

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.718/2024

DISTRICT:- NANDED

Rahul Avinash Pawar,
Age : 38 years, Occ : Agriculturist,
R/o. At Ramnaik Tanda, Post-Kurula,
Tq. Kandhar, Dist. Nanded-431442.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Maharashtra Home Department,
Second Floor, Madam Cama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai-32.

2. The District Collector and
Examination Controller,
Office of District Collector, Nanded.

3. The Sub Divisional Officer,
Sub Divisional Office at Kandhar,
Tq. Kandhar, Dist. Nanded.

4. Anant Manohar Pawar,
Age : 36 years, Occ : Unemployed,
R/o. At Ramnaik Tanda (Rama Tanda),
Post-Kurula, Tq. Kandhar,
Dist. Nanded-431442.

5. Ankush Shankar Pawar,
Age : 50 years, Occ : Unemployed,
R/o. At Ramnaik Tanda (Rama Tanda),
Post-Kurula, Tq. Kandhar,
Dist. Nanded-431442.

6. Kiran Dharmraj Naik,
Age : 37 years, Occ : Unemployed,
R/o. At Ramnaik Tanda (Rama Tanda),
Post-Kurula, Tq. Kandhar,
Dist. Nanded-431442.

7. Balaji Datta Pawar,
 Age : 46 years, Occ : Unemployed,
 R/o. At Ramnaik Tanda (Rama Tanda),
 Post-Kurula, Tq. Kandhar,
 Dist. Nanded-431442.

...RESPONDENTS

 APPEARANCE :Shri Suvidh S. Kulkarni, Counsel for
 the Applicant.

:Shri D.M.Hange, Presenting Officer
 for respondents.

:Shri K.B.Bhise, Counsel for
 respondent no.4.

:Shri G.J.Karne, Counsel for
 respondent no.5 to 7.

CORAM : JUSTICE V.K.JADHAV, MEMBER (J)

Reserved on : 08-10-2024.

Pronounced on : 18-11-2024.

ORDER

1. Heard Shri Suvidh S. Kulkarni, learned Counsel for the Applicant, Shri D.M.Hange, learned Presenting Officer for respondent authorities, Shri K.B.Bhise, learned Counsel for respondent no.4 and Shri G.J.Karne, learned Counsel for respondent no.5 to 7.

2. Heard finally with consent of the parties at the admission stage. By filing this O.A. the applicant is seeking quashing and setting aside the order dated 03-07-2024 passed by respondent no.3, the Sub Divisional

Officer Kandhar, Tq. Kandhar, Dist. Nanded thereby rejecting the candidature of the applicant for the post of Police Patil. Applicant is also seeking directions to respondents to appoint him on the post of Police Patil.

3. Brief facts stated by the applicant giving rise to this Original Application are as follows:

[i] In response to the advertisement dated 01-01-2024 issued by respondent no.2 the District Collector, Nanded, the applicant applied for the post of Police Patil from VJ(A) category. The application was duly accepted and accordingly applicant appeared for the written examination as well as the oral examination. Applicant had secured 86 marks out of 100 and thus selected for the post of Police Patil of Village Ramnaik Tanda, Tq. Kandhar, Dist. Nanded.

[ii] The applicant further contends that subsequent to the declaration of the result respondent no.4 to 7 have raised an objection regarding applicant's candidature. It was based on two grounds; [1] the applicant is facing criminal prosecution in connection with Crime No.194/2018 for the offences punishable under sections

498-A, 323, 504, 506 and 34 of the IPC which is pending for adjudication before the learned JMFC at Majalgaon, [2] the applicant is the Secretary of Savitribai Shikshan Prasark Mandal and allegedly not residing at Ramnaik Tanda. Thereafter, respondent no.3 by the impugned order dated 03-07-2024 rejected the candidature of the applicant. Hence, this O.A.

4. Learned Counsel for the applicant submits that Government Resolution (G.R.) dated 02-06-2022 has explicitly made it clear that the eligibility of the candidate for the post of Police Patil cannot be questioned even if he holds the position in Co-operative Societies or Educational Trusts. Thus, individuals serving as Members or Office Bearers of the Co-operative Societies or Educational Trusts are not disqualified from being appointed as Police Patil. Role of Police Patil is primarily administrative in nature and not conflicting with the position held in the Co-operative Societies or Educational Trusts. It is further made clear in the said G.R. that involvement in such an organization does not undermine the responsibilities or integrity required for the position of Police Patil, however, the Sub Divisional Officer has failed to consider the same.

