

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 733 OF 2018

[SUBJECT : - KOTWAL]

DISTRICT: - DHULE

Kishor S/o Chhagan Koli,

Age-35 years, Occu. : Nil

R/o. Morane (PI)

Tq. & Dist. Dhule.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,

Through Secretary,
General Administration Department,
Mantralaya, Mumbai – 400 032.

2. The President,

Selection Committee and
Sub-Divisional Officer, Dhule,
Division Dhule.

3. The Collector,

Dhule, Tq. & Dist. Dhule.

4. The Tahsildar,

Dhule, Tq. & Dist. Dhule.

5. Shivdas S/o Murlidhar Patil,

Age : Major, Occu. Service

R/o. Sanjori, Tq. & Dist. Dhule.

.. RESPONDENTS.

APPEARANCE : Shri. Nitin V. Gaware, learned
Advocate for the applicant.

: Shri S.K. Shirse, learned Presenting
Officer for the respondent Nos. 1 to 4.

: Shri A.P. Yenegure, learned Advocate
for respondent No. 5.

CORAM : **B.P. PATIL, ACTING CHAIRMAN**
DATE : **14.02.2020**

ORDER

By filing the present Original Application the applicant is challenging the order dated 17.5.2018; thereby appointing the respondent No. 5 on the post of Kotwal of village Kondne (war), Taluka and District Dhule and prayed to quash and set aside the impugned order and to direct the respondent Nos. 2 to 4 to appoint him on the said post.

2. Deceased Chagan Deochand Koli father of the applicant was serving as Kotwal of the village Kondne (war) and Moranke (PI) till his death i.e. till 15.02.1993. After death of Chagan Deochand Koli the brother of the applicant namely Chotu Chagan Koli was working on the post of Kotwal at Morne (PI) without honorarium. The brother of the applicant from time to time requested the respondents to fill up the vacant post and filed several applications to the respondent No. 4 in that regard. On 28.02.1974 the Government has issued Government Resolution and issued guidelines that at

the time of filling up the post of Kotwal preference should be given to the legal heirs of the Kotwal.

3. On 7.4.2018 the respondents had issued an advertisement for filling up the post of Kotwal in Dhule district. In the said advertisement posts of Kotwal were not reserved for SC, ST and SBC category. It is contention of the applicant that in the Government Resolution dated 23.01.2008 it has been specifically mentioned that the post of Kotwal should be reserved for SC & ST category as per the guidelines issued by the Government in the Government Resolution dated 1.4.1980. But respondent No. 2 has not reserved the post for SC, ST and SBC category, which is in violation of the Government Resolution dated 23.1.2008. It is contention of the applicant that in pursuance of the advertisement dated 7.4.2018 he himself and 7 other candidates applied for the appointment on the post of Kotwal of village Kondne (war). It is his contention that he has applied from the category of Special Backward. He had submitted the documents regarding his caste i.e. Special Backward Category and other required documents. Thereafter, he was appeared for the written examination held

on 15.5.2018 at Kamlabai Shankarlal Kanya High School, Sakri Road, Dhule. After conclusion of the written examination its result was declared by the respondents on 15.5.2018. The applicant secured 53 marks while respondent No. 5 secured 61 marks in the written examination. Thereafter, the applicant and respondent No. 5 were called for oral examination. In the oral interview the applicant secured 20 marks while respondent No. 5 secured 18 marks. It is contention of the applicant that he secured 73 marks in aggregate and respondent No. 5 secured 79 marks in aggregate. The respondent No. 2 declared the result of the examination and declared the respondent No. 5 as selected candidate. It is contention of the applicant that he is belonging to Special Backward Category and the respondent No. 5 is belonging to Open Category. It is his contention that the respondents had not followed the guidelines contained in the Government Resolutions dated 23.1.2008 and 28.2.1974 while declaring selected candidate. It is his contention that the respondent No. 2 ought to have given preference to the applicant as he is legal heir of Kotwal, but the respondent No. 2 has wrongly declared respondent No. 5 as selected candidate and issued appointment order in his favour on

17.5.2018. Therefore, the applicant has filed the present Original Application challenging the impugned order dated 17.5.2018 issued by respondent No. 2; appointing the respondent No. 5 on the post of Kotwal of village Kondne (war) and prayed to quash and set aside the same. The applicant has also prayed to direct the respondents to appoint him on the post of Kotwal in view of the Government Resolution dated 28.2.1974.

