

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.970 OF 2016**

**DISTRICT : NASHIK**

Shri Bhausaheb L. Kandekar. )  
Age : 37 Yrs., Occu.: Nil, )  
R/at : At Post Lakhgaon, District : Nashik. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai. )
2. The District Collector. )  
Old Agra Road, Nashik – 422 002. )
3. The Sub Divisional Magistrate. )  
Nashik Sub Division, in the premises of )  
District Collector, Old Agra Road, )  
Nashik – 422 002. )
4. Smt. Swati N. Kandekar. )  
(@Swati Vasant Kawale) )  
Lakhgaon, Tal. & District : Nashik. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents 1 to 3.**

**Mr. A.L. Bhise, Advocate for Respondent No.4.**

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

**DATE : 13.03.2019**

## JUDGMENT

1. The Applicant has challenged the impugned communication dated 21.07.2016 as well as order dated 27.05.2016 whereby Respondent No.4 has been appointed to the post of Police Patil invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Respondent No.3 (S.D.O, Nashik Sub Division) had issued Proclamation on 05.03.2016 inviting applications to fill in the post of Police Patil of Village Lakhalgaon, Ta. & District Nashik. Accordingly, the Applicant as well as Respondent No.4 participated in the process and both have secured equal marks i.e. 66 out of 100. However, the Respondent No.3 appointed Respondent No.4 as Police Patil on the ground that she possesses more academic qualification than the Applicant. The Applicant challenged the decision by making representation to Respondent No.3 contending that, he being having Diploma in Vegetable Production, Diploma in Fruits Production and Diploma in Floriculture and Landscape Gardening from Yashwantrao Chavan Open University (hereinafter referred to as 'Y.C.O. University') was entitled to have two marks as per the criteria laid down by the Committee, but instead he was allotted one mark. As such, if two marks are allotted as per the criteria, his total would come to 67, and therefore, entitled to the appointment to the post of Police Patil. However, his representation has been rejected by impugned communication dated 21.07.2016. The Applicant has, therefore, challenged the appointment order dated 27.05.2016 in favour of Respondent No.4 as well as rejection of his objection by communication dated 21.07.2016.

3. The Respondent Nos.1 to 3 have filed Affidavit-in-reply (Page Nos.62 to 68 of Paper Book) *inter-alia* denying that there is any mistaken or illegality in the

allotment of marks. The Respondents contend that, as per the criteria laid down by the Committee, one mark was rightly allotted to the Applicant and he is not entitled to two marks on the basis of Diploma from 'Y.C.O. University'. As the Applicant and Respondent No.4 secured equal marks i.e.66, the Respondent No.4 being M.A. and having more qualified, she came to be appointed and accordingly, appointment order has been rightly issued.

4. After remand of the matter from Hon'ble High Court in pursuance of direction, fresh notice was issued to Respondent No.4 and accordingly, he appeared and contested the claim by filing Affidavit-in-reply (Page Nos.69 to 79 of P.B.). The Respondent No.4 denied the entitlement of the Applicant to the relief claimed. She contends that the objection raised by the Applicant for non-allotment of two marks on the basis of Diploma from 'Y.C.O. University' is incorrect and the same has been rightly rejected by Respondent No.3. In this behalf, the Respondents contend that the Applicant is S.S.C. and then acquired Diplomas from 'Y.C.O. University' which is not equivalent to Government Diploma, and therefore, he was not entitled to two marks as the Applicant sought to claim. As such, the allotment of marks by Respondent No.3 is correct. As per the criteria fixed by Committee in case of equal marks, the candidate who possess more qualification deserves to be appointed, and therefore, she being M.A, the Respondent No.3 rightly appointed her. The Respondent No.4 further contends that, at the time of submitting applications, the Applicant has suppressed material fact of pendency of criminal prosecution against him. The offence under Section 379 read with 34 of I.P.C. vide CR No.128/2014 in Ozar Police Station and charge-sheet was filed against him in the Court of Magistrate. However, the Applicant has suppressed this material fact while submitting information to Respondent No.3, and therefore, he cannot be said of having good and moral character, which was one of the condition for appointment of Police Patil. With these pleadings, she prayed to dismiss the application.

