

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.789 OF 2016

(Subject :- Police Patil)

DISTRICT : AURANGABAD

Shri Rahul s/o Ramnath Jadhav,)
Age: 29 years, Occu: Agri.,)
R/o: Ranjangaon (Shen Punji),)
Post Ghanegaon, Tal. Gangapur,)
Dist. Aurangabad.) **...Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through Sub-Divisional Officer,)
Vaijapur-cum-Chairman,)
Police Patil Recruitment-2015)
Selection Committee,)
Vaijapur, Dist. Aurangabad.)
2. Ankush s/o Sahebrao Gore,)
Police Patil, Ranjangaon)
(Shen Punji), Post Ghanegaon,)
Tal. Gangapur. Dist. Aurangabad) **...Respondents**

Shri Avinash S. Deshmukh, learned Advocate for the Applicant.

Shri V.R. Bhumkar, learned Presenting Officer for the Respondent No.1.

Shri Vishwas B. Wagh, learned Advocate for the Respondent No.2.

CORAM : **B.P. Patil, Member (J).**

DATE : **29.03.2019.**

ORDER

1. The Applicant has challenged the selection/ appointment of the Respondent No.2 as Police Patil of village Ranjangaon (Shen Punji), Taluka Gangapur, District Aurangabad by filing present Original Application and also prayed to direct the Respondent No.1 to appoint him as Police Patil of same village.

2. The Applicant is permanent resident of village Ranjangaon (Shen Punji), Taluka Gangapur, District Aurangabad. He is belonging to OBC category. He passed B.A. examination. On 10.03.2016, the Respondent No.1 published the proclamation/advisement inviting the applications from aspiring eligible candidates for the post of Police Patil of different villages in Vaijapur Sub-Division including the post of Police Patil of village Ranjangaon (Shen Punji). In the proclamation dated 10.3.2016, it was mentioned that the selection was to be made

on the basis of written examination for 80 marks and oral interview/ viva voce for 20 marks. It was one of the mandatory condition that the candidate called for oral interview has to produce the original documents/certificates regarding educational qualification and other required documents for verification before appearing for oral interview. In case of failure to produce the same, the candidate will not be considered for oral interview.

3. In pursuance of the proclamation issued by the Respondent No.1, the Applicant and other candidates filed their application. The Applicant and Respondent No.2 and other candidates participated in the recruitment process. They appeared for the written examination conducted on 17.04.2016. The result of the written examination was declared on 18.04.2016. The Applicant, the Respondent No.2 and one more candidate had been called for oral interview to be held on 22.04.2016 and 23.04.2016. The Applicant, Respondent No.2 and another candidate appeared for oral interview. The Applicant produced the original documents for verification before oral interview but the Respondent No.2 had not submitted the

original documents/certificate regarding his educational qualification and other eligibility. Thereafter, one Shri Ravindra Ramnath Jadhav had raised objection that the Respondent No.2 had not submitted his non-creamy layer certificate before the oral interview and therefore he moved application before the Respondent No.1 on 23.04.2016. But his objection was not considered. He moved another application on 25.04.2016 before the Respondent No.1 in writing, but that was also not considered. Thereafter, he moved another application on 05.05.2016, but the Respondent No.1 had not considered his objection. It is contention of the Applicant that the Respondent No.1 allowed the Respondent No.2 to appear for oral interview though he failed to produce the necessary documents/certificates for verification before the recruitment committee on the date of interview i.e. on 23.04.2016 before appearing for oral interview. Because of the non production of the documents/certificates, the Respondent No.1 ought to have declared the Respondent No.2 as ineligible candidate. But the Respondent No.1 had not declared the Respondent No.2 as ineligible and permitted him to appear for oral interview illegally. It is contention of the Applicant that the Respondent No.2 was not in possession of caste certificate and

non-creamy layer certificate on the date of oral interview i.e. on 23.04.2016. The Respondent No.2 collected those certificates on 26.04.2016 and 29.04.2016. Therefore, he was not eligible for appointment on the post of Police Patil of village Ranjangaon (Shen Punji). But the Respondent No.1 illegally permitted the Respondent No.2 to appear for the oral interview and on the basis of marks secured by the Respondent No.2, he selected and appointed him as Police Patil of village Ranjangaon (Shen Punji) and issued appointment order on 18.8.2016. It is contention of the Applicant that the act of the Respondent No.1 allowing the Respondent No.2 to appear for oral interview without producing the original documents/certification before the oral interview for verification is illegal and against the terms and conditions mentioned in the notification/proclamation. Therefore, he approached this Tribunal and prayed to quash and set aside the appointment order of the Respondent No.2 as Police Patil of Village Ranjangaon (Shen Punji) dated 18.8.2016 and also prayed to direct the Respondent No.1 to appoint him as Police Patil of Village Ranjangaon (Shen Punji) by allowing the Original Application.

4. The Respondent No.1 resisted the contention of the Applicant by filing an affidavit-in-reply. He has not disputed the fact that there was proclamation/notification inviting the applications from the eligible candidates for selection/appointment on the post of Police Patil in different Villages of Vaijapur Sib-Division. He has not disputed the fact that the Applicant, the Respondent No.2 and other candidates filed application for appointment on the post of Police Patil, Village Ranjangaon (Shen Punji) and they participated in the recruitment process. He has also not disputed the fact that the Applicant, the Respondent No.2 and one more candidate had been called for oral interview. He has not disputed the fact that the Respondent No.1 issued appointment order dated 18.08.2016, appointing the Respondent No.2 on the post of Police Patil of Village Ranjangaon (Shen Punji). It is his contention that he had selected the Respondent No.2 as Police Patil of Village Ranjangaon subject to condition mentioned in the advertisement and accordingly issued appointment order dated 18.8.2016. It is his contention that the Respondent No.2 secured 85 marks in aggregate out of 100 marks. He secured highest marks and therefore he has been selected as Police Patil of village

Ranjangaon (Shen Punji) and accordingly appointment order has been issued. He has not disputed the fact that one candidate raised objection regarding non production of original certificate/document by Respondent No.2. It is his contention that the said application will be considered in due course. It is his contention that as the Respondent No.2 fulfilled the criteria mentioned in the proclamation and as he secured highest mark in written and oral examination, he has been selected and appointed as Police Patil of village Ranjangaon (Shen Punji). There is no illegality in the impugned order. Therefore, he prayed to reject the Original Application.

