

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION NO.867/2018.**

**(S.B.)**

Yogesh Kashinath Sonawane,  
Aged about 32 years,  
Occ-Nil, At Post Dusane, Tq. Sakari,  
Dist. Dhule.

**Applicant.**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Principal Secretary,  
Department of Revenue and Forests,  
Mantralaya, Mumbai-400 032.
- 2) The Collector,  
Dhule.
- 3) The Sub-Divisional Officer,  
Dhule Division, Dhule.
- 4) Mr. Raosaheb Jagannath Khairnar,  
Dusane, Tq. Sakari,  
Distt. Dhule.

**Respondents**

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Shri Suresh Dhongde, the learned Advocate for the applicant.

Shri B.S. Deokar, the learned P.O. for the respondents 1 to 3.

Shri A.S. Sawant, the Ld. Advocate for respondent No.4.

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**PER: JUSTICE A.H. JOSHI, CHAIRMAN**

**J U D G M E N T**

(Reserved on 03.06.2019)  
(Reheard on 26.06.2019 & 27.06.2019)  
(Pronounced on 08.07.2019.)

1. Heard Shri S.D.Dhongde learned Advocate for the applicant,  
Shri B.S.Deokar learned Presenting Officer for respondent nos.1 to 3 and  
Shri A.S.Sawant learned Advocate for respondent no.4.

2. Perused the record.

3. Applicant has approached this Tribunal with following prayers:-

“A) The Original Application may kindly be allowed with costs.

B) The selection of respondent No.4 and consequential order dated 30.10.2018 appointing him as Police Patil of village Dusane, Tq. Sakri, Distt. Dhule be quashed and set aside.

C) Respondents be directed to appoint the applicant as Police Patil of village Dusane, Tq. Sakri, Distt. Dhule pursuant to his test, interview and selection forthwith.

D) Any other equitable and appropriate relief to which the applicant is found due and entitled in the facts and circumstances of the case may kindly be granted in favour of the applicant.”

4. According to the applicant:-

(a) Relevant text of G.R. dated 22/08/2014 as regard consequence of erroneous information and procedure to be observed when candidates get equal marks reads thus:-

“२. तोंडी परीक्षेकरीता किमान गुण.

पोलीस पाटील भरती / निवडीसाठी घेण्यात येणाऱ्या ८० गुणांच्या लेखी परीक्षेत किमान ३६ गुण (४५%) गुण (४५%) गुण प्राप्त करणारे उमेदवार तोंडी परीक्षेस पात्र ठरतील.

३. तोंडी (मुलाखत) परीक्षा उपस्थिती.

लेखी परीक्षेत मुलाखतीस पात्र ठरलेल्या उमेदवारास, पोलीस पाटील भरती / निवडीसाठी घेण्यात येणाऱ्या २० गुणांच्या तोंडी (मुलाखत) परीक्षेस उपस्थित राहणे अनिवार्य राहिल. तोंडी परीक्षेस अनुपस्थित रहाणारा उमेदवार अंतिम निवडीकरीता अपात्र ठरेल. मात्र, एखाद्या उमेदवाराला मुलाखतीत शुन्य गुण मिळाले असले तरी लेखी परीक्षेतील गुणांच्या आधारे तो जर गुणवत्ता यादीत येत असेल, तर असा उमेदवार पोलीस पाटील पदावरील निवडीकरीता पात्र राहिल.

४. निवडसूची.

निवडसूची एक वर्षासाठी वैध राहिल. त्यानंतर ती व्यपगत होईल. निवडसूची तयार करताना एका पदासाठी एक उमेदवार या प्रमाणात तयार करण्यात यावी.

५. उमेदवारास समान गुण मिळाल्यास. गुणवत्ता यादीमधील दोन किंवा त्यापेक्षा अधिक उमेदवार समान गुण धारण करीत असतील, तर अशा उमेदवारांचा गुणवत्ता क्रम खालील निकषांवर क्रमवार लावला जाईल. :-

१. पोलीस पाटलांचे वारस, त्यानंतर

२. अर्ज सादर करावयाच्या अंतिम दिनांकास उच्च शैक्षणिक अर्हता धारण करणारे उमेदवार, त्यानंतर
३. माजी सैनिक असलेले उमेदवार, त्यानंतर
४. वयाने ज्येष्ठ उमेदवार.”

(Quoted from paper book page 29 of O.A.)

