

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.686/2016.**

**(S.B.)**

Nilesh Suddhodhan Athawale,  
Aged about 27 years,  
Occ-Nil,  
R/o Deurwadi, Tq. Arni,  
Distt. Yavatmal.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-400 032.
2. The Sub-Divisional Officer,  
Yavatmal.
3. Vaibhav Sheshrao Butale,  
Aged about Major,  
Occ-Police Patil,  
R/o Deurwadi, Tq. Arni,  
Distt. Yavatmal.

**Respondents**

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Shri D.S. Raut, the Ld. Advocate for the applicant.

Shri M.I. Khan, the learned P.O. for respondent Nos. 1 and 2.

None for respondent No.3.

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**Coram:- Shri J.D. Kulkarni, Vice-Chairman (J)**

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**JUDGMENT**

(Delivered on this 3<sup>rd</sup> day of April, 2018.)

Heard Shri D.S. Raut, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondent Nos. 1 and 2. None for respondent No.3.

2. The applicant has claimed that the appointment order dated 11.7.2016 in favour of private respondent No.3 Vaibhav Sheshrao Butale issued by respondent No.2 i.e. Sub-Divisional Officer, Yavatmal for the post of Police Patil of village Deurwadi, Tehsil- Arni, District Yavatmal be quashed and set aside and in his place, the applicant be appointed on the said post. From the admitted facts on record, it seems that the applicant, one Shri Vijay Babulal Rathod and respondent No.3 i.e. Shri Vaibhav Sheshrao Butale alongwith other candidates applied for the post of Police Patil of village Deurwadi (Butle), Tehsil- Arni, District Yavatmal, in pursuance of the advertisement / notification dated 10.9.2015. Admittedly, the process of written test and interview was conducted and final select list was published on 15.10.2015. Shri Vijay Babulal Rathod secured 79 marks, the applicant secured 74 marks whereas the respondent No.3 secured 64 marks. Shri Vijay Babulal Rathod was selected and the applicant was kept at waiting list at Sr. no.1 whereas the respondent No.3 was kept at Sr.

No.2. Shri Vijay Babulal Rathod was accordingly appointed to the post vide order dated 30.12.2016. However, Shri Vijay Babulal Rathod resigned his post on 30.6.2016 and the post remained vacant.

3. The applicant was waiting for his appointment, since he was at Sr. No.1 in the wait list, having secured more marks than the respondent No.3. However, to the surprise of the applicant, the respondent No.3 came to be appointed. The said order, therefore, is illegal and, therefore, the applicant has filed this O.A.

4. The respondent No.2 i.e. Sub-Divisional Officer, Yavatmal has filed reply affidavit and admitted almost all the facts. He, however, justified the appointment order of respondent No.3 to the post of Police Patil. He submitted that after Shri Vijay Babulal Rathod resigned from the post, the respondent No.2 called verification of character certificate from the office of Superintendent of Police, Yavatmal in respect of the applicant and the respondent No.3, as both the candidates were on wait list. The Superintendent of Police, Yavatmal vide letter dated 8.7.2016 informed the respondent No.2 that Crime No. 791/2015 for the

offences punishable U/s 107 and 116 (3) of the Code of Criminal Procedure (Cr.P.C.) was registered against the applicant. The applicant suppressed this fact and in fact misled the authorities. It is stated that since the respondent No.3's character was unblemished, it was decided to appoint the respondent No.3 to the post and accordingly he was appointed vide order dated 10.7.2016 and the respondent No.3 has already joined the post as Police Patil on 11.7.2016 and since then he is working in the said post. The applicant has filed rejoinder affidavit on 20.12.2016 and submitted that the character certificate was called only with intent not to appoint the applicant, as no character certificate was called when Shri Vijay Babulal Rathod was appointed. It is further stated that the respondent No.2 has not followed the G.R. dated 26.8.2014, which is for making appointment to the post of Police Patil. The said G.R. gives guidelines as to when and how the persons facing criminal trial, shall be appointed or not to be appointed. According to him, crime against the applicant neither falls in Schedule-A or Schedule-B of the said G.R. and, therefore, rejection of appointment is illegal.

5. From the facts discussed in foregoing paras, it will be clear that the applicant was on wait list at Sr. No.1 whereas the respondent No.3 was at Sr. No.2 in the wait list. Admittedly, the applicant got more marks than the respondent No.3 and, therefore, in normal course, the candidate at Sr. No.1 should have been appointed. The respondents, however, justified the order of appointment of the respondent No.3. Even the G.R. which has been relied upon by the applicant dated 26.8.2014 shows that as per the earlier G.R., it was mandatory on the part of the appointing authority to issue an appointment order only after getting character verification of the candidate to be appointed from the competent authority. Thus, there can be no doubt that any appointment in the Govt. Department is subject to verification of character of the candidate and his antecedents. Thus, the said G.R. gives only guidelines as to under what circumstances, the person shall be appointed or not.

