

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 704 OF 2016**

**DISTRICT: - AURANGABAD.**

**Shri Pandurang S/o. Prabhakar Hiwale,**

Age – 33 years, Occu. Agri.,

R/o. Telwadi, Post Andhaner

Tq. Kannad, Dist. Aurangabad.

**.. APPLICANT.**

**V E R S U S**

**1. The State of Maharashtra,**

Through its Secretary,  
Home Department,  
Mantralaya, Mumbai.

**2. The Sub Divisional Magistrate,**

Kannad, Tq. Kannad,  
Dist. Aurangabad.

**3. Dynaneshwar S/o. Nagorao Tupe,**

Age-29 years, Occu. Agri.,

R/o. Telwadi, Post Andhaner,

Tq. Kannad, Dist Aurangabad.

**.. RESPONDENTS**

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**APPEARANCE :** Shri R.D. Khadap, learned Advocate  
for the applicant.

: Shri N.U. Yadav, learned Presenting  
Officer for respondent Nos. 1 & 2.

: Shri P.S. Dighe, learned Advocate for  
respondent No. 3.

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**CORAM :** **HON'BLE SHRI B.P. PATIL,**  
**MEMBER (J)**

**DATE :** **14<sup>TH</sup> SEPTEMBER, 2017.**

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## **ORAL ORDER**

1. Heard Shri R.D. Khadap, learned Advocate for the applicant, Shri N.U. Yadav, learned Presenting Officer for respondent Nos. 1 & 2 and Shri P.S. Dighe, learned Advocate for respondent No. 3.

2. The learned Advocate for the applicant has filed an affidavit in rejoinder and the same is taken on record and the copy thereof has been served on the other side.

3. In the present Original Application, the applicant has challenged the impugned order dated 10.06.2016 passed by the respondent No. 2, the Sub-Divisional Magistrate, Kannad, Dist. Aurangabad. By the said order, the respondent No. 2 has cancelled the selection of the applicant for appointment on the post of Police Patil of village Telwadi, Post Andhaner, Tq. Kannad, on the basis of objection raised by respondent No. 3.

4. It is contention of the applicant that in response to the advertisement published by the respondent No. 2 on

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31.12.2015 inviting applications from the eligible candidates for the post of Village Police Patil, in the different villages of Kannad Taluka including the village Telwadi, he himself and other persons including respondent No. 3 had filed online applications. The post of the Police Patil of village Telwadi was reserved for OBC Category. After scrutiny of the application forms, the applicant and other eligible candidates including respondent No. 3 had been called for written examination held on 28.02.2016. In the written examination, the applicant, respondent No. 3 and other candidates secured highest marks. Therefore, they were called for oral interview. The applicant and other candidates including the respondent No. 3 had appeared for the oral interview. The applicant secured highest marks in aggregate i.e. in written and oral examination, and therefore, he was declared as selected candidate by the respondent No. 2 on 01.03.2016 and accordingly, published the provisional select list of the selected candidates to be appointed on the post of Village Police Patil of village Telwadi.

Respondent No. 3 on the very day raised objection before the respondent No. 2 by filing application stating that the applicant has three living children and he is not holding small family as provided in clause No. 20 of the advertisement and, therefore, he is not eligible to be appointed on the post of Village Police Patil of village Telwad.

5. On the basis of the objection raised by the respondent No. 3, respondent No. 2 issued notice to the applicant. During the pendency of the objection the respondent No. 2 has directed to the Tahsildar, Kannad to make enquiry and prepare Panchanama and accordingly the Tahsildar had prepared Panchanama behind back of the applicant. It is contention of the applicant that there is no entry of the birth of third child of the applicant in the Grampanchayat Telwadi, Tq. Kannad, Dist. Aurangabad, and the Grampanchayat Telwadi has issued certificate accordingly. It is contention of the applicant that on the basis of Panchnama prepared by the Circle Officer

Division Kannad, the respondent No. 2 made an enquiry into the application filed by the respondent No. 3 without recording statement of the applicant and without giving opportunity of hearing to him, passed the order dated 10.06.2016 declaring that the applicant is not eligible for the post of Village Police Patil of village Telwadi as the applicant is having three living children, and therefore, respondent No. 2 has cancelled the selection of the applicant on the post of Village Police Patil. The applicant has filed the present Original Application challenging the said order. It is his contention that no opportunity was given to him to defend himself by the respondent No. 2. It is his further contention that the respondent No. 2 has not followed the principles of natural justice while passing the impugned order dated 10.06.2016 and hence, the same is illegal. Therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

