

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.936 OF 2016

DISTRICT : SATARA

Shri Sachin A. Dhavale.)
Occu.: Agriculturist, Residing at Dhavalewadi)
(Nimbhore), Tal.: Phaltan, District : Satara.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary, Home Department)
Mantralaya, Mumbai.)
2. The Collector & District Magistrate.)
Satara.)
3. The Sub-Divisional Officer.)
Phaltan Sub-Division, Dist. : Phaltan.)
4. The Tahasildar.)
Tal. Phaltan, Dist.: Satara.)
5. Shri Satish D. Suryawanshi.)
R/o. Dhavalewadi (Nimbhore),)
Tal.: Phaltan, District : Satara.)
6. Shri Tanaji A. Dhavale.)
7. Shri Sushant A. Ranvare.)
8. Shri Balaso N. Mane.)
9. Shri Dnyaneshwar D. Dhavale.)
Nos.6 to 9 all residents of Dhavalewadi)
(Nimbhore) Tal.: Phaltan, Dist.: Satara.)...Respondents

Mr. A.B. Kadam, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents 1 to 4.

See

Mr. K.R. Jagdale, Advocate for Respondent No.5.
None for Respondents 6 to 9.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 10.06.2019

JUDGMENT

1. This is an application challenging the appointment of Respondent No.5 as Police Patil of Village Dhavalewadi (Nimbhore), Tal.: Phaltan, District Satara invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Respondent No.3 – Sub-Divisional Officer, Phaltan, District Satara issued Notification dated 26.11.2015 to fill-in the post of Police Patil of Village Dhavalewadi (Nimbhore), Tal.: Phaltan, District Satara amongst other places. The Applicant as well as Respondent No.5 filed an application for the post of Police Patil. The Applicant raised objection by representation dated 21.01.2016 on the application made by the Applicant for the post of Police Patil stating that the Respondent No.5 is not the resident of Dhavalewadi. He is working as Petition Writer in Tahasil Office, Phaltan and further alleged that he fraudulently took the benefit under Indira Aawas Yojana and got allotted Gharkul though in fact, he is not entitled to the same and had also purchased Flat of Rs.10,30,000/- at Village Kolki, Tal.: Phaltan, District Satara. On the objection raised by the Applicant, the Respondent No.5 filed his reply on 25.02.2016. The Respondent No.3 called report on the complaint made by the Applicant from B.D.O. and Tahasildar. On receipt of report, he passed an order on 04.05.2016 thereby rejecting the objections raised by the Applicant and ultimately, by order dated 04.05.2016, appointed Respondent No.5 to the post of Police Patil having stood in merit in

the examination conducted by him. Being aggrieved by the order dated 04.05.2016, the Applicant has filed the present application contending that the Respondent No.3 has erred in rejecting the objection lodged by him and the Respondent No.5 is not eligible for the appointment to the post of Police Patil.

3. The Respondent Nos.1 to 4 filed Affidavit-in-reply (Page Nos.86 to 97 of Paper Book) *inter-alia* denying that the impugned order suffers from any illegality. It is not in dispute that the Respondent No.5 is the beneficiary of Indira Aawas Yojana. In this behalf, the Respondents contend that it is in Survey of 2001, the Respondent No.5 was found eligible for the allotment of Gharkul and allotment was made in 2011. It is also not in dispute that the Respondent No.5 had purchased a Flat at Kolki on 08.03.2013 by registered Sale Deed for Rs.10,30,000/-. It is also not in dispute that the Applicant was working as Petition Writer in Tahasil Office, Phaltan. However, in this behalf, the Respondents contend that, all these factors did not invite disqualification and there is no suppression of material fact much less to render Respondent No.5 ineligible or disqualified for the appointment to the post of Police Patil. The Respondent No.3 contends that he duly considered the objection and having found no substance therein, rejected the same.