5. The Respondent No.1 had also filed another affidavit-in-reply and contended that the Respondent No.2 submitted his caste certificate on 12.04.2016 issued by the S.D.O., Vaijapur at the time of oral interview for verification. After scrutiny of the documents, the scrutiny officer directed the Respondent No.2 to submit non-creamy layer certificate and accordingly the Respondent No.2 submitted his non-creamy layer certificate. It is his contention that the Applicant has not taken any objection in that regard till today but his brother had taken objection on

23.04.2016, 25.04.2016 and 05.05.2016 and that too, after time limit given in the proclamation. It is his contention that after giving proper opportunity of hearing to the objection petitioner, the Respondent No.1 passed the order in that regard on 28.09.2017. It is his contention that the committee by fair manner completed the selection process, and there is no error in the selection process and therefore, he prayed to reject the Original Application.

6. The Respondent No.2 resisted the contention of the Application by filing his affidavit-in-reply. It is his contention that he had filed application for appointment on the post of Police Patil of Village Ranjangaon (Shen Punji) in response to the proclamation dated 10.3.2016. He had participated in recruitment process. He had appeared for written examination and secured 72 marked out of 80. He had been called for oral interview along with the Applicant and other candidate. In the oral interview he secured 13 marks out of 20. He secured highest marks i.e. 85 marks in aggregate. As he secured highest marks, he has been selected and appointed by the Respondent No.1 as Police Patil of village Ranjangaon (Shen Punji) w.e.f.

18.8.2016. It is his contention that he is belonging to OBC category. He obtained caste certificate from the Competent Authority on 12.4.2016 and produced the same before the scrutiny committee at the time of oral interview. It is his contention that he received non-creamy layer certificate from Maha E-Seva Kendra on 22.4.2016 prior to the oral interview and he produced the same before the Respondent No.1 for scrutiny. It is his contention that there is no illegality in his selection/appointment on the post of Police Patil of village Ranjangaon (Shen Punji) and therefore, he prayed to reject the Original Application.

7. I have heard Shri A.S. Deshmukh, learned Advocate for the Applicant, Shri V.R. Bhumkar, leaned Presenting Officer for the Respondent No.1 and Shri V.B. Wagh, learned Advocate for the Respondent No.2. I have perused the documents on record produced by the both the parties.

8. Admittedly, the Respondent No.1, S.D.O. for Vaijapur Sub-Divisional issued proclamation dated 10.3.2016 inviting applications for the post of Police patil of 145 villages including the village of Ranjangaon (Shen Punji). Admittedly, the terms

and conditions for the appointment and recruitment have been mentioned in the proclamation. It was mentioned in the 'terms and conditions' that the original documents/certificate regarding education qualification and other eligibility has to be produced by the candidate before oral interview. If candidate fails to produce the documents, he would not be considered for oral interview. Admittedly, it has been mentioned in the proclamation that the written examination for 80 marks and oral interview for 20 marks would be conducted for the selection of the candidate. Admittedly, the Applicant, the Respondent No.2 and other aspiring candidates participated in the recruitment process. The written examination was conducted on 17.4.2016 and its result was declared on 18.04.201. Admittedly, the Applicant secured 41 marks while the Respondent No.2 secured 72 marks and 3rd candidate secured 40 marks in the written examination. Since these three candidates had secured highest marks in the written examination, they had been called for oral interview and oral interview of these candidates was conducted on 23.04.2016. In the oral interview, the Applicant secured 10 marks, the Respondent No.2 secured 13 marks and the 3rd candidate secured 10 marks. The Respondent No.2 secured 85 marks in

aggregate while the Applicant secured 51 marks in aggregate and 3rd candidate secured 50 marks in aggregate. Admittedly, before appearing for oral interview, as per the terms and conditions, the Applicant, the Respondent No.2 and 3rd candidate had to produce their original documents/certificate regarding education qualification and other eligibility before the scrutiny committee for verification.

9. Learned Advocate for the Applicant has submitted that the Respondent No.1 has not followed the mandatory terms and conditions mentioned in the proclamation/advertisement published on 10.03.2016. He has submitted that as per the terms and conditions incorporated in the proclamation, candidates have to produce original documents/certificate for verification before the scrutiny authority before appearing for oral interview. If any candidate fails to produce the same before the scrutiny authority, he would not be considered for oral interview. He invited my attention to condition nos.1,3 and 17 mentioned under the terms and conditions for appointment on the post of Police Patil in the proclamation produced at page nos.20 to 39. He has submitted that the Applicant, the Respondent No.2 and

one other candidate secured highest marks in the written examination and therefore they had been called for oral interview to be held on 22.04.2016 and 23.04.2016. He has submitted that the oral interview of these candidates was scheduled on 23.04.2016. They were called upon to produce original documents/certificates regarding their education qualification and other eligibility as mentioned in the advertisement before scrutiny committee before oral interview. He has submitted that the Applicant had produced necessary documents/certificates before the scrutiny authority but the Respondent No.2 had not produced the original caste certificate and non-creamy layer certificate for verification before scrutiny committee before oral interview. Because of the non production of the original documents/ certificate, the Respondent No.1, S.D.O., Vaijapur ought to have declared the Respondent No.2 as ineligible candidate and he should not have been considered for oral interview but he had not considered the said facts and mandatory terms and conditions mentioned in the advertisement/ proclamation and permitted the Respondent No.2 to appear for oral interview and thereafter selected him for the post of Police Patil, Village Ranjangaon (Shen Punji) and

