

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 338 OF 2016

DISTRICT: JALGAON

Shri Krushna s/o Suresh Wadhe,

Age: Major, Occu. : Nil,

R/o : Kathora (B), Tq. Bhusawal,

District-Jalgaon.

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**
Through its Secretary,
Home Department,
Mantralaya, Mumbai -32.

(Copy to be served on C.P.O.
Maharashtra Administrative Tribunal,
Bench at Aurangabad.)

- 2) **The Sub Divisional Officer,**
Bhusawal, Tq. Bhusawal,
Dist. Bhusawal.
- 4) **Shri Harshal S/o Madhukar Patil,**
Age : Major, Occu: Agri.,
R/o : Kathora (B), Tq. Bhusawal,
District-Jalgaon.
- 5) **Shri Sanjay S/o Manohar Patil,**
Age : Major, Occu: Agri.,
R/o : Kathora (B), Tq. Bhusawal,
District-Jalgaon.

.. **RESPONDENTS**

APPEARANCE : Shri P.B. Rakhunde, learned Advocate holding
for Shri S.B. Bhapkar, learned Advocate for
the Applicant.

: Shri M.P. Gude, learned Presenting Officer for
the Respondent nos. 1 & 2.

: Shri Nilesh N. Desale, learned Advocate for
respondent no. 3.

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

ORDER

(Delivered on this 27th day of July, 2017.)

1. The applicant has challenged the order dated 18.02.2016 passed by the Sub Divisional Officer, Bhusawal, Tq. Bhusawal, Dist. Jalgaon, rejecting his objection regarding eligibility of the respondent nos. 3 & 4 to be appointed as Police Patil and prayed for direction that the respondent nos. 3 & 4 are not eligible and qualified for the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon and he is the only eligible candidate for the said post.

2. The respondent no. 2 i.e. the Sub Divisional Officer, Bhusawal, Dist. Jalgaon, had issued advertisement/proclamation inviting applications from the eligible candidates for the appointment on the post of Police Patil of different villages situated within the Sub Division, Bhusawal. As per the terms and conditions in the advertisement, the candidate should have passed S.S.C. examination and he should not be affiliated to any

political party. In pursuance of the said advertisement, the applicant has submitted his application online. The respondent nos. 3 & 4 have also submitted their online applications. The written examination has been conducted by the respondent no. 2. In the written examination the applicant secured 53 marks, respondent no. 3 secured 63 marks and respondent no. 4 secured 52 marks. They have been called for oral examination. The respondent nos. 3 and 4 were active Members of Bhartiya Janata Party. The respondent no. 3 was also working as a Member of Gram Panchayat of village Kathore (B), Tq. Bhusawal, Dist. Jalgaon. They were not eligible and qualified for the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. Therefore, he raised objection by filing an application dated 8.1.2016 before the respondent no. 2. He has produced the necessary documents in support of his contention. The respondent no. 2 had rejected his objection by impugned order dated 18.02.2016. It is his contention that the respondent no. 2 has not considered the documents produced by him and he had not applied his mind properly, while passing impugned order dated 18.02.2016. It is his contention that the respondent no. 2 ought to have disqualified the respondent nos. 3 and 4, as they

are not eligible for the said post. But the respondent no. 2 has wrongly rejected the application. Therefore, he prayed to quash the impugned order dated 18.02.2016 passed by the respondent no. 2 and prayed to declare that the respondent nos. 3 & 4 are not eligible and qualified for appointment on the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon and also prayed to declare that he is eligible and qualified for the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. It is the contention of the applicant that he is son of retired Police Patil and respondent no. 2 ought to have considered the said fact and appointed him as Police Patil.

