

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1355 OF 2023

**DISTRICT: Solapur
Subject: Police Patil**

Shri Revansiddh M. Naymgonde)
Age: 35 yrs, Occ: Agriculturist,)
R/o. Malewadi, Taluka Mangalvedha,)
Dist. Solapur.).....**Applicant**

VERSUS

- 1] The State of Maharashtra, through)
Chief Secretary, Revenue Dept.,)
Mantralaya, Mumbai 400 032.)
- 2) The Sub-Divisional Officer,)
Mangalvedha Sub-Division,)
Mangalvedha, Dist. Solapur.)
- 3) The District Collector, Solapur,)
Dist. Solapur.).....**RESPONDENTS**

**Shri R. M. Kolge, learned Advocate for the Applicant.
Shri A. J. Chougule, learned Presenting Officer for the Respondent**

CORAM : Shri Ashutosh Karmarkar, Member (J)

DATE : 19.11.2024

J U D G M E N T

1. The Applicant has sought relief to set aside set aside impugned order dated 23.01.2023 of Respondent No.2 whereby the claim of Applicant for appointment/continuation on the post of Police Patil was rejected. He has also sought relief for setting aside the orders of Respondent No.2 dated 28.04.2023, 18.07.2023, 16.06.2023, 14.08.2023, 14.08.2023, 12.09.2023.

During pendency of matter, the petition was amended and relief was sought that impugned revised order passed by the Respondent No.2 dated 29.11.2023 be quashed.

2. There was advertisement dated 08.11.2017 for purpose of appointment to the post of Police Patil at Village Malewadi. The Applicant had applied for the said post and was also appointed as Police Patil for village Malewadi vide order dated 30.12.2017. Three candidates namely Applicant, one Shrikant Mali and Audumber Mali were the candidates who applied for the post of Police Patil. All the three candidates got 74 marks in written test. Shri Audumber Mali filed application to Respondent No.2 that answer to the question no.26 in question paper as shown in answer key is wrong. If the said answer is verified, the said Audumber Mali will get one more mark. Accordingly, it was found that answer of Audumber Mali was correct and he got 75 marks. Meantime, the Applicant has also filed complaint that said Audumber Mali was not permanent resident of village Malewadi and there is bungalow of his name of father in village Hulajanti. So, he is not entitled for the post of Police Patil.

3. After hearing Applicant as well as Audumber Mali, the Respondent No.2-S.D.O. has cancelled the appointment of Applicant. The Respondent No.2 has also held that enquiry is to be conducted in respect of complaint of Applicant against Shri Audumber Mali. According to Applicant, Tahsildar, Mangalwedha sent letter to Respondent No.2 about failure of Audumber Mali to produce document showing his residence at

village Malewadi. Applicant has made application for appointing him as Police Patil. The Respondent No.2 has also held Audumber Mali as ineligible for the post of Police Patil. Again Applicant has moved application for appointing him as Police Patil. Shri Audumber Mali has filed O.A. No.584/2021 before this Tribunal challenging the order of S.D.O. holding him ineligible. That O.A. filed by Audumber Mali was dismissed by order dated 06.05.2022. The Applicant again moved an application for appointing him as Police Patil. Thereafter, Shri Audumber Mali filed W.P. No.508/2023 challenging the judgment of this Tribunal passed in O.A.No.584/2021. There is no stay in that matter and it is pending. The Respondent No.2 vide order dated 23.01.2023 rejected the claim of the Applicant for reinstatement or continuation on the post of Police Patil. Similar orders are passed on other applications for similar relief.

4. During pendency of said W.P.No.508/2023, the Respondent No.2 - S.D.O. published new advertisement on 31.08.2023 for the appointment to the post of Police Patil at Malewadi. The Applicant has objected the said act on the ground of pendency of W.P.No.508/2023 of Shri Audumber Mali in Hon'ble High Court.

5. As per new advertisement, the post of Police Patil is shown reserved for female candidate. So, the Applicant approached the Hon'ble High Court by filing W.P.No.12502/2023. The said petition is also dismissed.

