

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1181 OF 2022

**DISTRICT: SATARA
SUB : POLICE PATIL**

Shri Dattatray B. Salunkhe,)
Age:- 29 yrs, Occ. Agri,)
R/at Gadewadi, Post-Jakhangaon, Tal-Khatav)
Dist. Satara.)

Versus

1) The State of Maharashtra, through the)
Secretary, Home Dept., O/at MK Marg,)
HR Chowk, Mantralaya, Mumbai 400 032.)

2) The Sub-Divisional Officer, Man-Khatav)
Sub Division, Dahiwadi, O/at near)
BSNL Office, Mayani Road, Dahiwadi,)
Tal. Man, Dist. Satara.)

3) Shri Anil D. Jadhav, Age Adult,)
Occ. Nil, R/at Gadewadi, Post Jakhangaon)
Tal. Khatav, Dist. Satara.)

)...Respondents

Shri S. A. Kashid, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

None for the Respondent No.3.

CORAM : Ashutosh N. Karmarkar, Member (J)

DATE : 28.08.2024

ORDER

1. Heard Shri S. A. Kashid, learned Advocate for the Applicant and
Smt. Archana B. K., learned Presenting Officer for the Respondent No.1
& 2. None for the Respondent No.3.

2. The issue posed for consideration is whether due to pendency of criminal case for offences under Section 323, 324, 504, 506 and 34 of IPC against the Applicant, he was ineligible for appointment to the post of Police Patil.

3. The Applicant is praying for setting aside the impugned order dated 08.08.2022 of S.D.O. Man-Khatav, Sub-Division Dahiwadi by which the Applicant was held to be disqualified for appointment to the post of 'Police Patil' and appointment order of Respondent No.3 dated 18.10.2022 issued by Respondent No.2.

4. According to Applicant, he is permanent resident of village Gadewadi, Taluka Khatav. The Respondent No.2 – S.D.O. Man-Khatav, Sub Division Dahiwadi has published Advertisement dated 22.02.2022 for appointment to the post of 'Police Patil' of various villages including Gadewadi. The Applicant and Respondent No.3 have applied for the said post. The mark list of the candidates published by Respondent No.2 on 22.03.2022. The Applicant and Respondent No.3 have got total 77.50 and 75.75 respectively in the written and oral examination. Thereafter, the Respondent No.3 forwarded representations to the Respondent No.2 intimating about pendency of criminal case No.141/2021 for offences under Section 324, 323, 504 r/w 34 of IPC against the Applicant in the Court at Vaduj, District Satara.

In response to the notice of Respondent No.2, the Applicant appeared and filed detailed reply on 07.04.2022. The Respondent No.2 without applying mind considered the Applicant as disqualified from the post of 'Police Patil' vide order dated 08.08.2022. The Respondent No.2 erroneously appointed the Respondent No.3 on the post of 'Police Patil' vide order dated 18.10.2022. Both the orders of Respondent No.2 dated 08.08.2022 and 18.10.2022 are challenged on the ground of non-following of procedure while conducting enquiry under Clause No.3(e) of Maharashtra Village Police Patil (Recruitment, Pay and Allowances & Other Conditions of Services) Order, 1968 (hereinafter referred to as

'Order 1968'). Secondly, the Respondent No.2 failed to consider G.R. dated 26.08.2014. He has also raised the ground that Applicant has not suppressed any material information.

5. The Respondent No.2 has filed Affidavit in Reply. According to them, Clause No.3(e) of 'Order 1968' and G.R dated 26.08.2014 are relating to Class-III and Class-IV Cadres. The post of 'Police Patil' is not included in those Cadres. According to them, the Applicant has submitted Certificate as per Clause 6 of the Advertisement. That Certificate shows existence of crime against the Applicant. According to Respondent No.2 as per Clause 3, page 6 of the Advertisement, the candidate can be held disqualified at any stage.

6. The Respondent No.3 has also filed his Affidavit in Reply. According to him, he has made grievance before the Respondent No.2 about pendency of criminal case No.141/2021 against the Applicant. On the basis of it, the notice was issued by Respondent No.2 to Applicant and Respondent No.3. The Respondent No.2 has rightly held the Applicant disqualified. According to Respondent No.3, the post of 'Police Patil' is so sensitive and the person appointed on the said post should not involve in criminal activity. According to Respondent No.3, the judgments on which the Applicant has placed reliance are not applicable in the present case.