consequently issued appointment order dated 18.8.2016. He has submitted that one of the candidate participated in the recruitment process namely Shri Ravindra Ramnath Jadhav raised objection in that regard before the Respondent No.1 by filing the application but the Respondent No.1 had not decided the said application and selected the Respondent No.2 as Police Patil, Village Ranjangaon (Shen Punji). He has submitted that the act of the Respondent No.1 to allow the Respondent No.2 to appear for oral interview though he had not complied with the terms and conditions mentioned in the advertisement and not produced the original documents/ certificates for verification before appearing for oral interview is illegal, arbitrary and therefore, same requires to be quashed.

10. Learned Advocate for the Applicant has submitted that the Respondent No.2 collected the caste certificate on 26.04.2016 and non-creamy layer certificate on 29.04.2016. This fact is evident from the extract of the register maintained by the Maha E-Seva Kendra, Gangapur. The copy of the same has been produced at Annexure 'A-8', page no.51. He has submitted that as per the advertisement, the Respondent No.2 ought to

have produced the said certificates before the recruitment authority on 23.04.2016 before oral interview. But on that date i.e. on 23.04.2016, the Respondent No.2 was not in possession of these documents. He collected the said documents subsequently and produced the same after due date i.e. on 23.04.2016 after completion of oral interview and therefore, the act of the Respondent No.1 allowing the Respondent No.2 to produce the said documents after oral interview is in contravention of the terms and conditions mentioned in the advertisement and therefore, act of the Respondent No.1 appointing the Respondent No.2 as Police Patil of Village Ranjangaon (Shen Punji) is illegal. Therefore, he prayed to quash and set aside the order issued by the Respondent No.1 and thereby declaring the Respondent No.2 as selected candidate for the post of Police Patil of Village Ranjangaon (Shen Punji) and prayed to direct the Respondent No.1 to appoint the Applicant as Police Patil of Village Ranjangaon, (Shen Punji) as he secured highest marks amongst remaining two candidates.

11. Learned P.O. for the Respondents has submitted that the Respondent No.1 had conducted the recruitment process as per the terms and conditions mentioned in the advertisement.

He has submitted that the Respondent No.2 applied for the issuance of caste certificate and non-creamy layer certificate with the concerned authority i.e. S.D.O. Vaijapur on 12.04.2016. The caste certificate was prepared and issued to the Respondent No.2 on 12.04.2016 at 4.4.51 p.m. and accordingly the Respondent No.2 produced the same before the recruitment authority. He has submitted that the Respondent No.2 produced the caste certificate after written examination and he produced the non-creamy layer certificate thereafter for verification as per the direction given by the scrutiny officer. He has submitted that the Respondent No.2 has produced the necessary documents in stipulated time and therefore, there is no violation of mandatory terms and conditions published in the notification. He has submitted that the Respondent No.2 secured highest marks i.e. 85 marks in aggregate amongst the candidates called for oral interview and therefore he was declared as selected candidate for the post of Police Patil of Village Ranjangaon (Shen Punji). He has submitted that there is no illegality in the appointment of Respondent No.2 and therefore, he prayed to reject the Original Application.

12. The learned Advocate for the Respondent No.2 has submitted that the Respondent No.2 had applied for issuance of caste certificate and non-creamy layer certificate on 12.04.2016. The Caste Certificate was issued accordingly on the very day but the application of the Respondent No.2 for issuance of non-creamy layer certificate was misplaced and therefore, the Respondent No.2 filed another application for issuance of non-creamy layer certificate with the office of S.D.O. through Maha E-Seva Kendra on 22.04.2016 and accordingly he received the non-creamy layer certificate on the very day and he produced the same before the scrutiny committee. He has submitted that as the Respondent No.2 produced the documents in time, he was allowed to appear for oral interview and therefore, he was selected as Police Patil of Village Ranjangaon (Shen Punji). He has submitted that there is no illegality in the appointment of Respondent No.2 and therefore, he prayed to reject the Original Application.

13. Learned Advocate for the Applicant has submitted that the scrutiny committee has prepared a chart of original documents produced by the candidates called for oral interview

and submitted before the scrutiny committee before the oral interview for verification. He has submitted that the Respondent No.2 had not produced the original non-creamy layer certificate before the scrutiny committee and therefore the scrutiny committee made endorsement in the regard. He has invited my attention to the documents produced by the Respondent No.2 in that regard at Exh. 'R-1, page nos. 97 & 98, which show that the Respondent No.2 had not produced the non-creamy layer certificate before the scrutiny committee before the oral interview. He has submitted that from this it is crystal clear that before appearing for oral interview, the Respondent No.2 had not produced the original non-creamy layer certificate before the scrutiny officer. Learned Advocate for the Applicant has submitted that there was non-compliance of terms and conditions mentioned in the notification. The Respondent No.2 was not eligible to appear for oral interview but the Respondent No.1 permitted him to appear for oral interview illegally and therefore, he prayed to allow the Original Application on that ground.