6. Applicant has claimed relief on the ground that Respondent Shri Audumber Mali is held to be ineligible as he is not resident of village

Malevadi. His petition in O.A.No.584/2021 is already dismissed on 06.05.2022. The reasons in impugned order dated 23.01.2023, that if Applicant is appointed as Police Patil, it would amount to contempt of order of this Tribunal is incorrect. Another ground is raised that after initial advertisement, appointment was to be continued after expiration of initial period of five years. So, the Applicant should have been continued on the post of Police Patil. Thirdly Shri Audumber Mali has not got any relief from the Hon'ble High Court though his petition is pending.

7. During pendency of petition, the Applicant has contended by way of amendment that the selection process as per new advertisement was come to an end on 20.12.2023. If the process of appointment is not stayed, the Applicant would be deprived of getting the post of Police Patil.

8. On the other hand, the Respondent No.1 to 3 had filed their reply. Admittedly, they have appointed Applicant as Police Patil vide order dated 30.12.2017. All the three candidates for the said post got equal marks in written test. Meantime, Shri Audumber Mali filed O.A. No.1112/2018 in which Tribunal has directed to decide as to which is correct answer to question no.26 in the written examination paper and if answer of Audumber Mali is found correct, then further steps be taken for cancellation as well as appointment of the proper person. Accordingly, Respondent No.2 has taken steps and it was found that Shri Audumber Mali got 1 more mark as his answer to question no.26 was correct. Meantime, the Applicant had filed complaint against Shri Audumber Mali

that he is not resident of Malewadi and house is in the name of his father at village Hulajanti.

9. After hearing both parties, Shri Audumber Mali is held to be ineligible for the post of Police Patil. He has challenged the said order in O.A.No.584/2021 before this Tribunal, but it was dismissed. Shri Audumber Mali has preferred W.P. No.508/2023 before the Hon'ble High Court which is pending. The applications of Applicant for reinstatement or continuation were rejected on the ground that in case of his appointment there would be contempt of the order of the Tribunal. Applicant has also filed W.P. No.12502/2023 to challenge new proclamation dated 14.04.2023 but it was dismissed.

10. Learned Advocate for the Applicant has submitted that after appointment of Applicant on the post of Police Patil, Shri Audumber Mali has filed representation to verify the Answer to Question No.26 in written examination. It was not considered initially. Then Audumber Mali filed O.A.No.1112/2018. As per the order of the Tribunal in that O.A., it was found that answer of Audumber Mali to Question No.26 was correct. So Audumber Mali got 75 marks. On that basis, appointment of Applicant on the post of Police Patil was cancelled by S.D.O. vide order dated 07.02.2020. Meantime, this Applicant made complaint to S.D.O. that Audumber Mali is not permanent resident of village Malewadi and he cannot be said to be eligible for the said post of Police Patil. It is also submitted that Respondent – S.D.O. had held Audumber Mali as ineligible for the post of Police Patil as he is not complying the condition

no.3 in the Advertisement which says that candidate must be permanent resident of concerned village.

11. According to learned Advocate for Applicant, the Applicant has forwarded applications to S.D.O. for his reappointment after said order dated 22.06.2021. It is submitted that impugned order dated 23.01.2023 is illegal and improper in which it is mentioned that appointment of Audumber Mali would amount to contempt of order of this Tribunal. According to him, on the same day of holding Audumber Mali as ineligible i.e. on 22.06.2021, Applicant should have been reappointed. It is also submitted that the order of S.D.O. holding Audumber Mali as ineligible was challenged by Audumber Mali in O.A.No.584/2021, but that O.A. is also dismissed against which Audumber Mali has preferred W.P. No.508/2023. The said petition is pending and there is no stay order in it. It is also submitted by Applicant that meantime, the Respondent has issued fresh proclamation for appointment of Police Patil at village Malewadi and now it is reserved for Female Candidate. It is also submitted that issue of cancellation of appointment of Applicant is not decided by the Hon'ble High Court. In support of his contention, he has relied in case of **Sau. Swati Hindurao Desai V/s State of Maharashtra & Ors. in O.A. No.272/2016** of this Tribunal and also in case of **Sushil Kumar Meth v/s Gobind Ram Bohra in 1990 (1) SCC 193** and in case of **Gangaram Topaji Hupade v/s Digamber Sadashio Kanwale & Another, 1991 (1) MHLJ1204.**

