

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 982 of 2023 (S.B.)**

Sujit S/o Rajesh Rawat,
Aged about 30 years, Occ. Nil, R/o Plot No.111,
Wardha Road, Panjri Lodhi, Post Dongargaon, Tah. Nagpur Rural,
Dist. Nagpur.

Applicant.**Versus**

- 1) State of Maharashtra,
through the Principal Secretary of Home Department,
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Nagpur Division, Old Secretariat Building,
Civil Lines Nagpur.
- 3) The Collector, Nagpur,
District Collector Office, Civil Lines, Nagpur.
- 4) Sub - Divisional Magistrate,
Nagpur Rural Sub Division, Civil Lines, Nagpur.
- 5) Savit Surendra Thakre,
Aged about 30 years, Occ. Not Known,
R/o Panjri Lodhi, Post Dongargaon, Tah. Nagpur Rural,
Dist. Nagpur.

Respondents.

S/Shri P.J. Mehta, S.D. Chande, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondent nos.1 to 4.
S/Shri R.S. Thengne, S.G. Gaurkar, Advocates for resp. no.5.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Date of Reserving for Judgment : 12th July,2024.

Date of Pronouncement of Judgment : 5th August,2024.

JUDGMENT

(Delivered on this 5th day of August,2024)

Heard Shri S.D. Chande, learned counsel for the applicant, Shri V.A. Kulkarni, learned P.O. for respondent nos.1 to 4 and Shri R.S. Thengne, learned counsel for respondent no.5.

2. The case of the applicant in short is as under –

Respondent no.4 has published advertisement to fill various vacant posts of Police Patil within Nagpur Sub Division, as per the advertisement dated 27/04/2023. In the said advertisement, respondent no.4 has also published the post of Police Patil of village Panjri Lodhi, Tah. Nagpur (Rural), Dist. Nagpur. On 5/5/2023, the applicant submitted online application for the post of Police Patil of village Panjri Lodhi. The applicant possessed all the requisite qualification and fulfilled all the conditions mentioned in the said advertisement. Respondent no.4 conducted the written examination. Thereafter, as per the marks obtained by the candidates in the written examination, published a list of the candidates who were found eligible for interview (oral examination) in which the name of the applicant is at Sr.No.243 for village Panjri Lodhi alongwith four other candidates. The applicant received letter on 14/7/2023 from respondent no.4 to remain present for interview on 24/7/2023 along with all documents. The applicant has appeared in the said interview before the Interview Committee, wherein the applicant has produced all the documents as required and has given all the appropriate answers to the question put

to him in the interview by the members of the Committee. On 7/8/2023, respondent no.4 published the village wise merit list of all the candidates. In the said merit list, the applicant is shown to have secured total 69 marks out of 100 marks, whereas, respondent no.5 is shown to have secured 70 marks out of 100 marks. However, in the said list respondent no.4 did not publish the marks obtained in the written examination and the marks obtained in the oral interview separately.

3. On 11/8/2023, respondent no.4 called the candidates personally and on the application of candidates provided result separately. On 11/8/2023, the result of applicant was provided. The applicant is shown to have obtained 57 marks out of 80 marks in the written examination and 12 marks out 20 marks in the oral interview. Respondent no.4 deliberately not given more marks in the oral interview. Respondent no.4 selected Respondent no.5 on the post of Police Patil. She was given more marks in the oral interview though she obtained less marks in the written examination. Hence, the applicant has challenged the selection of Respondent no.5 by filing present O.A. for the following reliefs –

“(8) (1) Call for the record of the interview (oral examination) conducted by the interview committee of all the candidates who participated in the recruitment process for the post of Police Patil for Village Panjri Lodhi, Nagpur (Rural) from the Respondent No. 4.

2) That, on perusal of the said record be pleased to hold and declare that the Respondent No. 4 has shown favouritism in favour of the Respondent No. 5 by giving her maximum marks in the interview (oral examination) and bias against the applicant by giving him the minimum marks in the interview (Oral Examination).

3) Further be pleased to direct the Respondent No. 4 to select and appoint the applicant for the post of Police Patil for Village Panjri Lodhi, Nagpur (Rural), being the most meritorious and deserving candidate.