- (b) At the time of submitting the online application, the Respondent No.4 has answered in affirmative by writing / subscribing word “Yes” while responding to the query as to whether he is son / ward of Police Patil.
- (c) Information furnished by the Respondent no. 4 about his being son / ward of Police Patil is factually wrong/false, as his father was not a Police Patil.
- (d) Though Respondent No.4 claimed to be 32 years of age, based on medical report he is in fact younger than applicant as per admitted record of date of birth relied on by the Respondent No.4.
- (e) Respondent No.4 has been awarded:
  - (i) 3 (three) marks for passing 12<sup>th</sup>.
  - (ii) 4 (four) marks for possessing degree of Bachelor of Arts.
- (f) Respondent No.4 and applicant both got equal marks i.e. 79 out of 140 (as aggregate, total of written, viva and weightage of graduation and on various other factors/parameters).
- (g) Since Respondent No.4 and applicant have equal marks, the respondent No.3 has to select the respondent no.4 as one amongst two candidates securing equal marks by giving preference as laid down in G.R. dated 22.8.2014 Exh.A-1,(copy whereof is at page nos 28 to 30 of O.A).

5. According to Respondent no. 3, the Respondent no. 4 is given preference

due to his higher educational qualification all other parameters between them being equal as is evident from the pleading of Respondent no. 3 seen at P.B., Pg. Nos. 54 & 55, which reads thus:-

“05. As regards to the contents of Para No. 6 (c) of the Original Application, I say and submit that the contents of this para are true and correct as a matter of record, hence reply of deponent is not necessary. I most respectfully say and submit that, the deponent has adopted the procedure laid down in Government Resolution dated 22.08.2014 which is as under:

The Government Resolution, Home Department, Government of Maharashtra dated 22.08.2014.

- “५. उमेदवारास समान गुण मिळाल्यास.  
गुणवत्ता यादीमधील दोन किंवा त्यापेक्षा अधिक उमेदवार सामान गन धारण करीत असतील, तर अशा उमेदवारांचा गुणवत्ता क्रम खालील निकषावर क्रमवार लावला जाईल.
१. पालिस पाटीलांचे वारस ; त्यानंतर.
  २. अर्ज सादर करावयाचा अंतिम दिनांकांस उच्च शैक्षणिक अहर्ता धारण करणारे उमेदवार ; त्यानंतर.
  ३. माजी सैनिक असलेले उमेदवार ; त्यानंतर
  ४. वयाने ज्येष्ठ उमेदवार”

In view of this Government Resolution the deponent has issued the appointment order to the respondent no. 4 as having more educational qualification i.e. B.A. than the present applicant i.e. 12<sup>th</sup> Std. as per condition no. 5 (2) mentioned in G.R. dated 22.08.2014, when the equal marks obtained by the candidates in examination”.

(Quoted from page no. 54-55 of Paper Book)

6. Respondent no. 4 has relied on right of preferential treatment in the matter of selection on this ground namely:-

He possesses Higher educational qualification and on the ground of being higher in age.

7. Though applicant has challenged selection of respondent no. 4 on various grounds and in long drawn pleadings in the memo of O.A. the issues around which the challenge revolves are as follows:-

- (a) Application of respondent no. 4 was liable to be rejected at the stage of scrutiny because respondent no. 4 has furnished wrong/false information as to his being son/ ward of former Police Patil.
- (b) Weightage for graduation was given to respondent no. 4 first time while assessing merit at the time of award / allotment of marks and it was not open to the Respondent no. 3 to give weightage again or on second time because the respondent no.4 had become equal in marks to the applicant due to weightage while allotment of marks.

8. Learned advocate for the applicant has relied on following Judgments:-

- (i) Judgment of Madhya Pradesh High Court, Union of India & Ors Vs. Surendra Singh, W.A 31/2012.
- (ii) Judgment of Hon'ble Supreme Court in A.P Public Service Commission Vs. Koneti Venkateswarulu & Ors, Appeal (Civil) 5335 of 2005.
- (iii) Judgment of Hon'ble Supreme Court in Ram Kumar Vs. State of U.PO & Ors, Civil Appeal No. 7106/2011.
- (iv) Judgment of Hon'ble Supreme Court in Devendra Kumar Vs. State of Uttaranchal & Ors, Civil Appeal No. 1155/2006.
- (v) Judgment of this Tribunal dated 20.3.2019 in O.A 502/2018, Bansilal C. Jaiswal Vs. State of Maharashtra & Ors.
- (vi) Judgment of Hon'ble Bombay High Court in Writ Petition No.2011/2016 decided on 01-03-2017 in the case of Rupesh s/o. Pandurangji Surjuse V/s. The State of Maharashtra & Ors.
- (vii) Judgment of Hon'ble Supreme Court in Lila Dhar Vs. State of Rajasthan & Ors, (1982 SCR (1) 320).
- (viii) Judgment of Hon'ble Supreme Court in P.K.Ramachandra Iyer & Ors. V/s. Union of India & Ors, (1984 SCR (2) 200).

