

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,**  
**BENCH AT AURANGABAD.**

**ORIGINAL APPLICATION NO. 833 OF 2021**

DIST. : JALGAON

**Deepali Yogendra Patil,** )  
 Age 41 years, Occ. Household & Agri, )  
 R/o At village Dokalkhede, Tal. Pachora, )  
 District - Jalgaon. ) .. **APPLICANT**

**V E R S U S**

**1) The State of Maharashtra,** )  
 Through Secretary, )  
 Home Department, Mantralaya, )  
 Mumbai – 32. )

**2) The District Collector,** )  
 Jalgaon at Jalgaon. )

**3) The Sub-Divisional Magistrate,** )  
 Pachora Division, Pachora, )  
 Dist. Jalgaon. )

**4) Vaishali Subhash Patil,** )  
 Age. 38 years, Occ. Household, )  
 R/o At village Dokalkhede, )  
 Tal. Pachora, Dist. Jalgaon. ) .. **RESPONDENTS**

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 APPEARANCE :- Shri R.A. Shinde, learned Counsel  
 holding for Shri D.B. Thoke, learned  
 counsel for the applicant.

: Smt. Resha S. Deshmukh, learned  
 Presenting Officer for the respondent  
 authorities.

: Shri R.A. Joshi, learned counsel for  
 respondent no. 04.

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**CORAM : Hon'ble Shri Justice V.K. Jadhav,**  
**Member (J)**  
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**RESERVED ON : 20.09.2024**  
**PRONOUNCED ON : 11.11.2024**  
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### **ORDER**

1. Shri R.A. Shinde, learned counsel holding for Shri D.B. Thoke, learned counsel for the applicant, Smt. Resha S. Deshmukh, learned Presenting Officer for respondent authorities and Shri R.A. Joshi, learned counsel for respondent no. 04.

2. The matter is finally heard with 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 respondent no. 03, the Sub Divisional Magistrate, Tal. Pachora, Dist. Jalgaon dated 26.08.2021 and is also seeking directions that the selection and appointment of the respondent no. 04 on the post of Village Police Patil of village Dokalkhede, Tal. Pachora, Dist. Jalgaon vide order dated 16.08.2018 issued by the respondent no. 03, the Sub Divisional Magistrate, Pachora Division, Pachora, Dist. Jalgaon, thereby appointing respondent no. 04 for the period of 05 years, be declared as

illegal and be quashed and set aside. The applicant is also seeking directions to respondent no. 03, the Sub Divisional Magistrate, Pachora Division, Pachora, Dist. Jalgaon, to appoint her as a Police Patil of village Dokalkhede, Tal, Pachora, Dist. Jalgaon.

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

(i) In response to the advertisement/notification bearing no. 01/2018 published by respondent no. 03 dated 04.05.2018 to fill up 50 posts of Police Patil for various villages in Pachora Division, Dist. Jalgaon, the applicant has submitted the application for the post of Police Patil of the village Dokalkhede, Ta. Pachora, Dist. Jalgaon. It was accepted and the applicant was held eligible for the written examination. The respondent was pleased to hold the written examination and the applicant has passed the said examination. The respondent no. 04 as a result of written examination and oral examination scored 57 marks and the applicant has scored 56 marks.

(ii) It is the further case of the applicant that thereafter the applicant noticed that the respondent no.

04 had not submitted the non-creamy layer certificate (hereinafter referred to as NCL certificate), which was mandatory and thus the respondent authority ought to have rejected the form of respondent no. 04 as she did not comply/fulfill the mandatory criteria as per the notification published by the respondent concern. The Sub Divisional Magistrate by the order dated 16.08.2018 was pleased to appoint the respondent no. 04 as a Police Patil of village concern for a period of 05 years. Hence, this Original Application.

(iii) It is the part of record that the applicant had approached this Tribunal by filing Original Application No. 780/2018. However, it was withdrawn by the applicant with liberty to file objection before the respondent no. 03 for the selection and appointment of respondent no. 04 on the post of Police Patil of the concern village. By the order dated 01.07.2019 this Tribunal has disposed of the said Original Application with liberty to the applicant as aforesaid (Annexure A-5). Thereafter the applicant approached the respondent no. 03 and filed objection dated 15.07.2019. However, no action was taken on it for the considerable period. Therefore, the applicant was

constrained to approach the Hon'ble High Court of Bombay, Bench at Aurangabad by filing Writ Petition No. 3279/2021 seeking directions to respondent no. 03 to decide the objection raised by the applicant within the stipulated time. Thereafter, the respondent no. 03 issued notice dated 24.06.2021 for hearing. The applicant has submitted her detailed say and also submitted the documents in support of her objection. Even the respondent no. 04 has also submitted her say along with documents to respondent no. 03. Though respondent no. 04 has submitted the NCL certificate dated 30.07.2019, there is no outward number on it and further the period mentioned about validity of the said certificate is also up to 31.03.2021 from the date of issue. The respondent no. 04 had not submitted the NCL certificate at the time of interview, which is mandatory as per the advertisement. By the impugned order dated 26.08.2021 the respondent no. 03 has rejected the objection of the applicant by relying on the Government Resolution dated 25.05.2001 issued by the Women and Child Development Department. Hence, this Original Application.