4) By way of the interim relief direct the Respondent No.4 not to proceed with appointment of the Police Patil of village "Panji Lodhi", Tah. Nagpur Rural, Sub Division Nagpur Rural, Dist. Nagpur, in terms of the advertisement issued by the Respondent No. 4 dated 27/04/2023, till the pendency of the present original Application."

4. Respondent no.5 has filed reply. It is submitted that apart from Respondent no.5 other persons namely Deepak N. Thakur, Vikas B. Thakur, Yogesh P. Bhatero, Sujata R. Thakur and Chandrashekhar R. Thakur and Shobha A. Thakur also applied for the post of Police Patil of village Panjri Lodhi. In the examination, Respondent no.5 has secured 70 marks (51+19 marks), whereas, the applicant has secured 69 marks (57+12 marks). Respondent no.5 is having highest marks and therefore she is selected for the post of Police Patil for village Panjri Lodhi.

5. It is submitted by respondent no.5 that there is no any settled rule as to exclusively consider the marks of the written examination in the oral interview. There is no any striate jacket

formula to select the candidate on the basis of marks secured in the written examination ignoring the overall performance in the interview and other qualification. It does not mean that the person who secured more marks in written examination can be given more marks in the oral interview without considering other qualification and performance of the candidate.

6. Respondent no.5 being female candidate who is highly educated. She is Graduate. She has also taken education of professional course such as B.Ed. After perusal of the marks sheet of Respondent no.5, it reveals that from 10th Standard to Graduation and B.Ed. she had secured 60% i.e. first and second division. On the contrary, the applicant passed 12th Standard and his score is also very less i.e. 48%. From the documents produced by the applicant it reveals that after 10th Standard, he has completed 12th Standard after nearabout 5 years. While conducting viva voce, the Interview Committee may have considered the overall performance and educational qualification of respondent no.5 and given 19 marks to her.

7. It is submitted that during the entire recruitment process nobody has raised any objection against the selection of respondent no.5 or constitution and working of Interview Committee. Considering the entire recruitment process, there is no any malafide on the part of

Interview Committee or respondent no.4. There is no any iota of evidence to show that there is any opaque or favouritism or bias manner on the part of respondent no.4 for selection of respondent no.5. The applicant has secured less marks, therefore, he is not selected. Respondent no.5 has secured more marks, therefore, she is selected for the post of Police Patil. Hence, the O.A. is liable to be dismissed.

8. Respondent no.4 has filed reply. There is no dispute about the advertisement and selection process for the post of Police Patil of villages including the village of Panjri Lodhi. Respondent no.4 after scrutinising examination marks, issued interview letter to the respective candidates including the applicant and respondent no.5. The applicant and respondent no.5 and other candidates appeared for oral interview. The applicant secured 69 marks out of 100 marks, whereas, respondent no.5 has scored 70 marks out of 100 marks. The applicant failed to demonstrate what kind of norms and principles have been violated by respondent no.4. The entire process of selection is transparent. The allegation made by applicant is without any substance. The applicant is making baseless statement on oath. Respondent no.4 has taken oral interview of applicant and respondent no.5. In the oral interview respondent no.4 has found respondent no.5 more eligible to get appointment on the post of Police Patil. Therefore

submission on the part of applicant is baseless. The applicant failed to demonstrate any substantial ground. Hence, O.A. is liable to be dismissed.

9. During the course of submission learned counsel for applicant has submitted that the applicant has secured more marks, i.e., 57 marks in the written examination out of 80 marks, therefore, he should have given more marks in the oral examination.

10. The learned counsel for applicant has submitted that respondent no.5 has secured 51 marks out of 80 marks, but she was given more marks in the oral interview. The applicant was given only 12 marks in oral interview, whereas, respondent no.5 was given 19 marks out of 20 marks.

11. The learned counsel for applicant has submitted that more marks in oral interview are given to respondent no.5 only to select her for the post of Police Patil. The learned counsel for applicant has pointed out the decision of the Hon'ble Supreme Court in the case of ***Ashok Kumar Yadav and Ors. Vs. State of Haryana and Ors. (1985) 4 SCC,417***. The Hon'ble Supreme Court has held that "the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indubitably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high

that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness.” Nothing is pointed out by the applicant to show any arbitrariness on the part of respondent no.4.