(ix) Judgment of Hon'ble Bombay High Court in Writ Petition No.2181/2015 decided on 01-10-2015 in the case of Nilkanth s/o. Ashok Patil V/s. The State of Maharashtra & Ors.

9. Learned advocate for Respondent no. 4 has emphatically urged that:

(a) It was a slip of writing due to which Respondent no.4 has answered in affirmative to the question as to whether he is son/ward of a former Police Patil.

(b) Respondent no. 4 has succeeded in the process of selection on the basis of merit, and therefore, an error or slip ought not vitiate the selection.

(c) Candidate who has participated in the process of selection should not be permitted to challenge the selection process.

10. Learned advocate for Respondent no. 4 has relied on judgments of Hon'ble Supreme Court in:

(a) Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh [(1999) 1 SCC 246].

(b) Ramesh Chandra Shah V/s. Anil Joshi & Ors. [(2013) 11 SCC 309]

11. Learned Presenting Officer for the Respondent no. 3 has exerted to substantiate the action by relying on the pleadings and contentions which are summarized hereinbefore.

12. This Tribunal has perused the judgment relied upon by respective parties, perused the record and considered the respective submissions.

13. In view of rival pleadings, questions which arise for consideration are:-

(a) Whether respondent no. 4 is entitled for preferential treatment for higher education.

- (b) Whether respondent no. 4 was entitled to second additional benefit of preferential treatment upon once getting additional marks /weightage for higher educational qualification?
  - (c) Whether the application for appointment for the post of Police Patil submitted by the applicant was liable to be rejected at the stage of scrutiny itself due to furnishing wrong / erroneous / false information as regards being son / ward of Police Patil.
  - (d) Can the selection process be held to be legal in case foregoing question (c) is answered unfavourable to the respondent no. 4.
  - (e) Is relief the applicant entitled for any relief?
14. Though various arguments are advanced, crucial facts are as following:-
- (a) Respondent No.4 has represented that he is son of former Police Patil, which is not a fact.
  - (b) According to Respondent no. 3 said mention of being son of Police Patil was a slip of writing/error in uploading the information.
  - (c) Respondent No.4 is older than applicant.
  - (d) Respondent No.4's educational qualification being B.A. and his qualification is higher as compared to the applicant who has barely passed 12<sup>th</sup> standard, he can be preferred in case all other candidates stand on equal footing as regards all other parameters.
  - (e) In view of higher educational qualification of respondent no.4, he has been awarded 3 marks and because of those added marks, the respondent no.4 came on par became equal to the applicant.
  - (g) Respondent no.4 is treated equal to applicant after adding three marks towards graduation, and on the ground of equal merit

respondent no.4 has been preferred over the applicant due to being holder of a degree.

15. After the order in this O.A. was reserved and case was examined for judgment, this Tribunal found that question not addressed by the parties had emerged, which is formulated as point (c) in foregoing para no.13, this Tribunal directed rehearing of present O.A. Thereafter, O.A. was listed on board on 25-06-2019, when this Tribunal passed order on 25-06-2019 as follows:

*“1. Heard Shri S.D.Dhongde learned Advocate for the applicant, Shri B.S.Deokar learned Presenting Officer for the respondent nos.1 to 3 and Shri A.S.Sawant learned Advocate for respondent no.4.*

*2. O.A. was heard and reserved for order. Today again it has been listed for rehearing.*

*3. It had transpired during the scrutiny of papers that respondent no.4 has been granted weightage of 3 marks on account of his graduation.*

*4. Thereafter, due to grant of 3 marks for graduation, the Respondent no.4 came at par on the basis of total marks received by the applicant.*

*5. It prima facie appears that respondent no.4 had gained the advantage of graduation twice, namely, once on account of getting 3 marks at the time of initial assessment and again by way of preference when applicant and respondent no.4 stood at equal footing.*

*6. Since the question as to whether the benefit of graduation can be given to the respondent no.4 firstly at the time of computation of merit and again on second time at the time of giving preference, all other things being equal, was not addressed by either parties.*

7. Therefore, list the O.A. for rehearing tomorrow with direction to parties to address this Tribunal on following questions:

*Whether addition of 3 marks for graduation in favour of respondent no.4 and again giving him preference on the ground of equal merit gained due to graduation is permissible.*

8. This case be placed for rehearing on tomorrow high on board.

9. S.O. to 26-06-2019.”

16. This O.A. was again listed on 26-06-2019 for hearing and was argued on 27-06-2019.

17. Advocate for applicant has addressed urging that:

- “(a) Preference ought to be given to candidate having higher merit or better performance in the written examination and weightage for viva voce ought to be always secondary.
- (b) Any statutory rule or precedent does not permit giving extra or dual weightage for one head of preference.”

