

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.1040/2023 (S.B.)

Rupali Sandeep Gawande,
Age: about 32 years, Occ: Nil,
R/o. Plot No. 17, 18, Vidhya Nagar, Bokhara,
Near Modern School, Nagpur – 441111.

... **APPLICANT**

// V E R S U S //

- 1] The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai-400 032.
- 2] The Sub-Divisional Officer (Rural),
Office at: Ravindranath Tagore Road,
Civil Lines, Nagpur - 440 001.
- 3] Sau. Rushali Ishan Kurve
Age: about 33 years, Occ: Service,
R/o: Vidhya Nagar, Bokhara,
Near Modern School, Nagpur – 441111.

... **RESPONDENTS**

Shri M.A. Vishnu, ld. counsel for the Applicant.

Shri V.A. Kulkarni, ld. P.O. for the Respondent nos.1 & 2.

Shri A.S. Dhore, ld. counsel for the Respondent No.3.

**Coram :- Hon'ble Shri Justice M. G. Giratkar,
Vice Chairman.**

J U D G M E N T

Judgment is reserved on 24/01/2025.

Judgment is pronounced on 10/02/2025.

Heard Shri M.A. Vishnu, learned counsel for the Applicant, Shri V.A. Kulkarni, learned P.O. for the Respondent Nos.1 & 2 and Sheikh Sohailoddin, learned counsel holding for Shri A.S. Dhore, learned counsel for respondent No.3.

2. The case of the applicant in short is as under:-

Respondent No. 2 had published an advertisement bearing no. 79/2023 for the post of Police Patil on 27/04/2023 for Village Bokhara. Applicant has duly and rightly applied for the post of Police Patil. Before the declaration of the result it has come to the knowledge of Applicant that Respondent No. 3 has suppressed the material facts from the respected authorities i.e. from Respondent No 2. It has come to the knowledge of Applicant that Respondent No. 3 is having political connection with the National Level Political Party. Applicant approached to Respondent No. 2 complaining about the Respondent No.3's illegal activity.

3. Results were declared on 11/08/2023. Respondent No.3 was / is having political connection, therefore, she was selected for the post of Police Patil. Applicant again approached to Respondent No. 2 regarding the same facts, but her words fell on deaf ears of the Authority. Applicant had no choice, but to file a written complaint dated 14/08/2023 to Respondent No. 2 against Respondent No. 3 stating that she is not eligible for the post of the Police Patil, as per the terms and conditions of the advertisement. It is also contended in the written complaint that Respondent No. 3 is currently working in Swami Vivekanand Hospital, Koradi. It is also contended that Respondent No. 3 contested an election for Zilla Parishad Member / Panchayat Samiti being associated with national political party, hence she must be disqualified.

4. It is submitted that respondent No.3 was not eligible for appointment on the post of Police Patil. Therefore, appointment order is liable to be quashed and set aside. Hence, the O.A. is filed for the following reliefs:-

“9a. Allow this Original Application and disqualify the Respondent No. 3 in the interest of justice.

b. Quash and set aside the Application for advertisement filled up by the Respondent No. 2.

c. Quash and set aside the result dated 07/08/2023 of Respondent No. 3.

d. Appoint Applicant as Police Patil after the disqualification of the Respondent No. 3

e. Grant any other relief which this Hon'ble Tribunal may deem fit and proper in the facts of the case.

f. Stay the effect of the Order of Appointment dated 03/10/2023, given by Respondent No.2 in the name of Respondent No. 3, being disqualified.

g. Direct the SDO to conduct an enquiry as contemplated in law.

h. Quash and set aside the Order of Appointment dated 03/10/2023, given by Respondent No. 2 in the name of Respondent No. 3, being disqualified.”

5. The O.A. is opposed by the respondent No.2. It is stated that the advertisement was issued on 27/04/2023. The applicant and other candidates applied for the post of Police Patil. Written examination was conducted as per Rules and Regulations. As per the marks obtained by the candidates, they were called for interview. The respondent No.3 scored 59 marks, whereas, the applicant has scored 58 marks. According to merit, respondent

No.3 is appointed on the post of Police Patil of Village Bokhara. Hence, the O.A. is liable to be dismissed.

6. Respondent No.3 has filed reply. It is submitted that present respondent No.3 fulfils all the essential eligibility conditions as mentioned in the advertisement dated 27/04/2023. She has scored more marks than the applicant. Applicant has scored 58 marks, whereas, respondent No.3 has scored 59 marks. Therefore, respondent No.3 is appointed on the post of Police Patil of Village Bokhara.

7. It is submitted that applicant is not associated with any political party. Past affiliation of the respondent No.3 with the political party does not incur any disqualification. In fact, such restrictions or disqualification on the ground of association with political party is arbitrary and violative of Article 14 and 16 of the Constitution of India. It is submitted that the applicant could not get appointment on the post of Police Patil on which the respondent no.3 is selected. Therefore, she has raised objections on malafide grounds.

