

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.941 of 2017

DISTRICT : Raigad

Shri Uttam Pandurang Kambri)
Age 44 years, Occ. Nil,)
R/at. Markewadi, Post at Kadav, Tal.Karjat,)
Dist. Raigad.) **...Applicant**

Versus

1. The State of Maharashtra, through the Chief)
Secretary, Revenue & Forest Department,)
Mantralaya, Mumbai.)
2. The Collector, Raigadh, off at Alibagh, Dist. Raigadh.)
3. The Sub-Divisional Officer, Karjat, At Taluka Karjat,)
Dist. Raigadh.)
4. Tahsildar & Executive Magistrate, Karjat, At Karjat)
Dist. Raigadh, Pin – 410201.)
5. Mahesh Gaman Marke, R/at Markewadi, Tal. Karjat)
Dist. Raigadh.) **...Respondent**

Shri Amol Joshi, Counsel for the Applicant
Smt. Kranti Gaikwad, Presenting Officer for the Respondent Nos.1 to 4
Shri K. R. Jagdale, Counsel for the Respondent No.5.

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 19.11.2019

ORDER

1. Only issue posed for consideration in the present O.A. is whether the appointment of Respondent No.5 to the post of Police Patil of village Markewadi, Tal. Karjat, District Raigad is legal and valid.

2. The Respondent No.3, S.D.O. Karjat had issued advertisement to fill in the post of Police Patil of various villages and applications were required to be submitted on or before 11.07.2016. The Applicant and Respondent No.5 amongst other filed an applications for the post of Police Patil of village Markevadi. Respondent No.5 got highest marks in the written as well as in oral examination, therefore, he was appointed by order dated 04.01.2017.

3. Shri Amol Joshi, learned Counsel for the Applicant sought to assail the legality of appointment order of Respondent No.5 on the ground that Respondent No.5 was the member of Grampanchayat, Savale, Tal. Karjat, Dist. Raigad on the date of submission of application to the post Police Patil but he tendered his resignation on 14.08.2016, and therefore, his appointment to the post of Police Patil is illegal. According to him, the candidate should not have been the member of Grampanchayat on the date of filing of application itself.

4. Per contra, Smt. Kranti Gaikwad, learned P.O. and Shri K.R. Jagdale, learned Counsel for the Respondent No.5 submit that there was no such specific covenant or stipulation in advertisement regarding cutoff date and all that was required that he should possess required qualification and should be eligible for appointment on the date on which appointment is issued.

5. Admittedly, Respondent No.5 was the member of Gram Panchayat, Savale, and he resigned from the said post w.e.f.14.8.2016. His resignation was accepted on 14.08.2016. Whereas, the appointment order was issued on 04.01.2017.

6. Here it would be apposite to see relevant clause (6) of the advertisement which is as follows:

“६. अर्जदार नेमणुकीच्या गावी स्थानिक स्वरूपाचा उद्योग करणारा नसावा, इतर ठिकाणी संपुर्ण वेळ नोकरी वा धंदा करणारा नसावा, ग्रामपंचायत सदस्य नसावा तसेच खाजगी किंवा निमसरकारी संस्थेचा सदस्य अथवा पुर्ण वेळ नोकरी करणारा नसावा. याबाबतचे रूपये १००/- च्या स्टॅम्प पेपरवरील प्रतिज्ञापत्र कागदपत्र पडताळणीच्या वेळी सादर करणे आवश्यक राहिल.”

7. As such, there is no specific stipulation in the advertisement that the candidate applied for the post should not be the member of Gram Panchayat on the date of filing of application itself. Besides, no other provision is pointed out by the learned Counsel for the Applicant to point out that on the date of filing of application itself, the Respondent No.5 should not have been the member of Gram Panchayat. The appointment of Police Patil is governed by Maharashtra Village Police Patil (Recruitment, Pay & Allowance and other Conditions of Services) Order, 1968 (hereinafter referred to as 'Order 1968' for brevity). It provides for eligibility for appointment, terms of office remuneration etc. There is no provision in 'Order 1968' to show that candidate should have been ceased to be the member of Gram Panchayat on the date of filing of application itself.

8. Suffice to say, appointment by 'Order 1968' or advertisement nowhere stipulates that the candidate should be ceased to member of Gram Panchayat on the date of his application to the post of Police Patil. In absence of any such provision, it cannot be said that the application filed by the Respondent No.5 for the post of Police Patil itself was illegal. Disqualification cannot be inferred in absence of specific provision to that effect.

9. Perusal of record reveals that the written examinations were conducted on 21.08.2016 and oral was conducted on 28.08.2016. Respondent No.5 tendered his resignation which was accepted on 14.08.2016. As such, even before written examination he ceased to be the member of Gram Panchayat, Savale. Consequently by order dated 04.01.017, Respondent No.5 was appointed to the post of Police Patil. As such, the date of appointment is crucial and admittedly, the Respondent No.5 was ceased to be the member of Gram Panchayat on 14.08.2016 itself.

10. The appointment of Respondent No.5 is challenged only on the ground that he did not tendered resignation of the post of member of Gram Panchayat before submitting an application to the post of Police Patil. In absence, any such specific stipulation in advertisement or in 'Order 1968' it cannot be said that the Applicant should have been ceased to be the member of Gram Panchayat on the date of filing of application. He was the member of Gram Panchayat on the date of filing of application but before written examination, he tendered resignation and the same was accepted. He then appeared in written examination as well as oral and got through. He secured highest marks and accordingly appointed by order dated 04.01.2017. There was no disqualification on the date of appointment.

11. I, therefore, see no illegality in the impugned order on the ground raised by the Applicant.

12. The totality of the aforesaid reasons leads me to sum up that Original Application is devoid of merit and deserves to be dismissed.

ORDER

Original Application is dismissed with no order as to costs.

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

