

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 725 OF 2016
(Subject – Police Patil)**

DISTRICT: AURANGABAD

Shri Shyam S/o Chaganrao Kotkar,)
Age: 34 years, Occu. : Agriculture,)
R/o Tajnapur, Tq. Khulthabad,)
Dist. Aurangabad.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through Secretary,)
Home Department,)
Mantralaya, Mumbai- 32.)
- 2) **The Sub-Divisional Officer/**)
Magistrate,)
Kannad, Dist. Aurangabad.)
- 3) **Shri Sanjay S/o Namdeo Kotkar)**
Age- 45 Years, Occ- Agriculture,)
R/o Tajnapur, Tq. Khultabad,)
Dist. Aurangabad.) .. **RESPONDENTS**

APPEARANCE : Shri Kakasaheb B. Jadhav, learned Advocate
for the Applicant.

: Smt. Resha S. Deshmukh, learned Presenting
Officer for the Respondent Nos. 1 & 2.

: Shri G.M. Patel, learned Advocate for
Respondent No. 3.

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

O R D E R

(Delivered on this 15th day of January, 2018)

1. The applicant has challenged the appointment of respondent No. 3 as Police Patil of village Tajnapur, Tq.

Khultabad, Dist. Aurangabad by the respondent No. 2 vide order dated 14.07.2016 by filing the present Original Application.

2. The respondent No. 2 issued an advertisement on 23.01.2016 for filling up the various posts of Police Patil in the Kannad Sub Division including the post of Police Patil of village Tajnapur, Tq. Khultabad. According to the conditions mentioned therein, the candidate should be the resident of village where he will be appointed as Police Patil. The candidate shall not be below 25 years and above 45 years of age. In response to the said advertisement, the applicant, respondent No. 3 and others filed thier applications for the post of Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad, which was reserved for NT-C category. They appeared for written examination and after passing written examination, the applicant and respondent No. 3 were called for oral interview. The applicant secured 49 marks in the written examination and 11 marks in oral interview and thereby he secured total 60 marks, while the respondent No. 3 secured 50 marks in the written examination and 15 marks in the oral interview and secured total 65 marks. It is contention of the applicant that the respondent No. 3 had not conducted oral examination properly and he had given less mark to the applicant and more marks to the respondent No. 3 intentionally. It is his further contention that on the basis of marks secured by them,

the respondent No. 2 declared respondent No. 3 as selected candidate.

3. It is contention of the applicant that, the respondent No. 3 is a retired Government servant and getting pension of Rs. 15000/- per month. He owns agricultural land and he is receiving income from agricultural land in the tune of Rs. 10 to 12 lacs p.a., but he suppressed the said fact and obtained false Non-Creamy Layer certificate. He has also obtained false Caste certificate and on the basis of said certificate, he claimed his appointment on the said post. It is contention of the applicant that the respondent No. 3 has crossed the age of 45 years and in spite of that, the respondent No. 3 had given him appointment by appointment letter dated 14.07.2016, which is against the Recruitment rules of Police Patil. It is contention of the applicant that the respondent No. 2 had not considered all these aspects and issued appointment order in favour of respondent No. 3, which is illegal and therefore, he prayed to quash the impugned order appointing the respondent No. 3 as Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad and quashed his appointment.

4. The respondent No. 2 has filed their affidavit in reply resisted the contention of the applicant. He has denied that he has given less mark to the applicant and more marks to the

respondent No. 3 in the oral interview intentionally. He has denied that he has not conducted recruitment process as per the provisions of Recruitment Rules of Police Patil. He has denied that he has not considered the income of the respondent No. 3, while giving him appointment. It is his contention that the entire recruitment process has been conducted by him as per the G.Rs. and Recruitment Rules by constituting recruitment committee. It is his contention that after considering the performance of the candidates, who appeared for oral interview, they allotted marks to them. The respondent No. 3 secured highest marks in entire process and therefore, the appointment has been given to him. He has denied that the respondent No. 3 was not eligible to be appointed as Police Patil, as he crossed the age of 45 years. It is his contention that the entire recruitment process has been conducted as per the provisions of law and therefore, he prayed to reject the present Original Application.

5. The respondent No. 3 filed his affidavit in reply and resisted the contention of the applicant. It is his contention that he applied for the post of Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad, as he was eligible as per the terms and conditions mentioned in the advertisement. He appeared for written examination, as well as, oral interview. He has secured total 65 marks in written and oral examination and he stood first

in the merit list and therefore, he was selected for the post of Police Patil. It is his contention that he served Army for about 17 years and thereafter, he retired from the Military Service. He belonging to NT-C category and therefore, he applied for the said post. He has denied that the respondent No. 2 intentionally gave him more marks in the oral interview. It is his contention that at the time of selection for the post of Police Patil, he was below 45 years of age and therefore, selection committee selected him for the post of Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad. It is his contention that there is no illegality in his appointment as Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad and therefore, he prayed to reject the present Original Application.