5. Learned Counsel for the applicant submits that so far as the objection as about pendency of the criminal case against the applicant is concerned, the pending case RCC No.182/2018 in connection with the Crime No.194/2018 is yet to be adjudicated and no conviction is recorded against the applicant. Mere pendency of the criminal case cannot be a ground for disqualification from public employment. This principle is also upheld by the Hon'ble Supreme Court in various pronouncements. In the case of **Mohammed Imran V/s. State of Maharashtra & Ors. reported in AIR 2018 SC 4895**, the Hon'ble Supreme Court held that pending criminal cases, without a conviction, should not disqualify a candidate from public employment as it would violate the principles of natural justice and fairness.

6. Learned Counsel for the applicant submits that objection regarding applicant's residence is unfounded. Applicant has provided all the necessary documents proving his permanent residence including the certificates from Talathi and Tahsildar. Learned Counsel submits that the O.A. deserves to be allowed in terms of the prayers made therein.

7. Learned P.O. on the basis of the affidavit in reply filed on behalf of the respondent no.3 submits that the applications were invited for the post of Police Patil within Nanded District by respondent no.2 vide advertisement dated 01-01-2024. Subsequently, written examination of the candidates who were found eligible after screening of the application forms was held on 14-01-2024. Consequently, five candidates were selected for oral examination on the basis of their performance in the written examination. The list of the candidates shortlisted for oral examination was published on 15-01-2024 and the final list of selected candidates was published on 20-01-2024 in which the present applicant was selected to the post of Police Patil from Village Rama Naik Tanda and respondent no.4 herein i.e. Anant Manohar Pawar was waitlisted. Respondent no.2 has called objections, if any, on the selection list vide letter dated 22-01-2024. Accordingly, respondent no.4 to 7 have submitted their objections in writing thereby objecting the appointment of the present applicant on the ground that, [1] the applicant himself has submitted in his court matter before the Majalgaon Court that he lives with his family at

Kandhar and as such Ramnaik Tanda, Tq. Kandhar, Dist. Nanded is not his permanent residence, [2] as per clause 4 of the advertisement candidate for the post Police Patil should have unblemished character, [3] a case under section 498-A, 323, 504, 506 r/w. 34 of IPC is pending vide RCC No.182/2018 against the present applicant in Majalgaon Court and [4] in terms of clause 5 of the advertisement, a candidate applying for the post of Police Patil should not be a member of either private or semi-government organization.

8. Learned P.O. submitted that, in terms of the aforesaid objections an opportunity of hearing was provided to the parties including the applicant as well as the respondent no.4 on 19-06-2024. Learned P.O. submits that, in terms of clauses 4 and 5 of the advertisement objection filed by the respondent no.4 has been accepted and the appointment of the applicant as a Police Patil of Village Ramnaik Tanda has been cancelled by the Sub Divisional Officer vide order dated 03-07-2024. Said order is fair, impartial and is in accordance with the law and there is no substance in the O.A. and the same is liable to be dismissed.

9. Learned Counsel on the basis of affidavit in reply filed on behalf of respondent no.4 submits that, the applicant has suppressed material facts from the respondents and also before this Tribunal. Applicant has suppressed material fact regarding registration of crime at Majalgaon for the offences punishable under sections 498-A, 323, 504, 506 and 34 of the IPC and pending RCC No.182/2018 in this regard. Learned Counsel for respondent no.4 submits that, applicant is Lawyer by profession and this fact is not disclosed to the authorities and also to this Tribunal. In the title clause of this O.A., occupation of the applicant is shown as Agriculture. Applicant being lawyer is not entitled to be appointed as Police Patil in terms of Rule 47 framed by the Bar Council of India under the Advocates Act which puts restriction for engaging in a trade or business. Further Rule 49 provides that Advocates should not accept full time job as long as he continues to practice. So far as the post of Police Patil is concerned the person appointed has to give full attention to his duties and he is allowed to avail only 15 days' leave, meaning thereby that the Police Patil is a full time job. Therefore, the applicant is not entitled to be appointed as

Police Patil and respondent no.3 has rightly rejected his candidature.

10. Learned Counsel submitted for respondent no.4 that applicant is not residing at Village Ramnaik Tanda (Rama Tanda), Post. Kurula, Tq. Kandhar, Dist. Nanded and since the applicant is practicing as a lawyer at Pune, the Bar Association of Pune has prepared a list of Advocates wherein name of the applicant appears at Sr.No.5339 having Bar Council Registration No.MAH/1818/2011.

11. Learned Counsel submits that the applicant is also a Joint Secretary of Matoshri Savitribai Shikshan Prasarak Mandal, Ramnaik Tanda, Tq. Kandhar, Dist. Nanded Educational Institution registered under the provisions of Bombay Public Trust Act. Copy of Schedule-A indicates the name of the applicant as Joint Secretary of the said institution. His father is Secretary of the said Institution. Applicant has suppressed all these material facts. Learned Counsel for respondent no.4 therefore submits that O.A. is liable to be dismissed.