18. Learned Advocate for respondent no.4 as well by learned P.O. have argued as follows:

- “(a) Selection is legal.
- (b) Applicant cannot object selection process having participated in the process of selection.
- (c) The sports participation by applicant is dubious.
- (d) Grant of weightage for graduation is legally done.”

19. Learned Advocate for applicant Shri S.D.Dhongde has replied as regards objection to sports certificate as follows:

- “(a) Objection by the respondent no.4 itself was not raised before the respondent no.3 and the document relied upon by him is not trustworthy and is disputed.
- (b) Respondent no.4’s candidature being *non est* due to false/wrong information furnished by him, his objection does not deserve cognizance.

- (c) Moreover, even if weightage of 2 marks given to applicant towards participation in sports event is deducted, still applicant continues to be higher in rank and he would get 77 marks.
- (d) Hence, objection by respondent no.4 has no merit.”

### **DISCUSSION & REASONS**

20. G.R. dated 22.08.2014 prescribes / lays down the recruitment procedure. Para no. 3 thereof is quoted in the affidavit of the Respondent no. 3 as reproduced in foregoing par no.5.

21. Record reveals that in order to ensure that the selection process is made highly objective and transparent, allotted marks is divided as follows:-

- (a) 80 marks Written test
- (b) 20 marks Viva voice
- (c)(i) 03 marks passing of 12<sup>th</sup>
  - (ii) 04 marks passing of Graduation
  - (iii) 03 marks passing of Post Graduation
  - (iv) 02 marks passing of MSCIT
  - (v) 02 marks passing Certificate of participation in Sports
  - (vi) 02 marks passing of NCC
  - (vii) 02 marks passing of NSS/ Scout
  - (viii) 02 marks passing of Personality/ Skill of communication.

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140 marks (Total)

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It is thus evident from division/apportionment of marks that only 20 marks out of 140 are reserved for viva voice, and 40 marks are divided for weightage on different heads of merit.

22. The provision for allotment of extra marks for Graduation 4 (four) and for Post Graduation 3 (three) appears to be the finest and a most rational modality or device, based on objectivity achieving in the process of giving weightage or preference too.

23. It is evident from pleadings of the respondent no.3(quoted in para 5 of this judgment that the rule of preference has to be acted or observed after crossing the stage of viva voce, if total marks secured are equal. The rule as regards preference lays laid down therein that higher educational qualification is the criteria of preference for selection when marks obtained in written test and vivo-voce together are equal.

24. The Respondent no. 4 is given 4 marks towards degree of B.A. Thus marks secured by applicant without weightage of degree are 76.

25. Figure of total marks secured by the applicant as well as by Respondent no. 4 is 79 out of 140.

26. The marks secured by applicant are 79 without weightage of graduation, while the marks secured by the Respondent no. 4, without weightage for graduation are 76 as is evidenced from page no.60 of paper book of O.A..

27. The rule lays down / prescribes that when total of marks secured in written test and viva by candidates is equal, preference be given as a mandatory rule, to the candidate having higher educational qualification.

28. The respondent no. 4 has secured equal marks after adding 03 marks granted due to graduation and hence any further and repeated latitude, weightage or special preference being contrary to rule, it cannot be granted to the respondent no. 4. Hence any occasion for grant of preferential treatment due to higher qualification to the Respondent no. 4 does not and cannot arise.

29. Next question to be considered is as to whether what is the effect of act of applicant in furnishing information to the effect that "He is son/ ward of former Police Patil".

30. Admittedly, the respondent no.4 has claimed in his online application that he is son/ ward of former Police Patil which is erroneous or is a falsehood. The Respondent no. 4 claims that marking "yes" while answering the question as regards being child of former Police Patil was a slip in writing / keying in of the words.

