

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 161 OF 2013

DISTRICT: LATUR

Shri Siraj s/o Rasidmiya Deshmukh,
Age: 40 years, Occu. : Service & Agri.,
R/o Village Chapoli, Tq. Chakur,
Dist. Latur.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai.
(Copy to be served on C.P.O.
MAT Aurangabad Bench)
- 2) The Sub Divisional Magistrate,
Udgir, Sub-Divisional Officer,
Tq. Udgir, Dist. Latur.
- 3) Vilas S/o Shesherao Dhondapure,
Age 57 years, Occu.: Agri,
R/o Chapoli, Tq. Chakur,
Dist. Latur.

.. **RESPONDENTS**

APPEARANCE : Shri A.A. Khande learned Advocate holding for
Shri B.N. Gadegaonkar, learned Advocate
for the Applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the Respondent nos. 1 & 2.

: Shri A.D. Gadekar, learned Advocate for
respondent no. 3.

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

J U D G M E N T

(Delivered on this 30th day of January, 2017.)

1. Heard Shri A.A. Khande, learned Advocate holding for B.N. Gadegaonkar, learned Advocate for the applicant, Shri V.R. Bhumkar, learned Presenting Officer for the respondent nos. 1 & 2 and Shri A.D. Gadekar, learned Advocate for respondent no. 3.
2. The present Original Application has been filed by the applicant, against the orders dated 9.3.2009 passed by the Sub Divisional Magistrate, Udgir, whereby, the applicant was removed from the post of Police Patil in view of the complaint filed against him to the effect that the applicant has not completed age of 25 years on the date of advertisement for that post. The relevant paragraph in the said order is as under:-

“तहसीलदार यांचा अहवाल व निलंबित पोलीस पाटील श्री सिराजोद्दीन रशिदमियाँ देशमुख यांचे म्हणणे त्यांच्या विधीज्ञांचा लेखी युक्तीवाद तसेच तक्रारदार श्री विलास शेषेराव धोंडापुरे यांचा जबाब आणि मुख्याध्यापक संजीवणी विद्यालय चापोली यांचा जबाब व संविकेतील उपलब्ध कागदपत्रा वरून या कार्यालयाने मौ चापोली येथील पोलीस पाटील पद भरण्या करीता दिनांक २०.१२.१९९७ रोजी जाहिर प्रगटन काढले होते. याच तारखेस महाराष्ट्र ग्राम पोलीस अधिनियम १९६७ चे कलम ३ नुसार उमेदवाराने त्यांचे वय हे २५ पूर्ण करावयास हवे होते. प्रस्तुत प्रकरणात अर्जदाराच्या विधीज्ञांनी दाखल केलेले २००८ (५) ए एलएल एमआर ३५८ मधील रिट याचिका क्रमांक ६९६२/२००६ मधील निर्णया नुसार नगर परिषदेने दिलेला जन्म दाखला पुरावा म्हणून ग्राह्य धरणे योग्य असल्याने व अर्जदार सिराजोद्दीन देशमुख यांनी ही आपल्या जवाबात त्यांची जन्म तारीख नगर परिषदेने दिलेल्या जन्म तारखे नुसार १०.०३.१९७३ असल्याचे मान्य केले आहे. या पुरावा वरून अर्जदाराचे जाहिर प्रगटन काढलेल्या

तारखेस २४ वर्षे ९ महिने होते. ग्राम पोलीस अधिनियम १९६७ चे कलम ३ नूसार अर्जदाराने आपले वय २५ वर्ष पुर्ण करणे आवश्यक होते.

महाराष्ट्र ग्राम पोलीस अधिनियम १९६७ चे कलम ९ (ई) तसेच महाराष्ट्र ज्ञापन परिपत्रक गृह विभाग बी.व्ही.पी. ०२९९/सीआर/५६ पोल-८ दिनांक ७ सप्टेंबर १९९९ मधील तरतूदी व मला प्राप्त झालेल्या अधिकारानूसार मौ. चापोली येथील निलंबित पोलीस पाटील श्री सिराजोद्दीन रशिदमियाँ देशमुख यांना मौ चापोली येथील पोलीस पाटील पदावरून कायम काढून टाकण्यात येते.”