3. The respondent nos. 1 & 2 have resisted the contention of the applicant by filing affidavit in reply. They have admitted the fact that the advertisement has been issued on 3.11.2015 and it was published in daily 'Lokmat' and 'Divya Marathi' newspapers. They have admitted that as per the advertisement, the respondent no. 2 conducted written examination of the eligible candidates on 13.12.2015. The applicant, respondent nos. 3 and respondent no. 4 secured highest marks in the written examination and therefore, they were called for oral interview.

...5

Meanwhile, the applicant had filed objection application dated 8.1.2016 to disqualify the respondent nos. 3 & 4, as they were active Members of political party and as the respondent no. 3 was Member of the Gram Panchayat. It is their contention that the application was rejected on 18.02.2016 by the respondent no. 2, after considering the documents produced by the applicant. Thereafter, oral interview has been conducted on 1.4.2016, by the committee consisted 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 i.e. respondent no. 2. In the oral interview, the applicant has been secured 13 marks, respondent no. 4 secured 13 marks and respondent no. 3 secured 14 marks. After considering the marks secured by them in the written examination and oral interview, it reveals that the applicant secured 52 marks in aggregate, while the respondent no. 3 and respondent no. 4 secured 63 and 53 marks in aggregate respectively. Therefore, respondent no. 3 i.e. Shri Harshal Madhukar Patil, was declared as selected candidate, as he secured highest marks in aggregate. The name of respondent

no. 4 had been maintained in the wait list for the appointment on the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. It is their contention that the entire selection process has been conducted transparently as per the recruitment Rules and as per the terms and conditions mentioned in the advertisement. There was no illegality and irregularity in the impugned order dated 18.02.2016 and therefore, they prayed to reject the present Original Application.

4. The respondent no. 3 has raised similar contention to that of the contention of the respondent nos. 1 & 2 mentioned in their affidavit in reply. He has admitted the fact that he was Member of the Bhartiya Janata Party prior to filing of application for the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. He resigned from his post and membership of Bhartiya Janata Party by tendering his resignation dated 3.10.2015. His resignation was accepted on 4.10.2015. He is not affiliated to any political party since 4.10.2015. It is his contention that he was Member of Kathore (B) Gram Panchayat, but he sent notice of resignation on 30.12.2015 and his resignation was accepted by the Gram Panchayat on 24.02.2016 (in fact as per resolution

which is at paper book page nos. 61 & 62 it is '25.02.2016'). It is his contention that the Sub Divisional Officer, Bhusawal, sent a letter dated 25.04.2016 and informed the respondent no. 3 that he was selected for the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. Accordingly, he accepted the appointment by letter dated 28.04.2016, stating that he is not affiliated to any political party. It is his contention that he has been selected as Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon, as he has scored highest marks amongst the candidates called for oral interview. He has submitted that the Sub Divisional Officer, Bhusawal has rightly rejected the application of the applicant. Therefore, he prayed to reject the present Original Application.

5. It is his further contention that the applicant is not entitled to claim appointment on the post of Police Patil on the ground that he is legal heir of retired Police Patil. It is his contention that he scored highest marks and therefore, he was selected for the post of Police Patil. The applicant is not entitled to claim relief as sought. On these ground he has prayed to dismiss the O.A.

6. The applicant has filed rejoinder affidavit and contended that the Criminal Case has been filed by him against the respondent no. 3 in the Court of J.M.F.C. at Bhusawal under the provisions of Section 193/2, 199, 200, 420, 463, 464, 465, 468, 471, 120-B r/w Section 24 of I.P.C. for making false statement on oath. It is his contention that the respondent nos. 3 and 4 were active Members of political party, but the said aspect had not been considered by the respondent no. 2 i.e. the Sub Divisional Officer, Bhusawal. Therefore, he prayed to allow the Original Application.

7. I have heard Shri P.B. Rakhunde, learned Advocate holding for Shri S.B. Bhapkar, learned Advocate for the applicant, Shri M.P. Gude, learned Presenting Officer for respondent nos. 1 & 2 and Shri Nilesh N Desale, learned Advocate for respondent no. 3. I have perused the affidavit, affidavit in replies, rejoinder affidavit and various documents placed on record by the respective parties.

