

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 479 OF 2016

DISTRICT: JALGAON

Shri Dhamratna s/o Raghunath Bhalerao,
Age: Major, Occu. : Nil,
R/o Mundholde, Tq. Muktainagar,
Dist. Jalgaon.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Collector,
Collector Office,
Jalgaon.
- 3) The Sub Divisional Officer,
Sub Division Bhusawal,
Tal Muktainagar, Dist. Jalgaon.
- 4) Amol Hari Bhalerao,
Age : Major Occ.: Nil,
R/o: Muktainagar,
Tal : Muktainagar,
District : Jalgaon.

.. **RESPONDENTS**

APPEARANCE : Shri Girish A. Nagori, learned Advocate
for the Applicant.

: Smt. Resha S. Deshmukh, learned Presenting
Officer for the Respondent nos. 1 to 3.

: Smt. S.R. Bhilegaonkar, learned Advocate for
respondent no. 4

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T

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

1. Heard Shri Girish A. Nagori, learned Advocate for the applicant, Smt. Resha S. Deshmukh, learned Presenting Officer for the respondent nos. 1 to 3 and Smt. S.R. Bhilegaonkar, learned Advocate for respondent no. 4.

2. The applicant Shri Dhamratna Raghunath Bhalerao and respondent no. 4 Shri Amol Hari Bhalerao, applied for the post of Police Patil of village Mundholde, Tal. Muktainagar, Dist. Jalgaon in pursuance to the advertisement No. 1/2015 dated 2.11.2015. Admittedly, the respondent no. 4 stood at Sr. No. 1 in the merit list, which was published on 13.12.2015. The applicant raised objection against the respondent no. 4 before the S.D.O., Bhusawal on 5.1.2016 mentioning therein that the respondent no. 4 is not a resident of village Mundholde and that as per advertisement the candidate to be selected for the post of Police Patil must be resident of that village. The respondent no. 3 i.e. the S.D.O. Bhusawal replied to the objection raised by the applicant and S.D.O. Bhusawal issued order dated 25.01.2016 and rejected

the objection taken by the applicant. The said impugned letter of rejection of objection is at paper book page nos.20 & 21 (both inclusive). The sum and substance of the rejection letter it seems that the S.D.O. has heard applicant as well as respondent no. 4 on 22.1.2016 and also considered the documents submitted by the applicant and respondent no 4. The documents considered by the S.D.O., Bhusawal are as under:-

- “१) गैरअर्जदार श्री अमोल भालेराव यांना ग्रामसेवक मुंडोळदे यांनी दिलेला दि. ३०/१२/२०१५ चा रहिवासी दाखला.
- २) गैरअर्जदार श्री अमोल भालेराव यांना ग्रामसेवक मुंडोळदे यांनी दिलेला दि. ३०/१२/२०१५ चा रहिवासी दाखला.
- ३) गैरअर्जदार श्री अमोल भालेराव यांचे मालकीचा नमुना नं. ८ ग्रामसेवक मुंडोळदे यांनी दिलेला दि. ३०/१२/२०१५ रोजीचा घराचा उतारा.
- ४) गैरअर्जदाराचे वडील हरी रामचंद्र भालेराव यांचे मालकीचा तलाठी मुंडोळदे यांनी दिलेला ७/१२ चा उतारा.
- ५) मुक्ताईनगर विधानसभा मतदार संघ मोजे मुंडोळदे ता. मुक्ताईनगर येथील यादी भाग क्र. १०० मधील अ.क्र. ५९८ वर गैरअर्जदाराचे नांव असलेबाबत मतदार यादीची छायांकित प्रत.
- ६) गैरअर्जदार श्री अमोल भालेराव यांनी कार्यकारी दंडाधिकारी तथा तहसिलदार मुक्ताईनगर यांनी मुंडोळदे गावाचे रहिवासी असल्याबाबतचे दिलेले दि. ०८/०१/२०१६ चे वय व अधिवास प्रमाणपत्र.
- ७) गैरअर्जदार श्री अमोल भालेराव यांना मिळालेले BSH १३३६१४८ क्रमांकाचे मोजे शेमळदे येथील मतदार ओळखपत्राची छायांकित प्रत.”

3. From the aforesaid documents, S.D.O., Bhusawal came to the conclusion that the respondent no. 4 was resident of village Mundholde, Tal Muktainagar, Dist. Jalgaon and therefore, the S.D.O., Jalgaon decided to issue appointment order in favour of respondent no. 4.

4. The respondent nos. 2 and 3 resisted the claim of the applicant by filing affidavit in reply and they have stated in paragraph no. 4 as under:-

“4.....The res. no. 4 submitted a dakhala issued by Gramsevak Mondholde dated 30.12.2015, house village form No. 8 dated 30.12.2015. He also submitted the 7/12 extract of land issued by Talathi Mondholde in name of his father. He also submitted extract of voter list of village Mondholde in which his name is enrolled at Sr. No. 598. After going to the documents filed by res. no. 4 the res. no. 3 came to the conclusion that Amol Hari Bhalerao was resident of Mondholde Tal.-Muktainagar. Hence, the application filed by Dhamratna Raghunath Bhalerao i.e. applicant to the Respondent No. 3 on 05.01.2016 was rejected.”

