

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

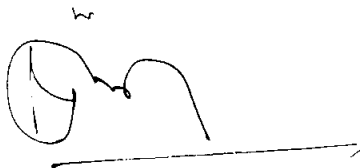
ORIGINAL APPLICATION NO.157 OF 2016

DISTRICT : KOLHAPUR

Shri Pradeep Namdev Patil.)
Age : 32 Yrs, Occu. Nil, R/at Post Koparde)
Tal. Karveer, Dist : Kolhapur.)
Address of Service of Notice :)
Shri Prashant S. Bhavake, Advocate,)
28-A, 4th Floor, Noble Chambers)
(RPI House), Opp. Janmabhoomi Bhavan,)
Near Hutatma Chowk, Fort,)
Mumbai 400 001.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. The District Collector.)
Kolhapur, having office at Swaraj)
Bhavan, Assembly Road, Nagala)
Park, Kolhapur.)
3. The Sub-Divisional Magistrate &)
Sub-Divisional Officer, Karveer)
Division, Karveer, having office at)



Swaraj Bhavan, Assembly Road,)
 Behind Collector Office, Nagala)
 Park, Kolhapur.)

4. Shri Jalindar A. Jamdar.)
 Age : 34 Yrs, Occu. Agri, R/at Post)
 Koparde, Tal. Karveer, Dist Kolhapur)...**Respondents**

Shri P.S. Bhavake, Advocate for Applicant.

Ms. A.B. Kololgi, Presenting Officer for Respondents 1 to 3.

Shri Paras Yadav, Advocate for Respondent No.4.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 13.01.2017

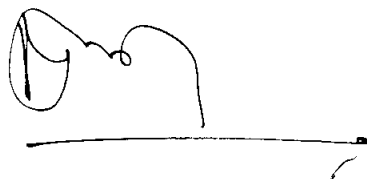
JUDGMENT

1. The dispute in this Original Application (OA) relates to the post of Police Patil of Village Koparde, Taluka Karveer, District Kolhapur (to be hereinafter called 'the said post'). The Applicant is aggrieved by the appointment of the Respondent No.4, a private party Respondent and he having been left out. The 1st Respondent is the State of Maharashtra in Home Department while the 2nd Respondent is the District Collector, Kolhapur and the 3rd Respondent is the Sub-Divisional Magistrate of Karveer

within whose jurisdiction, the said post falls.

2. I have perused the record and proceedings and heard Mr. P.S. Bhavake, the learned Advocate for the Applicant, Ms. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents 1 to 3 and Mr. Paras Yadav, the learned Advocate for Respondent No.4.

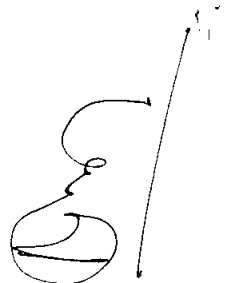
3. It is an indisputable factual position that a proclamation came to be issued on 23rd November, 2015, a copy of which is at Exh. 'B' (Page 23 of the Paper Book (PB)) whereunder, the said post was advertised. The Applicant and the 4th Respondent and 9 others were ultimately left in the reckoning. The written test was held of 80 marks while 20 marks were for oral interview. The Applicant scored in the written test 43 marks as against 42 scored by the 4th Respondent. In the oral interview, the Applicant scored 9.75 marks as against 11.50 by the 4th Respondent and thus, the 4th Respondent edged pass the Applicant by a paltry 0.75 marks. Ultimately, the 4th Respondent was given the letter of appointment. By way amendment to the OA, that letter of appointment is also being challenged.

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4. Mr. Bhavake, the learned Advocate for the Applicant told me relying on the G.R. of 5th October, 2015 (Exh. 'M', Page 49 of the PB) that with effect from the said date, in so far as the appointments to the Group 'D' posts were considered, they would have to be held only on the basis of written test and not even a part on the basis of the oral interview. The learned PO Ms. A.B. Kololgi and the learned Advocate Mr. Paras Yadav, however, countered the submissions of Mr. Bhavake.

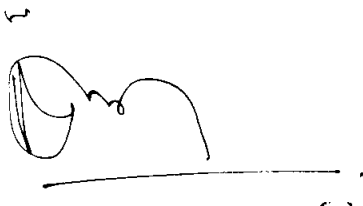
5. Now, in the first place, I find that even as Mr. Bhavake is right in contending that the declaration inviting applications was post the G.R. above referred to that is a G.R. issued by the GAD. It is not clear as to whether it can be equated with even the statutory rules much less with the enacted law. However, as far as the present facts are concerned and in deciding this OA I am only concerned therewith, it is quite clear that for better part of the life time of the facts giving rise to this OA, the Applicant not only applied with full knowledge of the requirement of written and oral test but also appeared without murmur at the said test. In fact, far from opposing the oral interview, he has a concept in a way clearly supported it when in better part of the OA, he as emphasized as to how looking to the duration of time that was consumed in the interview

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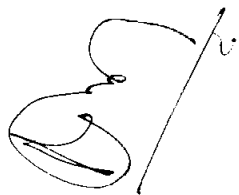
of the Applicant and the 4th Respondent, the Applicant ought to have scored over the 4th Respondent. Therefore, in this context, according to the clearly acknowledge principles of law in this behalf, it is not now open to the Applicant to turn around and claim any immunity from oral test and its effect.