5. The learned counsel for the applicant submits that the conditions mentioned in the said advertisement/notification are mandatory in nature and the respondent no. 04 has violated the same. The respondent no. 04 has not submitted the NCL certificate as per the advertisement issued by respondent no. 03. Therefore, the selection and appointment of the respondent no. 04 needs to be cancelled by quashing and setting aside the impugned appointment order dated 16.08.2018. The learned counsel submitted that the certificate of NCL submitted by respondent no. 04 appears to be forged one and she was not possessing it at the relevant time. The respondent no. 03 has misread and misinterpreted the G.R. dated 25.05.2001 issued by the Department of Women and Children Welfare of the State of Maharashtra. The learned counsel for the applicant submits that in terms of the advertisement/notification there was no power of relaxation vested with the Selection Committee. The Original Application thus deserves to be allowed in terms of the prayer clauses.

6. The learned counsel for the applicant in order to substantiate his contentions placed his reliance in the case of **Priyanka Appasaheb Dongre Vs. State of Maharashtra & Ors. (Original Application No. 130/2017)** decided by this Tribunal on

19.01.2022 and in the case of **Bedanga Talukdar Vs. Saifudullah Khan and Ors. (AIR 2012 SC 1803)**. The learned counsel has also placed his reliance on the order passed by Hon'ble High Court of Bombay, Bench at Nagpur in the case of **Vishnupant s/o Narayanrao Kashid & Ors. Vs. The State of Maharashtra & Ors. (Writ Petition No. 2465/2020)** dated 01.09.2023.

7. The learned Presenting Officer on the basis of the affidavit in reply filed by respondent nos. 01 to 03 submitted that the submissions made by the applicant are wrong and misleading. Respondent no. 04 has scored more marks than the applicant. Further, the NCL certificate submitted by the respondent no. 04 dated 15.07.2018 issued by the Sub Divisional Officer, Erandol Division has been cross verified and was found to be correct and genuine as submitted in the report dated 11.08.2021.

8. Learned Presenting Officer submits that the appointment of the respondent no. 04 by order dated 16.08.2018 was in Woman (General) Category, whereas her base documents are that of Reserved Category as O.B.C. In view of the same the G.R. bearing no. 82/2001 dated 25.05.2001 is entirely attracted. There is no substance in the Original Application and the same is liable to be dismissed.

9. The learned counsel for respondent no. 04 submits that the respondent no. 04 is meritorious than the original applicant. The respondent no. 04 has scored 57 marks, whereas the present applicant got 56 marks. The respondent no. 04 has possessed all the eligibility as prescribed in the advertisement including that of NCL certificate.

10. The learned counsel for the respondent no. 04 submits that the post of Police Patil in question was earmarked for Woman (General) Category. Thus, the requirement of submitting the NCL certificate by Woman candidate belonging to Reserved Category claiming the post earmarked for Woman Unreserved Category is relaxed by the G.R. dated 25.05.2001 issued by the Women and Child Development Department. Thus, the requirement of possessing the NCL Certificate is not contemplated by the Woman belonging to Reserved Category claiming the post earmarked for Woman (General) Category. Further, the said G.R. dated 25.05.2001 is also mentioned in the notification/advertisement dated 04.05.2018. There is no substance in this Original Application and the same is liable to be dismissed. The learned counsel submits that the cases relied upon by the learned counsel for the applicant are in



different context and the same cannot be made applicable to the facts and circumstances of the present case.

11. I find no substance in this Original Application. It is clearly mentioned in the notification/advertisement no. 01/2018 dated 04.05.2018 that in case the post of Police Patil of a particular village is reserved for a particular category then it is incumbent for the candidates of that category applying for the said post to possess the NCL certificate issued by the competent authority, which is valid till 31.05.2019.