4. The Respondent No.5 filed Affidavit-in-reply (Page Nos.113 to 118 and 121 to 124 of the P.B.) *inter-alia* denying that he was not eligible to the appointment of Police Patil. He admits that he was working as Petition Writer at Tahasil Office, Phaltan and also admits that in Survey of 2001, he was found entitled for allotment of Gharkul in India Aawas Yojana. He contends that in 2001, he was below poverty line and rightly allotted Gharkul. As regard purchase of Flat, he contends that he had purchased the same with the financial assistance from his maternal uncle as well as the loan borrowed by Co-operative Bank and this aspect of purchase of Flat has no relevance much less to incur disqualification for

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appointment of Police Patil. With these pleadings, he prayed to dismiss the application.

5. Respondents 6 to 9 are absent.

6. Heard Shri A.B. Kadam, learned Advocate for the Applicant, Smt. A.B. Kololgi, learned Presenting Officer for the Respondents 1 to 4 and Shri K.R. Jagdale, learned Advocate for Respondent No.5.

7. On perusal of the pleadings and on hearing the submissions of the learned Counsels, it emerges that the Applicant is challenging the appointment of Respondent No.5 to the post of Police Patil on the following grounds :-

- (a) The Respondent No.5 is not the resident of Village Dhavalewadi.
- (b) The Respondent No.5 at the relevant time was working as Petition Writer in Tahasil Office, Phaltan.
- (c) The Respondent No.5 fraudulently availed the benefit of Indira Niwas Gharkul Scheme and got Gharkul allotted though he is finally sound in view of his purchase of Flat for Rs.10,30,000/- by Sale Deed dated 08.03.2013.
- (d) The father of Respondent No.5 is the beneficiary of Indira Gandhi National Old Age Pension Scheme and it was suppressed by Respondent No.5 while applying to the post of Police Patil.

8. **As to point (a) :-**

In so far as the challenge on the ground that the Respondent No.5 is not the resident of Village Dhavalewadi is concerned, the learned Advocate for the Applicant did not press this aspect and confined to his submission of the alleged suppression of benefit under Indira Niwas Gharkul Scheme. Therefore, the challenge on this ground does not survive.

9. **As to point (b) :-**

There is no denying that the Applicant was working as Petition Writer at Tahasil Office, Phaltan. The learned Advocate for the Applicant sought to contend that by taking disadvantage of his good relations with revenue officials, he fraudulently availed the benefit under Indira Niwas Gharkul Scheme. In so far as the availment of Gharkul under Indira Niwas Gharkul Scheme is concerned, it will be dealt with a little later. As regard working as a Petition Writer in Tahasil Office, Phaltan, it cannot be said that it incurs any disqualification for the post of Police Patil. Petition Writer is a perso allowed to sit in the premises of Tahasil Office for drafting the petitions of the litigants who pay for his services. As such, it is private job done with the license granted by the Tahasildar, and therefore, it cannot be termed as a disqualification for the post of Police Patil.

10. **As to point (d) :-**

Though the Applicant sought to contend that the father of Respondent No.5 was the beneficiary of Indira Gandhi National Old Age Pension Scheme and suppressed this fact, it is not at all relevant in the present context. Furthermore, the father of Respondent No.5 admittedly surrendered the pensionary benefits on 29.02.2016. Be that as it may, even assuming for a moment that the father of Respondent No.5 continued the benefit of such Pension Scheme, nothing is pointed out by the learned Advocate for the Applicant as to how it incurs disqualification in so far as candidature of Respondent No.5 to the post of Police Patil is concerned.

11. **As to point (c) :-**

The main contention of the learned Advocate for the Applicant was confined to the alleged suppression of fact of allotment of house under Indira Niwas Gharkul Scheme. The learned Advocate for the Applicant vehemently

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urged that the Respondent No.5 fraudulently availed the benefit of the said Scheme and got Gharkul allotted. According to him, he suppressed his aspect while filing application for the post of Police Patil. He has further pointed out that the Respondent No.5 had purchased a Flat for Rs.10,30,000/- by Sale Deed dated 08.03.2013, which shows that the disentitlement of Respondent No.5 for Gharkul under Indira Niwas Gharkul Scheme.

