

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 837 OF 2016
(Subject – Police Patil)**

DISTRICT: JALGAON

Shri Sham Surehs Fulgaonkar,
Age: 39 years, Occu. : Agriculture,
R/o Fulgaon, Tq. Bhusawal,
Dist. Jalgaon.

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**
Through Secretary,
Home Department,
Mantralaya, Mumbai- 32.
- 2) **The District Collector,**
Jalgaon, Dist. Jalgaon.
- 3) **The Sub-Divisional Magistrate,**
Bhusawal Division, Bhusawal,
Dist. Jalgaon.
- 4) **Shri Pravin Raghunath Mahajan,**
Age- 40 Years, Occ- Agriculture,
R/o Fulgaon, Tq. Bhusawal,
Dist. Jalgaon.

(Copies for the respondent No. 1 to 3 be
Served on Presenting Officer, M.A.T., Mumbai
Circuit Bench at Aurangabad)

.. **RESPONDENTS**

APPEARANCE : Shri B.S. Deshmukh, Advocate for the
Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate, Presenting
Officer for the Respondent Nos. 1 to 3.

: Shri S.D. Joshi, Advocate for respondent No. 4

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

ORDER**(Delivered on this 7th day of September, 2017.)**

1. The applicant has prayed to quash and set aside the selection list published by the respondent No. 3 and the order dated 29.9.2016 passed by the respondent No. 3 rejecting his objection and issuing the order in favour of the respondent No. 4 on 30.9.2016 appointing him as Police Patil of village Fulgaon, Dist. Bhusawal, Dist. Jalgaon.

2. The respondent No. 3 i.e. the Sub Divisional Magistrate, Bhusawal, Dist. Jalgaon had issued advertisement/ notification in the month of November, 2015 and thereby, called applications from the eligible candidates for the post of Police Patil of several villages situated in Bhusawal Sub-Division including village Fulgaon. The eligibility criteria for the appointment on the post of Police Patil was mentioned in the advertisement dated 02.11.2015. The applicant fulfilled the eligibility criteria and therefore, he applied for the appointment on the post of Police Patil of village Fulgaon. He appeared for the written examination along with other candidates and respondent No. 4. In the written examination, the applicant secured 46 marks, while the respondent No. 4 secured 41 marks. They were called for oral interviews. In the oral interview conducted by the committee

headed by the respondent No. 3, the applicant secured 9 marks, while the respondent No. 4 secured 15 marks. The applicant secured 55 marks in aggregate, while the respondent No. 4 scored 56 marks in aggregate. Thereafter, the interim selection list was prepared, where the applicant and respondent No. 4 had been shown.

3. It is contention of the applicant that the respondent No. 4 filed affidavit stating that he did not belong to any political party and he had not participated in any political activities. It is his contention that the respondent No. 4 is an active Member of Bhartiya Janata Party (B.J.P.) and his wife is presently working as a Sarpanch of village Fulgaon. She is also belonging to B.J.P. The respondent No. 4 intentionally concealed the said facts and gave misleading information stating that he did not belong to any political party. Therefore, he filed application dated 18.04.2016 with the respondent No. 3 raising objection as regards eligibility of respondent No. 4 and prayed to cancel his selection. The respondent No. 3 had not considered his objection. Therefore, he filed W.P. No. 4689/2016 for quashment of selection of respondent No. 4 for the post of Police Patil before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad and the Hon'ble High Court was pleased to stay the selection process

on 25.04.2016. Thereafter, the Hon'ble High Court disposed of the W.P. No. 4689/2016 on 4.7.2016, with a direction to the applicant to approach the respondent No. 3 within two weeks from the date of order and also directed the respondent No. 3 to decide the objection of the applicant on its own merit after hearing both the parties within a period of 8 weeks. In view of the direction given by the Hon'ble High Court, the applicant again filed another application with the respondent No. 3 challenging the selection of respondent No. 4 on the ground that the respondent No. 4 and his wife are affiliated to political party. The respondent No. 3 enquired in to the said application and rejected the application of the applicant on 29.09.2016 observing that the respondent No. 4 does not belong to any political party. Thereafter, he issued appointment order dated 30.09.2016 in favour of the respondent No. 4 appointing him as a Police Patil of village Fulgaon. The applicant has challenged the said orders passed by the respondent No. 3 on 29.09.2016 and 30.09.2016 by filing the present Original Application and prayed to quash the selection of the respondent No. 4 as Police Patil of village Fulgaon and to quash the orders dated 29.09.2016 and 30.09.2016 issued by the respondent No. 3.

