

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.965 OF 2018

DISTRICT : SOLAPUR

Shri Suresh Sambha Nimangare.)
Age : 36 Yrs., Occu.: Police Patil,)
Residing at Village Pout, Tal.: Mangalwedha,)
District : Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Collector, Solapur.)
3. The Sub-Divisional Officer.)
Mangalwedha, District : Solapur.)
4. The Tahasildar.)
Mangalwedha, District : Solapur.)...**Respondents**

Mr. A.A. Deshpande, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 12.06.2019

JUDGMENT

1. The Applicant has challenged the impugned order dated 17th October, 2018 whereby his appointment to the post of Police Patil of Village Pout, Tal.

Mangalwedha, District Solapur has been cancelled invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was appointed on the post of Police Patil temporarily on 26th November, 2008 and continued on the said post till the issuance of regular order of appointment. The Respondent No.3 – S.D.O, Mangalwedha by order dated 02.05.2018 appointed the Applicant on regular basis in terms of G.R. dated 28.06.2011 which *inter-alia* provides for regular appointment of temporarily appointed Police Patil, if found suitable for the regular appointment. However, later, one Shri Bashir M. Mulla filed complaint with Respondent No.3 alleging that the Applicant had suppressed the fact of involvement in Criminal Case No.156/2016 for the offences under Section 379 read with 34 of Indian Penal Code and under Sections 9 and 15 of Environment Protection Act. On receipt of complaint, the Respondent No.3 conducted an enquiry by calling explanation of the Applicant. In explanation, the Applicant admits the factum of registration of FIR No.156/2016 but sought to explain that it was politically motivated and he is innocent. He further sought to explain that after investigation in fact, the Police had filed 'A' Final Summary under Section 173 of Cr. P.C. stating that the accused are not detected though the occurrence of theft is a matter of fact. However, the Respondent No.3 by impugned order cancelled his appointment on the ground that the Applicant has suppressed the factum of registration of crime against him, and therefore, not eligible to continue to the post of Police Patil in terms of Clause 6 of Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 (hereinafter referred to as 'Order 1968' for brevity) which is under challenge in the present O.A.

3. The Respondent Nos. 1 to 4 resisted the application by filing Affidavit-in-reply (Page Nos.53 to 60 of Paper Book) *inter-alia* denying that the impugned order suffers from any illegality. It is not in dispute that initially, the Applicant was appointed temporarily by order dated 26.11.2008 and later by order dated 02.05.2018, he was appointed on regular basis in terms of G.R. dated 28.06.2011. In this behalf, the Respondents contend that the Applicant has suppressed the factum of registration of Crime No.156/2016 against him and having noticed the same, the enquiry was conducted calling the explanation of the Applicant. The Respondents contend that in view of registration of crime against the Applicant, he was not eligible for further continuation on the post of Police Patil, which was suppressed by the Applicant, and therefore, his appointment has been rightly cancelled.

4. Shri A.A. Deshpande, learned Advocate for the Applicant sought to contend that there was no suppression of registration of FIR against the Applicant, as there was no requirement of furnishing any such information. In alternate submission, he contends that after investigation, the Police had filed 'A' Summary Report with an opinion that the accused are not detected but the Summary is not yet granted or approved by the Magistrate. On this line of submission, he sought to contend that the FIR lodged against the Applicant is apparently false in view of Summary Report filed by Police, and therefore, the question of disqualification or cancellation of order of appointment does not survive. Lastly, he submitted that at the most, the Respondent No.3 – S.D.O. would have taken recourse of suspension of the Applicant for conducting regular enquiry and direct order of cancellation of the appointment is illegal.

5. Per contra, Smt. A.B. Kololgi supported the impugned order contending that the factum of registration of FIR being suppressed, the Applicant cannot be

said suitable to the post of Police Patil and the order of cancellation of appointment cannot be faulted with.

6. Admittedly, initially, the Applicant was appointed temporarily by order dated 26.11.2008 and later by order dated 02.05.2018, he was appointed on regular basis in terms of G.R. dated 28.06.2011, which *inter-alia* provides for regular appointment of the persons who have worked as Police Patil temporarily for more than two years. It is also not in dispute that before passing the impugned order, the Respondent No.3 – S.D.O. had called for the explanation of the Applicant and after giving opportunity of hearing, he passed the impugned order.

