

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 298 OF 2024
(Subject:- Police Patil)**

DISTRICT:- PARBHANI

Devidas S/o. Kashinath Rengade,)
Age: 34 Years, Occu.:Education,)
R/o: At Kaudgaon, Taluka Purna,)
District: Parbhani.)...**APPLICANT**

V E R S U S

1. The Sub-Divisional Magistrate,)
(Through its President of District)
Police Patil Selection 2023 Examination)
Controller), Administrative Building,)
Collector Office, Parbhani,)
District Parbhani.)

2. Sachin Namdeo Thenge,)
Age: Major, Occu. Education,)
R/o: At Kaudgaon, Taluka Purna,)
District: Parbhani.)...**RESPONDENTS**

APPEARANCE : Smt. Vijaya P. Adkine, learned counsel
holding for Shri V.B. Wagh, learned counsel
for the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent No.1.

: None present for respondent No.2.

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **13.02.2025.**

PRONOUNCED ON : **14.02.2025.**

ORDER

By filing this Original Application the applicant has prayed for quashing and setting aside the order passed by the respondent No.1 dated 14.02.2024 thereby appointing respondent No.2 to the post of Police Patil of village Kaudgaon, Taluka Purna, Dist. Parbhani and also seeking direction to the respondent No.1 to appoint him to the post of Police Patil of said village.

2. In response to the proclamation/advertisement dated 12.01.2024 the applicant and the respondent No.2 have applied for the said post. They participated in the written and oral test. The respondent No.1 has published select list and also marks obtained by the candidates. The applicant and respondent No.2 both secured total 87 marks out of 100. But the respondent No.2 was selected for the post of Police Patil and appointment order was issued accordingly. Then the applicant has raised objection on 20.02.2024 with the allegation of favoritism. In case, candidates get equal marks, certain procedure is to be adopted as per the Government Resolution dated 22.08.2014. This applicant is elder than the respondent No.2. So considering the age of the applicant the weightage should have been given to him.

3. The respondent No.1 has filed affidavit in reply and denied the allegations against him. The respondent No.1 has specifically denied the allegation regarding favoritism. In view of clause No.5 of G.R. dated 22.08.2014, birth criteria should be considered lastly. Considering point No.2 of clause No.5 of said G.R., preference is to be given to the candidate having higher educational qualification.

4. I have heard Smt. Vijaya Adkine, learned counsel holding for Shri V.B. Wagh, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for respondent No.1. The respondent No.2 is not appeared though he is treated as duly served as per the order of this Tribunal dated 07.10.2024.

5. Learned counsel for the applicant has submitted that in view of G.R. dated 22.08.2014 the preference should have been given to the applicant since he is having higher educational qualification and he is elder than the respondent No.1. According to him the qualification of the applicant is B.A., M.Lib. D.Ed,. On the other hand the educational qualification of the respondent No.2 is B.Sc., M.Sc., B.Ed. It is submitted that the applicant is having additional qualification of MS-CIT, Typing etc.

6. Learned Presenting Officer has invited my attention to the minutes of meeting and submitted that the respondent No.2 is

having higher educational qualification. Subsequently again taking circulation, learned P.O. has submitted that while filing the application on-line, the applicant has not mentioned that the applicant has passed D.Ed. course. So this fact is raised for the first time in the petition and that cannot be considered. On the other hand learned counsel for the applicant has submitted that the applicant was called upon vide letter dated 30.01.2024 (page No.41) to produce documents before interview. Accordingly, these documents were produced and verified by the respondents.

7. It is not disputed by the respondent No.1 that the applicant and the respondent No.2 have filled in the online application for appointment to the post of Police Patil of village Kaudgaon, Taluka Purna, Dist. Parbhani. It is also not disputed by the respondent No.1 that the applicant has got 76 and 11 marks respectively in written and oral test, while the respondent No.2 got 70 and 17 marks respectively in written and oral test.