8. Learned Advocate for the applicant has submitted that the applicant is son of retired Police Patil and as per the terms and conditions mentioned in the advertisement and

recruitment Rules, preference has to be given to the heirs of ex-Police Patil, while appointing Police Patil. He has submitted that the Sub Divisional Officer, Bhusawal, has not considered the said aspect and wrongly rejected his application dated 8.1.2016. He has further submitted that the respondent nos. 3 and 4 were active Members of the political party. The respondent no. 3 was Member of the Kathore (B) Gram Panchayat. He has produced the documents in that regard before the Sub Divisional Officer, Bhusawal i.e. respondent no. 2 along with the application dated 8.1.2016, but the respondent no. 2 had not considered the said documents and without recording findings on those issue, he rejected application dated 8.1.2016 by passing impugned order dated 18.02.2016. He has submitted that since the respondent nos. 3 & 4 were affiliated to political party, they were not eligible and qualified to be appointed on the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. He has argued that the respondent no. 3, who was selected as Police Patil, was working as Member of the Gram Panchayat till his selection was made, but the respondent no. 2 has not considered the said aspect and wrongly rejected his application by impugned order dated 18.02.2016. Therefore, he prayed to allow the present Original

Application and to quash the impugned order dated 18.02.2016 and declare that the respondent nos. 3 & 4 are not eligible and qualified for the post of Police Patil and to declare him as he is only eligible candidate for the post of Police Patil.

9. Learned Presenting Officer and learned Advocate for respondent no. 3 have submitted that the learned Sub Divisional Officer, Bhusawal i.e. respondent no. 2 has passed reasoned order dated 18.02.2017, considering the documents produced on record. They have submitted that the respondent no. 3 was not Member of any political party, when he filed online application for the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. They have submitted that the respondent no. 3 was Member of Bhartiya Janata Party, but he had resigned from his post and membership of the party by tendering his resignation dated 3.10.2015. His resignation was accepted by the President of B.J.P., Jalgaon District and he communicated the said fact to the respondent no. 3 by letter dated 4.10.2015, which is at paper book page nos. 56 & 57 (both inclusive). They have submitted that on the date of filing application i.e. on

3.11.2015, the respondent no. 3 was not affiliated to any political party and therefore, there was no substance in the objection raised by the applicant in that regard.

10. Learned Presenting Officer and learned Advocate for respondent no. 3 have further submitted that the respondent no. 3 was the Member of Gram Panchayat of Kathora (B), but he tendered his resignation by issuing notice dated 30.12.2015. The Gram Panchayat, Kathora (B) passed the resolution and accepted his resignation in the meeting held on 25.02.2016 (paper book page nos. 61 & 62). They have submitted that there is no violation of recruitment Rules and there is no illegality and irregularity in the impugned order dated 18.02.2016 passed by the respondent no. 2. They have submitted that the respondent no. 2 has conducted recruitment process as per the recruitment Rules and terms & conditions mentioned in the advertisement. Therefore, they supported the order passed by the respondent no. 2 i.e. the Sub Divisional Officer, Bhusawal.

11. On going through the documents produced on record, it is crystal clear that the respondent no. 3 was affiliated to political party and he was member of B.J.P. prior to filing online

application for appointment on the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon, but he tendered his resignation from the post and Membership of B.J.P. by filing application dated 3.10.2015 (Exhibit R-1, page no. 56). His resignation application was accepted by the B.J.P. and accordingly, he was informed by communication dated 4.10.2015 (page no. 57 of the paper book). It means, on the date of filing online application i.e. on 3.11.2015, the respondent no. 3 was not affiliated to any political party and therefore, it cannot be said that he was disqualified and not to eligible for appointment on the post of Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. The Sub Divisional Officer, Bhusawal has considered the documents produced by parties and rightly passed the impugned order dated 18.02.2016. Therefore, I find no illegality in the impugned order in that regard.

