

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.978 OF 2012

DISTRICT : KOLHAPUR

Shri Prakash M. Patil.)
Age : 39 Yrs, Occu.: Nil,)
R/o. Malagewadi, Tal.: Chandgad,)
District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. The District Collector, Kolhapur.)
Having office at Udyog Bhavan,)
Assembly Road, Kolhapur.)
3. The Sub-Divisional Magistrate,)
Gadhinglaj Division, Gadhinglaj,)
District : Kolhapur.)
4. The Tahasildar, Chandgad,)
Tal.: Chandgad, District : Kolhapur.)
5. Shri Dhondiram S. Patil.)
Age : 33 Yrs, Occu.: Agriculture,)
R/o. Malagewadi, Tal. : Chandgad,)
District : Kolhapur.)...**Respondents**

Mr. P.S. Bhavake, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents 1 to 4.

Mr. V.S. Chavan, Advocate for Respondent No.5.

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

DATE : **10.01.2019**

JUDGMENT

1. In this Original Application, the Applicant has taken exception to the impugned order dated 22nd June, 2012 passed by Respondent No.3 thereby declaring the Applicant ineligible for the appointment to the post of Police Patil and appointing Respondent No.5 as Police Patil of Village Malagewadi, District Kolhapur invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. The Applicant is a resident of Village Malagewadi, Tal. Chandgad, District Kolhapur. He belongs to Hindu Gavali Caste, which is recognized as Nomadic Tribe (B) by G.R. dated 07.05.2005. The Respondent No.3 – S.D.O. issued proclamation on 02.04.2012 inviting the applications to fill-in the post of Police Patil as per Clause 5 of Maharashtra Village Police Patil Order, 1968. Accordingly, the Applicant has submitted his application along with required documents. The Applicant accordingly appeared in written examination conducted by Respondent No.3 and was declared successful. However, the Respondent No.5 objected his selection by his objection / representation dated 30.04.2012 for cancellation of his selection. The Respondent No.3 by letter dated 03.05.2012 called upon the Applicant to submit Caste Certificate and Non-Creamy Layer Certificate upto 10.05.2012. Even before receipt of the letter of Respondent No.3, the Applicant had filed an application before Tahasildar for grant of Non-Creamy Layer Certificate. As he could not obtain Caste Certificate and Non-Creamy Layer Certificate, he requested to Respondent No.3 by letter dated 03.05.2012 for extension of 10 days' time. However, suddenly, by letter dated 22.06.2012, the Respondent No.3 informed Applicant that despite grant of 15 days' time on the

request of Applicant, he failed to submit the Caste Certificate, and therefore, he is declared ineligible for the appointment to the post of Police Patil. On the same day, the Respondent No.3 issued appointment letter in favour of Respondent No.5 appointing him as Police Patil of Village Malagewadi. The Applicant has challenged both these communications dated 22.06.2012 in this application.

3. The Applicant contends that, he belongs to Hindu-Gavali Caste which falls in NT(B) category in terms of G.R. dated 07.05.2005. Before issuance of G.R. dated 07.05.2005, Hindu-Gavali caste was falling in the category of Other Backward Class. The Applicant in this behalf contends that his Caste Certificate dated 17.06.1994 showing his caste as OBC was already submitted to the Respondent No.3, and therefore, the said Caste Certificate deemed to have been valid to treat him of NT(B) category in terms of G.R. dated 07.05.2005 which was issued subsequent to the issuance of Caste Certificate dated 17.06.1994. Therefore, the action of the Respondent No.3 declaring him ineligible is not sustainable in law. He further contends that the Respondent No.3 deliberately failed to issue Caste Certificate and Non-Creamy Layer Certificate and kept the matter pending with him which was forwarded to him by Tahasildar. The Applicant, therefore, prayed to quash and set aside the communications dated 22.06.2012 and also sought declaration of his appointment as Police Patil.

