

**CORAM : Hon'ble Shri Justice V.K. Jadhav,
Member (J)**

RESERVED ON : 10.09.2024
PRONOUNCED ON : 24.10.2024

ORDER

1. Shri M.V. Thorat, learned counsel for the applicant, Smt. Resha S. Deshmukh, learned Presenting Officer for respondent authorities and Shri A.S. Deshmukh, learned counsel for respondent no. 04.

2. The matter is finally heard with the consent of both the sides at the admission stage.

3. By filing this Original Application, the applicant is seeking quashing and setting aside the impugned order passed by the Sub Divisional Officer, Nanded dated 31.01.2023 in view of the advertisement No. 2023/Mashaka-1/Astha-2/CR, dated 01.01.2024. The applicant is also seeking directions to respondent nos. 01 to 03 to cancel the appointment order given to respondent no. 04 and also seeking directions to the respondent nos. 01 to 03 to issue appointment order of the post of Police Patil of village Patnur, tq. Ardhapur, Dist. Nanded to the applicant in view of the advertisement No. 2023/Mashaka-1/Astha-2/CR, dated 01.01.2024.

4. Brief facts giving rise to this Original Application are as follows:-

In response to the advertisement bearing No. 2023/Mashaka-1/Astha-2/CR, dated 01.01.2024 the applicant has submitted online application for the post of Police Patil for village Patnur, tq. Ardhapur, Dist. Nanded. The applicant has secured highest 59 marks in the examination. However, respondent no. 04 has filed objection stating therein that the applicant has not resigned from the post of Sarpanch of Granpanchayat, Patnur and as such violated the condition no. 5 of the advertisement. By the impugned order dated 31.1.2024 the respondent no. 3 has allowed the said objection and declared the applicant as ineligible for appointment on the post of Police Patil of said village and further directed that the respondent no. 04 be appointed to the post of Police Patil of village Patnur, tq. Ardhapur, Dist. Nanded. Hence, this Original Application.

5. The learned counsel for the applicant submits that the applicant has submitted her resignation application on 29.12.2023 to the Block Development Officer, Panchayat Samiti, Ardhapur, Dist. Nanded. The learned counsel submits that in

terms of the advertisement the aspiring candidates were supposed to fill in the online applications from 1.1.2024 to 8.1.2024. Learned counsel submits that the applicant has submitted the resignation of the post of Sarpanch of Granpanchayat, Patnur to the Panchayat Samiti, who has to accept it. It is a part of record. However, the respondent no. 3 has passed the impugned order dated 31.1.2024 with unjust reasons.

6. The learned counsel for the applicant submits that the Hon'ble Supreme Court in **Civil Appeal No.(S) 2712/2019 (arising out of SLP (c) No. (s) 21256/2018)** has referred the Circular dated 10.05.1983 issued by the Government in this regard, wherein it is specifically stated that an office bearer or member of a local body who is the candidate for a post of Police Patil may be considered for such post but he could be appointed as Police Patil only on his actual designation from that body being effect. Learned counsel submits that the respondent no. 03 has illegally, incorrectly and improperly cancelled the appointment of the applicant.

7. Learned counsel for the applicant submits that during pendency of this Original Application the applicant has submitted another resignation on 19.01.2024 of the post of

Sarpanch and Member of Grampanchayat and it was accepted on 05.09.2024 by the Panchayat Samiti, Patnur, Tq. Ardhapur, Dist. Nanded. At the time of passing impugned order dated 31.01.2024 and further appointing the respondent no. 04 on the post of Police Patil of the concerned village and till the date the resignation of the applicant is accepted by Panchayat Samit, the applicant was working as Sarpanch and Member of Grampanchayat, Patnur, Tq. Ardhapur, Dist. Nanded. Learned counsel submitted that though the applicant has submitted the resignation on 29.12.2023, however, it remained pending.

8. Learned Presenting Officer on the basis of the affidavit in reply filed by respondent no. 03 submits that if the applicant has submitted the resignation on 29.12.2023 before applying for the post of Police Patil of the village Patnur, tq. Ardhapur, Dist. Nanded, purpose of submitting the resignation again on 19.01.2024, as contended, would not arise. Learned P.O. submits that the applicant's resignation dated 19.01.2024 clearly indicates that the applicant was working as Sarpanch of Granpanchayat, Patnur till 19.01.2024. Thus, there is clear-cut breach of condition no. 5 of the advertisement dated 01.01.2024 and the applicant is thus ineligible for to be appointed on the

post of Police Patil of village Patnur, Tq. Ardhapur, Dist. Nanded.

9. Learned Presenting Officer submits that the applicant has filed application on 29.12.2023 to the Block Development Officer, Panchayat Samiti, Ardhapur, wherein it is mentioned that she is filling in application in the office of the Sub Divisional Officer, Nanded to the post of Police Patil and thus sought permission. Therefore, the application dated 29.12.2023 is not a resignation, but it is an application seeking permission for filing application for the post of Police Patil. Learned P.O. submits that after selection to the post of Police Patil on 19.01.2024 the applicant has submitted the resignation after thought. The learned P.O. submits that there is no substance in the O.A. and the same is liable to be dismissed.