8. Learned counsel for the applicant has submitted that the applicant has raised objection vide letter dated 20.02.2024 (Annexure 'A-7, page No. 49) and has communicated that he is highly qualified as well as elder than the respondent No.2. Learned counsel for the applicant has tried to convey that the applicant is having diploma in education. According to her, the

applicant has placed the copy of mark sheet on record (page No. 28).

9. Learned Presenting Officer has submitted that while filling up the application online, this applicant has avoided to mention that he is holding D.Ed. qualification. It appears from the copy of on-line application forwarded by the applicant that he has not mentioned about D.Ed. qualification.

It is submitted by the applicant that he has made available the said documents pertaining to D.Ed. at a time of verification of documents. Its reference is not appearing in the impugned order. It is necessary to reproduce clause (1) pertaining to selection procedure in the advertisement (page No. 16), which is as under:-

9. प्राप्त केलेल्या गुणांच्या आधारे गुणवत्तेनुसार अंतिम निवडीसाठी अर्जदारांस शैक्षणिकपात्रता व इतर संबंधीत मुळ प्रमाणपत्र तपासणीसाठी उपलब्ध करून द्यावे लागतील, अन्यथा तोंडी परीक्षा अंतिम निवडीसाठी त्याचा विचार केला जाणार नाही.

This clause shows that the documents pertaining to eligibility were to be verified before the date of interview. Firstly the applicant has not mentioned about having D.Ed. qualification in initial application. He has referred about it in his objection (page No. 49) dated 20.02.2024 i.e. subsequent to declaration of final result. Even if submission of learned counsel for the applicant is accepted for a moment, mere mark-sheet pertaining to D.Ed. course cannot be said to be helpful to the applicant. One

important note in the said mark-sheet is a reason for which this mark-sheet is not helpful to the applicant. There is specific note at the bottom of the mark-sheet that this mark-sheet cannot be made applicable for any job, unless a certificate of competent authority pertaining to completion of 'internship period' satisfactorily, is produced by the concerned candidate. The applicant has not placed on record any such certificate about completion of internship.

10. Learned counsel for the applicant has also submitted that the certificate of D.Ed. is not taken into consideration by the respondent-Sub Divisional Magistrate, but at the same time the NSS certificate of the respondent No.2 is considered. She has relied on the decision of this Tribunal in a case of **Yogesh Kashinath Sonawane Vs. the State of Maharashtra & Ors. (O.A.No. 867/2018).** The facts in this case appear to be different as the marks were given separately to graduation, post-graduation, MS-CIT, NSS etc. Secondly in that matter the applicant and the respondent No.4 were considered by the respondent No.3-S.D.O. in it to be equal, after adding weightage towards graduation to the marks secured by the respondent No.4. It is discussed in that case that the stage of granting preference has to arise after final assessment upon totaling written test and viva voce and without grant of weightage for graduation. So this judgment is not helpful

to the applicant. I will consider about the consideration by the Sub-Divisional Magistrate to the NSS while appointing the respondent No.2 later on.

11. The respondent No.1 has come with the case that in case the candidates got equal marks then the criteria should be followed as per the G.R. dated 22.08.2014. Learned counsel for the applicant has submitted that this applicant is elder than the respondent No.2 and in view of clause No. 5 of the said G.R., the preference should have been given to the applicant. It is necessary to reproduced clause No.5 of the said G.R. which is as under:-

“५. उमेदवारास समान गुण मिळाल्यास.

गुणवत्ता यादीमधील दोन किंवा त्यापेक्षा अधिक उमेदवार समान गुण धारण करीत असतील, तर अशा उमेदवारांचा गुणवत्ता क्रम खालील निकषांवर क्रमवार लावला जाईल.:-

१. पोलीस पाटलांचे वारस; त्यानंतर
२. अर्ज सादर करावयाच्या अंतिम दिनांकास उच्च शैक्षणिक अर्हता धारण करणारे उमेदवार; त्यानंतर
३. माजी सैनिक असलेले उमेदवार; त्यानंतर
४. वयाने ज्येष्ठ उमेदवार.”