6. Respondent No. 2 has filed affidavit in reply and

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resisted the contentions of the applicant. It is his contention that the applicant secured highest marks in aggregate and, therefore, he was declared as selected candidate and published the provisional select list. It is his contention that respondent No. 3 has raised objection to the selection of the applicant by filing application on 01.03.2016 contending that the applicant is not holding small family and he has three living children. He made enquiry regarding objection raised by the respondent No. 3. Both the parties had been given opportunity to make their submissions. Respondent No. 3 produced documents on record, which show that the applicant has three living children viz. Vishakha, Vaishnavi & Kedar and dates of birth of them are 25.07.1999, 18.09.2001 & 11.07.2008 respectively. As the applicant has three living children, he is not eligible for the appointment on the post of Police Patil and, therefore, he cancelled the selection of the applicant by passing the impugned order dated 10.06.2016. It is his contention that proper opportunity of being heard was given to the applicant and after

considering the submissions of both the parties, the impugned order has been passed by him. There is no illegality in passing the impugned order and, therefore, he prayed to reject the present Original Application.

7. Respondent No. 3 has filed an affidavit in reply and contended that the post of Police Patil of village Telwadi was reserved for OBC Category. He himself and applicant filed application for appointment on the post of Police Patil. They appeared for written examination and oral examination. Oral examination was conducted on 29.02.2016 and thereafter provisional selection list was published on 29.02.2016 in which the name of the applicant has been mentioned as selected candidate. It is his contention that on the very day i.e. on 29.02.2016 he has filed an application before the Tahsildar raising objection to the appointment of the applicant on the post of Police Patil, on the ground that the applicant is having three living children. Not only this, but as soon as, the provisional selection list was published by the respondent No. 2 another written application was filed by him on

1.3.2016 before the respondent No. 2 and he raised the objection for the appointment of the applicant as Police Patil and requested to cancel appointment of the applicant on the ground that the applicant has three living children.

8. It is his contention that as respondent No. 2 has tried to proceed with the selection process, he approached this Tribunal by filing O.A. No. 189/2016 challenging the selection of the present applicant for the post of Police Patil of village Telwadi. It is his contention that the respondent No. 2 made an enquiry in his application. He directed to the Tahsildar to make enquiry and submit his report. Accordingly, the Tahsildar has made enquiry and submitted report to the respondent No. 2. Thereafter, he has issued show cause notice to the applicant. An opportunity of being heard was given to the applicant, as well as, to him and after conducting an enquiry, the respondent No. 2 has passed the impugned order and cancelled the selection of the applicant on the post of Police Patil. It is his contention that there is no illegality in the order passed by the respondent No. 2 thereby



cancelling the appointment of the applicant.

9. It is his further contention that the O.A. No. 189/2016 filed by him has been allowed by this Tribunal on 29.07.2016 and the respondent No. 2 was directed to take steps to appoint the candidate who may be eligible for being appointed to the post of Police Patil, including the applicant therein (respondent No. 3 in the present O.A.), if he is eligible, as per due process of law. He has submitted that in view of the said decision in O.A. No. 189/2016, the present Original Application is not maintainable and prayed to reject the Original Application.

10. Admittedly, the applicant, respondent No. 3 and other deserving candidates filed application forms for the appointment on the post of Village Police Patil of village Telwadi in pursuance to the advertisement dated 31.12.2015 issued by the respondent No. 2 inviting the applications for the said post. After scrutiny of the application forms, the applicant and other eligible candidates including respondent No. 3 had been called for

written examination held on 28.02.2016. In the written examination, the applicant, respondent No. 3 and other candidates secured highest marks. Therefore, they were called for oral interview on 29.02.2016. Admittedly, after oral examination respondent No. 2 published the provisional select list and declared the applicant as selected candidate, as he secured highest marks amongst the candidates, who were called for oral interview. The respondent No. 3 raised the objection to the selection of the applicant on the ground that the applicant is not qualified and eligible for the appointment on the post of Police Patil, as he is having three living children. Out of them two children born before 28.3.2005 and third is born after 2005. Admittedly, the respondent No. 3 has filed one more application dated 29.2.2016 raising similar objection before publication of the select list before respondent No. 2. Respondent No. 2 issued show cause notice to the applicant and also directed the Tahsildar, Kannad to make an enquiry and prepare Panchanama and submit report. Accordingly the Tahsildar, Kannad made an enquiry and

submitted report to the respondent No. 2. Thereafter, after giving an opportunity to both the parties, respondent No. 2 has passed the impugned order.