14. On perusal of record it reveals that the Respondent No.1 issued a proclamation/notification inviting the applications

from the aspiring candidates for appointment on the post of Police Patil of some different villages in Sub-Division, Vaijapur on 10.03.2016. The detailed scheduled for examination and terms and conditions regarding education qualification etc. have been mentioned therein. The terms and conditions incorporated in the application are mandatory. The notification/proclamation has been produced on record at page no.20 to 39. Process of filing the online application form for the post of Police Patil was commenced on 14.03.2013 and last date for filing application was upto 5.45 p.m. of 28.03.2016. On page no.22, the education qualification and other eligibility criteria have been mentioned which are as follows:-

“ किमान आवश्यक अर्हता:-

- १) अर्जदार महाराष्ट्र राज्य शालांत परिक्षेत उत्तीर्ण **(SSC)** असावा.
- २) (अ) वयोमर्यादा करीता अर्जदाराचे दि.१४.०३.२०१६ रोजी वय विचारात घेतले जाईल. (ब) अर्जदाराचे वय दिनांक १४.०३.३०१६ रोजी २५ वर्षांपेक्षा कमी नसावे व ४५ पेक्षा जास्त नसावे. (क) पोलीस पाटील पदाकरीता वयोमर्यादा शितीलक्षम नाही.
- ३) अर्जदार संबंधित गावाचा स्थानिक व कायम रहिवाशी असावा तसेच त्यांची संबंधित गावात स्थावर मालमत्ता असावी.
- ४) अर्जदार शारिरीक दृष्ट्या सक्षम असावा व अर्जदाराचे चारित्र्य निष्कलंक असणे आवश्यक आहे.
- ५) महाराष्ट्र राज्य सेवा (लहान कुटुंबातील प्रतिज्ञा पत्र) नियम २००५ मधील लहान कुटुंबाची अर्हता धारण करणे आवश्यक (अर्जदार यांची अर्हता दिनांकास दोन पेक्षा जास्त अपत्य नसावेत.)

- ६) मागास प्रवर्गासाठी आरक्षित पदाकरीता त्या प्रवर्गाचे सक्षम अधिकारीयाने निर्गमित केलेले जातीचे प्रमाणपत्र आवश्यक.
- ७) मागास प्रवर्गातील अर्जदार (विजाअ, भजब, भजक, विमाप्र व इमाव) यांना सन २०१५-२०१६ कालावधीकरीता वैध्य असलेले उत्पन्न आणि प्रगत व्यक्ती व गट (किमीलीअर) यामध्ये मोडत नसल्याबाबतचे (नोंन-किमीलीअर) प्रमाणपत्र आवश्यक राहिल.
- ८) राखीव महिला पदासाठी अर्ज सादर करणाऱ्या महिला अर्जदाराला २०१५-१६ या कालावधीकरीता वैध असलेले उत्पन्न आणि प्रगत व्यक्ती व गट (किमीलीअर) यामध्ये मोडत नसल्याबाबतचे (नोंन-किमीलीअर) प्रमाणपत्र आवश्यक.
- ९) ज्या गावात पोलीस स्टेशन/पोलीस चौकी आहे त्या ठिकाणी उमेदवारांना अर्ज सादर करता येणार नाही.

(quoted from page nos.22 & 23 of the O.A.)

15. Terms and conditions of the recruitment process have been mentioned on page no.24 onward. The relevant terms and conditions read as follows:-

- १) प्राप्त केलेल्या गुणांच्या आधारे गुणवत्तेनुसार अंतिम निवडीसाठी अर्जदारास शैक्षणिक पात्रता व इतर संबंधित मुळ प्रमाणपत्रे तपासणीसाठी उपलब्ध करून द्यावी लागतील. अन्यथा तोंडी परिक्षा अंतिम निवडीसाठी त्याचा विचार केला जाणार नाही.
- २)
- ३) लेखी परिक्षा अंती मुलाखतीसाठी पात्र अर्जदारांचे जाहीरातीनुसार आवश्यक पात्रता व ऑनलाईन अर्जात भरलेली माहिती यांच्या आधारे मुळ कागदपत्र पडताळणी करण्याकरीता अंतरीम स्वरूपात यादी जाहीर करण्यात येईल. ज्या अर्जदाराची जाहीरातीनुसार आवश्यक पात्रता व ऑनलाईन अर्जात भरलेली माहिती, परिक्षा शुल्क मुळ कागदपत्राच्या आधारे परिपूर्ण सिध्द होईल अशाच अर्जदाराचा विचार भरती प्रक्रियेच्या पुढील टप्प्याकरीता करण्यात येईल. जाहीरातीत नमुद केलेली संपुर्ण अर्हता ऑनलाईन अर्जात भरलेली माहिती व मुळ कागदपत्रे तपासणीच्या वेळी सादर केलेली कागदपत्रे यामध्ये तफावत आढळल्यास

अर्जदाराची उमेदवारी भरतीच्या कुठल्याही टप्प्यावर रद्द होवु शकेल. तसेच अशा अर्जदाराचे परिक्षा शुल्क इत्यादीसारख्या सवलती नामंजूर करण्यात येतील याची कृपया नोंद घ्यावी.

- ४ ते १६)
- १७) महाराष्ट्र राज्य लोकसेवा अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जाती, भटक्या जमाती, विशेष मागासप्रवर्ग, इतर मागास प्रवर्ग यांचेसाठी आरक्षण अधिनियम २००१ (सन २००४ चा महाराष्ट्र अधिनियम क्रं.०८) हा अधिनियम महाराष्ट्र शासनाने दि. २९ जानेवारी २००४ पासून अमंलात आणला आहे. त्यानुसार उन्नत व प्रगत गटाचे (किमीलीयर) तत्वतः विमुक्त जाती, भटक्या जमाती (अ,ब,क,ड), विशेष मागास प्रवर्ग, इतर मागास प्रवर्ग यांना लागू आहे. सदर प्रवर्गातील अर्जदाराकडे दि.३१ मार्च २०१६ पर्यंत वैध आलेले (नॉनकिमीलीयर) तत्वतः अनुसूचित जाती, अनुसूचित जमाती व्यतिरिक्त इतर सर्व मागास प्रवर्गांना लागू राहिल. तसेच त्याबाबत सक्षम प्राधिकारी यांनी निर्गमित केलेले प्रमाणपत्र, कागदपत्र पडताळणीचे वेळी सादर करणे आवश्यक राहिल.

