebisari. In support of his submission, he has invited Tribunal's attention to the various documents filed in the O.A.

22. The parties have produced various documents in support of their contention in the present O.A. It is not clear whether these documents were produced before the SDO while passing the impugned order. Indeed, the perusal of impugned order dated 29.06.2018 reveals that on receipt of complaint made by Smt.

Nandatai D. Shinde, the SDO called report from Tahasildar and on receipt of report of Tahasildar accepting it, passed the impugned order without making further enquiry at his level. It is also not clear nor mentioned in the impugned order that after receipt of report of Tahasildar, the hearing was given to the parties and after hearing them, the order is passed. It is explicit from the impugned order that the SDO acted upon solely on the report of Tahasildar though he himself was required to conduct the enquiry himself by giving opportunity of hearing and filing documents and on hearing their submissions, if any. There is no reference or discussion of any documents relied upon by the parties in support of their contention to find out whether Smt. Tai B. Vhanmane is the resident of Village Kalubaluwadi. As such, his finding totally based on the report of Tahasildar without giving opportunity of hearing to the parties before him is not sustainable in law. This being the position, the matter is required to be remitted back to SDO, Mangalvedha to decide it afresh after giving an opportunity of hearing to the parties.

23. In this view of the matter, I have no hesitation to sum-up that the impugned order dated 29.06.2018 is not sustainable in law for the reasons stated above and liable to be quashed. The SDO, Mangalvedha is required to hear the parties afresh by giving them opportunity of hearing and production of documents in support of their contention and to pass appropriate order. In so far as the claim of Applicant in O.A.No.956/2018 is concerned, as stated above, she is not entitled to the appointment to the post of Police Patil, as the earlier process is already completed. In case, the SDO, Mangalvedha comes to the conclusion that the Applicant Smt. Tai B. Vhanmane is not the resident of Village Kalubaluwadi and consequently, if her appointment order dated 30.12.2017 is cancelled, in that event, the SDO, Mangalvedha is required to fill-in the vacancy by issuing Advertisement as per Police Patil Recruitment Order, 1968. Hence, the following order.

ORDER

- (A) The Original Application No.956/2018 is dismissed.
- (B) The Original Application No.629/2018 is partly allowed.
- (C) The impugned order dated 29.06.2018 passed by SDO, Mangalvedha is quashed and set aside.
- (D) The matter is remitted back to SDO, Mangalvedha to decide the objection of Smt. Nandatai Shinde by giving opportunity of hearing and for production of documents to objector as well as Smt. Tai B. Vhanmane and shall pass appropriate order afresh within six weeks from today.
- (E) No order as to costs.

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

Mumbai
Date : 03.08.2019
Dictation taken by :
S.K. Wamanse.