31. Applicant has placed on record copy of notification, inviting applications for the post of Police Patil which is at P.B., Pg. Nos. 12 to 27, relevant conditions are seen at paper book page no.21 to 25. Relevant text thereof reads as follows:-

"निवडीसाठी कार्यपध्दती, अटी, शर्ती:

३. लेखीपरीक्षेअंती मुलाखतीसाठी पात्र उमेदवारांचे जाहिरातीनुसार आवश्यक पात्रता व ऑनलाईन अर्जात भरलेली माहिती यांच्या आधारे मूळ कागदपत्र पडताळणी करण्याकरीता अंतरिम स्वरूपात यादी जाहीर करण्यात येईल. ज्या उमेदवाराची जाहिरातीनुसार आवश्यक पात्रता व ऑनलाईन अर्जात भरलेली माहिती, परिक्षा शुल्क, मुळ कागदपत्रांच्या आधारे परीपुर्ण सिद्ध होईल अशाच उमेदवारांचा विचार भरती प्रक्रियेच्या पुढील टप्प्या करिता येईल. जाहिरातीत नमूद केलेली संपूर्ण अर्हता, ऑनलाईन अर्जात भरलेली माहिती व मूळ कागदपत्र तपासणीच्या वेळी सादर केलेली कागदपत्रे यामध्ये तफावत आढळल्यास उमेदवारांची उमेदवारी भरतीच्या कुठल्याही टप्प्यावर रद्द होउ शकेल अथवा अशा उमेदवारांचे मागीतलेले सामाजिक आणि/किंवा समांतर आरक्षण अथवा प्रक्रिया शुल्क इ. सारख्या सवलती नामंजूर करण्यात येतील याची कृपया नोंद घ्यावी.

(Quoted from page 21 of paper book)

ऑनलाईन अर्ज करण्याची पध्दत

१६. ऑनलाईन अर्ज केला अथवा विहित अर्हता धारण केली म्हणजे लेखी परिक्षेस/कागदपत्र पडताळणीस बोलविण्याचा अथवा नियुक्तीचा हक्क प्राप्त झाला आहे असे नाही. निवडीच्या कोणत्याही टप्प्यावर अर्जदार विहित अर्हता धारण न करणारा आढळल्यास, खोटी माहिती पुरविल्यास, एखादया अर्जदाराने त्याचा निवडीसाठी निवड समितीवर प्रत्यक्ष/अप्रत्यक्ष दबाव आणला अथवा गैरप्रकाराचा अवलंब केल्यास त्यास निवड प्रक्रियेतून बाद करण्यात येईल तसेच, नियुक्ती झाली असल्यास कोणतीही पुर्वसूचना न देता त्यांची नियुक्ती समाप्त करण्यात येईल वयांच्याविरुद्ध कायदेशीर कारवाई करण्यात येईल.''

(Quoted from page 25 of paper book)

32. It shall thus be evident from the totality of scheme of G.R. dated 22-08-2014 that if the information furnished is false or erroneous, the application is liable to be rejected at the stage of scrutiny and no opportunity shall be available to

improve or modify or change information once submitted in the application form, once it is uploaded.

33. After considering the rival submissions and foregoing discussion, it transpires that:-

Respondent no. 4 was entitled for "preference" over other candidates if the merit ranking, excluding preference or weightage is equal.

34. As discussed in foregoing paragraph nos.20 to 28 it is evident that the Respondent no. 4, had secured, were 76 marks without weightage for graduation. In the result the applicant and Respondent no.4 do not stand on equal footing based on marks excluding weightage / marks awarded due to graduation.

35. Had the applicant and Respondent no. 4 to stand on equal footing, without weightage for graduation, it would have been legitimate, just, proper and fair to give preference to Respondent no. 4.

36. Applicant and Respondent no. 4 have been considered by Respondent no. 3 to be equal, after adding weightage towards graduation to the marks secured by the respondent no.4. The stage of granting preference has to arise after final assessment upon totaling written test and viva voce and 'without grant of weightage for graduation' and not 'after granting weightage'.

37. Hence, selection of Respondent no. 4 by giving preference for graduation amounts to giving him the benefit of graduation dually or two times, which is neither in contemplation of rules, or of justice. In the result, respondent no.4 and applicant are erroneously treated as equals, and thereafter the respondent no.4 has been given preferential treatment. Preference has or can be given when two candidates are equal. It is unfair and in violation of Article 14 of the Constitution of India to upgrade a candidate by giving him credit for graduation and again to prefer him on account of same condition of qualification graduation.