7. Material question is whether the Applicant has suppressed material fact and was ineligible for the appointment to the post of Police Patil.

8. The appointments of Police Patil are governed by Maharashtra Village Patil Act, 1967 and Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968.

9. As per Sections 6 and 8 of Maharashtra Village Police Act, 1967, the following are the duties and functions of Police Patil.

- “6. 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."

8. The Police-patil shall dispose of the village establishment so as to afford the utmost possible security against robbery, breach of the peace and acts injurious to the public and to the village community, and shall report to the Executive Magistrate all instances of misconduct or neglect committed by any member of the said establishment."

10. Whereas, Clause 3 of 'Order 1968' provides for the eligibility for the appointment to the post of Police Patil. In the present matter, Clause 3(e) is relevant, which is as follows :-

"3(e) is adjudged by the competent authority after a summary inquiry to be of bad character, or has in the opinion of that authority such antecedents as render his unsuitable for employment as Police Patil."

11. Now, let us see the contents of G.R. dated 28.06.2018, which provides for the regular appointments on the post of Police Patil, who have worked for more than two years temporarily. As per Clause 4 of G.R. dated 28.06.2011, the S.D.O. is empowered to issue regular appointment on completion of more than two years temporary appointment of Police Patil subject to the satisfaction and verification about the character of the candidate by calling report from local Police Station. As such, before issuance of regular appointment, the S.D.O. was under obligation to call for Police verification report about the integrity and

character of the Applicant. However, in the present case, the Respondent No.3 seems to have not called for Police verification report though required for issuance of regular order.

12. True, at the time of issuance of regular appointment, the Applicant did not make separate application at his own. However, that would not absolve the Applicant from disclosing the fact of registration of offence against him by Crime No.156/2016. He ought to have disclosed the said aspect at the time of issuance of regular appointment order. This being admittedly not done, there is clear suppression of material fact which was very much relevant and essential. The person against whom crime is registered, cannot be said suitable or eligible to perform the duties imposed upon him as referred to above and to fulfill the requirement of Clause 3(e) of 'Order 1968' reproduced above.

13. True, in Crime No.156/2016 after investigation, the Police had filed the 'A' Final Summary in the Court of learned Magistrate, which is not yet heard and subjudice. As such, though Police had filed 'A' Final Summary, the fact remains that there is no approval to the same by the learned Magistrate so to give clean chit to the Applicant. Needless to mention that the learned Magistrate is empowered to direct further investigation or to pass appropriate order. Therefore, at this stage, no clean chit can be given to the Applicant much less to hold him eligible to the post of Police Patil.

14. As stated above, as per Clause 3(e) of 'Order 1968', the S.D.O. has to form an opinion about the suitability of the candidate for employment as Police Patil having regard to his antecedents and character. In view of registration of crime against the Applicant, the opinion formed by S.D.O. that the Applicant is not suitable for employment as Police Patil and suppressed the material fact of his involvement in criminal offences can be faulted with.

15. Needless to mention that this is not a forum to see or determine the veracity of allegations made against the Applicant in FIR No.156/2016. The relevant factor is the factum of registration of crime and the suppression of the same by the Applicant and consequent to it, suitability for appointment. Therefore, the impugned order of cancellation of appointment cannot be termed 'illegal'.

16. In so far as alternate submission advanced by the learned Advocate for the Applicant about recourse of suspension instead of cancellation of appointment is concerned, true, the appointing authority is empowered to suspend Police Patil pending a D.E. and trial or prosecution against him. However, in the present matter, the issue pertains to the suppression of material fact of registration of crime, which was registered before the issuance of regular order of Police Patil and it does not relate to the conduct post appointment. This being the position, the recourse of cancellation of appointment adopted by Respondent No.3 can hardly be assailed.

17. In view of aforesaid discussion, I have no hesitation to sum-up that the impugned order based upon the satisfaction of appointing authority, having found that antecedents of the Applicant in view of registration of crime registered against him is not suitable for continuation of Police Patil, the same cannot be interfered with. As such, I see no illegality in the impugned order and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai

Date : 12.06.2019

Dictation taken by :

S.K. Wamanse.

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