(quoted from page nos.27 & 28 from O.A.)

On Page no.31, it has been mentioned as follows:-

- “४) उमेदवारांची लेखी परिक्षा ही त्यांनी ऑन लाईन अर्जात नमुद केलेल्या गृहीत पात्रतेनुसार कोणतेही कागदपत्र पूर्व तपासणी/छानणी न करता घेतली जाणार असल्यामुळे या परिक्षेत मिळालेल्या गुणांच्या आधारे उमेदवाराला निवडीबाबतचे कोणतेही हक्क राहणान नाहीत. कागदपत्रांच्या पूर्ण छाननीनंतरच उमेदवारांची पात्रता निश्चित करता येईल. लेखी परिक्षेच्या प्राथमिक चाळणीनुसार गुणवत्तेच्या आधारे उमेदवाराने ऑनलाईन अर्जात नमुद केलेल्या गृहीत पात्रतेनुसार अंतिम यादी प्रसिध्द करून उमेदवारांच्या कागदपत्रांची सखोल छानणी केली जाईल. सदर प्रक्रियेत उमेदवार अपात्र आढळल्यास त्यास निवड प्रक्रियेतून बाद करण्यात येईल. पात्रता न धारण करणाऱ्या उमेदवारांना भरतीच्या कोणत्याही टप्प्यावर अपात्र करण्याचे संपुर्ण अधिकार पो.पा.भरती निवड समिती, वैजापूर यांचे जवळ राखुन ठेवण्यात आलेले आहेत. व याबाबत उमेदवारास कोणतीही तक्रार करता येणार नाही.”

(quoted from page no.31 of the O.A.)

Again following condition has been mentioned on page no.33 in para no.10:-

“ १०) ऑनलाईन अर्ज केले 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 एखाद्या अर्जदाराने त्याच्या निवडीसाठी निवड समितीवर प्रत्यक्ष/अप्रत्यक्ष दबाब आणला अथवा गैरप्रकारचा अवलंब केल्यास त्यास निवड प्रक्रियेतून बाद करण्यात येईल. तसेच नियुक्ती झाली असल्यास कोणतीही पूर्वसुचना न देता नियुक्तीसमाप्त करण्यात येईल व त्याच्या विरूद्ध कायदेशीर कारवाई करण्यात येईल.”

(quoted from page nos.33 & 34 of the O.A.)

16. On going through the said conditions, it is crystal clear that the candidate must have passed S.S.C examination and he must produce the caste certificate and non-creamy layer certificate. As per other terms and conditions, candidates who passed the written examination and called for oral interview have to produce original caste certificate and other documents for verification before the recruitment authority before appearing for oral interview. The condition shows that in case any candidate fails to produce the original documents before the scrutiny authority he will not be considered for oral interview. It also provides that in case of furnishing of false information,

candidature of the candidate would be cancelled and he will not be considered eligible for participating in future recruitment process. All these conditions are mandatory one. On going through the entire conditions, it reveals that the candidate belonging to OBC category has to produce his caste certificate and non-creamy layer certificate along with educational qualification certificate and other documents before the scrutiny authority for verification before appearing for oral interview. In the instant case, the Applicant, the Respondent No.2 and one more candidate had been called for oral interview scheduled on 23.04.2016 before the recruitment committee. Therefore, in view of the above said terms and conditions, they had to produce the original caste certificate and non-creamy layer certificate before the recruitment committee on 23.04.2016 before appearing for oral interview. On production of those documents only they would be eligible to appear for oral interview. Therefore, it is mandatory on the part of the Applicant, Respondent No.2 and 3rd candidate to produce original documents for verification before the recruitment committee on 23.04.2016.

17. Learned P.O. for the Respondents has submitted that the committee comprising of S.D.O., Vaijapur as President,

S.D.P.O., Gangapur, Tahsildar, Gangapur and Assistant Commissioner, Social Welfare, Aurangabad had been constituted to conduct the oral interview of the post of Police Patil of different villages in Vaijapur and Gangapur Talukas and they conducted the oral interview of the Applicant, the Respondent No.2 and the 3rd candidate on 23.04.2016. The Respondent has produced the copy of the original record regarding recruitment for the post of Police Patil maintained by the recruitment committee. On perusal of same, it reveals that only three members i.e. S.D.O. - Vaijapur, Tahsildar - Gangapur and Assistant Commissioner - Social Welfare, Aurangabad conducted the oral interview of the Applicant, the Respondent No.2 and the one candidate namely Shri Ravindra Jadhav in the morning session on 23.04.2016. S.D.P.O. was not present in the morning session for conducting the oral interview. In the evening session, the S.D.P.O., Gangapur and Tahsildar, Gangapur remained absent and only S.D.O., Vaijapur and Assistant Commissioner, Social Welfare-Aurangabad conducted the oral interview of the other candidates. No minutes of the meeting of the recruitment committee held on that date as well as previous minutes of meetings of the recruitment committee have been maintained by the recruitment

committee. Learned P.O. for the Respondents has admitted the said fact at bar. As per the rules, all the members have to conduct the oral interview. But one of the member was not present while conducting the oral interview of the Applicant, the Respondent No.2 and 3rd candidate.