3. Being aggrieved by the aforesaid order, the applicant files O.A. No. 353/2009. This Tribunal at Aurangabad Bench in O.A. No. 353/2009 was pleased to passed order on 15.07.2009 as under:-

“9. For all these reasons the application succeeds. The impugned order dated 9.3.2009 passed by Sub Divisional Magistrate, Udgir is quashed and set aside. Applicant is reinstated as Police Patil, Chapoli. The intervening period should be treated as continuous service. Applicant shall be entitled to the wages of the period between termination and resumption as a result of this order. Applicant must resume within fortnight from today.

10. Original Application stands disposed of with no order as to costs. ”

4. Against the said order, the complainant Shri Vilas Sheshrao Dhondapure, had filed a Review Application No. 7 of 2009 and the said Review Application came to be disposed of by

this Tribunal at Aurangabad Bench vide order dated 25.06.2010. The relevant order for the purpose of this application is in paragraph no. 9 which reads as under:-

“9. Last but not the least we cannot avoid feeling that even the order of learned SDM dated 9.3.2009 was infructuous on the day it was rendered. This is because if 10.01.1974 is accepted to be correct date of birth of applicant, he was below 25 years at the time of his appointment on 8.9.1998 but by the time decision was rendered by learned SDM applicant was already reappointed on 19.9.2003 when he was certainly above 25 years of age, irrespective of his birth date being either 10.03.1973 or 10.01.1974.

For all above reasons we find that review petition merits dismissal and the same is accordingly dismissed.”

5. Being aggrieved by the order passed in O.A. 353/2009 and Review Application No. 07/2009, the complainant Shri Vilas Sheshrao Dhondapure filed W.P. No. 10890 of 2009. In the said W.P., the order has been passed on 31.07.2012 by the Hon'ble High Court of Judicature at Bombay at Aurangabad and the relevant paragraph nos. 3 & 4 of the said order are as under:-

“3] After hearing respective counsel, we find that the date of appointment as specified in the

advertisement is not a certain event with respect to which or in relation to which age can be computed. Last date for submission of application as given in it, can therefore be presumed as correct date. However, we are not concluding the controversy and we keep the issue open because MAT has not addressed this issue at all.

4] As Shri Sakolkar has attempted to show to this Court that there is a 3rd date of birth of respondent no. 3 in existence which ought to have been considered by MAT, we permit the petitioner to make appropriate representation afresh to respondent no. 2 and we direct respondent no. 2 to give fresh look to the entire controversy in accordance with law, after giving petitioner and respondent no. 3 necessary opportunity. If representation is made within a period of 8 weeks from today, respondent no. 2 shall consider it, independently in his own wisdom within a further period of 4 months. Needless to mention that the ongoing continuation of respondent no. 3 as Police Patil shall not be affected till the respondent no. 2 passes further suitable orders in this respect.”

6. In view of the aforesaid direction in the W.P., the complainant Shri Vilas Sheshrao Dhondapure filed representation before the respondent no. 2, the Sub Divisional Magistrate, Udgir and the said representation has been decided finally by the Sub

Divisional Magistrate, Udgir vide order dated 14.01.2013 in last but one paragraph before operative order and the operative order of the Sub Divisional Magistrate, Udgir has observed as under:-

“ अर्जदार व गैरअर्जदार यांचे म्हणणे व संचिकेतील उपलब्ध कागदपत्राचे अवलोकन केले असता असे दिसून येते की, मौ. चापोली ता. चाकूर येथील पोलीस पाटील पद भरण्यासाठी दिनांक २०.१२.१९९७ रोजी जाहीर प्रगटन काढले होते. सदर जाहीर प्रगटनाच्या अनुषंगाने श्री सिराजोद्दिन रशिदमियाँ देशमुख यांनी अर्ज सादर करून त्या अर्जासोबत जन्मतारखेचा पुरावा म्हणून संजिवनी माध्यमिक व उच्च माध्यमिक विद्यालय चापोली या शाळेची टिसीक. ३२२ ज्यामध्ये जन्म तारीख १०.०१.१९७२ नमुद असलेली दाखल केलेली होती. त्यांचे इतर सर्व शालेय अभिलेख जसे टी सी क. ३१६, प्रवेश पत्रिका, टी सी क. ७६, टी सी क. १५२ व प्रवेश निर्गम उत्तरा यामध्ये श्री सिराजोद्दिन रशिदमियाँ देशमुख यांची जन्म तारीख १०.०१.१९७४ लिहिलेली आहे. ज्यानुसार त्यांचे वय विहित रोजी २५ वर्ष पुर्ण नव्हते हे सिध्द होते. श्री सिराजोद्दिन रशिदमियाँ देशमुख यांनी दाखल केलेले जन्म प्रमाणपत्र ज्यामध्ये जन्म तारीख १०.०३.१९७३ अशी लिहिलेली आहे त्याप्रमाणे श्री देशमुख सिराजोद्दिन यांनी आपली जन्म तारीख १०.०३.१९७३ शालेय अभिलेखामध्ये दुरुस्त करण्यासाठी कसलाही कायदेशिर प्रयत्न यापुर्वी केल्याचे दिसून येत नाही. यावरून त्यांचे वय २५ वर्षापेक्षा कमी असल्याचे स्पष्ट होते. करिता महाराष्ट्र ग्राम पोलीस अधिनियम १९६७ चे कलम ९ व ११ मधील तरतूदीनुसार व महाराष्ट्र ग्राम पोलीस अधिनियम १९६७ चे कलम ९(ई) तसेच महाराष्ट्र ज्ञापन परिपत्रक गृह विभाग बी. व्ही.पी. ०२९९/सीआर/५६ पोल-८ दिनांक ७ सप्टेंबर १९९९ मधील तरतूदी नुसार खालील प्रमाणे आदेश पारीत करण्यात येतो.

