MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 543/2016

Sau. Chaya Arunrao Dahake,
Aged about 36 years, Occ. Housewife,
R/o Bhuli, Tq. Manora,
District : Washim.

Applicant.

Versus

1) State of Maharashtra
through its Secretary,
Revenue Department,
Mantralaya, Mumbai-32.

2) Collector,
Washim, Tq. Washim,
District : Washim.

3) Sub Divisional Officer,
Karanja, Tq. Karanja,
Dist. Washim.

Respondents.

Shri A.V. Band, Nilesh Borkar, Advocates for the applicant.

Shri M.I. Khan, P.O. for the respondents.

Coram :- **Hon'ble Shri J.D. Kulkarni, Member (J).**

Dated :- 08/03/2017.

ORAL ORDER -

The applicant Sau. Chaya A. Dahake has challenged the order dated 18-6-2016 issued by respondent no.3, whereby her claim for appointment to the post of Police Patil for village Bhuli has been rejected. The applicant is also claiming the direction to respondent

no.3 to appoint him on the post of Police Patil of village Bhuli in pursuance of the order dated 1-6-2015. From the admitted facts on record, it is clear that the applicant and one Sau. Meenakshi G. Chavan participated in the process of selection for the post of Police Patil village Bhuli. Admittedly, Sau. Meenakshi Chavan got 70 marks out of 100, whereas, the applicant got 58 marks and being meritorious a candidate, Sau. Meenakshi Chavan was appointed as Police Patill vide order dated 24.2.2016. The applicant has challenged the appointment of Sau. Meenakshi Chavan on the ground that she was having three issues. It is stated that Sau. Meenakshi Chavan was having the daughter Ku. Vaishanvi, whose date of birth was 11-7-2003, daughter Ku. Vedshree her date of birth was 31-10-2006 and son whose date of birth was 3-10-2012. It was stated that Sau. Meenakshi Chavan cannot be appointed to the post of Police Patil since she was having more than two children and one of her children's birth was after 28-5-2005. The SDO, Karanja heard objection as made by the applicant and pass the order on 18-6-2016 which reads as under :-

^^vkn'k&

1- egkjk"V ukxjh lok ¼ygku dVckp ifrKki=½ fu;e]2005 ueuk&v ¼fu;e&4½ ulkj g;kr vlY;k eykph l[;k nkui{kk vf/kd vly rj fnukd 28 ekp]2006 urj tUekyk vkyY;k eykeG ;k inkl kBh lk- feukJh x.k'k p0gk.k vug Bjfo.;k l ik= gkr vkg-

2- lk- feukJh x.k'k p0gk.k ikyhl ikVhy Hkyh] rk- ekukjk ft- okf'ke ;kuh ikyhl ikVhy inkoj vkn'k d-1 ph vtkl kcr fru viR; vlrkuk [kkV ifrKky[k lknj dy o ekfgrh nMou Boyh- lcc egkjk"V xkeikyhl vf/kfu;e] 1967 p dye 9 ¼p½ o vkn'k d-1 p mYy?ku dY;keG ikyhl ikVhy Hkyh ;k inko#u cMrQ dj.;kr ;r vkg-

3- lk- Nk;k v#.k Mgkd rdkjnkj ;kuh lk- feukJh x.k'k p0gk.k ikyhl ikVhy Hkyh g in jnn dY;kurj ek>h ikyhl ikVhy ;k inkoj fu;Drh dj.;kr ;koh ijr egkjk"V ukxjh lok fu;e 1981 ¼inxg.k vo/kh] Loh;rj lok vkf.k fuycu] cMrQh o loru dk<u Vkd.k ;kP;k dkGkrhy inku ½ fu;e 75 ulkj cMrQheG fjDr >kyY;k inkoj ,dk o"kkpk dkyko/kh liY;kurjp dk;ei.k Hkjrk ;by v'kh rjrn vkg o ek-ftYgkf/kdkjh] okf'ke ;kp i- d- d{k1] vkLFkk] dfy- dkoh&220]2015 fnukd 1-6-2015 p fu;kftr dk;dekulkj ikfyl ikVhy inHkjrhph ifd;k li.k li"Vkr vkY;kus vkiY;k vkpk fopkj u djrk [kkjh t dj.;kr ;r vkg-

4- [kpkckcr vkn'k ukgh**-

2. The applicant is aggrieved by the order at sr.no.3 as aforesaid whereby SDP refused to appoint her as Police Patil though it was declared that Sau. Meenakshi Chavan was not eligible to be appointed for the post of Police Patil and appointment in respect of Sau. Meenakshi Chavan was cancelled.

3. The learned counsel for the applicant submits that the applicant should have been appointed to the post of Police Patil village Bhuli since she stood separately in the merit list after Sau. Meenakshi Chavan and since the appointment of Sau. Meenakshi Chavan was cancelled, she should have been appointed on such post. The respondent nos.2 & 3 justified the order passed by the SDO, Karanja.

4. The only material point is to be considered in this case is whether the order passed by SDO, Karanja rejecting the appointment to the applicant in place of Sau. Meenakshi Chavan is legal and proper.

5. From perusal of the relevant order in clause-3 of the operative part as aforesaid clearly shows that the SDO, Karanja has taken benefit of Rule 75 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal) Rules,1981. The said rule 75 reads as under :

> ***Filling in vacant post substantively due to reduction, removal or dismissal, after one year****.*
> *Post vacated by Government servant reduced, removed or dismissed from service, may be filled substantively only after the expiry of period of one year from the date of such reduction, removal or dismissal, as the case may be, subject to the condition that the arrangements thus made will be reserved if such Government servants are reinstated on appeal.*

6. Perusal of the aforesaid rule shows that if the post of servant is vacated on accounts of reduction / removal / dismissal from service, then the competent authority has to wait for one year before appointing any person in that post. In the present case said rule however may not be applicable for the simple reason that as soon as Sau. Meenakshi Chavan was appointed to the post, the applicant filed

her objection for her appointment and after giving full opportunity to Sau. Meenakshi Chavan as well as to the applicant, the SDO was pleased to dismiss Sau. Meenakshi Chavan. Admittedly no appeal has been filed by Sau. Meenakshi Chavan against her dismissal and infact Sau. Meenakshi Chavan was not at all eligible to be appointed for the said post. There is no dispute that the applicant stood second in merit after Sau. Meenakshi Chavan in the competitive examination conducted for post of Police Patil of village Bhuli and therefore when meritorious candidate was held unfit or not eligible for being appointment, the recourse open to the SDO was to appoint being second meritorious candidate in her place. Even for argument simply accepted that the process of appointment of Police Patil is completed as mentioned in the order, it has been completed on 1-6-2015 and the order has been passed on 18-6-2016 i.e. more than one year after the process was completed. The learned P.O. admitted the fact and till today nobody is appointed on the post of Police Patil of village Bhuli nor any fresh advertisement was issued for the said post. Considering these aspects, I am of opinion that no prejudice will be caused to anybody if the applicant is appointed as Police Patill of village Bhuli in place of Sau. Meenakshi Chavan.

7. In view thereof, I pass the following order :-

ORDER

i) The O.A. is allowed.

ii) The respondent no.3 is directed to issue appointment order in favour of the applicant for the post of Police Patil of viilage Bhuli, Tq. Manora, Dist. Washim. The said order shall be issued within one month from today.

iii) No order as to costs.

(J.D. Kulkarni)
Member (J).

dnk.