18. The documents produced by the Applicant as well as the Respondent No.2 had been verified by the scrutiny authority appointed by the recruitment committee. The scrutiny authority prepared a chart in that regard. The scrutiny authority submitted its report to the recruitment committee in the prescribed form. The scrutiny authority submitted report in respect of documents produced by the Respondent No.2. The said report is at page no.69 of paper book which shows that the Respondent No.2 had not produced the non-creamy layer certificate before the scrutiny committee for verification on 23.04.2016. The relevant document is as follows:-

उपविभागीय अधिकारी कार्यालय, वैजापुर
पोलीस पाटील भरती प्रक्रिया २०१५-२०१६
गंगापुर तालुक्यातील उमेदवाराचे छाननी पत्रक

१	अर्जदाराचे संपुर्ण नांव:- अंकुश साहेबराव गोरे
२	अर्जदाराचा पत्ता:- रंजणगाव शेणपुंजी ता. गंगापूर जी औरंगाबाद

३	पोलीस पाटील पदाचे गावाचे नांव	गावांसाठी (महिला/पुरुष)	आरक्षण
४	गावासाठीचे आरक्षण जातनिहाय	इ.मा.व	
५	अर्जदाराचे जात/पोट जात तद्यसंबंधीत प्रमाणपत्र	माळी (सोबत जोडले)	
६	अर्जदाराचे जात पडताळणी समिती कडील वैधता प्रमाणपत्र जोडले आहे काय?	आहे ()	नाही ()
७	अर्जदाराचे शाळा सोडण्याचे प्रमाणपत्र जन्म दिनांक ५/४/१९८२	आहे (✓)	नाही ()
८	अर्जदाराकडे तालुका दंडाधिकारी यांचेकडील रहिवासी प्रमाणपत्र/अर्जदार त्याच गावातील रहिवासी आहे काय?	आहे (✓)	नाही ()
९	उमेदवाराकडे उपलब्ध असलेली शैक्षणिक अर्हता प्रमाणपत्र १. एस.एस.सी. उत्तीर्ण प्रमाणपत्र व गुणपत्रीका २. एच एस सी उत्तीर्ण प्रमाणपत्र व गुणपत्रीका ३. पदवी—बीए/बी कॉम/बीएससी ४. एम ए/एम कॉम/एम एस सी ५. इतर उल्लेखनीय अर्हता प्रमाणपत्र इतर	आहे (✓) (✓)	नाही ()
१०	अर्जदार शारिरीक दृष्ट्या सक्षम आहे किंवा कसे त्या बाबत अर्जदाराने वैद्यकीय प्रमाणपत्र जोडले आहे किंवा नाही?	आहे (✓)	नाही ()
११	अर्जदार राखीव महिला असल्यास २०१५-२०१६ या कालावधीकरीता वैध असलेले उत्पन्न आणि प्रगत व्यक्ति व गट (क्रिमीलीयर) या मध्ये मोडत नसल्याबाबतचे नॉन क्रिमीलीयर प्रमाणपत्र आहे काय?	आहे ()	नाही (✓)
१२	अर्जदार मागास प्रवर्गातील (विजाअ, भजब, भजक, विमाप्र, व इमाव) प्रवर्गातील २०१५-२०१६ या कालावधी करीता वैध असलेले उत्पन्न आणि प्रगत व्यक्ति व गट (क्रिमीलीयर) या मध्ये मोडत नसल्याबाबतचे नॉन क्रिमीलीयर प्रमाणपत्र आहे काय?	आहे ()	नाही (✓)
१३	अर्जदारास महाराष्ट्र राज्य सेवा नियम २००५ नुसार दोन पेक्षा जास्त अपत्य आहे किंवा कसे ? या बाबतचे प्रमाणपत्र जोडलेले आहे काय ?	आहे (✓)	नाही ()
१४	अर्जदारोच चारित्र्य प्रमाणपत्र जोडले आहे काय ?	आहे (✓)	नाही ()
१५	अर्जदाराने वरील दिलेली माहिती ही खरी असल्या बाबत अर्जदाराची स्वाक्षरी	सही	

छाननी कर्मचारी नाम/पदनाम/स्वाक्षरी.....

छाननी अधिकारी नाम/पदनाम/स्वाक्षरी.....”

(quoted from page nos.69 &70 of the O.A.)

It shows that at the time of verification of original certificates/documents, the Respondent No.2 had not produced the original caste certificate and non-creamy layer certificate.

19. In this regard, the Respondent No.1 has made different statement on oath. Initially, the Respondent No.1 filed an affidavit-in-reply at page no.57 onwards and it was sworn in by Shri Sudhir Satyanaranay Shetty, Naib-Tahsildar, in the office of Sub-Divisional Officer, Vaijapur, District Aurangabad. But there was no whisper about the production and scrutiny of the original certificate/documents by the Respondent No.2. Therefore, Shri Laxmikant Prakash Satalkar the then S.D.O., Vaijapur filed his affidavit at page no.63 onwards wherein he made following statement.

“4) I further say and submit that, after written examination and before oral examination as per the terms and condition of the advertisement respondent No.2 submitted his document in respect of his Caste Certificate received by the Respondent No.1 dated 12/04/2016 issued

by the Sub-Divisional Officer Vaijapur dated 12/04/2016 at 04:04:51 p.m. by online generated print No.12851604123000158709 and same is submitted by the respondent No.2 at the time of verification of document before interview. Therefore the contention raised by the applicant in para No. X on page No.8 are denied by the present deponent.

5) I further say and submit that, respondent No.2 after written examination and oral interview submitted his residential certificate and he is the resident of said village. After the scrutiny of the document scrutiny officer directed the respondent No.2 to submit his non-creamy layer certificate accordingly he had submitted the certificate. The copy of the scrutiny sheet along with the certificates submitted by the respondent No.2 are annexed herewith and marked as Exhibit R-1 colly.

(quoted from page nos.65 & 66 of the O.A.)