5. Initially, this matter was disposed of by this Tribunal on 05.10.2018 with the observation that the Applicant is entitled to two marks, and therefore, entitled to the appointment to the post of Police Patil. However, the Respondent No.4 has challenged the said order by filing Writ Petition No.12577 of 2018 before the Hon'ble High Court, which came to be allowed on 22.01.2019 and matter has been remanded to the Tribunal for decision afresh on the ground that there was no proper service of notice to Respondent No.4.

6. In view of above, fresh notice was issued to Respondent No.4 and accordingly, he appeared in the O.A. and contested the application.

7. Shri K.R. Jagdale, learned Advocate for the Applicant urged that the Applicant possesses Diploma in Vegetable Production, Diploma in Fruits Production and Diploma in Floriculture and Landscape Gardening from 'Y.C.O. University', and therefore, entitled to two marks as per the criteria fixed by the Committee. In this behalf, he placed reliance on G.R. dated 27.03.2002 issued by the Department of Agriculture, Animal Husbandry & Fisheries. According to him, in view of said G.R, the Diploma obtained from 'Y.C.O. University' is equivalent to Government Diploma, and therefore, the Applicant having secured more than 50 marks in the said Courses, he is entitled to two marks, but he was given one mark only. If two marks are allotted to Applicant, his total marks would come to 67 and was entitled to the appointment being highest. As regard suppression of claim of prosecution, he contends that this ground now cannot be taken up by Respondent No.4, as the candidature of the Applicant was not rejected on that ground, and therefore, the legality of the impugned order has to be tested on the reasons mentioned therein only and it cannot be supplemented by additional ground.

8. Whereas, the learned P.O. Shri A.J. Chougule and Shri Bhise, learned Advocate for Respondent No.4 urged that there is no illegality in the allotment of

marks to the Applicant and the interpretation sought to be made by the applicant for claiming two marks on the basis of G.R. dated 27.03.2002 is incorrect. They also pointed out that, admittedly, criminal prosecution against the Applicant was pending under Section 379 read with 34 of I.P.C. on the date of filing of application but it being suppressed by the Applicant, he is not eligible to the appointment in view of terms and conditions laid down in Advertisement.

9. Admittedly, the Applicant has obtained 54 marks in Written Examination and 12 marks in Interview, total 66 marks out of 100. Whereas, admittedly, the Respondent No.4 secured 53 marks in Written Examination and 13 marks in Interview, total 66 marks out of 100. However, in so far as the qualification is concerned, the Applicant is S.C.C. and then obtained certain Diplomas adverted to above from 'Y.C.O. University'. Whereas, the Applicant is M.A. As per the Advertisement in case two candidates get equal marks, then the candidate who possesses higher educational qualification should be appointed to the post of Police Patil. Therefore, the Respondent No.3 has appointed Respondent No.4 to the post of Police Patil. There is no dispute that the Applicant after S.S.C. obtained Diplomas in Vegetable Production, Diploma in Fruits Production and Diploma in Floriculture and Landscape Gardening with more than 50% marks.

10. The crux of the matter is whether the Applicant is entitled to two marks and the interpretation sought to be made by the Applicant in terms of G.R. dated 27.03.2002 is correct and acceptable.

