

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

DIST. PARBHANI.

ORIGINAL APPLICATION NO.585/2016.

Pralhad s/o Munjaji Raner,
Age 28 years, Occu.Agriculture,
R/o Sarangpur, Tq. Parbhani,
Dist. Parbhani.

-- **APPLICANT**

VERSUS

1. The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai-32.
(Copy to be served on C.P.O.
MAT, Aurangabad)
2. The Collector,
Parbhani, Tq. & Dist. Parbhani.
3. The Sub Divisional Magistrate,
Parbhani, Tq. & Dist. Parbhani.
4. The Tahsildar,
Parbhani, Tq. & Dist. Parbhani.
5. Rukmin Maruti Shinde,
Age major, Occ. Household,
R/o Sarangpur, tq. & Dist.
Parbhani.

-- **RESPONDENTS.**

APPEARANCE : Shri D. T. Devane, learned Advocate for the Applicant.
: Smt P. R. Bharaswadkar , learned Presenting Officer for the Respondents no.1 to 4; and
: Shri A. S. Deshmukh, learned Advocate for the Respondent no.5.

CORAM : **Hon'ble Shri JD Kulkarni, Member (J).**

DATE : 24.01.2017.

JUDGMENT.

(Delivered on this 24th day of January, 2017)

1. Heard Shri D. T. Devane, learned Advocate for the Applicant, Smt P. R. Bharaswadkar, learned Presenting Officer for the Respondents no.1 to 4 and Shri A. S. Deshmukh, learned Advocate for the Respondent no.5.
2. The applicant is claiming that the impugned order dated 16.7.2016 passed by Respondent no.3 i.e. Sub Divisional Magistrate, (S.D.M.) Parbhani, disqualifying the applicant for the post of Police Patil of village Sarangpur Tq. & Dist. Parbhani be quashed and set aside and respondent no.3 be directed to issue appointment order in favour of applicant.
3. During pendency of the application the respondent no.5 Rukmin Maruti Shinde came to be appointed as Police Patil of village

Sarangpur. The applicant is claiming that the said order be quashed and set aside.

4. From the admitted facts and records it seems that the applicant and Respondent no.5 applied for the post of Police Patil of village Sarangpur in response to the advertisement issued by Respondent no.3. Applicant and respondent no.5 applied for the post, appeared for written examination and oral interview. It is stated that, the applicant has secured highest marks as seems from the selected list dated 27.2.2016.

5. Before the applicant was called for interview, the Respondent no.5 Rukmin Maruti Shinde filed an objection against the applicant on the ground that criminal case bearing No.289/2015 was filed against applicant and one more candidate. The Respondent no.3 heard the objection and vide order dated 22.2.2016 held that the objection was not proved and therefore the applicant was allowed to appear for oral interview which was held on 22.2.2016. As already stated the merit list was published in which the applicant was selected on merit at Sr.No.1. On 22.2.2016 similar objection was again taken before Respondent no.3 and the Respondent no.3 rejected applicant's selection. In fact, the appeal before said authority is not maintainable. The applicant further submitted that,

complaint was filed against one Vithal and it was false, bogus and frivolous and on the basis of said complaint chapter case under Section 107 of Cr.P.C. was registered against the applicant and one another candidate and it concluded on 28.6.2016.

6. The Respondent nos. 3 & 4 have filed reply affidavit and admitted that, the applicant got 65 marks, which was highest. It is stated that, a criminal case was registered against the applicant and the same has been closed on 22.2.2016, one Rukmin Shinde filed complaint against the applicant and the Respondent authorities found that the applicant's character was not good. It is stated that the Sub Divisional Magistrate was working in dual capacity one as S.D.M. and another as Administrative quasi-judicial work as a Head of the appointment committee and therefore, the case was reconsidered though earlier applicant was held eligible. Though the applicant was earlier found eligible for the interview, he was found unfit for appointment and therefore, appointment has been refused to the applicant.

7. The Respondent no.5 has filed reply affidavit. It is stated that, there was basic change in the circumstances when two different orders were passed by respondent no.3. The first order was passed when applicant was merely a candidate in selection process,

whereas the second order dated 16.7.2016 was passed when the selection process was already completed and the applicant was selected. The respondent no.3 was sitting in appeal over his previous order dated 22.2.2016, while passing order dated 16.7.2016. It is stated that the candidate like applicant against whom offence was registered cannot be permitted to participate in the selection process.