7. None appeared for Respondent No.3 for argument. The learned Advocate for Applicant has submitted that the only condition as per Advertisement is that the candidate is not convicted in any of the crime. According to him, the Applicant has also filed 'Police Clearance Certificate' in which information about pendency of criminal case for the offences under Section 323 & 324 is mentioned. So, there is no concealment of any fact. He has also relied on G.R. dated 26.08.2014 which would be helpful for guidance. He has submitted that the Applicant is not involved in the case causing grievous hurt as referred in

Schedule-1 of G.R. dated 26.08.2014. The learned Advocate for Applicant placed reliance on the cases decided by this Tribunal in **O. A. No.663/2022 (Smt. Komal K. Shinde v/s State of Maharashtra & Ors.)** and **O.A.No.139/2020 (Karan Bhosale V/s State of Maharashtra & Ors.)**. He has also relied on the judgment of the Hon'ble High Court of Judicature at Bombay (Nagpur Bench) in **Pandurang Mahada Salsundar V/s State of Maharashtra & Ors. 2015 (3) ALL MR 210**

8. On the other hand, the learned PO has submitted that in **Padurang Salsundar's** case (cited supra), the petitioner has appointed on the post of Peon and not Police Patil and also the allegations were made against the husband of Respondent No.3, therefore, the facts were different. She has referred to Clause 6 of the Advertisement which suggested that person to be appointed on the post of 'Police Patil' should not involve in harmful activity.

9. After considering the submissions of both sides, the point for consideration arises as to whether mere pendency of criminal prosecution against Applicant would be sufficient for disqualification to be appointed as Police Patil.

10. It is undisputed fact that the Applicant and Respondent No.3 have applied for the post of 'Police Patil' and they both have secured 77.50 and 75.75 marks respectively in written & oral examinations. It is also undisputed fact that the Respondent No.3 has moved application dated 24.03.2022 intimating S.D.O. Man-Khatav Sub Division, District Satara about pendency of criminal case No.141/2021 for offence punishable under Section 324, 323, 504 r/w 34 of IPC against the Applicant which is pending before the court at Vaduj, Dist. Satara. It is also undisputed fact that notices were issued to Applicant and Respondent No.3 and after hearing both of them, the Applicant was treated as disqualified by the Respondent No.2.

11. On perusal of impugned order dated 08.08.2022, it appears that the Applicant was held to be disqualified for the post of Police Patil as Respondent No.3 moved application about pendency of criminal case against the Applicant. On the basis of it, Respondent No.2 issued notices to Applicant and Respondent No.3 for hearing on 07.04.2022. It is mentioned in impugned order that Applicant failed to file reply and so this Applicant is held to be disqualified. The copy of notice is filed by Respondent No.2 (Exhibit AR-6). The same copy is filed by Applicant (Exhibit-D). It shows that Applicant was present for hearing on 07.04.2022. According to Respondent No.2 – S.D.O., this Applicant did not file reply. But Applicant and Respondent No.3 both have filed copy of reply filed by this Applicant before S.D.O. In Para No.7 of Affidavit in Reply filed by Respondent No.3, it is specifically asserted on Affidavit that the Applicant has also filed his reply on 07.04.2022. This fact falsifies the content in impugned order about absence of reply by Applicant to notice of S.D.O.

12. It is apparent that Respondent No.2 has issued Notification dated 22.02.2022 inviting applications to fill up the post of Police Patil in village Gadewadi, Taluka Khatav, District Satara. The Applicant and Respondent No.3 had participated in the recruitment process. The merit list of written and oral examination shows that Applicant stood first who secured highest marks i.e. 77.50 and Respondent No.3 has secured 75.75 marks. Immediately after two days of publication of this merit list, the complaint was moved to Respondent No.2-S.D.O. Man-Khatav intimating about pendency of criminal case no.141/2021 for offence punishable under Section 324, 323, 504 r/w 34 of IPC against the Applicant.

Actually, the impugned order does not reveal that Applicant is disqualified because of concealment of above facts. The Respondent No.2 has contended in para no.4 of their Affidavit in Reply that Applicant had submitted relevant documents which were required to be filed along with 'Police Clearance Certificate'. It is also clear from the Notification dated

22.02.2022 that documents of the candidates were to be verified after concerned candidate succeeds in written examination. It is apparent that the Applicant succeeded in written examination. So it can be said that Respondents have verified the documents including 'Police Clearance Certificate'. It can be said that Respondent No.2 was aware about pendency of Criminal Case under Section 324 of IPC against the Applicant. Subsequent to declaration of the result of written and oral examination, the impugned order dated 08.08.2022 was passed.

13. The learned Advocate for Applicant has invited my attention to Notification dated 22.02.2022 and particularly Serial No.8 of the eligibility criteria in it. It says that the candidate would be disqualified in case he is convicted in any crime. It does not reveal from the said Notification that registration of criminal offence is disqualification to participate in the recruitment process for the post of Police Patil. So mere pendency of crime for the offence under Section 324, 323 of IPC cannot be said to be granted for disqualification.