11. At this juncture, it would be apposite to see criteria laid down by the Committee for the allotment of marks as well as the position of marks obtained by the Applicant as well as Respondent No.4, which is as under :

अ. क्र.	गुणांसाठी निकष प्रश्न विचारून व कागदपत्र पडताळणी नुसार	निश्चित गुण	अर्जदाराला मिळालेले गुण	प्रतीवादी क.४ ला मिळालेले गुण
१	२	३	४	५
A	१० वा वर्ग उत्तीर्ण / समकक्ष उत्तीर्ण	०७		४
	४०% ते ५०% पर्यंत	०८		
	५०% ते ६०% पर्यंत	०९	०९	०९
	६०% ते ७०% पर्यंत	१०		
	७०% ते ८०% पर्यंत	११		
	८०% चे वर	१२		
B	१२ वी उत्तीर्ण / शासकीय पदविका उत्तीर्ण (कोणतेही एकच गुण मिळेल) मुक्त विद्यापीठाची पदवी असल्यास १२ वी चे गुण मोजण्यात येईल.			
	३५% ते ५०% पर्यंत	०१	०१	
	५०% चे वर	०२		०२
C	पदवी परिक्षा उत्तीर्ण	०१		०१
D	क्रिडा स्पर्धेतील तालुका / जिल्हा/राज्यस्तरीय सहभाग	०१		
E	MS-CIT, CCC इ. संगणक परिक्षा उत्तीर्ण	०१		
F	टंकलेखन परिक्षा	०१		
G	MCC/NCC/NSS सहभाग प्रमाणपत्र	०१	०१	
H	परिचय व सर्वसाधारण माहितीची उत्तरे	०१	०१	०१
	एकुण गुणांकन (A+B+C+D+E+F+G+H)	२०	१२	१३

12. It would be also material to note the contents of G.R. dated 27.03.2002 for proper appreciation, which are as under :

“महाराष्ट्र शासन  
कृषि व पदुम विभाग,  
शासन निर्णय क्र.एजीयु-२१९९/सीआर-१६७/१८-ए,  
मंत्रालय विस्तार, मुंबई - ४०० ०३२  
दि. २७ मार्च, २०१२

- वाचा - १) शा.नि. सा.प्र.वि.कुमांक : आरजीडी-१३९४/प्र.त्र.२१/९४/१३, दि ८ मार्च १९९९  
२) शा.नि. सा.प्र.वि.कु : आरजीडी-१३९४/प्र.त्र.६७/९८/१३, दि १०.१२.१८.  
३) संचालक, कृषि विज्ञान शाखा, यशवंतराव चव्हाण महाराष्ट्र मुक्त विद्यापीठ, नाशिक यांचे पत्र क्र. एजी-१००, दि.२०.०४.१९९९.

**प्रस्तावना -**

यशवंतराव चव्हाण महाराष्ट्र मुक्त विद्यापीठाकडील कृषि शिक्षण अभ्यासक्रमाचा राज्यातील कृषि विद्यापीठामार्फत अभ्यासक्रमाशी समकक्षता ठरविण्याकरिता महाराष्ट्र मुक्त विद्यापीठाचे अधिकारी कृषि आयुक्तालयाचे अधिकारी व महाराष्ट्र कृषि शिक्षण व संशोधन परिषदेचे अधिकारी यांची एक समिती नियुक्त करून दोन्ही विद्यापीठाच्या अभ्यासक्रमाशी तुलना करून अहवाल देण्यास सूचविले होते. सदरहू अहवाल प्राप्त झाला असून तो विचारात घेऊन यशवंतराव चव्हाण महाराष्ट्र मुक्त विद्यापीठाकडील काही कृषि अभ्यासक्रमांना कृषि विद्यापीठाकडील अभ्यासक्रमाशी समकक्षता उरविण्याची वाय शासनाच्या विचाराधीन होती.

**शासन निर्णय.**

यशवंतराव चव्हाण महाराष्ट्र मुक्त विद्यापीठाकडील कृषि शिक्षण अभ्यासक्रमाचा त्यांच्यासमोर नमूद केलेल्या राज्यातील कृषि विद्यापीठातील अभ्यासक्रमाशी समतुल्य समजण्यास शासनाची मान्यता देण्यात येत आहे.