8. From the admitted facts on record it will be clear that earlier objection was taken to the appearance of the applicant in oral interview by Rukmin Maruti Shinde i.e. Respondent no.5 and the said objection has been decided by S.D.M. Parbhani i.e. Respondent no.3. While rejecting the objection the Respondent no.3 observed as under :-

“आक्षेप अर्जदारांनी सादर केलेला आक्षेप तसेच त्याअनुषंगाने त्यांचेमार्फत सादर करण्यात आलेला युक्तवाद तसेच गैरअर्जदारामार्फत सादर करण्यात आलेला युक्तिवाद यांचे अवलोकन केले असता खालील बाबी स्पष्ट होतात.

१. गैरअर्जदार क्रमांक १ व २ यांचेवर पोलीस स्टेशन परभणी ग्रामीण येथे अदखलपात्र गुन्ह्याची नोंद आहे हे वस्तुस्थिती आहे.
२. सदरील अदखल पात्र गुन्हा हा पोलीस भरतीची प्रक्रिया सुरु झाल्यानंतर नोंदविण्यात आला आहे.
३. दोन्ही उमेदवारांची गुन्हागारी पार्श्वभूमी असल्याचे आक्षेप अर्जदार सिद्ध करू शकले नाही.
४. नोंदविण्यात आलेला अदखलपात्र गुन्हा हा पोलीस पाटील भरतीची प्रक्रिया सुरु झाल्यानंतर नोंदविण्यात आला आहे.

५. आक्षेप अर्जदारांचे विधीज्ञ अदखलपात्र गुन्हा दाखल असलेले उमेदवार हे तोंडी परीक्षेस अपात्र ठरविण्यास पात्र आहेत याबाबत कोणतीही कायदेशीर तरतुद माझे समोर सादर करू शकले नाही.
६. केवळ अदखलपात्र गुन्हा दाखल असणे ही बाब मुलाखतीसाठी अपात्र ठरविण्यास पुरेशी नसल्यामुळे आक्षेप अर्ज निकाली काढणे योग्य असल्याचे निर्णय प्रत आलो असून सदरील प्रकरणात या न्यायालयात खालील प्रमाणे निर्णय पारीत करण्यात येत असून तो सदरील न्यायालयात समक्ष जाहीर करण्यात आला आहे.

आदेश

१. आक्षेप अर्जदार श्रीमती रक्मीणी मारोती शिंदे रा. सारंगपुर यांचा आक्षेप अर्ज फेटाळण्यात येतो.
२. गैरअर्जदार क्र. १ व २ अनुक्रमे श्री प्रल्हाद मुंजाजी रणे व काशिनाथ मुंजाजी रणे यांना पोलीस पाटील पदाच्या मुलाखतीसाठी पात्र ठरविण्यात येते.
३. सर्व संबंधितास कळविण्यात यावे व संचीका अभिलेख कक्षात वर्ग करावी.

9. Thereafter, the applicant again filed objection before the S.D.M. Parbhani and the said objection has been decided by S.D.M. Parbhani in his capacity as a Chairman of Police Patil recruitment process and S.D.M. Parbhani. The said objection has been decided on 16.7.2016 and in the said order the objection was upheld and the applicant was held not eligible for the post of Police Patil. It is not known as to under what provisions the appeal was filed by Rukmin Marutirao Shinde before the S.D.M. i.e. whether in his capacity as S.D.M. or Chairman of the appointing authority. The respondents could not place on record any documentary evidence to show that said appeal can be filed against the order of S.D.M. before the so-called appointing authority. It is also surprising to note that, earlier the S.D.M. found applicant fit for interview on the ground that, the offence was registered after recruitment process was initiated. Even

otherwise merely because some non-cognizable offence is registered against the applicant in which proceedings under Section 107 of Cr.P.C. were initiated that itself will not mean that the applicant was of bad character. Mere registration of offence can not prove the character. Ultimately it was a chapter case in which both the parties have been directed to execute bond for good behavior. Even considering the nature of the offence it will be seen that, it was trifling offence and it was non-cognizable offence and it seems that, on account of some previous dispute there might be some incident for which applicant alone cannot be held responsible.