5. The respondent no. 4 also filed affidavit in reply and submitted that he is permanent resident of village Mundholdeand. He also owns and possesses ancestral residential house in the

said village. The copies of relevant documents of ownership are annexed by the respondent no. 4 and it seems that the said copies were also submitted before the S.D.O., Jalgaon. It is stated that the appointment order has already been issued in favour of respondent no. 4 on 30.4.2016.

6. The only material factor to be considered in this case is whether the respondent no. 4 is resident of village Mundholde?

7. The learned Advocate for the applicant invited my attention to the conditions for eligibility of the candidates to be considered for the post Police Patil as per advertisement. The said conditions regarding eligibility are as under:-

“किमान आवश्यक अर्हता

खाली नमूद केलेली शैक्षणिक अर्हता ०२/११/२०१५ या दिनांकास प्रमाणपत्रासहीत पूर्ण धारण करणे आवश्यक आहे.

अ.क्र.	संवर्ग (पदनाम)	किमान आवश्यक अर्हता
१	पोलीस पाटील	१. उमेदवार महाराष्ट्र राज्य माध्यमिक शालांक परीक्षेत (एस.एस.सी.) उत्तीर्ण असावा. २. अ) वयोमर्यादिकरिता उमेदवाराचे दिनांक ०२/११/२०१५ रोजीचे वय विचारात घेतले जाईल. ब) उमेदवाराचे वय दिनांक ०२/११/२०१५ रोजी २५ वर्षांपेक्षाकमीनसावे व ४५ वर्षांपेक्षाजास्तनसावे. क) पोलीस पाटील पदाकरीता वयोमर्यादा शिथिलक्षम नाहीत. ३. उमेदवार संबंधित गावाचा स्थानिक व कायमचा रहिवासी असावा. ४. उमेदवार शारिरीकदृष्ट्या सक्षम असावा व उमेदवाराचे चारित्र्य निष्कलंक असणे आवश्यक.

	<p>५. महाराष्ट्र नागरी सेवे (लहान कुटुंबाचे प्रतिज्ञापत्र) नियम, २००५ मधील लहान कुटुंबाची अर्हता धारण करणे आवश्यक राहिल.</p> <p>६. मागासप्रवर्गासाठी आरक्षित पदाकरिता त्याप्रवर्गाचे सक्षम अधिका-याने निर्गमित केलेले जातीचे प्रमाणपत्र आवश्यक.</p> <p>७. मागास प्रवर्गातील उमेदवार (वि.जा.अ., भ.ज.ब., भ.ज.क., भ.ज.ड., वि.मा. प्र. व इ.मा.व.) यांना सन २०१५-१६ या कालावधी करीता वैध असलेले उन्नत आणि प्रगत व्यक्तीवगट (किमिलेयर) यामध्ये मोडत नसल्याबाबतचे (नॉन-किमिलेयर) प्रमाणपत्र आवश्यक राहिल.</p> <p>८. राखीव महिला पदांसाठी अर्ज सादर करणाऱ्या महिला उमेदवारांना सन २०१५-१६ या कालावधीकरीता वैध असलेला उन्नत आणि प्रगत व्यक्तीवगट (किमिलेयर) यामध्येमोडत नसल्याबाबतचे (नॉन-किमिलेयर) प्रमाणपत्रआवश्यक राहिल.</p>
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8. The aforesaid minimum requirement as regards educational qualification is as on 2.11.2015. So far as other conditions in the requirement are concerned, the same has been explained in the special note on the foot of the advertisement as titled "विशेष सूचना" and which reads as under:-

“विशेष सूचना :-

यापरीक्षेत ऑन लाईन पध्दतीने अर्ज भरताना जरी उमेदवारांना कोणतीही कागदपत्रे सादर करावयाची आवश्यकता नाही. तरीही ज्या उमेदवारांकडे पदाकरता आवश्यक शैक्षणिक व इतर पात्रता नसेल अशा उमेदवारांनी विनाकारण अर्ज करू नयेत. अर्जदारांना अर्ज भरण्या संदर्भात काही अडचणी असल्यास त्यासाठी ८७९३०८३७१२ / ८७९३०८३७१३ / ८७९३०८३७१४ या भ्रमणध्वनीवर संपर्क साधावा”

Plain reading of the aforesaid special note clearly show that the candidates who were not possessing requisite education qualification or other requirements as mentioned in column No.1

shall not apply. In other words, it means that the candidates, who are not qualified, as mentioned in the column No. 1 on 2.11.2015, were barred from applying to the post of Police Patil. The condition No. 3 in the said advertisement in the said column no. 1 is that the candidates shall be permanent resident of said village. In such circumstances, it is necessary to see as to whether the respondent no. 4 has proved that he was permanent resident of village Mundholde on 2.11.2015. In view of this, the date 2.11.2015 seems to be most important.