12. In this context it is necessary to reproduce certain relevant paragraphs of the aforesaid notification/advertisement. Undisputedly the post of Police Patil of the village Dokalkhede, Ta. Pachora, Dist. Jalgaon is reserved for Woman in General Category. It is needless to repeat herein that 50 posts of Police Patil for different villages in Pachora Division, Dist. Jalgaon were advertised, wherein some of the posts are reserved for Reserved Categories. So far as the minimum eligibility criteria is concerned, it is mentioned in 1<sup>st</sup> paragraph as follows:-

**“किमान आवश्यक अर्हता -**

७. मागासप्रवर्गातील उमेदवार (वि.जा.अ., भ.ज.ब., भ.ज.-क, भ.ज.-ड, वि.मा.प्र. व इ.मा. व.) यांना सन २०१८-१९ या कालावधीकरीता वैध असलेले उन्नत आणि प्रगत व्यक्ती व गट (किमिलेयर) यामध्ये मोडत असल्याबाबतचे (नॉन-किमिलेयर) प्रमाणपत्र आवश्यक राहिल.”

Further, in Paragraph no. 17 under title “निवडीसाठी कार्यपद्धती, अटी, शर्ती” it is stated as under:-

“१७. महाराष्ट्र राज्य लोकसेवा अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जाती, भटक्या जमाती, विशेष मागास प्रवर्ग, इतर मागासवर्ग यांचेसाठी आरक्षण अधिनियम, २००१ (सन २००४ चा महाराष्ट्र अधिनियम क्रं. ८) हा अधिनियम महाराष्ट्र शासनाने दि. २९ जानेवारी २००४ पासून अंमलात आणला आहे. त्यानुसार उच्चत व प्रगत गटाचे (किमिलेअर) तत्व वि.जा.अ., भ.ज.ब., भ.ज.-क, भ.ज.-ड, वि.मा.प्र. व इ.मा.व. यांना लागू आहे. सदर प्रवर्गातील उमेदवारांकडे दि. ३१ मार्च, २०१९ पर्यंत वैध असलेले नॉन किमिलेअरचे सक्षम अधिकारी यांचेकडील प्रमाणपत्र असणे आवश्यक आहे. नॉन किमिलेअरचे तत्व अनुसूचित जाती / अनुसूचित जमाती व्यतिरिक्त इतर सर्व मागास प्रवर्गांना लागू राहिल.”

and lastly the paragraph no. 14 under title ‘ऑनलाईन अर्ज करण्याची पद्धत’ reads as under:-

“१४. ज्या महिला उमेदवारांना महिला आरक्षणाचा लाभ हवा असेल त्यांनी तशी मागणी ऑनलाईन अर्जात करणे अनिवार्य आहे. शासननिर्णय महिला व बालकल्याण क्रं. ८२/२००१/म.से.आ.२०००/प्र.क्र.४१५/का.२, दिनांक २५.०५.२००१ मधील तरतूदीनुसार महिलांसाठी आरक्षण राहिल. या संदर्भात वेळोवेळी निर्गमित केलेल्या आदेशानुसार आरक्षणा अंतर्गत अर्ज करण्या-या महिला उमेदवारांनी वर्ष २०१८-१९ या कालावधी करिता वैध असलेला (अदययावत अर्थात ३१.०३.२०१९ पर्यंत वैध असलेले) उच्चत व प्रगत गटात मोडत नसल्याबाबतचे (नॉनकिमिलेअर) प्रमाणपत्र कागदपत्र तपासणीच्या वेळी सादर करणे आवश्यक आहे.”

13. The post of Police Patil of the village Dokalkhede, Ta. Pachora, Dist. Jalgaon was reserved for Woman (General) Category. It further appears that the respondent no. 04 has not submitted her application under Reserved Category, since the said post is for Woman (General) Category, meaning thereby that any Woman irrespective of her caste can apply for the said

post. On perusal of copy of the application filed by respondent no. 04, which is part of original record before me, I find that the respondent no. 04 had submitted the application for the post of Police Patil of the village Dokalkhede, Ta. Pachora, Dist. Jalgaon for Woman (General) Category without claiming benefit of her caste status.

14. In this context the G.R. dated 25.05.2001 is important and reference of which is made in clause no. 14 under title 'ऑनलाईन अर्ज करण्याची पध्दत' of the advertisement/notification as reproduced herein above. As per said clause 14 if the application is submitted by the Woman in Reserved Category for the post of Police Patil then the NCL certificate of the year 2018-19 which is valid up to 31.03.2019 is required to be submitted at the time of verification of the documents. In terms of the said G.R. dated 25.05.2001 clause (C-1) two options are provided to Women candidates, who submit the application in Woman (General) Category. In terms of Option-A of the said clause (C-1) if such a candidate has mentioned in the application about her caste falling in Reserved Category, then it is incumbent upon the Department to inspect the caste certificate of such candidate and said candidate is not required to submit the requisite NCL certificate. In terms of

Option (B) if such candidate does not wish to submit the caste certificate of the reserved category or is not in a position to submit the caste certificate of the reserved category, then submission of NCL Certificate would be mandatory. Clause (C-1) and the options mentioned thereunder in the said G.R. dated 25.05.2001 are mentioned herein below:-