4. The respondent No. 3 has filed their affidavit in reply and resisted the contentions of the applicant. He has admitted the

fact that the applicant, respondent No. 4 and other candidates applied for the post of Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon. They appeared for written examination. The applicant secured 46 marks; the respondent No. 4 secured 41 marks and one Shri Milind Gopal Mahajan scored 42 marked in the written examination. Above said three candidates, who acquired highest marks in the written examination, were called for oral examination. The oral examination was conducted on 1.4.2016 by the committee consisting of Sub Divisional Police Officer, Bhusawal, Assistant Commissioner Social Welfare Division Jalgaon, Project Officer Tribal Development Project Yawal, Tahsildar Bhusawal and Sub Divisional Officer, Bhusawal. In the oral examination the applicant secured 9 marks, the respondent No. 4 secured 15 marks and Shri Milind Gopal Mahajan scored 11 marks. The applicant secured 55 marks in aggregate, the respondent No. 4 scored 56 marks in aggregate and Shri Milind Gopal Mahajan scored 53 marks in aggregate. As the respondent No. 4 scored highest marks amongst those candidates, he was declared as selected candidate for the post of Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon. It is his contention that the documents produced by the successful candidates in the written examination and who were called for oral interview, had been verified on 11.01.2016. The applicant

had not raised any objection as regards candidature of respondent No. 4 at that time and therefore, the oral interviews have been conducted accordingly.

5. It is his contention that on 14.07.2016, the applicant filed an application contending that the respondent No. 4 is affiliated to B.J.P. and he is active Member of said party and therefore, he prayed to cancel his selection as Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon. As per the direction given by the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad, on 4.7.2016, the notices were issued by the respondent No. 3 to the applicant and respondent No. 4 on 2.8.2016 and directed them to remain present on 19.08.2016. The applicant has filed application dated 14.07.2016 along with some documents. The respondent No. 4 has filed his written say on 19.8.2016 stating that he had resigned the membership of BJP on 5.10.2015 and it was accepted by the District President of Bhartiya Janata Party on 6.10.2015. It is his contention that as per the provision of Rule 5 of Maharashtra Civil Services (Conduct) Rules, 1979, a Police Patil cannot participate in Politics or Assembly Election or any local election after the selection for the post of Police Patil. After considering the documents and say of both the parties, respondent No. 3 decided the objection of the

applicant and rejected the application of the applicant. It is his contention that there is no illegality in the orders passed by him and therefore, he prayed to reject the present Original Application.

6. The respondent No. 4 has resisted the contentions of the applicant by filing his affidavit in reply. He has admitted that the respondent No. 3 rejected the application filed by the applicant by recording reasons on 29.9.2016. It is his contention that he was affiliated to B.J.P. prior to filing of the application for the post of Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon. But he tendered his resignation of membership of B.J.P. and post held him on 5.10.2015 and the same was accepted by the District President of B.J.P. on 6.10.2016. By the Advertisement/Notification dated 2.11.2015, applications were called from the eligible candidates for the post of as Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon and on that date, he was not affiliated to any political party. Therefore, he is eligible for the appointment on the post of Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon. The respondent No. 3 has rightly rejected the application of the applicant by relying on the G.R. dated 7.9.1999 and there is no illegality in the order under challenge. Therefore, he prayed to reject the O.A.

7. I have heard Shri B.S. Deshmukh, Advocate for the applicant, Smt. Sanjivani K. Deshmukh-Ghate, Presenting Officer for the respondent Nos. 1 to 3 and Shri S.D. Joshi, Advocate for respondent No. 4. I have perused the documents placed on record by the parties.

8. Learned Advocate for the applicant has submitted that the advertisement/notification inviting applications for the post of as Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon has been published on 2.11.2015 which is at paper book page Nos. 17 to 27 (both inclusive). He has submitted that as per Clause No. 6 of the terms and conditions mentioned therein, the candidate applying for the post shall not be affiliated to any political party and he has to file affidavit in that regard at the time of verification of the documents. He has attracted my attention towards the said clause mentioned at paper book page No. 23. He has submitted that the respondent No. 4, who was declared as selected candidate, was affiliated to B.J.P. and his mobile number was registered with the B.J.P. at the time of filing his application as well as at the time of his selection. He has submitted that the respondent No. 3 was in touch with the leaders of the B.J.P. at the time of his selection. Not only this, but his wife viz. Smt. Lalita Mahajan is presently working as a Sarpanch of village Fulgaon and she was also affiliated to political party namely B.J.P. He has

submitted that the applicant raised objection before the respondent No. 3 i.e. the Sub Divisional Magistrate, Bhusawal by filing application dated 18.04.2016. He has produced documents in support of his contention, but the respondent No. 3 i.e. the Sub Divisional Magistrate, Bhusawal, had not considered the documents produced by him with proper perspective and has passed impugned order dated 29.09.2016 observing that the Rule 5 of Maharashtra Civil Services (Conduct) Rules, 1979 provided that the Police Patil cannot participate in politics and elections and the said Rule is not applicable before the appointment of the Police Patil and therefore, he rejected the application of the applicant. He has submitted that the impugned order dated 29.09.2016 passed by the respondent No. 3 i.e. the Sub Divisional Magistrate, Bhusawal is not legal one. Therefore, he prayed to allow the present O.A. by quashing the order dated 29.09.2016 passed by the Sub Divisional Magistrate, Bhusawal and also prayed to set aside the appointment of respondent No. 4 as Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon and cancel the order dated 30.09.2016 issued by the respondent No. 3 in that regard.