6. Still an interesting debate went on at Bar with regard to the status of the Police Patil in the context of whether in so far as the 2015 G.R. is concerned, the Applicant could be considered to be a Group 'D' employee in which case, the said 2015 GR would be applicable. Mr. Bhavake's submission has been that regard being had to the honorarium which is just about Rs.3000/-, he would be in Group 'D'. In support of this submission, reliance was placed by him on GAD G.R. dated 2nd July, 2002 with particular reference to the Serial No.4 which prescribes a limit of Rs.4,400/- or less per month as a payment for one to befall Group 'D' (see Exh. 'B', Page 87 of the PB). Ms. A.B. Kololgi, the learned PO and Mr. Paras Yadav, the learned Advocate for the 4th Respondent in their own way tried to support their stand that the 2015 GR is not applicable to the Applicant.

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7. Therefore, I now have to consider the issue of the status of the Police Patil in the context of honorarium received and the issue as to whether the mere fact of the payment being not as a salary and as an honorarium would be conclusive and decisive. In fact, nothing more needs to be said or done by me because this particular controversy is now fully capable of being resolved by the two Judgments of the two Division Benches of the Hon'ble Bombay High Court at Nagpur Bench. The 1st is **Gangaram T. Hupade Vs. Digamber S. Kanwale and another, 1991 Mh.L.J 1204** and then a later Division Bench Judgment in **Shriram D. Bhoyar Vs. Asok K. Raut, 2012 (5) Bombay Cases Reporter 45.** In **Shriram** (supra), **Gangaram** (supra) has been followed and Paras 27 and 28 from **Gangaram** (supra) was quoted verbatim. I would, therefore, reproduce the entire Para 7 from **Shriram Bhoyar** (supra).

“7. It will, be also useful to refer to the judgment of this Court in the case of (*Gangaram Topaji Hupade Vs. Digamber Sadashio Kanwale and another*), reported in 1992 B.C.I. (soft) 128 (N.B.) : 1991 (2) Mh.L.J.1204, wherein this Court has considered the aspect that, (i) whether the Police Patil appointed under the Maharashtra Village Police Act is a government servant; and (ii) holder of civil post



under State. This Court in the said judgment has observed as under:

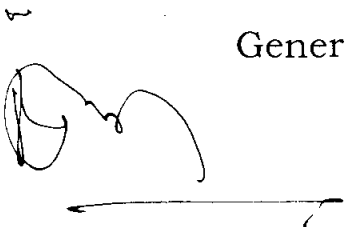
“26. Sub-rule (3) of Rule 1 of the Maharashtra Civil Services (Conduct) Rules, 1979, reads as under:-

“Except as otherwise provided by or under these rules, these rules (and also any rules and orders in relation to matters covered by these rules duly approved by Government from time to time and not inconsistent with provisions of these rules) apply to all persons appointed to civil services and posts in connection with the affairs of the State of Maharashtra.

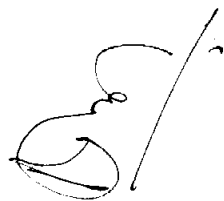
Provided that, only Rules 2, 3, 5, 6, 11, 15, 19, 29 and 30 shall apply to persons appointed as Police Patils under the Maharashtra Village Police Act, 1967.”

27. The Bombay Village Panchayats Act, 1958 is also relevant. Section 14(i) of the said Act provides that no person shall be a member of a *panchayat* or continue as such, who “is a servant of the Government or a servant of any local authority”. Explanation 3 provides that for the purposes of the above provision Police Patil shall be deemed to be a Government servant.