4. The Respondent No.3 has filed Affidavit-in-reply (Page 96 of Paper Book) *inter-alia* denying the allegations made against him. The Respondent contends that the post of Police Patil of Village Malagewadi was reserved for NT(B) category, and therefore, the Applicant was required to submit Caste Certificate and Non-Creamy Layer Certificate for his eligibility to the post of Police Patil. Having not done so, the Applicant was not eligible for the post of Police Patil. As he cleared the examination, he was directed to produce Caste Certificate and Non-Creamy Layer upto 10.05.2012. However, he failed to produce Caste Certificate and Non-Creamy Layer Certificate, and therefore, he was declared

ineligible. Consequently, the Respondent No.5 was appointed as Police Patil by communication dated 22.06.2012. As regard allegation that he deliberately avoided to issue Caste Certificate and Non-Creamy Layer Certificate to the Applicant, the Respondent No.3 contends that the token for Non-Creamy Layer Certificate submitted by him to the Tahasildar was returned to him for necessary compliance. However, he failed to make the compliance. As such, despite giving him time, he failed to submit Caste Certificate as well as Non-Creamy Layer Certificate. On these pleadings, the Respondent No.3 prayed to dismiss the application.

5. The Respondent No.5 resisted the application by filing Affidavit-in-reply (Page 86 of P.B.) *inter-alia* denying the allegations made by the Applicant. He contends that, despite enough time and communication by respondent No.3, the Applicant has failed to produce Caste Certificate and Non-Cream Layer Certificate of NT(B) category which is mandatory, as the post of Police Patil was reserved for the said category. The Respondent No.5 denied that the Applicant belongs to NT (B) category. The Respondent No.5 belongs to Hindu-Gavali Caste recognized as NT(B) and had furnished Caste Certificate and Non-Creamy Layer Certificate to the Respondent No.3. Therefore, the decision of Respondent No.3 to appoint him as Police Patil is legal and valid and needs no interference and prayed to dismiss the application.

6. While this proceeding was earlier taken up for hearing before the Tribunal, the Applicant had filed M.A.No.529/2013 seeking permission to amend the application and also to join the Divisional Caste Scrutiny Committee, Kolhapur as Respondent No.6. That amendment application was made regarding subsequent event, as by order dated 30.03.2013, the Respondent No.3 rejected the application of the Applicant for Caste Certificate, and therefore, he had filed an appeal before the Caste Scrutiny Committee. The Caste Scrutiny Committee allowed the appeal and Respondent No.3 was directed to issue Caste Certificate,

but was not issued by Respondent No.3. The Applicant, therefore, filed application for amendment. The amendment application was strongly opposed by Respondents. While hearing the M.A, the Tribunal observed that the issues raised in the M.A. for amendment are post appointment period and consequently, the amendment application came to be rejected. At the same time, with the observation that the Applicant has not made out a case to prove that the appointment of Respondent No.5 is bad in law, the Tribunal dismissed the M.A. as well as O.A. by order dated 23.06.2014.

7. Being aggrieved by order dated 23.06.2014, the Applicant has filed Writ Petition No.1178/2014 before Hon'ble Bombay High Court which came to be allowed by order dated 06.08.2018. The Hon'ble Bombay High Court observed that the O.A. was dismissed without giving any reasons and to the extent of dismissal of O.A, the order of Tribunal has been quashed and the matter has been remanded to the Tribunal to decide it afresh. In so far as the dismissal of M.A. is concerned, it was confirmed.

8. On receipt of Judgment of Hon'ble Bombay High Court in Writ Petition No.11708/2014, the matter was taken up for hearing. Thereafter, the Respondent No.5 has filed Additional Affidavit-in-reply about the subsequent event contending that, by order dated 1st June, 2014, the Tahasildar, Chandgad has cancelled the Applicant's Caste Certificate dated 17.06.1994 and also produced a copy of order of Tahasildar. Thus, Caste Certificate dated 17.06.1994 relied by the Applicant at the time of filing of application for the post of Police Patil itself stands cancelled.

9. Shri P.S. Bhavake, learned Advocate for the Applicant made two-fold submissions. He contends that, as the Applicant had already submitted Caste Certificate dated 17.06.1994 showing his caste as OBC that deemed to have been treated as Caste Certificate and Non-Creamy Layer Certificate in terms of G.R.

dated 07.05.2005 whereby caste of Hindu-Gavali was included in NT(B) category. Thus, according to him, there was no requirement of production of fresh Caste Certificate and Non-Creamy Layer Certificate. Secondly, he alleged that the Respondent No.3 himself avoided to issue Caste Certificate and Non-Creamy Layer Certificate despite his application to that effect. On this line of submission, he alleged that the impugned orders are not sustainable.

