

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.645 OF 2020**

**DISTRICT : PUNE**

Shri Dattatraya Dnyanoba Mali , )  
Age : 44 years, Occ. Agriculturist )  
R/at A/P. Chikharde, Tal. Barshi, )  
Dist. Solapur. )...**Applicant**

**Versus**

1. The State of Maharashtra, through )  
Secretary, Home Department , )  
Having its office at Mantralaya, )  
Mumbai – 32. )
  
2. Sub-Divisional Officer, Maval- )  
Mulshi Sub Division, Pune, having )  
Office at New Administrative Build. )  
2<sup>nd</sup> floor, opposite Vidhan Bhawan )  
Pune. ).....**Respondents**

**Shri L. S. Deskhmukh, Advocate for Applicant.**

**Shri A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 11.02.2022.**

**JUDGMENT**

The Applicant has challenged the order dated 21.10.2020 passed by the Respondent No.2 –S.D.O. Maval-Mulshi, District Pune thereby cancelling the order of appointment order dated 01.03.2018 whereby Applicant was appointed as Police Patil of village Chandkhed, Tal.Maval, Dist. Pune.

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

The Respondent No.2- S.D.O. issued Notification on 07.06.2017 (page 27 of PB) inviting applications to fill in the post of Police Patil, village Chandkhed amongst other villages. The Applicant and others participated in the process. One of the condition of Notification dated 07.06.2017 (Condition No.11) was that candidate should not be the member or affiliated to any political party and he has to submit affidavit to that effect. Accordingly, the Applicant has submitted affidavit on 16.06.2017 on stamp paper of Rs.100/- stating that he does not belonging to any political party or political organization. When the recruitment process was in progress, one villager Shri Hanumant Parkhe was lodged complaint against the Applicant with S.D.O. on 15.12.2017 stating that the Applicant has filed false affidavit thereby contravening condition of Notification and mislead the authorities. According to complainant, the Applicant is member of Bhartiya Janata Party (BJP). Despite this complaint, the Applicant came to be appointed by order dated 01.03.2018. Thereafter, one Shri Amol Kamble and other villagers filed regular criminal case No.2391/2018 (private complaint) before the learned Judicial Magistrate First Class Court, Pune alleging that in the recruitment process for the post of Police Patil, the Applicant has filed false affidavit stating that he does not belong to any political party though he was active member of BJP party. On the said complaint, learned Magistrate has taken cognizance and issue process for the offences under Section 420, 463, 465, 466, 468, 470, 471, 472 and 473 of the IPC by order dated 06.01.2020. It is on this background, having come to know about registration of offences, the S.D.O. issued show cause notice on 06.10.2020 to the Applicant that he has committed breach of condition of Notification by filing false affidavit and called his explanation as to why his appointment should not be cancelled. The Applicant has submitted his reply on 16.10.2020 denying to have

committed breach of condition of Notification. According to him, at the time of giving affidavit, he was not the member of any political party and the complaint is motivated. However, the S.D.O. by order dated 21.10.2020 passed the order of cancelling appointment of the Applicant as Police Patil invoking powers conferred upon the S.D.O. by G.R. dated 07.09.1999 which is under challenge in the present O.A.

3. Shri L. S. Deshmukh, learned Counsel for the Applicant sought to assail the impugned order of cancellation of appointment of his client *inter-alia* contending that mere issuance of process by the criminal court will not empower the S.D.O. to cancel the appointment and secondly, S.D.O. cannot review his own order once he has appointed the Applicant as Police Patil. He further sought to contend that much before filing of nomination, the Applicant has tendered his resignation of membership of BJP, and therefore, the affidavit cannot termed false. He sought to draw support from the decision of the Hon'ble High Court Bench Aurangabad in **O.A.No.1515/2017 Smt. Rukhmin Shinde V/s Pralhad M. Raner & 4 Ors., decided on 31.03.2017** and **2002(2) Mh.L.J.253 (Niraj Janardhan Kherde V/s Member, Maharashtra Administrative Tribunal, Nagpur & Ors).**

4. Per contra, Shri A. J. Chougule, learned Presenting Officer sought to support the impugned order of cancellation of appointment of the Applicant *inter-alia* contending that as per record tendered by the Applicant himself he has submitted his resignation from the membership of BJP party on 09.08.2017 as seen from page 33 of Paper Book. Whereas, he filed affidavit that he is not the member of any political party on 16.06.2017 which is at page no.31 to 32 of PB. He has further placed reliance on G.R. dated 07.09.1999 whereby administrative and quashi judicial powers are conferred upon the S.D.O. in the matter of appointment of Police Patil.

5. Indisputably, as per one of the condition of Notification, the candidate should not be affiliated or member of any political party and he has to submit affidavit on stamp paper of Rs.100/-. In Notification one more condition is mentioned that if information given by the candidate is found false, his appointment can be cancelled at any point of time. The Notification was issued on 07.06.2017. The Applicant has submitted affidavit on 16.06.2017. As such, the Applicant made a statement in affidavit that he was not a member of any political party, therefore, it was incumbent on the part of Applicant that he has tendered resignation of membership of BJP before 16.06.2017. However, it was not so, the Applicant has himself produced a letter dated 09.08.2017 issued by the President of BJP, Tal. Maval (Page 33 of PB) to show that he has tendered resignation from the membership of party on 09.08.2017 and on the same day it was accepted. It is thus explicit that on the date of filing of affidavit i.e. on 16.06.2017 he was active member of BJP. Though, during the course of argument, learned Counsel for the Applicant tried to contend that the Applicant has tendered oral resignation much earlier that has to be heard and rejected. The documents placed on record clearly established that he has tendered resignation only on 09.08.2017. However, while submitting affidavit on 16.06.2017, he made statement that he is not belonging to any political party which is *ex-facie* false.