10. Learned counsel for respondent no. 04 submits that the respondent no. 03 the Sub Divisional Officer, Nanded has passed the impugned order dated 31.01.2024 after hearing all the parties with sound reasons. Learned counsel submits that the order impugned is legal, proper and requires no interference. The learned counsel submits that the respondent no. 04 has now joined on the post of Police Patil of village Patur, Tq. Ardhapur, Dist. Nanded on 01.02.2024 in the office of

respondent no. 03 the Sub Divisional Officer, Nanded in terms of the appointment order dated 01.02.2024.

11. Learned counsel for respondent no. 04 submits that after selection of the present applicant for the post of Police of village Patur, Tq. Ardhapur it is noticed that the applicant is still enjoying the post of Sarpanch of Granpanchayat, Patnur and has not submitted resignation at the time of filling in the online application for the post of Police Patil, which is stipulated in condition no. 05 of the advertisement. Learned counsel submits that the applicant has submitted the resignation on 19.01.2024 after filling in the online application for the post of Police Patil and the same was not approved till date. Respondent no. 04 has, therefore, filed objection dated 23.01.2024 and in view of the same respondent no. 03 has issued notice to the concerned parties for appearance on 30.01.2024.

12. Learned counsel for respondent no. 04 submits that the applicant has not complied with the condition no. 05 of the advertisement and, therefore, she is not eligible for appointment to the post of Police Patil. Learned counsel submits that the applicant has suppressed the material facts and thereafter tried to manipulate the documents. Learned counsel submits that

there is no substance in the O.A. and the same is liable to be dismissed.

13. Being aggrieved by the order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in **Writ Petition No. 14191/2017 (Dnyaneshwar Bhikan Solunke Vs. Divisional Commissioner, Aurangabad)** the petitioner namely Dnyaneshwar Bhikan Solunke has filed the **Civil Appeal No. (S) 2712/2019 (arising from SLP (C) No. (S) 21256/2018)**. The Hon'ble Supreme court in paragraph Nos. 13 and 14 has made the following observations:-

“13. The petition was filed before the Tribunal questioning the appointment of the appellant. On 28.03.2016, he had resigned from the service as Member of Grampanchayat, Amdabad and also as the Member of Zila Parishad School Managing Committee on 17.03.2016. He was appointed as Police Patil on 27.06.2016. In view of the instructions in paragraph 2 of the Circular dated 10.05.1983, which still holds the field, he ought to have resigned before he is appointed as Police Patil. He resigned before the appointment. Paragraph 2 of the aforementioned Circular is extracted hereunder:-

“The Police Patil of a village is Government's resident representative in the village. Looking to his status, role and responsibilities he is not expected to involve himself in any political activity. In terms of Rule 5 of the Maharashtra Civil Services (Conduct) Rules, 1979 a Police Patil is precluded from taking part in politics or in an election to any legislature or local authority. A candidate for a post of Police Patil should not be a member or be

otherwise associated with any political party or organization taking part in politics. An office bearer or member of a local body who is the candidate for a post of Police Patil may be considered for such post but he could be appointed Police Patil only on his actual designation from that body being effect.

(Emphasis added)

14. In view of the aforesaid circular, which still holds field and as per the statement made by the learned counsel appearing on behalf of the State of Maharashtra, we have no hesitation to set aside the order passed by the Tribunal as well as by the High Court. Ordered accordingly. The appointment of appellant was illegally interfered with by the Tribunal and the appellant was rightly appointed to the post of Police Patil.”

14. The Hon’ble Supreme Court has specifically observed that the circular dated 10.05.1983 still holds the field and the office bearer or member of a local body, who is the candidate for a post of Police Patil may be considered for such post but he could be appointed Police Patil only on his actual designation from that body being effect.

15. In view of the above, the impugned order dated 31.01.2024 passed by the respondent no. 03, the Sub Divisional Officer, Nanded declaring the applicant ineligible only for the reason that at the time of filing the application for the post of Police Patil of village Patnur, Tq. Ardhapur, Dist. Nanded she was working as Sarpanch and Grampanchayat Member and as

such not eligible for appointment on the post of Police Patil, is not proper, correct and legal. The impugned order is thus liable to be quashed and set aside. There is no dispute that now the applicant is no more working on the post of Sarpanch and Grampanchayat Member and her resignation is accepted on on 05.09.2024 by the concerned Panchayat Samiti.

16. In view of the same, the applicant is entitled for appointment in terms of advertisement no. 2023/Mashaka-1/Astha-2/CR, dated 01.01.2024 to the post of Police Patil of village Patnur, tq. Ardhapur, Dist. Nanded and the appointment order given to respondent no. 04 is liable to be cancelled. Hence, the following order:-

ORDER

- (i) The Original Application is hereby allowed.
- (ii) The impugned order dated 31.01.2023 passed by respondent no. 03, the Sub Divisional Officer, Nanded, thereby declaring the applicant as ineligible for appointment to the post of Police Patil of village Patnur, Tq. Ardhapur, Dist. Nanded and further directing that the respondent no. 04 be appointed to the post of Police Patil of the said village is hereby quashed and set aside.

(iii) The order dated 01.02.2024 issued by respondent no. 03 thereby appointing respondent no. 04 to the post of Police Patil of village Patnur, Tq. Ardhapur, Dist. Nanded is hereby quashed and set aside.

(iv) The respondent nos. 01 to 03 are hereby directed to appoint the applicant to the post of Police Patil of village Patnur, tq. Ardhapur, Dist. Nanded.

(v) In the circumstances, there shall be no order as to costs.

(vi) The Original Application is accordingly disposed of.

MEMBER (J)

Place : Aurangabad

Date : 24.10.2024