6. The applicant has filed affidavit in rejoinder and contended that the age of the respondent No. 3 has to be considered at the time of his appointment as per the Recruitment rules i.e. on the date of his appointment on 14.06.2016. The respondent No. 3 crossed the age of 45 years and therefore, his appointment is illegal. Therefore, he prayed to quash the appointment of respondent No. 3.

7. I have heard Shri K.B. Jadhav, learned Advocate for the applicant, Smt. Resha S. Deshmukh, learned Presenting Officer for the respondent Nos. 1 & 2 and Shri G.M. Patel, learned

Advocate for respondent No. 3. I have perused the documents placed on record by both the parties.

8. Admittedly, the respondent No. 2 S.D.O., Kannad issued advertisement dated 23.01.2016 for filling up the various posts of Police Patil in Kannad Sub Division and invited applications from the eligible candidates. The terms and conditions of the appointment have been mentioned therein. Admittedly, the applications for the post of Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad have also been invited by the said advertisement. The Post of Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad was reserved for the candidates who were belonging to NT-C category. Admittedly, the applicant, as well as, respondent No. 3 are belonging to NT-C category and they had filed their applications along with others. They appeared for written examination and thereafter, they have been called for oral interview. Admittedly, the applicant secured 49 marks in the written examination, while the respondent No. 3 secured 50 marks in written examination. The applicant secured 11 marks in oral interview, while the respondent No. 3 secured 15 marks in oral interview. The applicant secured 60 marks in aggregate, while the respondent No. 3 secured 65 marks in aggregate. Admittedly, the respondent No. 3 stood first in merit list. It is not much disputed that the respondent No. 3 born on

19.04.1971. He completed his age of 45 years on 18.04.2016. Admittedly, he has been appointed as Police Patil by impugned order dated 14.07.2016 and at that time he crossed the age of 45 years. Admittedly, the applicant raised objection regarding selection of respondent No 3 on various grounds including his age before the respondent No. 2 and the respondent No. 2 rejected his application and appointed the respondent no. 3 as Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad by impugned order dated 14.07.2016.

9. Learned Advocate for the applicant has submitted that the respondent No. 3 has crossed his age of 45 years, when the impugned order 14.07.2016 has been issued. He has submitted that in view of the provisions of Clause-3 of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other conditions of Services) Order, 1968, no person shall be eligible for being appointed as a Police Patil, who is over 45 years of age at the time of appointment. He has submitted that the date of birth of the respondent No. 3 is 19.04.1971 and he has completed his 45 years of age on 18.04.2016. Therefore, he is not eligible to be appointed as Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad, as he was over 45 years of age at the time of his appointment i.e. on 14.07.2016. He has submitted that the respondent No. 2 has not considered the said mandatory

provisions of the Police Patil recruitment order 1968 issued by the Government. He has submitted that as the respondent No. 3 is not eligible in view of the said provisions, his appointment by the impugned order dated 14.07.2016 is illegal and therefore, he prayed to quash the appointment of respondent No. 3.

10. Learned Presenting Officer for respondent Nos. 1 and 2 and learned Advocate for respondent No. 3 have submitted that the respondent No. 2 issued advertisement/publication inviting applications of the eligible candidates for the appointment on the post of Police Patil of several villages situated in Kannad Sub Division including the village Tajnapur, Tq. Khultabad, Dist. Aurangabad. They have submitted that in the said advertisement, the eligibility criteria has been mentioned and it has been specifically mentioned that the candidate's age shall not be less than 25 years and more than 45 years as on 25.01.2016. They have submitted that the cut of date was given in the advertisement for the determination of the age of eligible candidate. On 25.01.2016, the respondent No. 3 had not crossed the age of 45 years and therefore, he was eligible. Accordingly, the respondent No. 3 was allowed to participate in the recruitment process. He appeared for the written examination, as well as oral interview, which were conducted on 28.02.2016 and 29.02.2016. Thereafter, result of both the examinations has been

declared and the respondent No. 3 was declared as selected candidate. They have submitted that on the date of selection of respondent No. 3 as Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad, he had not completed his age of 45 years and therefore, he was eligible for appointment on the post of Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad and therefore, respondent No. 2 issued impugned order dated 14.07.2016 appointing the respondent No. 3 as Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad. There is no illegality in the said order and in the appointment of respondent No. 3 as Police Patil and therefore, they prayed to reject the present Original Application.