20. Shri Laxmikant Prakash Satalkar again filed another affidavit at page no.91 to 94 and submitted as follows:-

“06. I say and submit that, after written examination and before oral examination as per the terms and conditions of the advertisement the Respondent No.2 submitted his document in respect of his caste certificate issued by the respondent no.1 which has electronically generated print dated 12.04.2016 at

4.4.51 p.m. Print No.12851604123000158709. This document is submitted by the respondent no.2 at the time of scrutiny of the documents. The scrutiny sheet also mentions in column no.5 that respondent no.2 has submitted his caste certificate. I further say and submit that, interview of the present applicant and respondent no.2 was conducted by the respondent no.1 on 23.04.2016 and name of the present respondent no.2 is appearing at Sr.No.113 and on the same date scrutiny of the documents done by the office of the respondent no.1 before oral examination. The copy of the scrutiny sheet and copy of caste certificate submitted by respondent no.2 are annexed herewith and marked as **ANNEXURE R-1 Collectively.**

07. I say and submit that, at the time of scrutiny of the documents on 23.04.2016 respondent no.2 did not submitted the non-creamy layer certificate but the produced online application print dated 12.04.2016 and 22.04.2016. As the application of non creamy layer certificate of respondent no.2 dated 12.04.2016 was misplaced. That, the applicant has resubmitted application on 22.04.2016 for non creamy layer certificate. Considering the true facts and considering the principles of nature justice the respondent no.1 has given opportunity to the respondent no.2 to produce the non creamy layer certificate before the declaration of final result. That, the respondent no.2

has submitted the electronically generated non creamy layer certificate dated 22.04.2016 issued at 7.43.44 p.m. before the declaration of final result. The copy of the earlier application dated 12.04.2016 for non creamy layer certificate and application dated 22.04.2016 and copy of non creamy layer certificate dated 22.04.2016 are annexed herewith and marked as **ANNEXURE R-2 Collectively.**

(quoted from page nos.93 & 94 of O.A.)

On going through the statement on oath made by Shri Laxmikant Satalkar it reveals that the Respondent No.2 produced the caste certificate at the time of oral interview before the scrutiny authority. But he failed to produce the non-creamy layer certificate initially. But he produced the same before the oral interview before the scrutiny committee as per the direction given by scrutiny committee. Thereafter again he changed his version and submitted that the Respondent No.2 had not furnished non creamy-layer certificate on 23.04.2016 but he produced online application print dated 12.04.2016 and 22.04.2016. He had submitted that the Respondent No.2 had not be produced non-creamy layer certificate as his application for non-creamy layer certificate was misplaced and therefore, he made another application dated 22.04.2016 and considering the

said fact he had given opportunity to Respondent No.2 to produce the non-creamy layer certificate before the declaration of the final result and accordingly, the Respondent No.2 submitted electronically generated non-creamy layer certificate dated 22.04.2016 before declaration of result.

21. The record produced by the Respondent No.1 shows that the final result regarding the selection of Police Patil of village Ranjangaon (Shen Punji) had been prepared and declared on 18.8.2016. It means that the Respondent No.2 has produced the non-creamy layer certificate after 23.04.2016 and before the 18.8.2016.

22. As against this the version of the Respondent No.2 in his affidavit is as under:-

“05. I say and submit that, the allegations in respect of the paragraph No.3,4 to the Original Application, which is being contended that, at the time of the respondent No.2 did not possess the documents, but respondent no.2 had the caste certificate issued by the Sub Divisional Office, Vaijapur, Dist. Aurangabad and which was obtained from the Maha-e-Seva Kendra which is being run by the proprietor Bharat Digambar

Sawai, had given the document issued by the Caste certificate on 12.06.2016 to the respondent No.2 and also the non creamy layer certificate which was also received on 22.04.2016 prior to the interview from the proprietor of Maha-e-Seva Kendra. The copy of the non creamy layer certificate dated 22.04.2016 is annexed herewith and marked at **ANNEXURE-“R-3”**.

(quoted from page no.82 of the O.A.)

On going through the above said fact, it reveals that Respondent No.2 collected the caste certificate on 12.04.2016 and non-creamy layer certificate on 22.04.2016 and produced the same before the scrutiny authority prior to his oral interview. On going through the office copy of the non-creamy layer certificate issued by S.D.O., Vaijapur, page no.86 it reveals that it has been prepared on 22.4.2016 but it did not bear outward number. Page no.100 & 101 show that the Respondent No.2 applied for said certificate on 12.4.2016 and 22.04.2016. The said documents had been prepared and delivered to the Respondent No.2 on 26.04.2016 and 29.04.2016 by Maha-E-Seva-Kendra. The Maha E-Seva-Kendra has maintained outward register in that regard. Copy of the said register has been placed on record at page no.51. On perusal of record it reveals that the

caste certificate of the Respondent No.2 had been delivered on 26.04.2016 and non-creamy layer certificate had been delivered to him on 29.04.2016. From this it is crystal clear that the Respondent No.2 received the documents i.e. caste certificate and non-creamy layer certificate on 26.04.2016 and 29.04.2016 respectively i.e. after the oral interview. It means that on the date of production of original certificate/documents for verification i.e. on 23.04.2016, he was not in possession of the said documents and he had not produced the same before the scrutiny committee before appearing for oral interview. This fact as well as the statement made by the Respondent No.1 show that the Respondent No.2 had produced the non-creamy layer certificate subsequently after oral interview which is against the mandatory terms and condition mentioned in the advertisement. The Respondent No.1 ought to have rejected the candidature of the Respondent No.2 and he should have declared the Respondent No.2 as ineligible for oral interview as per the terms and conditions mentioned in the advertisement and he should not have considered the Respondent No.2 for oral interview.