“(क) मागासवर्गीय उमेदवारांची खुल्या प्रवर्गातील महिलांच्या आरक्षित पदावर नियुक्ती झाल्यास त्याबाबतची प्रमाणपत्रे व त्याची तपासणी

(१) मागासवर्गीयांच्या प्रवर्गातील ज्या महिला उमेदवार खुल्या प्रवर्गातील जागांकरीता विकल्प देतील किंवा विकल्प न देताही मागासवर्गीयांच्या प्रवर्गातील ज्या महिला उमेदवारांची निवड खुल्या प्रवर्गातील महिलांच्या आरक्षित पदांवर झाल्यास, अशा महिला उमेदवारांना प्रमाणपत्र सादर करण्याबाबत खालील दोन विकल्प राहतील.

(अ) अशा महिला उमेदवारांनी सामाजिक न्याय विभाग, आदिवासी विकास विभाग अथवा विमुक्त जाती, भटक्या जमाती, इतर मागास प्रवर्ग व विशेष मागास प्रवर्ग कल्याण विभागांनी विहित केल्याप्रमाणे त्यांच्या संबंधीत जातीची प्रमाणपत्रे सादर करावीत व ती त्या विभागांनी विहित केलेल्या कार्यपद्धतीनुसार तपासून घेण्यात यावीत. अशा महिला उमेदवारांकडून खुल्या प्रवर्गातील महिलाकरीता विहित केलेले किलमीलेअरचे प्रमाणपत्र घेण्याची आवश्यकता राहणार नाही.

(ब) जर त्या त्यांच्या संबंधीत जातीचे प्रमाणपत्र सादर करू इच्छित नसतील किंवा सादर करू शकत नसतील तर अशा महिला उमेदवारांनी खुल्या प्रवर्गातील महिलांप्रमाणेच या शासन निर्णयाच्या परिशिष्ट ३ नुसार विहित केलेले उन्नत व्यक्तिगट (किमिलेअर) मध्ये मोडत नसल्याबाबतचे प्रमाणपत्र सादर करणे आवश्यक राहिल. त्यासाठी खालीलप्रमाणे कार्यवाही करावी. ....”

15. On careful perusal of the record, I find that the respondent no. 04 has submitted the NCL certificate and the caste certificate issued by the Sub Divisional Officer, Erandol

Division dated 15.07.2018. On perusal of the same, it appears that the respondent no. 04 belongs to 'Kunbi' caste, which is recognized as Other Backward Class caste and that she do possess the NCL certificate, which is valid up to 31.03.2021 and the date of issuance of said certificate is 15.07.2018. It further appears that on verification of the said caste and NCL certificate of respondent no. 04 it was found correct and genuine one. Thus, even both the said options i.e. Option-A and Option-B of clause (C-1) of G.R. dated 25.05.2001 are considered, it appears that the respondent no. 04 fulfills all the requisite criteria for the post of Police Patil of village Dokalkhede, Ta. Pachora, Dist. Jalgaon. The impugned order dated 26.08.2021 issued by respondent no. 03, the Sub Divisional Magistrate, Pachora Division, Pachora, Dist. Jalgaon rejecting thereby the objection raised by the applicant is thus proper, legal and correct and requires no interference.

16. So far as the case of **Bedanga Talukdar Vs. Saifudullah Khan and Ors.** (cited supra) relied upon by the learned counsel for the applicant is concerned, in paragraph no. 29 thereof the Hon'ble Supreme Court has made the following observations:-

*“29. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of respondent No. 1. Such a course would not be permissible as it would violate the mandate of [Articles 14](#) and [16](#) of the Constitution of India.”*

17. In the instant case there was no relaxation of any condition as laid down in the advertisement/notification. On the other hand, in the advertisement/notification itself a reference has been given of the G.R. dated 25.05.2001 and even considering the same the respondent no. 04 fulfills the eligibility criteria in its entirety as observed in the foregoing paragraphs.

18. Further, the other cases relied upon by the learned counsel for the applicant cannot be made applicable to the facts and circumstances of the present case and thus are inapplicable.

19. In view of the above, this Original Application deserves to be dismissed. Further as it appears that the respondent no. 04 has also completed her term of 05 years. Hence, this Original Application needs to be dismissed. Hence, the following order:-

### **ORDER**

(i) The Original Application No. 833/2021 is hereby dismissed.

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

(iii) The record submitted by the respondent authorities shall be returned to the authorities through the learned Presenting Officer.

**MEMBER (J)**

**Place : Aurangabad**

**Date : 11.11.2024**

ARJ O.A. NO. 881 OF 2021 VKJ POLICE PATIL