

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.747 OF 2017

DISTRICT : NASHIK

Shri Kavishwar Yashwant Deshmukh.)
Age : 32 Yrs., Occu.: Nil,)
R/o. A.P. Chikhhal Ohol, Tal.: Malegaon,)
District : Nashik.)...**Applicant**

Versus

1. The Sub-Divisional Officer cum Sub-) Divisional Magistrate, Malegaon,) District : Nashik.)
2. Shri Namdeo G. Ahirrao.) Age : Adult, Occu. : Librarian,) R/o. A/P. Chikhhal Ohol,) Tal.: Malegaon, District : Nashik.)
3. The State of Maharashtra.) Through Principal Secretary) (Revenue), Revenue & Forest) Department, Mantralaya,) Mumbai - 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents 1 & 3.

Mr. S.B. Pawar, Advocate for Respondent No.2 is absent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.12.2019

JUDGMENT

1. The Applicant has challenged the impugned order dated 12.04.2017 appointing Respondent No.2 as Police Patil of Village Chikhal Ohol, Taluka Malegaon, District : Nashik.

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

The Applicant and Respondent No.2 are resident of Village Chikhal Ohol, Taluka Malegaon, District : Nashik. The Respondent No.1 Sub-Divisional Officer, Malegaon issued Advertisement in March 2016 to fill-in the post of Police Patil of Village Chikhal Ohol. Accordingly, the Applicant and Respondent No.2 amongst others applied for the post of Police Patil and participated in the process. The Applicant lodged complaint with S.D.O. on 19.05.2016 about the eligibility of Respondent No.2 to the post of Police Patil on the ground that he is in regular service in N.S. Deshmukh Vidyalaya, Chikhal Ohol since 1996 drawing regular salary and had applied for the post of Police Patil without any permission from the employer and secondly, the Respondent No.2 is Director of Vivah Karyakari Seva Society, Chikhal Ohol. He, therefore, contends that the Respondent No.2 is not eligible for appointment on the post of Police Patil. However, the S.D.O. rejected the objection with the observation that the Applicant's service is Part Time and can discharge the duties of Police Patil. He accordingly appointed Respondent No.2 by order dated 12.04.2017, which is under challenge in the present O.A.

3. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for Respondent Nos.1 and 3. The Respondent No.2 though filed reply, later he and his Advocate both are continuously absent.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant assailed the impugned order appointing Respondent No.2 to the post of Police Patil contending that the Applicant is in regular service though it is styled as Part Time service and secondly, Director of Vividh Karyakari Seva Society, Chikhal Ohol, and therefore, not eligible for appointment to the post of Police Patil. In this behalf, he sought to refer Clause No.8 of Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 (hereinafter referred to as 'Order of 1968' for brevity). In order to substantiate that the Respondent No.2's service is permanent and he is availing all the benefits on par with regular employee, he referred to various documents, which will be discussed a little later. He has further pointed out that the Respondent No.2 has made encroachment upon the Government land for which he was fined and it also incurs disqualification for appointment to the post of Police Patil.

5. Per contra, Smt. K.S. Gaikwad, learned P.O. sought to justify the impugned order contending that the service of Respondent No.2 is Part Time and there is no such bar for the appointment of Part Time employee to the post of Police Patil.

6. To begin with, let us see Clause Nos.8, 9 and 12 of 'Order 1968', which are relevant for the present controversy, which are as follows :-

“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.

9. Casual leave and leave of absent.- A Police patil is entitled to (a) casual leave not exceeding 15 days in a year, but he shall not take more than 3 days in continuation at any time, and (b) to leave of absence without any remuneration upto six months at a time.

12. Application of Bombay Civil Services Rules etc. – The State Government may, by an order in writing apply to Police patils such of the provisions of the Bombay Civil Services Rules or the Bombay Civil Services (Conduct Discipline and Appeal) Rules, as are not inconsistent with the Act and the Rules made thereunder.”