10. The respondents could not said that, there was any provision for filing appeal against the order of S.D.M. whereby applicant was held fit for appointment of Police Patil.

11. The learned Presenting Officer invited my attention to one report dated 2.3.2016 issued by Police Inspector Parbhani (Rural). From which it seems that, earlier a report was submitted that, applicant was having good character but merely on the basis of registration of non-cognizable offences against the applicant it has been stated that wrong report was sent.

12. From the facts on record as discussed it is difficult to accept the order passed by Respondent no.3 in his capacity as a Chairman of the recruitment Board that applicant was not of good character. Had it been a fact that said character was to be verified by the Board all the Members should have been party to such order.

13. The learned Advocate Shri A.S. Deshmukh for the Respondent no.5 invited my attention to one G.R. dated 4.11.1968, which is recruitment Rules as regards Police Patil. He invited my attention to Sub Clause "E" of Clause 3, which reads as under:-

“(इ) संक्षिप्त चौकशीनंतर उक्त व्यक्ती वाईट वर्तणुकीची आहे असे सक्षम प्राधिका-याकडून न्यायनिर्णित करण्यांत आले असेल किंवा उक्त प्राधिका-याच्या मते उक्त व्यक्तीची पूर्वीचे वर्तणूक, पोलीस पाटील म्हणून त्याची नेमणूक केली जाण्यास त्यास अयोग्य ठरवित असेल, अशी कोणतीही व्यक्ती पोलीस पाटील म्हणून नियुक्त केली जाण्यास पात्र असणार नाही.

14. Learned Advocate for the applicant further submits that, as per clause "E" if the person is not holding good character, such person shall not be appointed for the post of Police Patil. The said clause states about the disqualification. In my opinion, had it been a fact that the applicant was not of good character, the respondent no.3 ought to have initiated proper inquiry in that regard before issuing order of appointment. In this particular case the inquiry

was already held by the respondent no.3, when the applicant was to be called for oral interview and all the objections taken in the said inquiry were considered and it was found that applicant was found fit for oral interview. In such circumstances, there was absolutely no reason for S.D.M. Parbhani to accept the objection and to review its own order on the same material placed on record. As already stated the nature of the crime registered against the applicant should have been considered so also the fact that it was a non-cognizable offence, that too lodged after recruitment process was initiated. In view of this, the objection taken by Respondent no.5 which was reviewed vide order dated 16.7.2016 without holding fresh inquiry cannot be sustained in law.

15. Clause "E" of the clause 3 of the recruitment rules for the post of Police Patil makes it crystal clear that, the competent authority (सक्षम अधिकारी) can take decision as regards conduct and character of the Officer to be appointed as a Police Patil and if such competent authority decides that the candidate is unfit the person can not be appointed as Police Patil. The definition of competent authority (सक्षम अधिकारी) is given in sub clause "C" of clause "2" and it includes i) Government or ii) District Magistrate or iii) the competent Officer to appoint Police Patil or any other Officer.

16. In this case the Sub Divisional Magistrate firstly opined that the applicant was fit for post and thereafter in his capacity as a Head of the appointing authority came to the conclusion that the applicant was not fit. Such order should not have been passed by one and the same authority.

17. It is material to note that, this O.A. was filed on 25.7.2016 and at that time Respondent no.5 was not given appointment. On the very day i.e. on 26.7.2016 when the matter came before this Tribunal the order dated 16.7.2016 passed by respondent no.3 i.e. S.D.M. Parbhani was stayed. In spite of such interim order the respondent no.3 i.e. Sub Divisional Magistrate, Parbhani issued order in favour of respondent no.5 and it is stated that such order has been served on respondent no.5 on 29.7.2016, and therefore, the respondent no.5 was joined as party. The respondent no.5 therefore, came to be appointed in spite of stay order to the impugned order dated 16.7.2016.

18. In view of the discussion in foregoing paragraphs I am satisfied that the order dated 16.7.2016 is not legal and proper and deserved to be quashed. Hence, the following order.

ORDER.

The O.A. allowed in terms of prayer clauses X (C), (D) & (D-1) with no order as to costs.

atpoa58516

MEMBER (J)