अं. क्र.	यशवंतराव चव्हाण मुक्त विद्यापीठाकडील कृषि शिक्षणक्रम	कृषि विद्यापीठामार्फत सुरु असलेले अभ्यासक्रम	दोन्ही विद्यापीठाकडील शिक्षणक्रमाचा कालावधी
१.	माळी प्रशिक्षण प्रमाणपत्र	माळी प्रशिक्षण प्रमाणपत्र	१ वर्ष
२.	उद्यानविद्या पदवीका (फळबागा उत्पादन)	कृषि पदवीका	२ वर्ष
३.	उद्यानविद्या पदवीका (भाजीपाला उत्पादन)	कृषि पदवीका	२ वर्ष
४.	उद्यानविद्या पदवीका (फुल शेती व प्रांगण उद्यान)	कृषि पदवीका	२ वर्ष

सही/-  
(वि. शं. भोंगडे)  
उप सचिव, महाराष्ट्र शासन  
कृषि व पदुम विभाग

13. Now come to the question of interpretation of marks allotted under the Head 'B' to the Applicant in terms of G.R. dated 27.03.2002. The Committee had fixed the above criteria for the allotment of marks to the candidates. As per Clause 'B', the candidate having H.S.C. qualification or having Government Diploma upto 50% marks will be entitled to one mark and having more than 50% marks would be entitled to two marks. It is also made clear that, in case the candidate has degree from Open University then in that event, the said degree will not be considered for the allotment of marks and the marks will be given only on the basis of marks obtained in HSC Examination. It is thus very much clear that the marks obtained in HSC Examination or in Government Diploma will be only considered for the allotment of marks and even degree from Open University will not make any difference, as the same is not treated as additional qualification for the allotment of marks.

14. Now turning to the G.R. dated 27.03.2012, the reading of complete G.R. makes it quite clear that the said decision was taken for syllabus and curriculum of the academic courses. As per G.R, the Government had decided to treat certain Diplomas obtained from 'Y.C.O. University' equivalent to Diploma in Agriculture obtained from Agricultural University and obviously, this equivalence was for the purposes of syllabus and curriculum. It nowhere speaks to treat Diploma obtained from 'Y.C.O. University' equal to Government Diploma. Needless to mention that there is difference between Government Diploma and Diploma obtained from Agricultural University. This distinction has to be borne in mind. As such, on plain and simple reading of Clause 'B' as well as G.R. dated 29.03.2002, the equivalence is only for the purposes of syllabus, curriculum and for other educational purposes. At the cost of repetition, it is necessary to point out that the said G.R. does not say that the Diploma from 'Y.C.O. University' has to be treated with Government Diploma. Therefore, the interpretation sought to be made by the learned Advocate for the Applicant is misconceived.

15. The issue is in fact obvious in view of the criteria laid down by the Committee as reflected in Clause 'B' of the Chart reproduced above. As per criteria fixed by the Committee, even degree, let alone Diploma, from 'Y.C.O. University' should not be considered for grant of additional mark and in case, even if candidate possesses degree from 'Y.C.O. University' then also his marks in HSC will be counted considered for the allotment of marks. As such, the intention of the Committee is quite clear that no weightage is given to even degree obtained from Open University. This being the position, on plain and harmonious reading of Clause 'B' vis-à-vis G.R. dated 27.03.2002, it cannot be said that the Agricultural Diploma obtained by the Applicant from Open University is equal to Government Diploma, and therefore, entitled to two marks as sought to claim. Such interpretation runs counter to the plain meaning of Clause 'B' as well as G.R. dated 27.03.2002.



16. Shri K.R. Jagdale, learned Advocate for Applicant sought to place reliance on the decision of this Tribunal in ***O.A.670/2008 (Rajendra D. Ghunkikar Vs. The State of Maharashtra & Ors.) decided on 10.02.2009***. In that case, the Applicant had obtained degree of B.A. from 'Y.C.O. University' but was not selected to the post of Forester. Whereas, the requirement for the Forester was minimum H.S.C. It is in that context, the Tribunal disposed of the application with direction to consider the Applicant's case for the post of Forester by giving him appropriate marks considering his B.A. degree with the observation that it would be fair to give appropriate weightage in marks considering his B.A. degree for which initially, no marks were allotted. As such, the facts of this case are quite distinguishable and have no relevance in the present situation, particularly in the light of specific criteria laid down by the Committee as discussed above.