6. True, only because learned Magistrate has taken cognizance and issue process against the Applicant, it cannot be presumed that Applicant is guilty for the said offence. Admittedly, the criminal case is pending. However, here the issue is not regarding committing an offence but the issue is of making false affidavit, suppression of material fact of affiliation of BJP party. One of the conditions of affidavit empowers the S.D.O. to cancel the appointment order where information supplied by the candidate was false or misleading.

7. Learned Counsel for the Applicant raised the issue of authority of S.D.O. to cancel the appointment once he appointed a candidate on the post of Police Patil. According to him, S.D.O. has no such power of review. In this behalf, he referred to the decision of the Hon'ble High Court in W.P. No.1515/2017 (cited supra). I have gone through the order passed in W.P. No.1515/2017. In that case, one Shri Pralhad Raner was appointed to the post of Police Patil of village Sharnapur but before interview one villager namely Rukhmin Shinde lodged complaint with S.D.O. that offence under Section 323, 504, 506 read with Section 34 of IPC registered against Shri Pralhad Raner and there is suppression of fact. The Superintendent of Police submitted report that no cognizance of offence was registered against Shri Pralhad Raner. The S.D.O. rejected objection and appointed Shri Pralhad Raner on the post of Police Patil. Thereafter again Rukhmin Shinde lodged a complaint with S.D.O. that Shri Pralhad Raner should not have been appointed on the post of Police Potil on the ground that he has suppressed the information regarding his character. The S.D.O. upheld the objection. Being aggrieved by it, Shri Pralhad Raner had filed Original Application before M.A.T. Court wherein interim relief was granted to stay the order dated 16.07.2016. The interim order was granted on 16.07.2016 and on the same day, the S.D.O. had issued the order of appointment in favour of Rukhmin Shinde. The petitioner accordingly joined and started discharging duties. In view of this subsequent development, original petitioner Shri Pralhad Raner carried out the amendment and challenging appointment of Rukhmin Shinde. The Tribunal allowed O.A. on 24.01.2017 and set aside the order dated 16.07.2016. Being aggrieved Rukhmin Shinde filed W.P. It is in that context, the Hon'ble High Court dismissed the W.P. and observed in Para No.16 that S.D.O. cannot reexamine its own earlier order. However, at the same time, it was specifically observed that the S.D.O. in administrative capacity as well as quashi judicial authority is empowered to correct certain

orders which are wrongly passed subject to issuance of notice to the aggrieved person as referred in G.R. dated 07.09.1999.

8. Whereas in the present case, the issue is about filing of false affidavit which empowers S.D.O. to cancel the appointment. Here, as stated above, the Applicant made statement in the affidavit that he does not belonging to any political party though in fact on the date of filing of affidavit, he was the member of BJP party. It is on this background, having noticed this aspect, the show cause notice was issued to the Applicant and thereafter cancelled his appointment order. Vide G.R. dated 07.09.1999, the administrative as well as quashi judicial powers are conferred upon the S.D.O. that he can cancel the appointment, if found made wrongly subject to issuance of notice to the aggrieved party.

9. In present case, admittedly, the S.D.O. has given show cause notice to the Applicant before cancellation of appointment. In answer to show cause notice, nothing substantial is stated. All that he denied filing of false affidavit. He has not tendered any record before the S.D.O. or in this O.A. to establish that he tendered resignation much before filing of affidavit before S.D.O. On the contrary, his own record reveals that he tendered resignation on 09.08.2017 which is subsequent to date of filing affidavit. This being so, the cancellation of appointment cannot be termed illegal. Indeed, as per condition mentioned in Notification dated 05.06.2017, the S.D.O. is empowered to cancel the appointment if it is found wrongly secured.

10. Learned Counsel for the Applicant further referred the decision of the Hon'ble High Court in ***Niraj Janardhan Kherde's case*** (cited supra). In that case, the petitioner was appointed to the post of Police Patil for five years. Subsequently, his appointment was cancelled on the ground that he did not belong to reserved community. In that case, the order of cancelling appointment was

found unjustified for not giving personal hearing to the Applicant and secondly, there was no such reservation of the said post for backward candidate. All that it is stated in the advertisement that if any of the candidate from the reserved community fulfilling the conditions then such candidate will be considered with preference and no such post was kept reserved for backward candidate. The Hon'ble High Court held that it implies that all thing being equal, the person from reserved community will be given preference. The petitioner therein was found far superior to all other candidates. He was not given hearing. Whereas in present case, we are dealing with the submission of false affidavit and making false statement in the affidavit knowingly before cancellation of appointment order, notice was given to the Applicant to which he replied. He did not ask for personal hearing. As such, in my considered opinion with respect these authorities are of no assistance to the Applicant in the fact and circumstances of the present case. The S.D.O. has rightly exercised the powers as conferred upon him by G.R. dated 07.09.1999. The Applicant himself invited this action by making knowingly false affidavit. The challenge to the impugned order is, therefore, devoid of merit.

11. The totality of the aforesaid discussion leads me to sum up that challenge to the impugned order holds no water and the 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**