38. It is thus evident that a factual error/folly and illegality has occurred on the part of or at the hands of the respondent no.3 in ruling/fact finding that applicant and Respondent no. 4 has secured equal marks. This fact finding is not just erroneous but is perverse as well.

39. Next point to be considered is as to whether candidature of Respondent no. 4 was liable to be rejected on account of furnishing wrong information

40. The point on which the parties do concur, is the aspect of rules and procedure.

41. Condition no.7 contained in the recruitment notice Exhibit A-1 reads thus:

“७. पोलिस पाटील पदावरील नियुक्तिकरीता मृत / सेवानिवृत्त पोलिस पाटलाच्या वारसाने अर्ज केल्यास त्याला प्राधान्य देण्यात येईल. परंतु याचा अर्थ एकाच स्थानासाठी (position) पोलिस पाटलाच्या वारसासह दोन किंवा अधिक उमेदवारांना समान गुण मिळाल्यास पोलिस पाटलाच्या वारसाची निवड करण्यात प्राधान्य देण्यात येईल. परंतु, तो महाराष्ट्र ग्राम पोलिस पाटील (सेवा प्रवेश, पगार भत्ते आणि सेवेच्या इतर शर्ती) आदेश १९६८ व त्यामध्ये वेळोवेळी करण्यात आलेल्या सुधारणांनुसार सर्व अटी व शर्ती पूर्ण करित असला पाहिजे. तसेच तो दिनांक १६/१०/२००८ च्या शासन निर्णयानुसार त्या गावासाठी ठरविण्यात आलेल्या सामाजिक / समांतर आरक्षणाचा असला पाहिजे.”

(Quoted from paper book page 22)

42. It is not disputed that a candidate is not entitled to alter, modify or withdraw the information once submitted / furnished. It is also a common ground that in case the information furnished in the application is found to be erroneous, wrong or false, the application is liable to be rejected at the threshold, as laid down in the Recruitment Notification, conditions no 3 & 16 concerned judgments/rules quoted in foregoing para no.31 text whereof is quoted appearing at page 21 & 25 of the paper book.

43. Moreover, had the mistake / error not been discovered, applicant would have secured preferential treatment as prescribed in condition no.7, seen at page

21. Hence, candidature of Respondent no. 4 could not have entered the field of competition.

44. Having secured equal marks as substantiated by Respondent no. 4, is a fortuitous event which is a product of violation of rule and justness and said status should not merit any consideration as a valid candidate since due to erroneous information furnished by him, his application was *non est*.

45. Admittedly, Respondent no. 4 is not higher in age than the applicant. Therefore, there was no ground available to give him higher preference.

46. In so far as precedent to the judgment relied upon by Respondent no. 4 is concerned, the case therein had arisen in totally different set of facts of that case and hence said judgment has no application to facts of present case.

47. Moreover, the submission that having participated in the process of selection, a candidate the applicant cannot challenge the process based on a legal proposition. However, challenge to an illegality in selection of a candidate is totally different from challenging the 'rules of selection' which has not been done in present case. Therefore, there cannot be any immunity from illegality in the process of selection.

48. Hence, the inherent illegality in the application/candidature of Respondent no.4 cannot be purged, due to alleged comparative higher merit of the Respondent no. 4.

49. Moreover, on facts, this Tribunal holds that treating the Respondent no. 4 equal to the applicant and then giving him preference on account of graduation is itself illegal since Respondent no. 4 became equal only because of weightage on account of graduation.

50. In so far as the objection of the respondent no.4 that sport certificate of the applicant is not truthful is concerned, said objection ought to have been raised before the respondent no.3 and had it been so raised, it could have been enquired. Moreover, since respondent no.4's candidature itself deserved rejection, in that background the respondent no.4 cannot raise an objection to applicant's candidature unless as a citizen he can maintain a petition for Writ for quo warranto like a PIL or like a whistle blower. This type of right is not available to the applicant.

51. In the result following order is passed:

- (A) Present Original Application succeeds.
- (B) Selection of Respondent no. 4 as Police Patil of village Dusane, Tal-Sakri, Dist-Shule is declared to be illegal in view of applicant is higher in merit in view of graduation.
- (C) Said selection of Respondent no. 4 as Police Patil, impugned is hereby quashed and set aside.
- (D) Original Application is allowed in terms of prayer clause (B) & (C), as quoted in para 3 of this judgment.
- (E) In the facts and circumstances of the case, parties are directed to bear their own costs.

Date : 08-07-2019.  
Place : Aurangabad

**(A.H JOSHI)**  
**CHAIRMAN**