7. Now, turning to the facts of the present case, admittedly, the Respondent No.2 is serving on the post of Librarian (Part Time) since 1995 with Narayanrao Sarjerao Deshmukh Vidyalaya, Chikhal Ohol run by Shri Chatrapati Shivaji Shikshan Prasarak Mandal, Chikhal Ohol. Shri Pradeep Rao Deshmukh is the Chairman of the said Institution. It is also not in dispute that the Respondent No.2 is Director of Vividh Karyakari Society. Furthermore, there is no denying that the Respondent No.2 had sought permission from Chairman of Shri Chatrapati Shivaji Shikshan Prasarak Mandal to apply for the post Police Patil but permission was refused by the Chairman. This fact is admitted by Respondent No.2 himself in his statement (Page Nos.59 and 72 of P.B.). However, the Respondent No.2 in his statement filed before SDO contended that his service of Librarian is part time, and therefore, it does not incur any disqualification.

8. The Respondent No.1 – SDO in impugned order dated 12.04.2017 held that the service of Respondent No.2 as Librarian is part time, and therefore, there would be no hindrance to discharge the duties of Police Patil. With this opinion, he rejected the objection raised by the Applicant and appointed Respondent No.2 on the post of Police Patil.

9. In view of above, the question comes whether the Respondent No.2 is eligible for appointment to the post of Police Patil in the light of provisions of ‘Order 1968’ and can discharge the duties of Police Patil.

10. Let us see the duties and responsibilities cast upon the Police Patil, as provided in Maharashtra Village Police Patil Act, 1967, which are as under :-

“SECTION 06: DUTIES OF POLICE-PATIL

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.”

11. Before going ahead, let us see the details post of Librarian held by Respondent No.2. The perusal of initial appointment order dated 07.09.1995 (Page No.36 of P.B.) reveals that, initially the Applicant was appointed on the post of Librarian (part time) in pay scale of Rs.1200-2040. His appointment was approved by Education Officer (Middle School), Zilla Parishad, Nashik as seen from order dated 29.10.2016 (Page No.36 of P.B.). Page Nos.41 to 45 is extract of Service Book of Respondent No.2. As per the entries in Service Book, it is explicit that the Applicant was getting yearly increment. As per

last endorsement, he is in pay band of Rs.5200-20200. Suffice to say, there is no denying that Respondent No.2 is in continuous regular service and availed yearly increments. Whereas, as per Page 46, in the month of June, 2016, the Applicant was in pay scale of Rs.5200-20200 and with D.A, his total pay was Rs.17,060/- in the month of June, 2016. As such, this undisputed documentary evidence clearly spells that the Respondent No.2 is in regular service as Librarian since 1995 and getting regular pay scale. True, his post is shown part time Librarian. However, what are the working hours of Respondent No.2 are not specified. Except nomenclature that the post is part time, no details of his working hours are forthcoming. The written statement of Respondent No.2 as well as impugned order passed by SDO is conspicuously silent on this point. Since the Respondent No.2 is in continuous service from 1995, till date it has to be termed as regular service though the post is shown temporary. He is getting all service benefits as per the provisions of 'The Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977' (hereinafter referred to as 'MEPS Act' for brevity).

12. On the above background, now material question comes whether the Respondent No.2 can be staid eligible for appointment to the post of Police Patil and can discharge the duties attached to the post without conflict of interest. As per Rule 8 of 'Order 1968' which is reproduced above, the candidate applying for the post of Police Patil can cultivate the land or engaged in local business or trade in the Village in such a manner, as is not detrimental to the performance of his duties as Police Patil but he shall not undertake any full time occupation elsewhere. As such, one need to interpret Rule 8 having regard to the intention behind the said provision to see whether a person in regular service though styled as part time can be said eligible for appointment to the post of Police Patil. Indeed, any kind of service with the institution itself seems to be not permissible in view of the language used in Rule 8. It only permits cultivation of land or

engagement in local business or trade. As such, if one interpret Rule 8 in keeping in mind duties and responsibilities of Police Patil, the intention is clear that the cultivation of land or engagement in business, that too, which is not detrimental to the performance of duties as Police Patil is permissible. In other words, only cultivation of land or engagement in local business is permissible, if it is not detrimental to the performance of duties of Police Patil. Whereas, in the present case, the Applicant is in regular service on the post of Librarian and drawing regular pay scale though the post is shown part time. At any rate, it has all trapping of regular service, which is not at all contemplated in Rule 8 of 'Order 1968'. Some private part time job is permissible, but not regular service in the School drawing regular pay scale, yearly increments, D.A, etc.