23. Not only this, but there is no written application made by the Respondent No.2 to the Respondent No.1 requesting to

grant time for production of original certificate/documents as contended by the Respondent No.1 in his affidavit. This falsifies the stand of the Respondent No.1 in that regard. The contention raised by the Respondent No.1 and 2 in their affidavit-in-reply are contradictory and inconsistent to each other. The Respondent No.2 has made a statement that he produced the copies of original certificates i.e. caste certificate and non-creamy layer certificate before the oral interview. But the Respondent No.1 has made different statement at different time and lastly admitted the fact that the Respondent No.2 had produced the non-creamy layer certificate after oral interview and he produced the copy of print of the online application and submitted the copy of print of electronically generated non-creamy layer certificate dated 22.04.2016 before oral interview. This fact shows that the Respondent No.1 the then S.D.O., Vaijapur Shri Laxmikant Satalkar made false statement on oath and misled the Tribunal.

24. On considering the above said facts, it is crystal clear that the Respondent No.2 was not eligible for oral interview for non production of the original documents/certificates before his oral interview as per the terms and conditions of the recruitment

process published in the advertisement. But the Respondent No.1 illegally permitted him to appear for oral interview and to participate in further recruitment process. Therefore, the said act of the Respondent No.1 is arbitrary, illegal and in violation of the terms and conditions mentioned in the advertisement. The act of the Respondent No.1 allowing the Respondent No.2 to appear for oral interview is unfair/malafide and act of favouritism. Therefore, the further decision taken by the Respondent No.1 to declare the Respondent No.2 as selected candidate is also illegal. It is also material to note that the Respondent No.1 has not maintained the minutes of the meeting of recruitment committee held time to time during the recruitment process. There is no document to show that the recruitment committee granted permission to the Respondent No.2 to produce the original documents/certificate. The Respondent No.1 ought to have maintained the minutes of the meeting of the recruitment committee to show the transparency in the recruitment process. But the Respondent No.1 had not maintained the record properly. Not only this but there is no single document to show that they have passed any order permitting the Respondent No.2 to produce the original

documents subsequently. All these facts are sufficient to arrive that the Respondent No.1 had intentionally favoured the Respondent No.2 and declared him as selected candidate and appointed as Police Patil of village Ranjangaon (Shen Punji) without following the terms and conditions mentioned in the advertisement/notification. Therefore, in my view, the selection and appointment of the Respondent No.2 on the post of Police Patil of village Ranjangaon (Shen Punji) is not legal and therefore the same requires to be quashed and set aside.

25. Learned Advocate for the Respondent No.2 has submitted that the Applicant has not raised the objection to the selection process at the proper stage. He had not filed any objection for the candidature of the Respondent No.2 at proper time and thereafter he challenged the selection of the Respondent No.2 as Police Patil of village Ranjangaon (Shen Punji). He has submitted that the Original Application is not maintainable as the Applicant had not objected the candidature of the Respondent No.2 by raising the objection at the proper stage. Therefore, the Original Application is liable to be dismissed. In support of his contention he has placed reliance on the judgment

of **Hon'ble Apex Court in case of Ashok Kumar and Ors. Vs. State of Bihar and Ors. reported in AIR 2016SC5069** and judgment of the Hon'ble High Court of judicature at Bombay Bench at Aurangabad in **Writ Petition No.5250 of 2018 in case of Rohit Dilip Pandit Vs. The State of Maharashtra and Others decided on 22.06.2018.**

26. I have gone through the above cited decisions. I have no dispute about the settled legal position laid down in the above cited decisions. In those cases the selection process has been challenged by the Petitioner and they had not raised objection while participating in the recruitment process. Therefore, it was held that they were estopped from turning around. In the instant case, the Applicant has challenged the eligibility of the Respondent No.2 for oral interview without production of original documents/certificate. Considering the said fact, in my view the principle laid down in the said decisions does not attract in the instant case as the Applicant has challenged the eligibility of the Respondent No.2 to appear for oral interview and about his selection for the post of Police Patil of village Ranjangaon (Shen Punji) and he had not challenged the recruitment process.

Therefore, in my view, the principles laid down in the above cited decisions are not attracted in this case. Therefore, I do not find any substance in the submission advanced by the learned Advocate for the Respondent No.2 in that regard.

27. In view of the above said facts, in my view, the Respondent No.1 has not considered the mandatory terms and conditions mentioned in the advertisement while allowing the Respondent No.2 to appear for oral interview though he was not in possession of original non-creamy layer certificate before appearing for oral interview and he had not produced the same before his oral interview. Therefore, the selection of the Respondent No.2 is illegal and the same requires to be quashed. Consequently, the impugned order dated 18.08.2016 appointing the Respondent No.2 requires to be quashed and set aside by allowing the Original Application.

28. Before parting with the case, it is material to note that Shri Laxmikant Prakash Satalkar, the then S.D.O., Vaijapur presently working as the Sub-Divisional Officer, Shahada, District Nandurbar has misled the Tribunal by making false statement on oath before the Tribunal knowingly. Therefore, Shri

Laxmikant Prakash Satalkar, the then S.D.O., Vaijapur is called upon to show cause as to why necessary action should not be taken against him in that regard.

29. In view of above, Original Application stands allowed. The impugned order dated 18.8.2016 is hereby quashed and set aside. The Respondent No.1 is directed to consider the cases of the remaining candidates including the Applicant who had appeared for oral interview, on merit and appoint the eligible candidate, if he found fit in order on merit within one month. No order as to costs.

30. Issue show cause notice to Shri Laxmikant Prakash Satalkar as to why proper action and contempt proceeding should not be initiated against him for making false statement on oath before Tribunal and misleading the Tribunal.

Place:- Aurangabad
Date :- 29.03.2019

(B.P. Patil)
Member (J)

Sas. O.A.No.789/2016.Police Patil BPP.