11. I have gone through the documents placed on record by all the parties. On perusal of it, it reveals that the respondent No. 3 was born on 19.04.1971 as per the date mentioned in the SSC certificate (Page No. 71 of the paper book) and this fact has not been disputed by the respondent No. 3. He had completed his age of 45 years on 18.4.2016. It is not much disputed that on the date of filing of the application or as on 25.01.2016 as mentioned in the advertisement, the respondent No. 3 had not completed his age of 45 years and therefore, he was held eligible to participate in the recruitment process. Sub Section 3 of Section 5 of the Maharashtra Village Police Act, 1967 regarding appointment,

remuneration and other conditions of service of Police Patils empowers the Government to issue General or special order regarding recruitment, remuneration and other conditions of service of Police Patils. Accordingly, the Government issued order namely the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other conditions of Services) Order, 1968. Clause 3 of the said Order provides eligibility for appointment as Police Patil , which is reproduced as follows :-

*“3. **Eligibility for Appointment:** - No person shall be eligible for being appointed as a Police Patil who*

(a) Is under twenty five years or over forty five years of age at the time of appointment,

(b)

(c)

(d)

(e)”

It provides that no person shall be eligible for being appointed as a Police Patil, who is under 25 years of or over 45 years of age at the time of the appointment. It means that the person to be appointed as Police Patil shall not be over 45 years of age at time of appointment. The said clause provides that the age of the concerned person or candidate has to be considered for deciding his eligibility on the date of appointment. Nothing has been produced on record by the respondents to show that the age has to be considered on the cut of date as mentioned in the

notification/publication. The advertisement/publication issued by the respondent No. 2 mentioning cut of date as on 25.01.2016 for the criteria of age of candidate is against the Clause 3 of the order 1968 and the Maharashtra Village Police Act. Therefore, conditions laid down in the advertisement/publication calling applications for the post of Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad are not legal one and therefore, the age of the respondent No. 3 as on 25.1.2016 or on the date of his selection cannot be considered for his appointment. On the contrary, the Clause 3 of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other conditions of Services) Order, 1968 specifically provides that the age of the person to be appointed as Police Patil can be considered on the date of his appointment and he shall not be over 45 years of age at the time of his appointment. The respondent No. 3 was over 45 years of age when he was appointed as Police Patil of village Tajnapur on the basis of impugned order dated 14.07.2016. The said appointment of the respondent No. 3 is in violation of the Clause 3 of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other conditions of Services) Order, 1968. Therefore, the appointment of respondent No. 3 as Police Patil of village Tajnapur cannot be said to be legal. Consequently, the impugned order dated 14.07.2016 issued by the respondent No. 2 is also illegal.

12. Learned Advocate for the applicant has relied on the judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **W.P. No. 8253/2013** in case of **Suresh S/o Gopinath Jate Vs. The State of Maharashtra & Ors.** on 28.08.2014, wherein it is observed as follows:-

“6. We have considered the submissions canvassed by the learned counsel for the parties. The advertisement could not be beyond the rules and the statute. No provision under the Maharashtra Village Police Patil Act, 1967 has been pointed out, which lays down the maximum age for a reserved category candidate being enhanced to 50 years. Sub-section (3) of Section 5 of the said Act lays down the eligibility criteria for appointment of a Police Patil. It states that no person shall be eligible for being appointed as a Police Patil, who is under 25 years or over 45 years of age at the time of appointment. No rule has been pointed out nor any other notification has been shown wherein the age has been enhanced by five years for a reserved category candidate.”

13. I have gone through the above said decision referred by the learned Advocate for the applicant. I have no dispute regarding settled legal principles laid down therein. The said principles are most appropriately applicable in the instant case. The respondent No. 3 was above the age of 45 years on the date of his appointment therefore, his appointment cannot be said to be legal one.

14. As discussed above, the appointment of respondent No. 3 as Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad is not legal one, as it is in violation of the Clause 3 of the order 1968. The impugned order dated 14.07.2016 issued by the respondent No. 2 appointing respondent No. 3 as Police Patil of village Tajnapur is also illegal and therefore, it requires to be quashed and set aside, by allowing the present Original Application.

15. In view of the discussions in foregoing paragraphs, the Original Application is allowed. The impugned order dated 14.07.2016 issued by respondent No. 2 appointing the respondent No. 3 as Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad is hereby quashed and set aside. The respondent No. 2 is directed to consider the case of the applicant, who stood second in the merit list for the appointment of Police Patil of village Tajnapur, Tq. Khultabad, Dist. Aurangabad, if he is otherwise eligible. There shall be no order as to costs.

(B.P. PATIL)
MEMBER (J)

PLACE : AURANGABAD.
DATE : 15.01.2018.