9. From the impugned letter whereby the applicant's objection has been rejected by the S.D.O. shows that the S.D.O. has considered the various documents submitted by the applicant as well as respondent no. 4. The said documents have also been referred in the relevant para earlier. From the documents submitted by the respondent no. 4 it seems that, he submitted two residential certificates issued by the Gramsevak, Mundholde and both these certificates bear date 30.12.2015. The respondent no. 4 then submitted copy of the form No. 8 in respect of property of house at Grampanchayat, Mundholde, the same is also dated 30.12.2015. The applicant submitted 7/12 extract of land alleged to be owned by respondent no. 4 in the village Mundholde but it is in the name of Respondent No.4's father. He has also submitted

the voters list showing the name of the respondent no. 4. I have perused the documents and it is to be noted that both the certificates issued by the Talathi, Muktainagar show that these certificates which mentions that the applicant is resident of village Mundholde, are prepared subsequent to the 2.11.2015.

10. The respondent no. 4 has filed copy of the property extract in form no. 8 of his so-called property at Mundholde. The same is also for the year 2015-16 and has been issued on 30.12.2015. The 7/12 extract of land of Gute No. 19 shows name of Shri Hari Ramchandra Bhalerao and not in the name of respondent no. 4 and it is also of the year 2015-16. From the remark column in the property extract in form No. 4, which is placed on record at paper book page no. 28 it seems that some affidavit was filed before the Grampanchayat authority on 28.12.2012 and on the basis of said affidavit the name of the applicant has been included as owner of the property and the names of earlier to owners i.e. Ramchandra Onkar Bhalerao and Hari Ramchandra Bhalerao have been deleted. This note has been taken in the monthly meeting of the Grampanchayat on 30.07.2012. It is however surprising to note as to how the said note can be taken in the monthly meeting of the year 2012 and in the month of July 2012 when the affidavit was filed for change of

name on 30.12.2015. All the documents submitted by the respondent no. 4 therefore, seem to be, prima-facie not genuine and in any case, all documents are having date either in the month of December 2015 or January 2016.

11. The learned S.D.O. therefore, did not consider the fact that the candidate must be resident of village Mundholde on 2.11.2015 i.e. on the date of filing of application.

12. The applicant submits that the respondent no. 4's father was resident of village Mundholde earlier but he left the village since long and never reside at village Mundholde. The applicant has filed voters list of Mundholde in which the name of the respondent no. 4 does not appear. It prima-facie seems that the respondent no. 4 has tried to prepare all the documents subsequently to show that he is resident of village Mundholde.

13. The learned S.D.O. did not record evidence of any witness who are resident of village Mundholde. In fact, it was obligatory on the part of the S.D.O. to make enquiry from the villagers and he should have collected documentary evidence as regards the proof of the residence of the respondent no. 4 and to see as to whether the respondent no. 4 is really resident of village

Mundholde, and whether he is conversant with the public and public life in that village and therefore, the conclusion drawn by the S.D.O. as regards residential status of respondent no. 4 does not seem to be legal and proper.

14. The applicant in his representation to the District Collector has mentioned in page no. 23 as under:-

“५. सामनेवाला यांचे आजोबा रामचंद्र ओमकार भालेराव हे मुंडोळदे गावातील रहिवासी होते. सामनेवाला यांचे वडिल हे नोकरी निमित्ताने मुंडोळदे सोडून मुक्ताईनगर येथे रहिवासासाठी आले. तेव्हापासून सामनेवाला हे मुक्ताईनगर येथील रहिवासी आहे व त्यांचा मुंडोळदे गावाशी क्वचितच संबंध येतो.”

From the aforesaid statement, it seems that there is no dispute that the applicant's grandfather Shri Ramchandra Omkar Bhalerao was resident of village Mundholde. It is stated that since, the applicant's father joined service at Muktainagar and therefore, he used to go village Mundholde very rarely. It is not known what is the distance between Muktainagar and village Mundholde. Now the possibility that the agricultural land might have been looked from Muktainagar, cannot be ruled out. However, for that purpose the S.D.O. ought to have made detailed enquiry as already stated. In such circumstances, instead of quashing and setting aside the order of appointment of the respondent no. 4, it will be in the interest of justice to direct the

S.D.O., Bhusawal i.e. respondent no. 3 to make fresh enquiry within stipulated period and thereafter, to take decision in the matter, since the respondent no. 4 has already been appointed. Hence, I pass following order:-

ORDER

1. The Original application is partly allowed.
2. The impugned communication dated 25.01.2016 is quashed and set aside.
3. The S.D.O., Bhusawal i.e. respondent no. 3 is directed to make detailed enquiry as regards residential proof of respondent no. 4, in view of the observations made in this order.
4. The said decision shall be taken within one month from the date of this order and shall be communicated to the applicant in writing.
5. In case the respondent no. 3 comes to the conclusion that the respondent no. 4 is not resident of village Mundholde, the appointment order in favour of the respondent no. 4 be cancelled and in his place applicant be appointed on that post.

There shall be no order as to costs.

(J.D. KULKARNI)
MEMBER (J)