

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1337 OF 2024

DISTRICT : SATARA

Kondiram Namdeo Patil,)
Sr Police Inspector,)
Karad City Police Station,)
Dist-Satara and Residing at)
Oriana CHS Ltd, Flat No. B-1002)
Near Mayur Nagari, Pimpale Gurav,)
Pune – 61.)...**Applicant**

Versus

1. Government of Maharashtra)
Through Addl. Chief Secretary)
Home Department, Mantralaya)
Mumbai 400 032.)
2. The Superintendent of Police,)
Satara, 93, Malhar Peth,)
Satara 415 002.)
3. Chief Electoral Officer,)
Maharashtra State,)
Having office at Mantralaya,)
Mumbai 400 032.)
4. Shri Raju Ananda Tashildar)
Police Inspector, Satara,)
Dist-Satara.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)

DATE : 15.10.2024

J U D G M E N T

1. The applicant prays to hold and declare that the impugned order dated 12.10.2024 ousting the applicant from the post of Incharge Police Officer, Karad City Police Station, to Cyber Police Station, District Satara and entrusting the Charge thereof to Respondent No. 4 as illegal and bad in law and the same be quashed and set aside and so also the order dated 12.10.2024, Exh. A-1.

2. Learned counsel for the applicant submits that one person, retired Dy Superintendent of Police, by name Shri K.s Talekar, filed Criminal Complaint against one Shri Dhanaji S. Kedar and the said complaint was filed with Tembhurni Police Station, Tal-Madha, Dist-Solapur. Learned counsel submitted that the aforesaid complaint was compromised before the Ld Magistrate, First Class, Madha by order dated 6.4.2015. Learned counsel further submitted that the despite compromise executed aforesaid, the Complainant filed Private Complaint against the present applicant in the Court of Ld. Judicial Magistrate, First Class, Madha, Dist-Solapur, as he failed to register the complaint against the then Police Inspector, Shri Dhananjay Jadhav working at Tembhurni Police Station. Thus, Complaint was filed against the applicant at Madha, Dist-Solapur praying for investigation under Section 156(3) of Cr. P.C for the offence punishable under Section

166-A of IPC. Learned counsel further submitted that as no cognizance was taken by the Learned Magistrate and applicant is not accused in the said criminal case by virtue of order dated 22.12.2021, it was not at all binding on the applicant to disclose as per Sub Clause (v) of Clause 6 of the guidelines of Election Commission of India dated 31.7.2024, that any criminal case related to official functioning is pending in any court of law. Learned counsel therefore submitted that the applicant has not violated any guidelines as per Clause 6(v) of the Election Commission of India. Learned counsel further submitted that at the time of Lok Sabha Elections, no such information was sought from the applicant. Thus, the transfer of the Applicant by order dated 12.10.2024 is in violation of Clause 6(v) of the Election Commission of India guidelines dated 31.7.2024 as it is illegal and incorrect.

3. Learned C.P.O pointed out to Page 46 which shows that FIR is registered at C.R No. 787/2021 on 27.12.2021 at Temburni Police Station, Dist-Solapur and Charge Sheet is filed on 13.1.2023 and on the said page, learned C.P.O drew attention at the bottom of the said page wherein it is mentioned as under:-

“Issue process against accused.”

However, it is scored off. Thus, query was made from S.P, Satara to get correct information on issuance of process on the said matter after submission of Section 156(3). Learned C.P.O on query pointed out that S.P, Solapur, Mr Atul Kulkarni, by letter dated 14.10.2024 informed S.P, Satara about the status of the case of the present applicant that yet the JMFC has not yet issued process in Court Case No. 137/2023 and it is pending at that stage. The same is taken on record and marked as Court

Exhibit-1. Learned C.P.O also produced copy of the minutes of the meeting of the Police Establishment Board dated 12.10.2024 and the same is taken on record and marked as Court Exhibit-2.

4. Perused the impugned order dated 12.10.2024. It specifically mentions that the authority has invoked provisions 6(v) as per the guidelines laid down by the Election Commission of India dated 31.7.2024 and applicant is transferred from Incharge Police Officer, Karad City Police Station, to Cyber Police Station, District Satara. The said provision 6(v) of the guidelines is reproduced below:-

“6. Categories of Officers not covered under transfer policy.

(v) The Commission further desires that no officer/official, against whom a criminal case related to official functioning is pending in any court of law, be associated with/deployed in election related duty.”

5. Perusal of the minutes of the meeting of the Police Establishment Board dated 12.10.2024 discloses that the applicant has submitted Certificate that at the time of Lok Sabha Election 2024 that no offence is registered against him. In the minutes it is mentioned that the applicant has not given the information about registration of offence against him. This observation made by the Police Establishment Board in its minutes is wrong. The report and investigation carried out by the Police under Section 156 of Cr. P.C though submitted before JMFC, Solapur, and the Learned Magistrate has not yet taken cognizance and issued process and offence is only registered against the applicant under Section 166A of IPC. It is to be noted that offence under Sec 166 is non-cognizable offence, hence unless Magistrate issues process against the applicant, it cannot be said that criminal case is pending against the applicant. Therefore, whatever

reason given in the minutes of the meeting of the Police Establishment Board invoking the provisions under Clause 6(v) of the guidelines of Election Commission of India dated 31.7.2024 is legally not correct.

5. In view of the above, following order is passed:-

ORDER

(i) The Original Application is allowed.

(ii) The impugned order dated 12.10.2024 transferring the applicant from Incharge Police Officer, Karad City Police Station, to Cyber Police Station, District Satara is hereby quashed and set aside. So also the order dated 12.10.2024 by which Respondent No. 4 was entrusted the charge of the post of Applicant is also quashed and set aside.

(iii) No order as to costs.

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 15.10.2024
Dictation taken by : A.K. Nair.