12. It is further held that “both written examination and viva voce test are accepted as essential features of proper selection in a given case. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless 'exaggerated weight has been given with proven or obvious oblique motives.” The Hon'ble Supreme Court has further held that “If selections made in accordance with the prescription contained in these rules are now to be set aside, it will upset a large number of appointments already made on the basis of such selections and the integrity and efficiency of the entire administrative machinery would be seriously jeopardised. Therefore, the selections already made by the

Haryana PSC need not be set aside at this stage though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test.”

13. In the present case nothing is pointed out arbitrariness or malice on the part of respondent no.4. From the reply, it appears that respondent no.5 is well qualified as compared to the applicant. She might have given correct answers in the oral interview. She might have given best performance in the oral interview. Nothing is shown by the applicant any favouritism in favour of respondent no.5. Hence, cited decision is not applicable in the case in hand.

14. The learned counsel for the applicant has pointed out the Judgment of the Hon’ble Supreme Court in the case of **P. Mohanan Pillai Vs. State of Kerala and Others (2007) 9 SCC,497**. It is held as under –

“As opined by the Supreme Court in Inder Parkash Gupta case, "for allocation of marks for viva voce test, no hard-and-fast rule of universal application which would meet the requirements of all cases can be laid down". The question as to how much marks should be allocated for interview would depend upon the post and nature of duties to be performed. The nature of duties to be performed on the post of watchman/messenger/attender is not such which requires a high intellectual ability or any particular trait of the candidates which is required to be judged by an expert.”

The fact in the cited decision is very much different. After publication of the result more candidates were called for interview and the ratio was changed from 1:3 to 1:4. The cut off marks was also lower down. Hence, the cited decision is not applicable.

15. The learned counsel for applicant has pointed out the decision of the Government of Maharashtra, Home Department, Mantralaya, Mumbai dated 28/05/2009. As per this decision, if the Police Patil died while on duty or retired, then his legal heir be given preference for the appointment of Police Patil. The guidelines are also given in the advertisement itself. As per Clause no.17 of the advertisement how the legal heirs of Police Patil are to be considered is given. The clause no.17 is reproduced below –

“17) समान गुण मिळाल्यास अंतिम निवड शासन निर्णय क्र. डीव्हीपी-1113/1767/प्र.क्र. 592/ पोल-8, दिनांक 22/08/2014 अन्वये गुणवत्ता यादीतील एकाच स्थानासाठी (Position) दोन किंवा अधिक अर्जदारांना समान गुण मिळाल्यास प्राधान्य क्रमाच्या आधारे उमेदवारांची अंतीम निवड केली जाईल.”

1) पोलीस पाटलांचे वारस, त्यानंतर

2) अर्ज सादर करण्याच्या अंतिम दिनांकास उच्च शैक्षणिक अर्हता धारण करणारे अर्जदार, त्यानंतर

3) माजी सैनिक असलेले अर्जदार, त्यानंतर

4) वयाने ज्येष्ठ असलेले अर्जदार

पोलीस पाटलांच्या वारसामध्ये पती, पत्नी आणि दोन मुले यांचा समावेश, त्या व्यतिरीक्त अन्य कोणत्याही नातेवाईकांचा वारस म्हणून विचार करता येणार नाही.”

16. Therefore, the applicant cannot say that because of the decision of the Government of Maharashtra, Home Department,

Mantralaya, Mumbai dated 28/05/2009, he should have been appointed on the post of Police Patil. It is one of the criteria that if two or more candidates get same marks, then more weightage is to be given to the legal heir of the Police Patil. Respondent no.5 is having more marks, therefore, condition is not applicable. The condition no.2 shows that those candidates are having higher qualification are to be considered. Respondent no.5 is more qualified than the applicant. The applicant has passed only 12th Standard examination, whereas, the respondent no.5 is having graduate degree. She is also having B.Ed. degree. She has passed degree examination in 1st and 2nd Division, whereas, the applicant scored only 48% marks in 12th Standard examination.

17. The learned counsel for applicant failed to demonstrate any malice on the part of respondent no.4. Respondent no.5 has scored more marks i.e. 70 marks, the applicant has scored 69 marks and therefore respondent no.5 is rightly selected for the post of Police Patil. Hence, the following order –

ORDER

The O.A. is dismissed with no order as to costs.

Dated :- 05/08/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 05/08/2024.