12. On the other hand, learned P.O. submitted that as per new advertisement, the candidate is already selected, but since W.P. No.508/2023 of Mr. Audumber Mali is pending before the Hon'ble High Court, no posting is given to said candidate. It is submitted that this Applicant has challenged new advertisement for appointment of Police Patil by filing W.P. No.12502/2023 but that W.P. is already dismissed. According to him, initial advertisement was for the period from 2018 to 2022 and new advertisement is pertaining to appointment to the year 2023. After holding Audumber Mali as ineligible for the post of Police Patil, this Applicant moved application for reappointment. The Respondent-S.D.O. has passed impugned order with reasons on 23.01.2023. It is also submitted that prayer of Applicant has become infructuous.

13. It is admitted fact that Applicant was appointed as Police Patil of village Malewadi as per the order of Respondent No.2, dated 30.12.2017. The said order is for the period from 01.01.2018 to 31.12.2023. It is also not disputed that Applicant, one Shri Audumber Mali and Shri Shrikant Mali were three candidates who obtained 74 marks in the test which was conducted for appointment to the post of Police Patil. The order of Respondent No.2 dated 07.02.2020 shows that as per criteria given in G.R. dated 12.08.2014, this Applicant was appointed as Police Patil as he was eldest amongst three candidates. The said order also shows that one Shri Audumber Mali applied on 05.01.2018 to verify answer to question

no.26 in written test. But that application was rejected as Applicant was already appointed on the post of Police Patil.

14. It is undisputed fact that said Shri Audumber Mali filed O.A.No.1112/2018 so as to challenge the said order of rejection of his application. It appears that the Tribunal has directed by passing order in the said petition that S.D.M. shall decide which is correct answer to Question No.26 of written test and if Applicant's (Audumber Mali) answer is found correct, he should pass further appropriate order about the cancellation as well as appointment of appropriate person to the post of Police Patil on the basis of marks on merit. It is also not disputed that S.D.M. found that answer given by Audumber Mali to Question No.26 in written test was correct and so he got 75 marks. It is also undisputed fact that on that basis appointment order of Applicant on the post of Police Patil was cancelled by S.D.M. vide order dated 07.02.2020.

15. It appears from the said order dated 07.02.2020 that in meantime i.e. 22.01.2020 present Applicant has filed application that candidate Shri Audumber Mali is not permanent resident of Malewadi and that as per said order, the candidate must be resident of that particular village. So, S.D.M. while cancelling appointment of Applicant has also passed order that inquiry in respect of complaint application of Applicant dated 22.01.2020 is to be conducted and then the decision regarding appointment of Police Patil is to be taken.

16. It is not disputed by the Respondents that S.D.M. has called Applicant as well as Shri Audumber Mali for inquiry purpose. The order dated 22.06.2021 passed by S.D.M. also shows that Shri Audumber Mali has also filed his reply during that enquiry. S.D.M. Mangalvedha has observed in order dated 22.06.2021 that Shri Audumber Mali is not the resident of village Malewadi. He has also passed final order that Shri Audumber Mali has not complied Condition No.3 of Advertisement dated 08.11.2017 that candidate should be resident of concerned village, and therefore, he is not eligible for the post of Police Patil. Shri Audumber Mali has challenged this order dated 22.06.2021 by filing O.A.No.584/2021 but that petition came to be dismissed by this Tribunal. The Respondents have contended that Shri Audumber Mali has filed W.P. No.508/2022 against the said final order in O.A.No.584/2021 which is still pending.

17. The learned Advocate for Applicant has submitted that there is no stay of the Hon'ble High Court to the final order in O.A.No.584/2021.