आदेश

१. अर्जदाराचा अर्ज मंजूर करण्यात येतो व तत्कालिन उपविभागीय दंडाधिकारी, उदगीर यांचे दि. ०९.०३.२००९ चे श्री सिराजोद्दिन रशिदमियाँ देशमुख यांना मौजे चापोली ता. चाकूर येथील पोलीस पाटील पदावरून कायम काढून टाकण्याचे आदेश कायम करण्यात येते.
२. श्री सिराजोद्दिन रशिदमियाँ देशमुख यांना देण्यात आलेला पालिस पाटील पदाची नियुक्ती आदेश क्र. २००३/आस्थापना/कावी/सीआर-५९ दिनांक १९.०९.२००३ हा रद्द करण्यात येतो.

स्वाक्षरी/-
(एल. आय. पठाण)
उपविभागीय दंडाधिकारी

This order of Sub Divisional Magistrate, Udgir dated 14.01.2013 is therefore, under dispute in this Original Application.

7. The Sub Divisional Magistrate, Ahmedpur accordingly issued order on 13.04.2015 and cancelled the order of appointment of the applicant as Police Patil dated 19.09.2003 and informed the applicant that he cannot be given extension on the post of Police Patil. The applicant has therefore, amended the Original Application and has claimed that the impugned order dated 14.01.2013 by Sub Divisional Magistrate, Udgir terminating the applicant from the post of Police Patil Chapoli, Tq. Chakur, Dist. Latur as well as order dated 13.04.2015 passed by the learned Sub Divisional Magistrate, Ahmedpur refusing to grant extension to the applicant on the post of Police Patil be quashed and set aside.

8. The respondent nos. 2 & 3 have resisted the claim of the applicant and justified both these orders. It is stated that the age of the applicant on the date of advertisement i.e. on 20.12.1997 was less than 25 years and therefore, the applicant was not entitled for being appointed as Police Patil, since, he did

not fulfill minimum age requirement criteria. The respondents have therefore, rightly terminated the services of the applicant.

9. The respondents further stated that the applicant has been filed different date of birth certificates and the documents regarding his date of birth from which it seems that three different dates of birth are given by the applicant, which are 10.01.1972, 10.03.1973 & 10.01.1974. The applicant has therefore, played a fraud on the competent authority.

10 From the pleaded facts on record, it seems that the advertisement for the post of Police Patil of village Chapoli, Tq. Chakur, Dist. Latur, was published on 20.12.1997. Initially the applicant discloses his date of birth as 10.03.1973 and therefore, on the date of advertisement the applicant's age was 24 years, 9 months and 10 days. He has applied on 9.01.1998 for the post of Police Patil and on that date his age was 24 years and 10 months. He was appointed for the post first time as Police Patil vide order dated 8.9.1998 and on the date of appointment, he was 25 years, 5 months and 28 days. Thereafter, second appointment was given to him on 19.03.2009 and on that date his age was 30 years, 6 months and 9 days. However, after due enquiry subsequently, the S.D.M. has held his date of birth as 10.01.1974.