The same clause is reproduced in the advertisement as clause No. 18 under the selection procedure. The impugned order shows that the Sub-Divisional Magistrate has considered criteria about higher educational qualification and also participation of the candidates in ancillary activities while selecting the respondent

No.2. It would be proper to reproduce the said paragraph of minutes of meeting which is as under:-

“तोंडी मुलाखतीमध्ये पुर्णा तालुक्यातील कौडगाव तालुका पुर्णा या गावात दोन उमेदवारांना लेखी व तोंडी परिक्षेत समान गुण प्राप्त त्यामुळे त्यांना पोलीस पाटील पदभरती शासन निर्णय २००८ मधील तरतुदीनुसार समान गुण प्राप्त झाल्यास पहिला निकष शैक्षणिक अर्हता व इतर अनुषंगीक सहभाग प्रमाणपत्र पाहुन प्राधन्यक्रम देणेबाबत सुचना आहेत. त्याप्रमाणे निवड करण्याबाबत असल्याने खालीलप्रमाणे निवडक्रम ठरविण्यात आला.

गावाचे नांव	परिक्षा क्रमांक	उमेदवाराचे नांव	लेखी व तोंडी परिक्षेतील एकुण गुण	शैक्षणिक अर्हता	निवडीबाबत शेरा
कौडगाव ता. पुर्णा	9232	रेनगडे देविदास काशीनाथ	87	B.A. M. Lib.	प्रतिक्षा सुची
कौडगाव ता. पुर्णा	9238	ठेंगे सचिन नामदेव	87	MSc. Bed. Cricket Certificate Blood Donation Essays Competition NSS Certificate Teaching Experience Certificate	निवड

12. It appears that the Sub-Divisional Magistrate has taken into consideration Cricket Certificate, Blood Donation, Essay Competition, NSS Certificate and Teaching Experience Certificate while appointing the respondent No.2. It is mentioned in the said minutes that priority also to be given to the participation in other ancillary activities (इतर अनुषंगीक सहभाग). It has to be noted that the said wording (इतर अनुषंगीक सहभाग) is not appearing either in the G.R. dated 22.08.2014 or clause 18 of advertisement. It is clear from the minutes of oral test that the applicant is having qualification of B.A. M.Lib, while the respondent No.2 is having qualification of M.Sc. B.Ed. So it is clear that both the candidates are having one

Bachelor Degree and one Post Graduation Degree. Though the candidates have post-graduation degree in different fields, but merely because the respondent No.2 is having educational qualification as M.Sc., it cannot be said to be higher qualification than the applicant's educational qualification. It seems that the respondent- Sub Divisional Magistrate has unnecessarily considered the aspect of participation in ancillary activities as discussed above while selecting the respondent No.2 to the post of Police Patil and that can be said to be extraneous consideration by the respondent No.1. It can be said that both the applicant and respondent No.2 are having equal educational qualification. In these circumstances the respondent No.1 should have been proceeded ahead to consider the next criteria as given in the G.R. dated 22.08.2014 and clause No. 18 of the advertisement. So the impugned order appointing the respondent No.2 can be said to be improper and illegal. Thus, there is need to interfere in the order. It will also appropriate to remand the matter to the respondent No.1 to select the candidate to the post of Police Patil on the basis of next criteria as given in the G.R. dated 22.08.2014 and clause No.18 of the advertisement. Hence, the following order.

ORDER

(A) The Original Application is hereby partly allowed.

(B) The impugned order dated 14.02.2024 issued by the respondent No.1 thereby appointing the respondent No.2 as Police Patil of village Kaudgaon, Taluka Purna, Dist. Parbhani is set aside.

(C) The matter is remanded to respondent No.1 with the direction as under:-

Since it is held that the applicant and respondent No.2 are having equal educational qualification, respondent No.1 shall select the candidate to the post of Police Patil of village Kaudgaon, Taluka Purna, Dist. Parbhani on the basis of next two criteria as mentioned in clause No.5 of G.R. dated 22.08.2014 and Clause No. 18 of the advertisement within a period of four weeks from the date of receipt of this order.

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

(E) The Original Record be returned to concerned learned P.O.

MEMBER (J)