18. The Applicant has invited my attention to the copy of application dated 09.05.2022 (page 73) wherein the Applicant has sought his reappointment or continuation on the post of Police Patil from 07.02.2020. It also appears from the document (page 75 to 79) that Applicant has forwarded applications for same relief on 21.11.2022, 23.02.2023, 11.03.2023 and 12.09.2023. The Applicant has contended in his application dated 08.09.2023 that he has forwarded applications for same relief to the Government. The impugned order dated 23.01.2023

shows reference of letters received by Revenue Department, Mantralaya, Mumbai.

S.D. M. Mangalvedha held in its impugned order dated 23.01.2023 that appointment of Applicant would amount to contempt of order of the Tribunal particularly his appointment is cancelled vide order dated 07.02.2020. Actually, this reason appeared to be cryptic. It is already discussed in forgoing paragraphs that while passing order dated 01.12.2018, this Tribunal has directed S.D.M. to decide which is the correct answer to Question No.26 in written examination paper and if Applicant's answer is found correct then he should pass appropriate order about cancellation as well as appointment of appropriate persons to the post of Police Patil. S.D.M. could have taken decision on the application of Applicant dated 09.05.2022 which was filed after the decision of the Tribunal in O.A.No.584/2021. The impugned order dated 23.01.2023 came to be passed after completion of tenure of 5 years from 01.01.2018 to 31.12.2022 as shown in the appointment order of the Applicant. (Page 24 of O.A.). Now, the Applicant has raised one of the grounds that appointment of Applicant was for initial period of 5 years and it could be continued till completion of his age of 60 years. So, the Applicant has referred condition in Clause 5 of his appointment letter. It is already discussed that S.D.M. has not taken decision in respect of appointment of Applicant immediately after dismissal of O.A.No.584/2021 on 06.05.2022.

19. Learned Presenting Officer submits that meantime new Advertisement for the period for 5 years from 2023 is published and the candidate is also selected for the post of Police Patil. Now, the said post is reserved for candidate from 'OBC Female' category. The said Advertisement dated 14.09.2023 shows that it was published subject to the decision of any of the Court. It is also referred in Clause 21 of the said Advertisement that W.P. No.508/2023 is pending before the Hon'ble High Court, Mumbai. It is already discussed that said petition is filed by Shri Audumber Mali challenging order in O.A.584/2023.

20. Learned Advocate for Applicant has already submitted that order in O.A. No.584/2021 is not stayed by the Hon'ble High Court. Learned P.O. has not submitted anything about any stay order.

21. The Applicant has sought relief for quashing or setting aside the impugned revised Advertainment/Proclamation. The copy of the said Proclamation shows that original Advertisement was published on 14.09.2023. But due to code of conduct for Grampanchayat further process was stopped by order of Collector dated 06.10.2023. It has to be noted that present Applicant has challenged the said Proclamation dated 14.09.2023 by filing W.P.No.12502 and the said W.P. was dismissed on 07.10.2023. Since the Hon'ble High Court has dismissed the said petition, there is no question of grant of relief to quash revised Proclamation/Advertisement as prayed.

22. The Applicant has relied on the case **Sau. Swati Hindurao Desai (cited above)**. The fact in that case was different. In that case, the appointment order of Applicant was cancelled and another candidate was appointed as Police Patil. The Applicant has also relied in case of **Sushil Kumar Meth** and in case of **Gangaram Topaji Hupade (cited above)**. These cases also can be distinguished on facts. These cases are not helpful to Applicant for the reasons given in forgoing paragraphs. It would be proper to direct the Respondent-S.D.M. to take decision in respect of case of the Applicant in light of Clause 5 of Appointment Order (Page 24 of O.A.). Therefore, I proceed to pass following order :-

ORDER

1. Petition is partly allowed in following terms –
2. Respondent Nos.1 to 3 to consider the case/prayer of Applicant regarding appointment/continuation as Police Patil, if any, particularly in context with condition in Clause 5 of appointment letter (Exb. 'C', Page 24) dated 30.12.2017 and decide it within the period of six weeks from date of this order.
3. Original Application is disposed of.
4. No Order as to Cost.

Sd/-
(Ashutosh N. Karmarkar)
Member (J)