10. Whereas, the learned Advocate for Respondent No.5 supported the impugned order and submitted that the analogy of deemed continuation of Caste Certificate and Non-Creamy Layer Certificate is not palatable, as the Applicant was required to produce Caste Certificate and Non-Creamy Layer Certificate in view of the fact that the post of Police Patil was reserved for NT(B) category. He has further pointed out that, in subsequent development, the Caste Certificate dated 17.06.1994 showing the caste of Applicant Hindu-Gavali OBC itself stands cancelled, and therefore, the very foundation of the claim of the Applicant is shattered and application deserves to be dismissed.

11. Whereas, the leaned P.O. Mrs. Kololgi holding for Ms. S.P. Manchekar, learned C.P.O. adopted the submission of learned Advocate for Respondent No.5 and submitted that the alleged avoidance of Respondent No.3 to issue Caste Certificate and Non-Creamy Layer Certificate is without any substance and it may be the subject matter of independent action against SDO. But that itself cannot be the ground in this proceeding. She, therefore, submitted in view of failure of the Applicant to furnish Caste Certificate and Non-Creamy Layer Certificate within time granted by SDO, the impugned orders dated 22.06.2012 are unassailable.

12. Admittedly, the post of Police Patil of Village Malagewadi was reserved for NT(B) category, and therefore, the Applicant was required to furnish Caste Certificate and Non-Creamy Layer Certificate for valid nomination. It appears

that, his application was supported by Caste Certificate dated 17.06.1994 wherein his caste Hindu-Gavali was shown OBC. However, only because he was allowed to appear in the examination and in further process, that would not vest any right to seek appointment on the post of Police Patil on the basis of Caste Certificate dated 17.06.1994. The submission of learned Advocate for the Applicant that, as by subsequent G.R. dated 07.05.2005, Hindu-Gavali caste was included in NT(B) category, the Caste Certificate dated 17.06.1994 itself deemed to have been accepted as Caste Certificate and Non-Creamy Layer Certificate in the year 2012-13 is misconceived and fallacious. Needless to mention that the Applicant was required to obtain fresh Caste Certificate and Non-Creamy Layer Certificate for the year 2012-13 and theory of deemed Certificate advanced by the learned Advocate for the Applicant is without any merit.

13. Furthermore, in subsequent development, the Applicant's Caste Certificate dated 17.06.1994 has been found obtained by misrepresentation. The Tahasildar in his order dated 01.06.2014 held that the said Caste Certificate dated 17.06.1994 was issued without requisite evidence. Accordingly, he cancelled the said Certificate dated 17.06.1994. Though this fact was brought before this Tribunal, no submission was advanced by the learned Advocate for the Applicant in this behalf. Therefore, the decision of Tahasildar cancelling Caste Certificate by the Applicant seems attained finality and remained unchallenged.

14. As regard the alleged avoidance of Respondent No.3 to issue Caste Certificate and Non-Creamy Layer Certificate, there is nothing to show that the Applicant persuaded the proceedings with the concerned authority and make necessary compliance. It appears that he made an application to Tahasildar and his papers were forwarded to SDO, but it was remitted back for some compliance. Therefore, it cannot be said that SDO purposely avoided to issue Certificate in favour of the Applicant.

15. Apart, fact remains that, despite enough time, the Applicant has failed to produce the Caste Certificate and Non-Creamy Layer Certificate. He seems to have applied for extension of time of 15 days by application dated 10.05.2012. Thereafter also, enough time was granted upto 22.06.2012. Ultimately, on 12.06.2012, the Respondent No.3 passed the impugned orders thereby declaring the Applicant as ineligible for the post of Police Patil and consequently, appointed Respondent No.5 as Police Patil.

16. In fact, the matter relates to the appointment of Police Patil of the year 2012. The Respondent No.5 was appointed and must have completed his term also. As such, in fact, nothing survives in the matter.

17. However, the O.A. needs to be disposed of by passing reasoned order.

18. In view of above, I find no substance in the O.A. and the same is 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 : 10.01.2019

Dictation taken by :

S.K. Wamanse.