17. Now, turning to the aspect of suppression of criminal prosecution, there is no denying that the Applicant was prosecuted for the offence under Section 379 read with 34 of I.P.C. and criminal case was pending against him on the date of filling of application to the post of Police Patil. Furthermore, there is no denying that the Applicant has not disclosed this fact while submitting the application. The copy of application submitted by the Applicant was placed on record during the course of hearing.

18. As per Advertisement, one of the condition was that the Applicant should be of good and moral character (उमेदवाराचे चारित्र निष्कलंक असणे आवश्यक आहे). While filing-in application, the Applicant supplied information to Column No.17 as under :

“१७. उमेदवार निष्कलंक चारित्रचा आहे काय ?

होय ”

Besides, the Applicant has also obtained Certificate from Police Commissioner, Nashik dated 15.03.2016. In the Certificate, Police Commissioner certified that, there is no entry of conviction or fine against the Applicant in the record of Adgaon Police Station. There is specific note in the Certificate that the said Certificate has been issued on the request of the Applicant. As such, the Applicant though aware of pendency of criminal case against him, he did not disclose it, which amounts to suppression of material fact.

19. Shri K.R. Jagdale, learned Advocate for the Applicant, however, sought to contend that there was no such specific Column in the application form about the pendency of criminal case, if any, and therefore, the Applicant was not required to disclose about the same. True, there is no such specific Clause but Clause No.17 about the moral character of the candidate is one of the requirement. Therefore, in all fairness, the Applicant was required to disclose the same and he cannot take disadvantage of technicalities when admittedly criminal prosecution was pending against him, which could be disqualification for the appointment to the post of Police Patil.

20. Shri K.R. Jagdale, learned Advocate for the Applicant sought to contend that the rejection of candidature of the Applicant is not arising from the issue of criminal prosecution, and therefore, this issue cannot be raised at this stage. He referred to Judgment of Hon'ble Supreme Court in **(1978) 1 SCC 405 (Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi)** wherein in Para No.8 the following had been laid down.

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”*

21. There could be no dispute about the principle enunciated in the aforesaid authority. However, with respect, in my considered opinion, it is hardly of assistance to the Applicant in the present case in view of admitted facts of pendency of criminal case against the Applicant and suppression of material facts, which incurs disqualification for the appointment to the post of Police Patil. As it was suppression of material fact, the concerned authority was not aware about the pendency of criminal case, and therefore, there was no question of finding its place in the impugned order.

22. Shri K.R. Jagdale, learned Advocate for the Applicant lastly sought to place reliance on the Judgment of Hon'ble Supreme Court in **(2011) 4 SCC 644 (Commissioner of Police and Ors. Vs. Sandeep Kumar)**. In that case, the candidature of Respondent was cancelled because of concealment of the fact of his involvement in criminal case. He was about 20 years of age. It is in that context, the Hon'ble Supreme Court in fact situation adopted the reformatory approach with the observation that in young age, the people often commit indiscretions and such indiscretions can often be condoned by adopting reformatory approach rather than to brand them as criminal for the rest of life. In that matter, the Respondent was prosecuted under Section 325 read with 35 of I.P.C. but did not mention it in the application. As such, in fact situation, the Hon'ble Supreme Court in its extra ordinary jurisdiction gave relief to the Respondent. Such decision cannot be construed as a binding precedent, so as to apply to each and every case. Therefore, with great respect, this authority is of little assistance to the Applicant.

22. The totality of aforesaid discussion leads me to conclude that the decision of Respondent No.3 appointing Respondent No.4 as Police Patil cannot be faulted with 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 : 13.03.2019

Dictation taken by :

S.K. Wamanse.

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