13. There is another angle of the matter to be examined from the point of conflict of interest. The Police Patil is required to be impartial and not affiliated to any group or people. In the present case, the Applicant is Librarian in School runs by Shri Chatrapati Shivaji Shikshan Prasarak Mandal, which seems to be recognized educational institution. As such, he is regulated by service conditions laid down in 'MEPS Act' and Rules framed thereunder and obviously, his allegiance is with the said educational institution. If this is so, then such person can hardly be said impartial so as to discharge the duties of Police Patil without any conflict of interest. In case, if occasion comes, such person may not take action against persons who are affiliated to the said educational institution. Therefore, such person cannot be said eligible to the post of Police Patil.

14. Furthermore, as per Clause 9 of 'Order 1968', the Police Patil is entitled to 15 days Casual Leave in a year, but shall not take more than 3 days consecutive leaves. In the present case, the Respondent No.2 being governed by the provisions of 'MEPS Act' and Rules thereunder, naturally he must be availing leaves as permissible to

him under those Rules, which provide for more leaves other than the leaves applicable to Police Patil as per Clause 9 of 'Order 1968'. In other words, the service conditions in respect of leaves or in conflict with Clause 9 of 'Order 1968'. This aspect also goes to show that the person appointed to the post of Police Patil should not be subjected to any other terms and conditions of other Institute and he should be governed only by 'Order 1968'. Perhaps, for this reason, such kind of service is impliedly barred in terms of Clause 8 of 'Order 1968'.

15. It would not be out of place to mention here that, as per Clause 12 of 'Order 1968', the State Government can apply the provisions of Bombay Civil Services Rules, Maharashtra Civil Services (Discipline & Appeal) Rules to the post of Police Patil as are not consistent with the Acts and Rules thereunder. Whereas, in the present case, the Respondent No.2 is already been governed by MEPS Act and Rules framed thereunder.

16. Needless to mention that the intention behind Clause 8 of 'Order 1968' is that a person appointed to the post of Police Patil shall be available to the public without any restriction of time or availability. A person cultivating any land or engaged in local business as contemplated in Clause 8 is easily available to the public without any restriction of time and can discharge the duties without any hindrance. Whereas, in the present case, the Respondent No.2 by virtue of his service as a Librarian, though it is styled as 'Part Time' cannot be said he is available to public without any restriction of time. As a Librarian, he has to devote and attend the duty in School and naturally in that period, he cannot be available to people in case situation arises. Therefore, the finding recorded by the SDO that the Respondent No.2 can himself be available to discharge the duties of Police Patil in remaining time is unsustainable in law.

17. Apart, as rightly pointed out by learned Advocate for the Applicant that the Respondent No.2 has made encroachment upon Government land and he was subjected to fine Rs.2,000/-. The Respondent No.2 himself has produced extract of proceedings of meeting of Gram Panchayat, Chikhal Ohol dated 05.08.2006, which shows that he had made encroachment on Government land and was subject to fine Rs.2,000/-. A person who has made encroachment on Government land and was subject to fine can hardly be said suitable for appointment to the post of Police Patil. Indeed, it incurs disqualification. As per Clause 3(e) of 'Order 1968', no person shall be eligible for being appointed as Police Patil having such antecedents which render him unsuitable for employment as Police Patil. As Respondent No.2 admittedly made encroachment on Government land and subjected to fine, such person definitely render himself unsuitable for the post of Police Patil.

18. Apart from service on the post of Librarian, the Respondent No.2 is also working as Director of Vivid Karyakari Society. Admittedly, he did not resign from the said post. As such, he is politically connected to one group of people by virtue of his post of Director in Vivid Karyakari Society and such person cannot be impartial so as to discharge the duties attached to the post of Police Patil without fear or favour.

19. For the aforesaid reasons, I have no hesitation to sum-up that the impugned order appointing Respondent No.2 to the post of Police Patil is not sustainable in law and facts and liable to be quashed. Consequently, the candidate next in merit needs to be appointed on the post of Police Patil. If the Applicant is next to Respondent No.2 in the merit list, then Respondent No.1 – SDO is required to pass appropriate order in this behalf. Hence, I pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 12.04.2017 appointing Respondent No.2 as Police Patil of Village Chikhhal Ohol, Tal.: Malegaon, District : Nashik is quashed and set aside.
- (C) The Respondent No.1 – SDO shall take further appropriate step for appointment of the candidate next in merit and shall pass appropriate order of appointment to the post of Police Patil within a month from today.
- (D) No order as to costs.

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

Mumbai

Date : 02.12.2019

Dictation taken by :

S.K. Wamanse.

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