11. Learned Advocate for the applicant has submitted that there is no record showing that the applicant has three children. He has submitted that birth of third child of the applicant has not been registered in the record of Gram Panchayat and Grampanchayat has issued certificate accordingly. He has submitted that respondent No. 2 has not given opportunity of being heard and to defend himself. Therefore, he prayed to quash and set aside the impugned order and to remand the matter to the respondent No. 2 to decide the objection raised by respondent No. 3 afresh.

12. Learned Presenting Officer, as well as, learned Advocate for respondent No. 3 have submitted that respondent No. 3 has filed objections on 29.2.2016 and 1.3.2016 contending that the applicant has three children born in the year 1999, 2001 & 2008 and respondent No. 3

has produced the documentary evidence i.e. School Leaving Certificate and extract of the birth register of third child of the applicant. He has submitted that after giving an opportunity of hearing to both the parties, the S.D.M. passed the order and, therefore, they supported the impugned order.

13. On going through the documents on record, it reveals that on receiving the objection on 1.3.2016 filed by respondent No. 3, respondent No. 2, S.D.M., Kannad, issued the notice to the applicant. He has also directed to the Tahsildar, Kannad to make enquiry into the application filed by the respondent No. 3 and submit report. Accordingly, the Tahsildar conducted the enquiry and submitted report to him. The impugned order dated 10.6.2016 filed at page-35 of the p.b. shows that the matter was heard on 9.5.2016, 24.5.2016, 31.5.2016 & 6.6.2016 and opportunity was given to both the parties and lead evidence and produced the documents. They were heard personally after giving them an opportunity of hearing he passed the impugned order. The said order

shows that the applicant has engaged the Advocate in the said matter. It shows that an opportunity was given to the applicant to defend him and after following the principles of natural justice the enquiry was conducted and the impugned order has been passed by the enquiry officer. This shows that there is no substance in the contentions raised by the applicant that no opportunity was given to him and respondent No. 2 had not followed the principles of natural justice while enquiring into the matter about objection raised by the respondent No. 3.

14. On going through the documents, it reveals that the applicant has three children namely Vishakha, Vaishnavi & Kedar and dates of birth of them are 25.07.1999, 18.09.2001 & 11.07.2008 respectively. Respondent No. 3 has produced the “प्रवेश निर्गम रजिस्टरचा उतारा, जि.प.प्रा.शाळा तेलवाडी” of **‘Vishakha’** at paper book page-53, “प्रवेश निर्गम रजिस्टरचा उतारा, जि.प.प्रा.शाळा तेलवाडी” of **‘Vaishni’** at paper book page-54 and Birth Certificate and “प्रवेश निर्गम रजिस्टरचा उतारा, श्री संत ज्ञानेश्वर विद्या मंदिर शिवनगर कन्नड, ता.कन्नड जि. औरंगाबाद” of **‘Kedar’** at paper book pages-55 & 56 respectively.

15. On perusal of the aforesaid documents filed by respondent No. 3, it reveals that Vishakha was born on 25.07.1999, Vaishnavi was born on 18.09.2001 and Kedar was born on 11.07.2008. This shows that the applicant has three living children and son is born after 2005. It means that he is not holding small family as provided in the recruitment rules i.e. Maharashtra Civil Services (Declaration of Small Family) Rules, 2005, and therefore, respondent No. 2 has rightly held that the applicant is not eligible and qualified to be appointed on the post of Police Patil and, therefore, he has cancelled the candidature and selection of the applicant to the post of Village Police Patil, Telwadi. Therefore, I do not find any illegality in the order under challenge. Not only this, but this Tribunal has also directed the respondent No. 2 to take steps to appoint the candidate who may be eligible for being appointed to the post of Police Patil, including the applicant by following due process of law while disposing of the O.A. No. 189/2016 filed by the respondent No. 3 on 29.7.2016. The said order has not been challenged by the respondent

No. 3. In the circumstances, in my view, there is no illegality in the impugned order and, therefore, no interference is called for in the impugned order. There is no merit in the present Original Application and, therefore, the same deserves to be dismissed.

16. In view thereof, the present Original Application stands dismissed with no order as to costs.

**MEMBER (J)**

O.A.NO.704-2016(SB)-HDD-2017-Police Patil-BPP