14. Clause No.3 of Maharashtra Village Police Patil (Recruitment, Pay and Allowances & Other Conditions of Services) Order, 1968 (hereinafter referred to as 'Order 1968' for brevity) provides for eligibility for appointment to the post of Police Patil. Clause No.3 is as under:-

"3. Eligibility for appointment – No person shall be eligible for being appointed as a Police Patil who

- (a) Is under twenty five years or over forty five years of age at the time of appointment,*
- (b) Has not passed the VI standard examination in a primary school or who does not possess equivalent or Higher educational qualification.*

Provided that, when no suitable candidates with this minimum qualification are available, the competent authority may appoint a candidate who has passed at least the IV standard examination in a primary school,

- (c) Is not a resident of the village concerned.*
- (d) Is physically unfit to perform the duties of a Police Patil,*

Provided that, the candidate may be required by the competent authority to undergo medical examination to determine his physical fitness, if deemed necessary.

(e) 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.'

15. Even if Clause 3(e) is considered for a moment, the Respondent No.2 did not find the Applicant unsuitable for the post of Police Patil till the complaint moved by Respondent No.3. It is not specifically mentioned in 'Police Clearance Certificate' that Applicant is of bad character which renders him unsuitable. Secondly, it is already discussed that Notification dated 22.02.2022 shows that only a person who is convicted would not be ineligible for the post of Police Patil.

16. Learned Advocate for Applicant submits that Applicant is facing offence under Section 323 & 324 of IPC. The learned Advocate has referred to the G.R. dated 26.08.2014 which can be seen as a guiding factor. The Government has tried to make clear by way of this GR as to in which case conviction or pendency of criminal proceeding would be granted for disqualification for appointment in Government Service. The Respondent No.3 has contended that the GR dated 26.08.2014 is related to Class-III or Class-IV employees. But the Government has specified that while appointing a person as Class-III or Class-IV employee, the candidate cannot be appointed if he is facing criminal trial or is convicted. Schedule-A of the GR shows that candidate cannot be appointed in Government service if he is convicted for causing grievous hurt or its trial is going on. Offences levelled against the present Applicant are under Section 323, 324 of IPC which are related to simple hurt. Causing of grievous hurt is punishable under Section 325 of IPC.

In view of this GR, a person can be disqualified for appointment in Government service in Group 'C' and Group 'D' posts only in case of prosecution under Section 325 of IPC. In absence of any other Circular as to appointment of Police Patil, this GR can be considered as a guiding factor. Thus, it would be difficult to accept that the impugned order of

disqualifying the Applicant on the post of Police Patil on that count is proper. In support of submission regarding GR dated 26.08.2014, learned Advocate for Applicant has relied on the judgment of this Tribunal in **O. A. No.663/2022 (Smt. Komal K. Shinde v/s State of Maharashtra & Ors.)**. There is no adjudication by the competent authority that Applicant is of bad character. Recitals of report against Applicant shows family dispute between Applicant and his uncle i.e original informant. The recital of F.I.R. also reveals that informant suffered superficial injury. The Medical Certificate of informant Ashok shows that he and other family members suffered simple injury. It is settled principle of law that accused is presumed to be innocent until guilt is proved. In that connection the Applicant has relied on case of **Padurang Salundar's** case (cited supra).

17. When the Notification dated 22.02.2022 only says about incompetency to apply in case the candidate is convicted in any crime, mere pendency of criminal case against Applicant can hardly be said to be disqualification for appointment to the post of Police Patil. So the impugned order dated 08.08.2022 can be said to be improper and unsustainable in law. The Applicant has got highest marks as compared to marks obtained by Respondent No.3. It is already held that disqualification of Applicant is improper. Naturally, the impugned order dated 18.0,2022 appointing Respondent No.3 would be illegal and improper.

18. The Respondent No.2 has referred to GR dated 07.09.1999 since the Applicant has challenged the orders dated 08.08.2022 and 18.10.2022 in OA. This GR would not be of much help to Respondents. According to Respondent Nos.2 and 3, in view of Clause 6 of page 5 of Notification, pendency of crime would be disqualification for appointment to post of Police Patil. It is already discussed in forgoing paras that after verifying documents, the candidates were interviewed as per the same Notification and at the same time the competent authority

has not disqualified the Applicant. For these reasons and discussions in forgoing paras, there is no substance in such contentions of Respondents. Thus, both the impugned orders need to be set aside. Hence, the following order :-

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 08.08.2022 vide पोलिसपाटील/आस्था/कवि/858/2022 passed by Respondent No.2 and 18.10.2022 vide कमांक/वतन/पोपा/खटाव/एसआर/118/2022 passed by Respondent No.2 are set aside.
- (C) The S.D.O. to appoint eligible candidate within four weeks from the date of this order.
- (D) No Order as to Costs.

Sd/-

(A. N. Karmarkar)
Member (J)

Place: Mumbai

Date: 28.08.2024

Dictation taken by: Vaishali Santosh Mane

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