4. Respondent Nos. 2 to 4 filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the respondent No. 2 has issued an advertisement inviting application forms from the eligible candidates for the post of Kotwal in Dhule District. It is their contention that as per the Government Resolutions dated 09.09.2009 and 05.09.2013, reservation has been fixed for filling up post of Kotwal by publishing declaration according to the population criteria. As per the criteria the post of Kotwal at village Kondne (war), District Dhule was reserved for Open Category. It is their contention that according to the reservation, Bindu Namavali there is no post reserved for the candidates of S.C. and S.T. category at village Kondne (war),

Tq. & Dist. Dhule and, therefore, it was kept open for Open Category. Accordingly, applications were invited from the eligible candidates. They have not disputed the fact that the applicant and respondent No. 5 had appeared for written and oral examination. It is their contention that respondent No. 5 secured highest marks in aggregate and, therefore, he was selected on merit and appointed his as per the rules. It is their contention that the preference to the legal heirs of Ex-Kotwal has to be given when the legal heir of Ex-Kotwal and other candidate/s secure equal marks. It is their contention that the applicant secured less marks than the selected candidate. Therefore, the preference was not given to the applicant in view of the Government Resolution dated 28.02.1974. It is their contention that there is no illegality in the selection and appointment of the respondent No. 5. Therefore, they prayed to reject the Original Application.

5. The applicant has filed rejoinder to the affidavit in reply filed by respondent Nos. 2 to 4. He has reiterated similar contentions to that of the contentions raised by him in Original Application. It is his contention that as per the advertisement dated 7.4.2018 one Nana Raghunath Koli filed

application for the appointment on the post of Kotwal at village Raivat. In the examination he secured 24 marks; while other candidate namely Pramod Suresh Shankpal secured 58 marks, but the respondent authorities had appointed Nana Raghunath Koli on the post of Kotwal as he is legal heir of Ex-Kotwal. It is his contention that the respondents had not followed the said provisions while giving appointment to the respondent No. 5 on the post of Kotwal and, therefore, he prayed to quash and set aside the impugned order of appointment of respondent No. 5 by allowing the Original Application.

6. I have heard the arguments advanced by Shri N.V. Gaware, learned Advocate for the applicant, Shri S.K. Shirse, learned Presenting Officer for respondent Nos. 1 to 4 and Shri A.P. Yenegure, learned Advocate for respondent No. 5. I have perused application, affidavit, affidavit in reply filed by the respondent Nos. 1 to 4. I have also perused the rejoinder affidavit filed by the applicant to the affidavit in reply filed by the respondent Nos. 1 to 4. I have also perused the documents placed on record by both the parties.

7. Admittedly, on 7.4.2018 the respondent No. 2 issued an advertisement inviting applications from aspiring and eligible candidates for appointment on the post of Kotwal in different villages in Dhule District including the village Konde (war). Admittedly, the applicant, respondent No. 5 and other candidates applied for the appointment on the post of Kotwal of village Kondne (war). There is no dispute about the fact that the post of village Kondne (war) was reserved for Open Category. Admittedly, deceased father of the applicant namely Chagan Deochand Koli was serving as Kotwal of the village Kondne (war) and Moranke (PI) till his death i.e. till 15.02.1993. Admittedly, the applicant and respondent No. 5 appeared for written examination on 15.5.2018. They secured 53 & 61 marks respectively in written examination. They were interviewed for oral interview scheduled on 16.5.2018. In the oral interview the applicant secured 20 marks and respondent No. 5 secured 18 marks. The applicant secured 73 marks in aggregate and respondent No. 5 secured 79 marks in aggregate. Admittedly, the respondent No. 5 stood first in merit list and, therefore, he was declared as selected candidate by the respondent No. 2 and

accordingly respondent No. 2 issued appointment order dated 17.5.2018 in his favour.

8. Learned Advocate for the applicant has submitted that the applicant is legal heir of Ex-Kotwal. The Government issued Government Resolution on 28.2.1974 and issued guidelines regarding filling up the post of Kotwal. As per the guidelines mentioned in the aforesaid Government Resolution the Government has decided to give preference to the legal heirs of the Ex-Kotwal while making appointment on the post of Kotwal. He has submitted that the respondent No. 2 ought to have considered the said guidelines / provisions of the said Government Resolution dated 28.2.1974, but the respondents had not considered the said aspect and declared the respondent No. 5 as selected candidate. He has submitted that the respondent No. 2 ought to have given appointment to the applicant in view of the said Government Resolution, but the respondent No. 2 has not considered the said aspect and, therefore, he prayed to quash and set aside the appointment order of the respondent No. 5 on the post of Kotwal of the village Konde (war).

9. Learned Advocate for the applicant has further submitted that the respondents had considered the provisions of the said Government Resolution while giving appointment to one Nana Raghunath Koli on the post of Kotwal of village Raivat and appointed him though Nana Raghunath Koli, secured less marks than other candidates, who have applied for the post of Kotwal of village Raivat. He has submitted that the respondent No. 2 rejected the claim of the applicant illegible and his act is discriminatory. Therefore, he prayed to quash and set aside the impugned order.