8. It is submitted by respondent No.3 that she had already resigned from the membership of Bharatiya Janata Party on 11/01/2023 prior to the advertisement dated 27/04/2023. Thus, she is not associated with the said political party. Hence, O.A. is liable to be dismissed.

9. Heard Learned Advocate for applicant Shri M.A. Vishnu. He has pointed out pamphlet in respect of election of the year 2020. Learned advocate has submitted that respondent no.3 contested the election of Panchayat Samiti as a candidate of Bharatiya Janata Party. Therefore, it is clear that she is associated with the political party. She was not eligible for the post of Police Patil and therefore O.A. be allowed as prayed.

10. Learned P.O. has submitted that respondent No.3 scored more marks than the applicant. She has fulfilled the criteria as per the advertisement. Therefore, she is appointed on the post of Police Patil of Village Bokhara. Hence, O.A. is liable to be dismissed. Advocate for respondent No.3 has pointed out the documents filed on record and submitted that resignation of membership of respondent No.3 of Bharatiya Janata Party is accepted on 20/01/2023 as per her application dated 11/01/2023.

Respondent No.2 has issued advertisement dated 27/04/2023, therefore, it is clear that on the day of advertisement that she was not the member of Bharatiya Janata Party. Respondent No.3 has fulfilled all the criteria of advertisement. She has scored 59 marks whereas applicant has scored only 58 marks, therefore, respondent No.3 is selected / appointed for the post of Police Patil, hence, the O.A. is liable to be dismissed.

11. During the course of submission, learned Advocate for applicant Shri M.A. Vishnu has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.2623/1995 in the case of *Shriram S/o Dattu Bhoyar VS Ashok S/o Kashinath Raut & Ano.*, decided on 09/04/2012. The fact in the cited Judgment is very much different. In the cited Judgment, the respondent no.1 who was working on the post of Police Patil had taken active participation in canvassing the candidature of his brother in the election. In reply to the show cause notice issued by the Sub Divisional Magistrate, he took a defence that he has contested the election for the Managing Committee member and got elected. It was submitted that there is no prohibition to contest election of the society for the Police Patil. He was

removed from the post of Police Patil therefore he had approached to the Court. The fact in the cited Judgment is very much different. It is held in the said Judgment that “Fact on record clearly indicates that in spite of such prohibition, the respondent was found not only taking active participation in politics, but also contesting the election and further taking role in canvassing the candidature of his brother. He was sponsored by a political party in the election.” Order of Sub-Divisional Magistrate removing respondent No.1 is perfectly correct.

12. Learned Advocate for Respondent No.3 has pointed out the Judgment of the Hon’ble Supreme Court in Special Leave Petition (Civil) No.4679/1980 in the case of ***State of Madhya Pradesh VS Ramashanker Raghuvanshi & Ano.***, decided on 21/02/1983. The Hon’ble Supreme Court has held in Para 10 as under:-

“10. We are not for a moment suggesting that even after entry into government service, a person may engage himself in political activities. All that we say is that he cannot be turned back at the very threshold on the ground of his past political activities. Once he becomes a government servant, he becomes subject to the various rules regulating his conduct and his activities must naturally be subject to all rules made in conformity with the Constitution.”

13. There is no dispute that on the date of advertisement i.e. on 27/04/2023, Respondent No.3 was not the active member of any political party. Resignation letter dated 11/01/2023 of respondent No.3 was accepted by the President of Bharatiya Janata Party, Nagpur on 20/01/2023. Therefore, it is clear that on the date of advertisement, she was not the member of political party. The past political history cannot be a ground to refuse the employment. As per the advertisement, respondent No.3 fulfills all the criteria. Respondent No.3 secured 59 marks, whereas, applicant has secured 58 marks. Therefore, respondent No.3 is rightly given appointment on the post of Police Patil of Village, Bokhara.

14. It is submitted that applicant has raised objection before declaration of result, but nothing is on record to show that applicant had taken any objection before the declaration of result. The application of applicant is dated 14/08/2023 after result which was declared on 07/08/2023. Therefore, it is clear that objection was raised by the applicant after publication of the result and when she came to know that respondent No.3 has secured more marks than her. It is mentioned in the application that respondent

No.3 is working in Swami Vivekanan Hospital, Koradi. Moreover, it is not a Government Institution nor she is a permanent employee. Nothing is on record about this objection.

15. It appears that applicant has raised objection when she was not found eligible for the post of Police Patil. She has raised objection in respect of respondent No.3 after declaration of result. It appears that respondent No.3 had already resigned from the membership of political party before the advertisement. Her resignation was accepted on 20/01/2023 and the advertisement was issued on 27/04/2023. Hence, the O.A. is filed when the applicant came to know that she is unsuccessful candidate for the post of Police Patil. Therefore, the following order is passed:

O R D E R

O.A. is dismissed with no order as to costs.

(Justice M.G. Giratkar)

Vice Chairman.

Dated :- 10/02/2025.

PRM

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 10/02/2025