12. Whereas, the learned Advocate for Respondent No.5 submitted that there is no violation of any Rules or regulations to disqualify Respondent No.5 for the appointment to the post of Police Patil on the ground of having beneficiary of Indira Niwas Gharkul Scheme. As regard to the alleged suppression, he has pointed out that there was no such requirement of furnishing this particular information in the application form, and therefore, the question of suppression of fact having Gharkul under Indira Niwas Gharkul Scheme does not survive.

13. Material to note that, on receipt of complaint lodged by the Applicant and others, the S.D.O. called report from Tahasildar, Phaltan and B.D.O, Phaltan. On receipt of report, he passed order on 04.05.2016 rejecting the objections and on the same day, appointed Respondent No.5 as Police Patil of Village Dhavalewadi. The Respondent No.5 does not dispute that he is the beneficiary of Indira Niwas Gharkul Scheme. In so far as the allegation of suppression of fact is concerned, the learned Advocate for the Applicant could not point out that there was any such requirement to furnish this information at the time of making of application for the post of Police Patil. Unless the person is called upon or required to disclose about the particular fact or aspect as a condition precedent or requirement under rule or regulation, the non-disclosure of such fact cannot be termed as suppression of fact. Therefore, it cannot be said that the Respondent No.5 has suppressed material fact which was required to be disclosed and

thereby incurred disqualification much less to make him ineligible for the appointment on the post of Police Patil.

14. Now, turning to the contention that the Respondent No.5 fraudulently obtained the benefit under Indira Niwas Gharkul Scheme, the perusal of record reveals that the name of Applicant was recommended for the allotment of Gharkul in the Survey of 2002 to 2007. That time, the Respondent No.5 was found enrolled in the list of persons living below poverty line. It appears that he got the benefit of the said Scheme and got amount spent by him on construction in 2012. He had purchased a Flat at kolki, Taluka Phaltan for Rs.10,30,000/- in 2013 which is subsequent to the allotment of Gharkul. In so far as this aspect is concerned, the Respondent No.5 sought to explain that he borrowed loan from Society as well as from his maternal uncle and purchased the Flat. As such, the fact remains that much after allotment of Gharkul under Indira Niwas Gharkul Scheme, the Respondent No.5 had purchased a Flat. This aspect itself does not incur any disqualification so far as the terms and conditions or eligibility to the post of Police Patil is concerned.

15. As stated above, the learned Advocate for the Applicant could not point out as to how the ground raised by him incurs disqualification of Respondent No.5 to the post of Police Patil. All that, he argued the matter on the assumption that the Respondent No.5 got Gharkul allotted in Indira Niwas Gharkul Scheme fraudulently and suppressed the fact of allotment of Gharkul while filing an application for the post of Police Patil. He could not point out that there was requirement of any such disclosure of allotment of Gharkul Scheme in Application Form. Therefore, non-disclosure of this aspect cannot be termed as suppression of material fact entailing into disqualification for the appointment. Needless to mention that the allotment of house under Indira Niwas Gharkul Scheme cannot be termed disqualification for the appointment to the post of Police Patil. Suffice to say, the grounds raised by the Applicant to challenge the

appointment of Respondent No.5 are devoid of merit and O.A. deserves to be dismissed.

16. However, before parting with the order, some clarification is necessary. I feel it appropriate that it would be in the fitness of things that the S.D.O. shall look into the matter about the allotment of Gharkul to Respondent No.5, which was allotted to him under Indira Niwas Gharkul Scheme and shall examine whether he can retain the Gharkul in view of his improved financial condition and if found not entitled to retain it, he may pass appropriate order as permissible in law after giving reasonable opportunity of hearing to him.

18. The totality of aforesaid discussion leads me to conclude that the Original Application is devoid of merit. Hence, the following order.

ORDER

- (A) The Original Application is dismissed.
- (B) In view of the observation made in Para No.16 of the Judgment, the Respondent No.3 – S.D.O. shall cause an enquiry into the matter of allotment and retention of Gharkul to Respondent No.5 and shall pass appropriate orders in accordance to law after giving reasonable opportunity of hearing to him, within 3 months.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 10.06.2019

Dictation taken by :

S.K. Wamanse.