11. This Tribunal in its earlier order dated 15.07.2009 was pleased to observe that on the date of appointment i.e. on 8.9.1998 the applicant certainly crossed the age of 25 years and he was entitled to apply, when he was 24 years and 10 days of age and therefore, considering the applicant's date of birth as 10.03.1973, the applicant was held entitled to be appointed as Police Patil, since he has crossed the age of 25 years on the date of appointment i.e. on 8.9.1998 and therefore, earlier impugned order dated 9.3.2009 passed by the Sub Divisional Magistrate, Udgir, was quashed and set aside and the applicant was reinstated and the intervening period was treated as continuous service.

12. The complainant Shri Vilas S/o Shesherao Dhondapure, as already stated, he had filed Review Petition and reiterated the fact that the date of birth of the applicant was 10.01.1974 and not 10.03.1973 and there was mistake of error.

13. This Tribunal observed in the order in Review Petition No. 7 of 2009, the Tribunal accepted conclusions drawn by the S.D.M. that 10.03.1973 is the correct birth date of the applicant and not 10.01.1974. The Tribunal further observed that "if, 10.01.1974 is accepted to be correct birth date of the applicant,

he was below 25 years on the date of his appointment on 8.9.1998 but by the time decisions was rendered by learned SDM applicant was already reappointed on 19.9.2003 when he was certainly above 25 years of age, irrespective of his birth date being either 10.03.1973 or 10.01.1974.”

14. In short, the Tribunal has observed that it makes no difference whether the applicant’s date of birth is 10.03.1973 or 10.01.1974 as he has crossed 25 years of age, when he was reappointed on 19.9.2003. As already stated against the said order, W.P. No. 10890 of 2010 was filed and clear directions were given to the SDM to make full-fledge enquiry.

15. The impugned order passed by the SDM after full-fledge enquiry is dated 14.01.2015, which is placed on record at paper book page nos. 52 to 54 (both inclusive). The relevant paragraph of the said order has already been reproduced earlier. From the said order, it is clear that the SDM came to the conclusion that the date of birth of the applicant was 10.01.1974 and therefore, on the date of advertisement the applicant had not crossed the age of 25 years.

16. The advertisement for the post of Police Patil of village Chapoli, Tq. Chakur, Dist. Latur dated 20.12.1997 is placed on

record at paper book page no. 55. The condition no. 1 of the said advertisement states as under:-

“१) उमेदवार नेमणुकीच्या वेळी कमीत कमी २५ वर्ष व जास्तीत जास्त ४५ वर्ष वयाचा असावा. (वयाच्या बाबतीत कोणत्याही प्रकारचा शिथिलता केली जाणार नाही.)”

17. I have also perused the Recruitment Rules, which clearly states on the date of appointment of Police Patil, the candidate must not be less than 25 years of age and not more than of 45 years of age. It is specifically stated in the advertisement that this condition as regards age shall in no circumstances be relaxed. In other words, the candidate to be appointed must have crossed 25 years of age and he should be below 45 years of age on the date of appointment. If the impugned order is taken into consideration the date of birth of the applicant being 10.01.1974, he was below age of 25 years on the date of his appointment on 8.9.1998.

18. The learned Presenting Officer submits that the observation of this Tribunal in Review Application No. 07/2009 in order dated 25.06.2010 that “if the date 10.01.1974 is accepted to be correct date of birth of the applicant, he was below 25 years at that time of his appointment on 8.9.1998, but by the time decision was rendered by the learned SDM, the applicant was

reappointed on 19.3.2009, when he was certainly above 25 years of age, irrespective of his birth date being either 10.03.1973 or 10.01.1974” is incorrect, since the applicant was not reappointed on 19.09.2003 but it was a continuation order.

19. I have perused the first appointment order dated 8.9.1998 which is placed on record at paper book page no. 10 (Exhibit 'A'). In the said order, it is stated that the applicant was appointed as Police Patil Chapoli, Tq. Chakur, Dist. Latur from 8.9.1998 to 7.9.2003 i.e. for five years. The so-called reappointment order of the applicant is at paper book page no. 11 and the same is dated 19.09.2003. It refers the application given by the applicant on 22.08.2003 and the report of the Police Sub Inspect, Police Station Chakur dated 3.8.2003 thereon. This appointment order reads as under:-

“क. २००३/आस्था/सीआर/कावि/५९
उपविभागीय दंडाधिकारी कार्यालय,
उदगीर, दिनांक- १९.९.२००३

नमुना
(खंड ५ अ व खंड ११ पहा)