12. As regards another grievance of the applicant that the respondent no. 3 was Member of Gram Panchayat at the time of appointment. The documents on record, show that the respondent no. 3 was Member of Gram Panchayat Kathore (B), but he tendered his resignation to the Gram Panchayat by

issuing notice dated 30.12.2015. His resignation was accepted by passing resolution in the meeting dated 25.02.2016 (paper book page nos. 61 & 62). The respondent no. 3 has informed the respondent no. 2 about resignation tendered by him from the post of Membership of Gram Panchayat Kathore(B) by communication dated 24.04.2016 (paper book page no. 63), in response to the letter dated 24.04.2016 issued by the respondent no. 2 (paper book page no. 64). Respondent no. 2 appointed the respondent no. 3 as Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon, thereafter; Recruitment Rules does not provide that the Member of the Gram Panchayat should not participate in the recruitment process. On the contrary, at the time of appointment of a person on the post of Police Patil he should not hold any post like Member of Gram Panchayat. The respondent no. 3 has resigned from the post of Member of Gram Panchayat before his appointment as Police Patil. Therefore, it cannot be said that his appointment is illegal and against the recruitment Rules. Therefore, I do not find any substance in the submissions advanced by the learned Advocate for the applicant in that regard.

13. Learned Advocate for the applicant has submitted that the Sub Divisional Officer, Bhusawal has not considered the fact that the applicant is heir of retired Police Patil. He has submitted that as per the recruitment Rules and terms and conditions mentioned in the advertisement, a preference has to be given to the heirs of the retired Police Patil and therefore, he prayed to quash the impugned order dated 18.02.2016.

14. Learned Presenting Officer and learned Advocate for respondent no. 3 have submitted that as per the Recruitment Rules the preference should be given to the heirs of the retired Police Patil, when heirs of the retired Police Patil and other candidates secure equal marks. They have submitted that in the instant case, the respondent no. 3 secured highest marks amongst the candidates called for oral interview and therefore, the said Rule is not applicable in the instant case.

15. I do find substance in the submissions advanced by the learned Advocate for the respondent no. 3 and learned Presenting Officer in that regard. No doubt, the applicant is a son of retired Police Patil in that regard. As per the recruitment Rules, preference should be given to the heirs of the former

Police Patil, only if, heirs of retired Police Patil and other candidates secure equal marks. The said Rules is not attracted in the present case, as the applicant secured less marks than the other two candidates i.e. respondent no. 3 & respondent no. 4 in aggregate. The respondent no. 3 secured 63 marks in aggregate while the respondent no. 4 secured 53 marks in aggregate and the applicant secured 52 marks in aggregate. Even considering the marks secured by the respondent no. 3 in the oral interview, as well as, written examination, it reveals that the applicant secured less marks in written and oral examinations, than the respondent no. 3. Therefore, the Rule on which the applicant is relying is not attracted in this case. I therefore, do not find substance in the submissions advanced on behalf of the applicant in that regard.

16. The respondent no. 2 has conducted the recruitment process as per the recruitment Rules and terms and conditions incorporated in the advertisement. There is no illegality and irregularity in the recruitment process conducted by the respondent no. 2. The respondent no. 2 has rightly rejected the application of the applicant raising objection regarding eligibility and qualification of respondent nos. 3 & 4. The respondent no. 2

has passed a reasoned order on 18.02.2016 and rejected the application of the applicant. Therefore, no interference is called for in the impugned order dated 18.02.2016 passed by the respondent no. 2, as well as, in the selection of the respondent no. 3 as Police Patil of village Kathora (B), Tq. Bhusawal, Dist. Jalgaon. There is no merit in the O.A. Therefore, it must fail.

17. In view of the above facts and circumstances, the Original Application stands dismissed without any order as to costs.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 338 of 2016 BPP 2017 Police Patil