

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 261 OF 2016**

**DISTRICT: PARBHANI**

Shri Baban S/o Mahadu Darade,  
Age: 39 years, Occu. : Agriculture,  
r/o Pimpalgaon (Gosavi), Tq. Selu,  
Dist. Parbhani

.. **APPLICANT**

**V E R S U S**

1) The State of Maharashtra,  
Through it's Secretary,  
Home Department,  
Maharashtra State, Mantralaya,  
Mumbai- 400 032.

2) The District Collector,  
Collector Office, Parbhani.

3) The Sub-Divisional Officer  
Tq. Sailu, Dist. Parbhani.

(Copies to be served on P.O.  
In M.A.T. at Aurangabad)

4) Shri Uddhav S/o Pandurang Budhwant,  
Age- Major, Occ- Agriculture,  
R/o Pimpalgaon Gosavi,  
Tq. Sailu, Dist. Parbhani.

.. **RESPONDENTS**

-----  
**APPEARANCE** : Shri Vishnu L. Dhoble, learned Advocate  
for the Applicant.

: Shri M.S. Mahajan, learned Chief Presenting  
Officer for the Respondent nos. 1 to 3.

: Shri N.B Narwade/ H.U. Dhage, learned  
Advocate for respondent no. 4, **absent**.

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

**ORDER****(Delivered on this 14<sup>th</sup> day of July, 2017.)**

1. The applicant has challenged the selection and appointment of respondent no. 4 as a Police Patil of village Pimpalgaon Gosavi, Tq. Selu, Dist. Parbhani, made by the respondent no. 3 by communication dated 01.03.2016.

2. The respondent no. 2 issued public notice dated 22.12.2015, thereby inviting applications from the eligible candidates for the post of Police Patil in several villages in Parbhani district, including for the post of Police Patil of village Pimpalgaon Gosavi, Tq. Selu, Dist. Parbhani. The post of Village Police Patil of village Pimpalgaon Gosavi, Tq. Selu, Dist. Parbhani was kept open for general category. The recruitment process has been put therein. The applicant has passed B.A. examination. He along with respondent no. 4 filed applications online. According to the schedule, they appeared for written examination held on 31.01.2016. The applicant, as well as, respondent no. 4 were called for oral examination on 22.02.2016, as they had successfully passed written examination. Their oral examination was conducted on 22.02.2016. It is the contention of the applicant that, the written examination has been conducted for 80 marks. The applicant would have been accorded 73 marks out

of 80, as per his calculation on the basis of answer-key provided by respondents. He secured highest marks against the candidates, who had appeared for written examination, but only 70 marks had been allotted to him. He had given 70 marks in the written examination, while respondent no. 4 secured 64 marks in the written examination. It is his contention that, in the oral examination less mark has been given to him by the respondents and more marks have been given to the respondent no. 4. It is their contention that the committee headed by respondent no. 2 had intentionally granted less mark to him in the oral examination and therefore, he secured less marks i.e. 76 marks in aggregate in the written, as well as, oral examination, while respondent no. 4 secured 77 marks in aggregate. It is his contention that the respondents had mala-fidely allotted more marks to the respondent no. 4 in the oral examination. They favoured the respondent no. 4 by giving more marks in the oral examination and thereby, they declared respondent no. 4 as selected candidate for the post of Police Patil of village Pimpalgaon Gosavi, Tq. Selu, Dist. Parbhani. On the basis of his selection, the respondent no. 3 issued appointment letter in favour of respondent no. 4 dated 1.3.2016, which is illegal. It is his contention that, he raised objection by filing representation before the respondent no. 3 as regards injustice caused to him, while

giving marks in the oral examination. But the respondent no. 3 has not been considered the said representation/objection properly and rejected it. It is the contention of the applicant that, the recruitment committee consisted of 5 members, but only 3 members took the oral interview. The respondents tampered the proceedings of the recruitment process and meeting of the committee. Therefore, the applicant has approached this Tribunal seeking cancellation of appointment of respondent no. 4 by quashing his selection and appointment.

3. The respondent no. 3 has filed affidavit in reply and refuted the contentions of the applicant. He has denied that he himself and the members of the committee headed by him intentionally granted less marks to the applicant in the oral examination and granted more marks to the respondent no. 4 and thereby they favoured him. It is his contention that the committee headed by him was consisting of 5 Members and they did not know about the marks secured by candidates in the written examination when they conducted oral interviews of the candidates. Therefore, no question of giving less mark to the applicant intentionally arises. It is their contention that the applicant secured 70 marks in the written examination and the respondent no. 4 secured 64 marks in the written examination. In

the oral examination, after considering performance, personality, intelligent, talent of the candidates, they had allotted marks to them. In the oral examination, the applicant secured 6 marks, while respondent no. 4 secured 13 marks. The applicant secured 76 marks in aggregate, while respondent no. 4 secured 77 marks in aggregate. As the respondent no. 4 secured highest marks, he was selected as Police Patil of village Pimpalgaon Gosavi, Tq. Selu, Dist. Parbhani and accordingly, the respondent no. 3 issued the appointment order. It is his contention that there was no illegality in the recruitment process conducted by the committee. They gave marks to the candidates after assessing personal performance and intelligence. Therefore, he prayed to reject the O.A.