12. Respondent nos.5 to 7 have not filed the affidavit in reply. Shri G.J.Karne, learned Counsel for

respondent nos.5 to 7 seems to have adopted the submissions made on behalf of respondent no.4.

13. In the backdrop of these rival submissions, I have carefully gone through the Circular dated 02-06-2022. It has been stated in the said Circular that remuneration is paid to the Police Patil and no salary is paid as such. In view of the same the person appointed as Police Patil may have his own independent source of income for survival. In this context, it is further stated that the person who has applied for the post of Police Patil may be considered for the said post even though he is member or office bearer of a co-operative society. Though the learned Counsel for respondent no.4 has vehemently submitted that the applicant is working as Joint Secretary of the Educational Institution and not the co-operative society, however, I do not find any substance in it. All the educational institutions are registered under the Co-operative Society's Act and considering the aim and object related to the education, such co-operative societies are also registered under the provisions of Maharashtra Public Trusts Act. However, respondent no.3 the Sub Divisional Officer has not considered the same and merely upheld the

objection raised by respondent no.4 to 7 in this regard without any reasoning.

14. So far as the pending criminal case against the applicant is concerned, it may be mentioned here that the said case is the outcome of the complaint filed by the wife of applicant on account of the cruelty extended to her by applicant and his relatives. In this context, I have carefully gone through the provisions of the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and Other Conditions of Service), Order 1968 ("Order of 1968" for short), particularly, as per Clause 3(e) of 'Order of 1968', no person shall be eligible for being appointed as Police Patil who is adjudged by the competent authority, after a summary inquiry, to be of bad character or has, in the opinion of that authority, such antecedents as render unsuitable for employment as Police Patil. In the instant case, respondent no.3 being competent authority has not adjudged the issue by making a summary enquiry of the bad character of the applicant, if any, nor recorded any express opinion that the antecedents in the form of pendency of the criminal offence under section 498-A, 323, 504, 506 and 34 of IPC rendering the applicant unsuitable

for employment as Police Patil. Further, in terms of the advertisement dated 01-01-2024, the eligibility criteria for the post of Police Patil is determined wherein there is no clause rendering the candidate disqualified for applying to the post of Police Patil on account of pendency of criminal case. So far as the procedure prescribed for selection with terms and conditions is concerned, as per clause 4 under the said head, the character of such candidate should be unblemished and the certificate to that effect issued by the Police Station is required to be produced at the time of verification of documents.

15. The Government has issued one Circular on 26-08-2014 prescribing certain guidelines in connection with the character or antecedents for appointment on the post of Class-C and D respectively. Those guidelines may be considered for the limited purpose. There are two annexures to the said Circular dated 26-08-2014 and so far as the offence of cruelty by husband or his relatives is concerned, the candidature of such person is directed to be rejected only if he is convicted and second column is kept blank which indicates that mere pendency of such case is

not enough to reject the candidature of a person applying for Class-C or Class-D posts in the Government service.

16. Learned Counsel for the applicant in order to substantiate his contention has relied on the judgment passed by the Maharashtra Administrative Tribunal Mumbai in O.A.No.139/2020 decided on 24-08-2021 and O.A.No.663/2022 decided on 03-02-2023 wherein similar issue is dealt with by the Tribunal and held that there is no bar to appoint a candidate on the post of Police Patil merely for the reason that a criminal case is pending against him. Applicant has also relied upon the case of **Mohammed Imran V/s. State of Maharashtra & Ors. [Civil Appeal No.10571/2018 (arising out of SLP (C) No.6599/2018)]-AIR 2018 SC 4895**. In paragraph 10 and 11 of the said case the Hon'ble Supreme Court has observed thus:

“10. In the present proceedings, on 23.03.2018, this Court had called for a confidential report of the character verification as also the antecedents of the appellant as on this date. The report received reveals that except for the criminal case under reference in which he has been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour in a competitive selection for the post of a judicial officer. In our opinion, no reasonable person on the basis of the materials placed before us can

*come to the conclusion that the antecedents and character of the appellant are such that he is unfit to be appointed as a judicial officer. An alleged single misadventure or misdemeanour of the present nature, if it can be considered to be so, cannot be sufficient to deny appointment to the appellant when he has on all other aspects and parameters been found to be fit for appointment. The Law is well settled in this regard in **Avtar Singh vs. Union of India and others**, (2016) 8 SCC 471. If empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment.*

11. In the entirety of the facts and circumstances of the case, we are of the considered opinion that the consideration of the candidature of the appellant and its rejection are afflicted by a myopic vision, blurred by the spectacle of what has been described as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand”

17. In the instant case, the respondent no.3 Sub Divisional Officer has not called any confidential report of the character verification, so also antecedents of the applicant from the concerned police station. It, thus, appears that, except the pendency of the criminal case there are no further antecedents against the applicant. In view of the same as per the ratio laid down by the Hon’ble Supreme Court, mere pendency of such type of criminal case may not be enough to refuse appointment to the applicant on the post of Police Patil.