28. The term “Government Servant” is not defined either by the Constitution or by the AT Act or by the General Clauses Act and hence recourse to the basic



concepts of the relationship between master and servant is inevitable. On the total conspectus of all the above provisions, it seems clear to us that all the attributes of that relationship exist in ample measure between a Police Patil and the Government and that he is clearly a holder of a civil post under the State created by the statute for performance of State functions and which exists apart from its holder. State selects and appoints him, exercises administrative and disciplinary control over him and his work, and pays his remuneration. The only features which, it is said, militates against the relationship and status of the post, are about his meager remuneration described as honorarium (Clause 7 of the Order) and his right to cultivate land or engage in local business or trade in the village in such manner as is not detrimental to the performance of his duties (Clause 8 of the Order). In our view these features are not decisive of the matter. Settled legal position is that a post outside regularly constituted services need neither carry regular salary nor be a whole time employment. In this connection the case of (*State of Assam Vs. Kanak Chandra Dutta*), A,I,R, 1967 S.C. 884, may be noticed. It related to a Mauzadar (revenue contractor) in Assam Valley, appointed and governed under the State's Revenue Regulations. His duties



appear to be an admixture of duties of a Police Patil and a Patwari in the Maharashtra State. Peculiar features are that his successor is ordinarily selected from his successor is ordinarily selected from among the members of his family and if suitable heir is minor, the post may be kept open for him for certain period during which an agent can be appointed to perform the duties, *Mauzadar* is not in whole time employment, he draws no fixed salary but is entitled to only commission. Despite these features, the Supreme Court held that he is a Government Servant holding a civil post. The ratio of that decision, therefore, applies with greater rigor to a Police Patil."

The fact that the facts in both the Judgments may not be exactly identical with the present one is immaterial because the ratio thereof is fully applicable hereto.

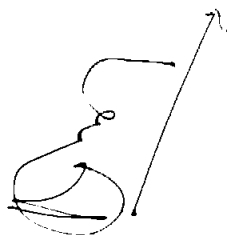
8. It is, therefore, quite clear that regardless of the nomenclature of the remuneration in so far as the status is concerned, the post of the Police Patil would be of civil service. However, that by itself would not mean that it falls in Group 'D' necessarily. For which, the above quoted observations of Their Lordships need to be referred to once again. It is, therefore, quite clear that while there is



material to suggest that the post of the Police Patil is a civil post, but there is nothing to indicate on the basis of the material on record that the said post is a Group 'D' post of the State of Maharashtra, and therefore, the 2015 GR would neither in terms nor intent nor by implication would be attracted hereto. This, in my opinion, knocks the stuffing out of the case of the Applicant coupled with the fact that he voluntarily not only applied for, but took part in the process of selection and only after having failed to make it, did he turn around and started raising issues about the same. In fact, a categorical plea in this behalf has been taken in right earnest by way of amendment and not so much in the OA such as it was initially brought.

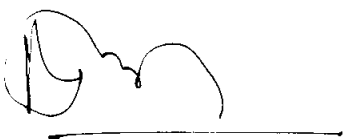
9. Mr. Bhavake, the learned Advocate for the Applicant laid some stress on the fact that while the Applicant fell in the category of the heirs and/or dependants of the Police Patil, the 3rd Respondent did not, and therefore, Shri Bhavake was considerably aggrieved by the fact that the Respondent No.4 still got one mark in the column of experience, inheritance and others, out of three. Now, he was in this behalf, referring to Page 66 of the PB. The Applicant got three marks for his lineage. But pertinently, if the Respondent No. 4 got one mark, it could have been for experience and others because experience

1



(अनुभव), lineage (वारसा) and others (इतर) are all clubbed together are three marks. Here, the point that this issue of one mark specifically urged in the OA assumes significance. Had that been done the Respondents would have got an opportunity to clarify and even elaborate. It is, therefore, quite clear that due regard was given to the Applicant lineage for which perhaps he can raise no dispute.

10. In the OA, more particularly pre-amendment, this aspect of the matter of lineage, inheritance, etc. have been raised quite vociferously. I can take it that the case of the Applicant that in as much as he was a dependent or descendant of a Police Patil, he would be entitled to edge past the Respondent No.4. At Exh. 'J' (Page 41 of the PB), there is a Home Department G.R. dated 22nd August, 2014. It contains within itself the guidelines for the appointment of Police Patil. It is in Marathi. Clause 5 thereof envisages a situation where two or more candidates would be tied at one particular figure in which case, the serial order of preference has been given and the heirs and LRs of the Police Patil would perhaps be the first to be considered followed by those holding higher qualification, Ex-servicemen and then the one senior in age. However, howsoever small, the difference may have been the



difference was nevertheless there between the Applicant and the 4th Respondent in the matter of scoring of marks, and therefore, the provision just now under consideration would have no occasion to apply. Other factors remaining constant, at this age of civilization, both civil as well as civilized, the accident of birth is not something that can be readily inferred and if an instrument provides therefor, then it must be strictly construed. If that be so, then in the present set of facts, the Applicant would not be able to steal a march over the 4th Respondent in that behalf.

11. The upshot is that in the first place, 2015 G.R. may not be applicable at all in view of the foregoing and in any case, in the set of facts such as they are, it will be too late in the day for the Applicant to raise a dispute thereabout. I would, therefore, find no merit in this OA and the same is accordingly dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
13.01.2017

Mumbai

Date : 13.01.2017

Dictation taken by :

S.K. Wamanse.

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