4. I have heard Shri Vishnu S. Dhoble, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for respondent nos. 1 to 3. Shri N.B. Narwade/H.U. Dhage, learned Advocate for respondent no. 4 (**Absent**). I have perused the affidavit, affidavit in reply, citations and various documents placed on record by the respective parties.

5. The Learned Advocate for the applicant has submitted that the recruitment process conducted by the respondent no. 3, was not transparent and he had favoured the respondent no. 4

and therefore, they purposely allotted more marks in the oral examination to the respondent no. 4 than the applicant. He has submitted that the applicant has secured highest marks i.e. 70 marks in the written examination amongst the candidates who appeared for the written examination, while the respondent no. 4 secured 64 marks in the written examination. He has submitted that in fact, respondents ought to have given proportionate marks to the applicant considering his performance in the written examination, but the respondents had intentionally given less marks i.e. 6 marks to him in the written examination. He has submitted that the respondent no. 4 secured 64 marks in the written examination, but the respondents had given 13 marks to him in the oral examination intentionally. He has submitted that this shows that the respondent no. 3 and Members of committee predetermined to select the respondent no. 4 and they gave more marks to the respondent no. 4 in the oral interview. He has submitted that the documents regarding recruitment process has been tampered by the respondents. He has submitted that the applicant has stated on oath that only three Members of the Committee had taken interview of the candidates, but the record shows that all five Members had attended the meeting and they took interview of the eligible candidates including the applicant and respondent no. 4. He has submitted that the said fact shows

that the recruitment process has been conducted in suspicious manner and therefore, it requires to be set aside. Therefore, he prayed to allow the present Original Application.

6. Learned Advocate for the applicant has further submitted that the respondents had given more marks to the respondent no. 4 intentionally and thereby favoured him. He has submitted that the marks given to the respondent no. 4 and the applicant in oral interview shows that the respondent no. 4 was favoured by the respondents. He has submitted that the said tactic played by the respondents is illegal and unacceptable. He has argued that the respondents ought to have given weightage to the marks obtained by the candidates in the written examination and they could have given more marks to the applicant in the oral examination accordingly. He has submitted that this practice has been deprecated by the Hon'ble Apex Court in the various decisions and therefore, he prayed to quash the impugned order. In support of his submission, he has placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Ashok Kumar Yadav Vs. State of Haryana** reported in **(1985) 4 Supreme Court Cases 417**, wherein it is observed as follows:-

*24..... While a written examination has certain distinct advantages over the viva voce test, there are yet*

*no written tests which can evaluate a candidate's initiative, alertness resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and more integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by viva voce test, much depending on the constitution of the interview board."*

The Hon'ble Apex Court has further observed as follows:-

*"25. ....There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body of which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in Lila Dhar case "exaggerated weight has been given with proven or obvious oblique motives"."*

7. The learned Advocate for the applicant has also placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Mohinder Sain Garg Vs. State of Punjab and Others**



reported in **(1991) 1 Supreme Court Cases 662**, wherein it is observed as follows:-

*“33. In our view Ashok Kumar Yadav case clinches the issues raised before us and being a decision given by four Judges is also binding on us. That was a case relating to public employment and a direction was given to all the Public Service Commissions to follow the marks allocated for viva voce test as done by the UPSC which was 12.2 per cent of the total marks. Ashok Kumar Yadav case was decided in 1985 and we fail to understand as to why the State of Punjab did not follow the same for making selections in 1989 for the posts of Excise and Taxation Inspectors. It is no doubt correct that the selection of Taxation and Excise Inspectors is done by a subordinate selection body and not by Public Service Commission yet no valid reason has been given before us by learned counsel for the respondents as to why the principle enunciated in Ashok Kumar Yadav case should not be applied in these cases as well. Even if Ashok Kumar Yadav case may not in terms apply in the cases before us to the extent of laying down 12.2 per cent of the total marks for viva voce test which was made applicable for selections to be made by UPSC, we deem it proper to lay down after taking in view the dictum of all the authorities decided so far that the percentage of viva voce test in the preset cases at 25 per cent of the total marks is arbitrary and excessive. There could be no gainsaying that viva voce test cannot be totally dispensed with, but taking note of the situation and*

*conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15 per cent of the total marks in the selection of candidates fresh from college/school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview.”*

8. Learned Advocate for the applicant has submitted that the percentage of viva voce would not been more than 50% of the total marks, but in the instant case, the respondents kept viva voce or oral interview for 20 marks out of total marks of 100 and therefore, it is not legal.

9. Learned Chief Presenting Officer has submitted that the recruitment process has been conducted by the respondent no. 3 as per the Rules and guidelines given in the recruitment process. He has submitted that the applicant secured 70 marks in the written examination, while respondent no. 4 secured 64 marks in it. Applicant, respondent no. 4 and other three candidates were called for oral interview. The committee headed by respondent no. 3 consisting of 5 members took the oral interviews of the applicant and others. They assessed their personal performance, intelligent, talent etc. in the oral interview and then accorded marks to the candidates on their performance.