10. Learned Presenting Officer has submitted that the provisions of the Government Resolution dated 28.2.1974 will come into picture when heir of Ex-Kotwal and other candidates secure equal marks and that time the preference has to be given to the heirs of Ex-Kotwal for appointment on the post of Kotwal. He has submitted that in the instant case the applicant secured 73 marks in aggregate while respondent No. 5 secured 79 marks in aggregate. Respondent No. 5 secured highest marks. Therefore, he being meritorious candidate, respondent No. 2 declared

respondent No. 5 as selected candidate and accordingly appointed him as Kotwal of village Kondne (war). He has submitted that there is no illegality in the impugned order. Therefore, he has prayed to reject the Original Application.

11. Learned Presenting Officer has submitted that the applicant has not produced any document to show that the case of Nana Raghunath Koli has been considered on the basis of Government Resolution dated 28.02.1974 and, therefore, on that basis the applicant cannot claim appointment on the post of Kotwal of village Kondne (war). Therefore, he prayed to reject the Original Application.

12. On perusal of the record it reveals that the applicant, respondent No. 5 and other candidates participated in the recruitment process held for the appointment on the post of Kotwal of village Knodne (war) Tq. and Dist. Dhule. They appeared for written examination, as well as, oral interviews. In the written examination the applicant secured 53 marks while respondent No. 5 secured 61 marks. In the oral interview the applicant secured 20 marks while respondent No. 5 secured 18 marks. The applicant secured 73 marks in aggregate while respondent No. 5 secured 79 marks in

aggregate. The respondent No. 5 stood first in merit and, therefore, respondent No. 2 declared him as selected candidate. Respondent No. 2 has appointed respondent No. 5 as Kotwal as he was meritorious candidate. Therefore, I find no illegality in the appointment order issued by the respondent No. 2 in favour of respondent No. 5.

13. I have gone through the provisions of Government Resolution dated 28.02.1974. It is necessary to reproduce the relevant provision of the said Government Resolution and, therefore, I reproduce the same as under: -

“कोतवाल मागण्या

महाराष्ट्र शासन
महसुल व वन विभाग
शासन निर्णय क्रमांक - केओटी १०७३/३०४३-ल
सचिवालय, मुंबई - ४०० ०३२, दिनांक २८ फेब्रुवारी, १९७४
वाचा :- शासन निर्णय क्रमांक -केओटी १०७३/१४१०८४-ल,
दिनांक २८ जाने. १९७४

निर्णय

कोतवालांच्या विविध मागण्यांच्या विचारासाठी व याबाबत शासनाकडे शिफारशी करण्यासाठी, माननीय राज्यमंत्री यांच्या अध्यक्षतेखाली एक समिती नेमलेली होती. या समितीच्या काही मुख्य शिफारशीबाबत शासनाने घेतलेले निर्णय..

शासन आदेश क्रमांक केओटी-१०७३/१४१०८४-ल, दिनांक २८ जानेवारी १९७४ अन्वये देण्यात आले आहेत. राहिलेल्या इतर शिफारशी व त्याबाबत शासनाने घेतलेले निर्णय खालीलप्रमाणे आहेत.

| <u>समितीच्या शिफारशी</u> | <u>शासनाने घेतलेले निर्णय</u> |
|--|-------------------------------|
| १. .. | .. |
| २. .. | .. |
| ३. .. | .. |
| ४. .. | .. |
| ५. .. | .. |
| ६. .. | .. |
| ७. .. | .. |
| ८. | स्वीकारली |
| इतर सर्व गोष्टी बरोबर असतील तर - कोतवालांच्या जागेवर नेमणूक करताना कोतवालांच्या मुलांना इतर उमेदवारांच्यावर प्राधान्य देण्यात यावे. | |

महाराष्ट्राचे राज्यपाल यांचे आदेशानुसार व नांवाने

सही/-

अवर सचिव, महाराष्ट्र शासन
महसूल व वन विभाग”

14. On perusal of the same, it reveals that the Government has decided to give preference to the legal heir of the Ex-Kotwal, in case he competes equally with other candidates in the recruitment process. It means that when legal heir of the Ex-Kotwal secures equal marks with other candidates, in that

case the preference has to be given to the legal heir of the Ex-Kotwal on the post of Kotwal. In the instant case, the applicant secured less marks than the selected candidate i.e. respondent No. 5. Therefore, benefit of the said Government Resolution cannot be extended to the applicant. Therefore, I find no substance in the submissions advanced by the learned Advocate for the applicant in that regard. There is no illegality in the impugned order and selection of the respondent No. 5 on the post of Kotwal. Therefore, no interference in the impugned order is called for. There is no merit in the Original Application. Consequently, it deserves to be dismissed.

15. In view of the discussion in foregoing paragraphs, the present O.A. stands dismissed. There shall be no order as to costs.

ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 14.02.2020

O.A.NO.733-2018(SB-Kotwal)-HDD-2020