6. The advertisement for the post of Police Patil was published on 10.9.2015 as per Annexure A-1. In the said advertisement, it has been stated as under:-

“भरती प्रक्रीयेसम्बंधात उपविभागीय दंडाधिकारी, यवतमाळ यांचा निर्णय अंतिम राहिल. पोलीस पाटील भरती प्रक्रीयेत कोणतेही फेरबदल करण्याचे अथवा भरती प्रक्रीया रद्द करण्याचे सर्व अधिकार उपविभागीय दंडाधिकारी, यवतमाळ यांनी स्वतःकडे राखून ठेवले आहेत.”

7. Instruction No.12 of the advertisement regarding eligibility of the candidate reads as under:-

“कोणताही उमेदवार भरती प्रक्रीयेच्या कोणत्याही टप्प्यावर अपात्र असल्याचे आढळून आल्यास त्यांची नेमणूक रद्द करण्यात येईल, व त्यांच्या विरुद्ध कायदेशीर कारवाई केली जाईल.”

8. The respondents have placed on record a letter received from the Superintendent of Police, Yavatmal dated 8.7.2016 which is at page No.30. From the said letter, it seems that after Shri Vijay Babulal Rathod resigned from the post of Police Patil, the respondent No.2 requested the Superintendent of Police, Yavatmal to verify character of the applicant as well as respondent No.3 and this letter is the report of verification. From the said report, it seems that no offence was registered against the respondent No.3 and one Shri Amrut Deokar. But Crime No.791/2015 U/s 107 and 116 (3) of Cr.P.C. has been registered

against the applicant and preventive action has been taken against the applicant. This letter shows that not only the crime was registered, but even the preventive action was taken against the applicant. Section 107 of Cr.P.C. reads as under:-

**“107. Security for keeping the peace in other cases.**

- (1) When an Executive Magistrate received information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of the opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond (with or without sureties) for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.
- (2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the

peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.”

9. Thus, the applicant was found guilty and security for keeping the peace was taken from him. Considering this aspect, the respondent No.2 might have appointed respondent No.3 as Police Patil, ignoring the claim of the applicant. There are vague allegations regarding illegality in the appointment in respect of respondent No.3. However, no personal malafides are alleged against the respondent Nos. 2 and 3. As already stated, as per the advertisement, the decision taken by the Sub-Divisional Officer, Yavatmal as regards recruitment was final.

10. If the applicant was aggrieved by the order of appointment of respondent No.3, he should have filed representation to respondent No.2, making grievance about the said appointment. The respondent No.3 has been appointed to the post vide order dated 10.7.2016 and he has already resumed the duty on 11.7.2016. He is still working on the said post of Police Patil. The O.A., however, has been filed on 3.10.2016, i.e., after a lapse of about three months. Considering the fact that the post for



which the candidate was to be appointed is of Police Patil which is an important post in the village, the appointment of respondent No.3 having unblemished character as against the person i.e. the applicant against whom proceedings u/s 107 of Cr.P.C. were initiated, appointment of respondent No.3 cannot be said to be illegal. The learned P.O. has placed reliance on the judgment reported in **(2001) 3 SCC 328 in case of Buddhi Nath Choudhary and others V/s Abahi Kumar and others**, in which the Hon'ble Apex Court has held thus:-

“Improper appointment cannot be interfered with, if the appointments are made long back pursuant to a selection, the said appointment need not be disturbed.”

11. The learned counsel for the applicant submits that in the advertisement, it was not mentioned that the candidates shall state about their antecedents such as registration of offences etc. nor there is any condition that the character will be verified prior to appointment. In this regard, as already stated, various G.Rs which are referred to in the G.R. dated 26.8.2014 filed by the applicant himself, it has been made clear that unless and until

character and antecedents of the selected candidate is verified, no appointment order can be issued. Thus even though it may not be mentioned in the advertisement that the appointment will be subject to verification of character and antecedents of the candidates, it is presumed to be so.

12. From the discussion in foregoing paras, I am, therefore, satisfied that no malafides can be attributed on the part of respondent No.2. As per the advertisement, respondent No.2 is the competent authority and the sole authority to take a decision regarding appointment of Police Patil. A candidate who was appointed to the post of Police Patil resigned, the respondent No.2 seems to have called character verification report of the candidate who were on the wait list, i.e., the applicant and respondent No.3 and in the said process, since crime was registered against the applicant, he was ignored and instead respondent No.3 has been appointed. I do not find any malafides in such action. Instead of making the grievance before the respondent No.2, the applicant has directly approached this Tribunal, that too after the respondent No.3 resumed the charge and served on the post for more than three months. Now, almost 18 months have elapsed and from last

18 months, the respondent No.3 is serving as Police Patil of the village Deurwadi. Admittedly, his character is unblemished. Considering this aspect, I do not find it necessary to interfere in the decision taken by respondent No.2 in appointing the respondent No.3 as Police Patil, ignoring the applicant for the said post. Hence, I proceed to pass the following order:-

**ORDER**

The O.A. stands dismissed with no order as to costs.

(J.D.Kulkarni)  
Vice-Chairman (J)  
3.4.2018.

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