He has submitted that the applicant secured 6 marks and respondent no. 4 secured 13 marks in the oral examination and considering their marks in written examination and oral examination, the applicant secured 76 marks in aggregate, while respondent no. 4 secured 77 marks in aggregate. As the respondent no. 4 secured highest marks amongst the candidates, who had appeared for written and oral examination, he was declared as selected candidate for the post of Police Patil of village Pimpalgaon Gosavi, Tq. Selu, Dist. Parbhani. Accordingly, the appointment letter has been issued by the respondent no. 3. He has submitted that there is no illegality in the recruitment process and therefore, he supported the selection and appointment of respondent no. 4.

10. I have gone through the documents placed on record by the respective parties. Admittedly, the applicant, respondent no. 4 and other candidates filed applications for the post of Police Patil of village Pimpalgaon Gosavi, Tq. Selu, Dist. Parbhani and they appeared for written examination. In the written examination, the applicant secured 70 marks while the respondent no. 4 secured 64 marks. The applicant, respondent no. 4 and other three candidates who secured highest marks in written examination were called for oral interview. Their

interviews were conducted by the five members' committee consisting Tahsildar, Selu, Joint Commissioner of Social Welfare, Project Officer of Tribal Development Project, Sub Divisional Police Officer and Sub-Divisional Magistrate, Selu, who was the Chairman of the committee. They assessed the personality, performance, General knowledge, Promptness, intelligence, talent of the candidates appeared for the oral interview and on considering their performance in the oral interview, they had given marks to them. In the oral interview, the applicant secured 6 marks while the respondent no. 4 secured 13 marks. It has been specifically stated by the respondents that the marks of the written examination secured by the candidates, who were called for oral interview, were not made available to the members of the committee and they were not aware about the marks secured by the candidates in the written examination, when they had interviewed the applicant and others. Therefore, no question of giving more marks to the respondent no. 4 than the applicant intentionally to favour him, arises. Therefore, I do not find substance in the submissions made by the learned Advocate for the applicant in that regard.

11. It is contended by the applicant that, only three members of the committee conducted oral interview though

committee consisted of 5 members, but the respondents prepared false record showing that all five members attended the meeting. Except the bald statement of the applicant, there is nothing on record to show that the interview had been conducted by only three members, though committee consisted of five members. On the contrary, mark-sheet produced by the respondents, which is at paper book page no. 45, shows that all five members conducted oral interview and they evaluated the performance of each of the candidates, who appeared for viva voce and accordingly, they allotted marks to them. Therefore, I do not find substance in the submissions made by the learned Advocate for the applicant in that regard.

12. I have gone through the record. On going through it, it reveals that after considering the marks obtained by each of the candidates in written examination and oral examination, the final mark-list has been prepared. The applicant secured 76 marks in aggregate (70 marks in written examination + 6 marks in oral examination) while the respondent no. 4 secured 77 marks in aggregate (64 marks in written examination + 13 marks in oral examination). As the respondent no. 4 secured highest marks, he was declared as selected candidate for the post of Police Patil of village Pimpalgaon Gosavi, Tq. Selu, Dist. Parbhani. The

respondent no. 4 was selected for the post of Police Patil, as he was meritorious candidate. Therefore, it cannot be said that the selection of the respondent no. 4 is not as per the Rules.

13. I have gone through the above referred decisions cited by the learned Advocate for the applicant, I have no dispute regarding settled legal principle laid down therein. In the instant case, the 20% marks i.e. 20 marks out of 100 had been kept for oral interview and therefore, it cannot be said to be excessive marks had been kept for the oral examination, therefore, it cannot be said to be unreasonable or excessive percentage of marks for the viva voce test. The object of the viva voce is to judge the suitability of the candidates for the service and the same can be decided on the performance, personality, intelligence, talent of the candidates appearing for the viva voce. Even considering the principles laid down in the above said decisions, in my opinion, there is no irregularity and illegality in the viva voce or oral examination conducted by the respondents. Therefore, decisions cited by the learned Advocate for the applicant are not much useful to the applicant in the instant case.

14. In view of the above facts and circumstances of the case, in my opinion there is no illegality in the recruitment

process conducted by the respondent no. 3. The respondent no. 3 has conducted recruitment process as per the guidelines issued in the advertisement as well as Rules in that regard. He selected meritorious candidate i.e. respondent no. 4, who secured highest marks in aggregate i.e. in the written examination and oral interview. Therefore, in my opinion there is no fault on the part of the respondent no. 3 in declaring the respondent no. 4 as selected candidate. There is no merit in the present O.A. Consequently, it deserves to be dismissed.

15. In view of the above said facts and circumstances, the Original Application stands dismissed with no order as to costs.

**(B.P. PATIL)**  
**MEMBER (J)**

**KPB/S.B. O.A. No. 261 of 2016 BPP 2017 Police Patil**