9. Learned Presenting Officer and learned Advocate for respondent No. 4 have submitted that the respondent No. 4 has not disputed the fact that the respondent No. 4 was affiliated to

political party namely B.J.P. and he was active Member of the said party. They have submitted that the recruitment process was commenced on 2.11.2015 and advertisement/notification calling applications from the eligible candidates was published on that date. They have submitted that the respondent No. 4 had tendered his resignation of membership of the B.J.P. by filing application dated 5.10.2015, which is at paper book page No. 76 and his application was accepted by the District President of B.J.P. and accordingly, he communicated the respondent No. 4 about acceptance of his resignation by letter dated on 6.10.2016, which is at paper book page No. 75. They have submitted that from the date of resignation i.e. from 5.10.2015, the respondent No. 4 is not affiliated to any political party. On the date of the advertisement i.e. on 2.11.2015 and at the time of filing application for the post of Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon, he was not affiliated to any political party and he was not active Member of any political party. They have submitted that the respondent No. 4 filed affidavit to that effect before the Sub Divisional Magistrate, Bhusawal on 1.1.2016, copy of this affidavit is placed on record at paper book page Nos. 42 & 43 (both inclusive). They have submitted that no false information has been given by the respondent No. 4 and therefore, the respondent No. 3 i.e. the Sub Divisional Magistrate,

Bhusawal has rightly rejected the application of the applicant by recording reasons by his order dated 29.09.2016. They have submitted that in the absence of evidence, the contention of the applicant cannot be accepted and therefore, they prayed to reject the present Original Application.

10. On going through the documents on record, more particularly the advertisement/notification inviting the applications for the appointment on the post of Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon published on 2.11.2015, it reveals that as per the Clause 6 of the terms and conditions for the appointment, the candidate shall not be affiliated to any political party and he has to file affidavit on stamp paper of Rs. 100/- at the time of verification of the documents. The respondent No. 4 was affiliated to B.J.P., but the document filed at paper book page no. 76 shows that he has tendered his resignation on 5.10.2015 from the membership of B.J.P. His resignation was accepted by the District President of B.J.P. Bhusawal and accordingly it was informed to him by communication dated 6.10.2015, copy of which is at paper book page no. 76. It means that from 5.10.2015, the respondent No. 4 is not affiliated to any political party. On the date of publication of the advertisement/notification i.e. on 2.11.2015, he was not

Member of any political party and on the date of filing his application he was not attached to any political party. Therefore, he has rightly made statement on oath in that regard by filing affidavit dated 1.1.2016, which is at paper book page Nos. 42 & 43 that on the date of his selection as Police Patil he was not affiliated to any political party.

11. The documents produced by the applicant before the Sub Divisional Magistrate, Bhusawal do not show that on the date of selection the respondent No. 4 was affiliated to any political party. Whatever documents produced by him are regarding registration of the membership of the respondent No. 4 with B.J.P., Bhusawal. This fact was not disputed by the respondent No. 4 that he was affiliated to political party prior to 5.10.2015, but he tendered his resignation on 5.10.2015 and severed his connection with political party. Therefore, the said documents are much useful to the applicant establishing the nexus between the respondent No. 4 and any political party on the date of his selection. In the absence of sufficient documents, the contention of the applicant in that regard cannot be accepted. The respondent No. 3 has rightly rejected the objection of the applicant recoding sound reasons in that regard. Not only this, but, the respondent No. 3 has also observed that in view of the

provisions of Rule 5 of the Maharashtra Civil Services (Conduct) Rules, 1979, any person appointed on the post of Police Patil cannot participate in politics and elections. He has also relied on the G.R. dated 7.9.1999, which provides that the Police Patil cannot participate in any assembly or local elections. There is no illegality in the order dated 29.09.2016 passed by the respondent No. 3 and therefore, no interference is called for in the said order.

12. The applicant has challenged the selection of respondent No. 4 on the post of Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon only on the ground of his affiliation to political party. The selection of the respondent No. 4 was made by the committee headed by the respondent No. 3 on merit, as the respondent No. 4 secured highest marks amongst the candidates who were called for oral interview. The applicant has no grievance regarding marks allotted to them and therefore, there is no reason to interfere in the selection list prepared by the respondent No. 3 by which respondent No. 4 was declared as selected candidate for the post of Police Patil of village Fulgaon, Tq. Bhusawal, Dist. Jalgaon and on that ground also, the present Original Application deserves to be rejected. The respondent No. 3 issued appointment order dated 30.09.2016 after rejection of objection raised by the applicant by his order dated 29.09.2016. Therefore, no question

of quashing the appointment order dated 30.9.2016 arises, as the order passed by the respondent No. 3 dated 29-9-2016 is legal and proper.

13. Considering the above said facts and circumstances, in my opinion, there is no merit in the present O.A. Consequently, it deserves to be dismissed. Resultantly, the Original Application stands dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 837 of 2016 BPP 2017 Police Patil