18. Respondent no.4 has raised an objection for the first time before this Tribunal that the applicant is a lawyer by profession and this fact is not disclosed by him. Applicant being a lawyer is not entitled to be appointed as Police Patil in terms of Rule 47 framed by the Bar Council of India and under the Advocates Act. Further, in terms of Rule 49 of Rules framed by the Bar Council of India, an Advocate should not accept full time job as long as he continues to practice. Respondent no.4 has not specifically raised this objection before the Sub Divisional Officer and the Sub Divisional Officer had no occasion to consider the same.

19. In terms of the notification/advertisement dated 01-01-2024, clause 5 under the title of “selection procedure, terms and conditions”, it is prescribed that the candidates should not have any concern with any political party. Similarly, he should not be in the full time employment. It is also prescribed that the candidate should not be a member of the Gram Panchayat, private or semi-government institution.

20. Further, there is a Circular dated 02-06-2022 issued by the Government. In terms of the said Circular

since the remuneration is paid to the Police Patil and no salary is paid as such, the person appointed as Police Patil may have his own independent source of income for survival. It is further stated in the said Circular that the person who has applied for the said post may be considered for the said post even if he is member or office bearer of a co-operative society. There is a reference to Rule 16 of the Maharashtra Civil Services (Conduct) Rules, 1979 in the said Circular. Having carefully gone through Rule 16 of the said Rules, I do not find any bar as such to appoint the applicant for the post of Police Patil.

21. So far as the objection that the applicant is a practicing lawyer at Pune is concerned, being a lawyer is not a job, it is a profession. Having gone through clause 5 of the advertisement, it appears that there is no specific bar as such to consider a candidate who is lawyer by profession for being appointed as a Police Patil.

22. Learned Counsel for respondent no.4 has specifically referred to Rule 47 and Rule 49 of the Bar Council of India Rules. Part VI of the Bar Council of India Rules, prescribe the Rules governing the advocates. Chapter 2 deal with the standards of professional conduct

and etiquettes and part VII deals with the other employments. Rule 47 under this section prescribes that an Advocate shall not personally engage in any business but he may be a sleeping partner in a firm doing business. Rule 49 prescribes that an Advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern. Said Rule 47 and Rule 49 of the Bar Council of India Rules are reproduced hereinbelow:

“47. An Advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that, in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

49. An Advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an Advocate so long as he continues in such employment.”

23. In terms of Rule 49 of the Bar Council of India Rules, an Advocate on taking up any employment intimate the fact to the Bar Council and shall thereupon cease to practice as an advocate so long as he continues in such employment. So far as the case in hand is concerned, the

post of Police Patil is not a full time salaried employment. Police Patil is getting honorarium and not a salary as such. Further, in the event if this applicant accepts the post as Police Patil, then in terms of Rule 49 as above, he shall intimate this fact to the Bar Council on whose roll his name appears and the Bar Council may take appropriate decision on the same. The applicant may be directed by the appointing authority to give an undertaking before his appointment order is issued that he would intimate the fact of accepting the post of Police Patil to the Bar Council on whose roll his name appears.

24. In view of the discussion as above, this O.A. deserves to be allowed. Hence, the following order:

O R D E R

- [i] Original Application is hereby allowed and disposed of.
- [ii] Order dated 03-07-2024 passed by respondent no.3, Sub Divisional Officer, Kandhar, Tq. Kandhar, Dist. Nanded rejecting the candidature of the applicant is hereby quashed and set aside.
- [iii] Respondents are hereby directed to appoint the applicant to the post of Police Patil as per the selection process and rules.

- [iv] Respondent no.3 is hereby directed to issue appointment order to the applicant on the post of Police Patil of Village Ramnaik Tanda, Tq. Kandhar, Dist. Nanded only upon an undertaking submitted by the applicant to the effect that he would intimate the fact of accepting the post of Police Patil to the Bar Council on whose roll his name appears.
- [v] In the circumstances, there shall be no order as to costs.

MEMBER (J)

Place : Aurangabad
Date : 18-11-2024.