--:नियुक्ती पत्र :-

श्री देशमुख सिराज रशिदमियाँ रा चापोली ता. चाकूर यांची वरील संदर्भ क्र. (१) अन्वये पोलीस पाटील म्हणून नियुक्ती करण्यात आली असून त्यांची मुदत दि. ७.९.२००३ पर्यंत आहे. संबंधीताचे पुढे मुदत वाढवून देण्याची विनंती वरील संदर्भ क्र.(२) अन्वये केली आहे. पोलीस उपनिरीक्षक पोलीस ठाणे चाकूर ता. चाकूर यांनी संबंधीताची वर्तणूक आणि चारित्र्य चांगली असल्याचा अहवाल सादर करून पुढे मुदत वाढ देण्याबाबत अभिप्राय दिला आहे. त्याअनुशंगाने

श्री देशमुख सिराजोद्दिन रशिदमियाँ रा. चापोली ता.चाकूर यांची लातूर जिल्हयाच्या चाकूर तालुक्यातील चापोली या गावचे पोलीस पाटील म्हणून दिनांक ८.९.२००३ रोजी सुरु होणा-या व दिनांक ७.९.२०१३ रोजी संपणा-या मुदतीकरता (नेमणुक) मुदत वाढ देण्यात आली आहे. महाराष्ट्र ग्राम पोलीस पाटील सेवा प्रवेश, वेतन, भत्ते आणि सेवेच्या इतर शर्ती आदेश १९६८ च्या उपबंधास अधिन ठेउन ही मुदतवाढ (नेमणुक)करण्यात आली आहे.

२) आज दि. १९ माहे सप्टेंबर सन २००३ रोजी माझ्या सही शिक्क्यानिशी देण्यात आले.

दिनांक :- / / २००

स्वाक्षरीत /-
(किशन ना. जावळे)
उपविभागीय दंडाधिकारी, उदगीर”

20. The plain reading of the aforesaid letter shows that the said letter of appointment is not fresh appointment order but it is a continuation of earlier order of appointment which was valid up to 7.9.2003 and from the said letter it seems that the applicant's service, which was to be expired on 7.9.2003 has been further extended from 8.9.2003 to 7.9.2013 i.e. for 10 years. It is stated in the order that it was extension order to the appointment, which was also given in favour of the applicant on 8.9.1998.

21. From the aforesaid circumstances, it is clear that the applicant was appointed as Police Patil for the period from 8.9.1998 to 7.9.2003 vide order dated 8.9.1998 and while in service, the applicant on 22.08.2003 requested for extension of tenure and the said extension was granted vide order dated 19.09.2003. Thus by no stretch of imagination the order dated

19.9.2003 can be said to be order of reappointment or fresh appointment, at the most it can be said to be extension of the appointment order dated 8.9.1998.

22. From the aforesaid discussions in foregoing paragraphs, I am satisfied that the order dated 19.9.2003 issued by the Sub Divisional Magistrate, Udgir is not reappointment order but is a continuation of the appointment order dated 8.9.1998. If the impugned order of Sub Divisional Magistrate, Udgir dated 14.01.2013 is taken into consideration, it will be clear that the applicant, as well as, complainant Shri Vilas Sheshrao Dhondapure were given full opportunity to submit documents by the S.D.M. and after going through all the documents, the S.D.M. came to the conclusion that the date of birth of the applicant was 10.01.1974 and therefore, on the date of appointment of the applicant i.e. on 8.9.1998 the applicant had not completed 25 years of age and such he was not qualified for being appointment on the said post. Had it been a fact that the applicant was appointed as Police Patil afresh on 19.09.2003, it could have been said that on the date of second appointment the applicant had crossed the age of 25 years. It is not the case that fresh appointment order was issued on 19.09.2003. However, order dated 19.9.2003 is nothing but continuation of earlier order of

appointment dated 8.9.1998, which was invalid and therefore, the applicant had rightly been removed from the post of Police Patil. The impugned order dated 13.04.2015 issued by the learned SDM, Ahmedpur has been issued in consequences of the order dated 14.01.2013 passed by the Sub Divisional Magistrate, Udgir. I therefore, do not find any illegality in both these orders passed by the learned Sub Divisional Magistrate, Udgir and the Sub Divisional Magistrate, Ahmedpur. Hence, I pass following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

(J.D. KULKARNI)
MEMBER (J)

KPB/S.B. O.A. No. 161 OF 2013 JDK 2017 Police Patil