

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

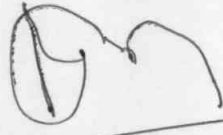
**ORIGINAL APPLICATION NO.158 OF 2016**

**DISTRICT : KOLHAPUR**

Shri Abaso Krishnat Patil. )  
Aged : 44 Yrs, Occu. Agriculturist, )  
R/o. Savarde Tarf Satave, Tal. Panhala, )  
District : Kolhapur. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai - 400 032. )
2. The Sub-Divisional Officer. )  
Panhala Division, Panhala, having )  
Office at Panhala, Tal.-Panhala, )  
District : Kolhapur. )
3. The Collector, Kolhapur having office )  
at Swarajya Bhavan, Kolhapur. )
4. Shri Sagar R. Yadav. )  
Declared Selected Candidate, )  
Aged : 30 Yrs, Occu. Agriculturist, )  
R/o. Savarde Tarf Satave, )  
Tal. Panhala, District : Kolhapur. )...**Respondents**

  
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**Shri V.V. Mohite, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondents 1 to 3.**

**Shri C.T. Chandratre, Advocate for Respondent No.4.**

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

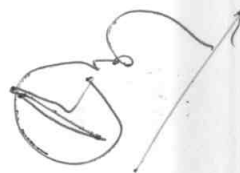
**DATE : 16.12.2016**

### **JUDGMENT**

1. This Original Application (OA) throws up for resolution the dispute with regard to the post of Police Patil (the said post hereinafter) of Village Savarde-Amtewadi, Taluka Panhala, District Kolhapur for which post the Respondent No.4 has been appointed but which appointment is contested by the Applicant who in turn seeks his own appointment thereto.

2. I have perused the record and proceedings and heard Shri V.V. Mohite, the learned Advocate for the Applicant, Mrs. K.S. Gaikwad, the learned Presenting Officer for the Respondents 1 to 3 and Shri C.T. Chandratre, the learned Advocate for the private party Respondent No.4

3. It is an indisputable factual position that the test was conducted for the said post. The Respondent No.4



secured more marks than the Applicant and one another. In fact, it is clear that the Applicant stood third. The Respondent No.3 secured 70.80 marks as against 59.60 marks by the Applicant. Taking that aspect into consideration along with the norms, etc., the Respondent No.2 – SDO, Panhala in fact declared the 4<sup>th</sup> Respondent to be successful. The 1<sup>st</sup> Respondent is the State of Maharashtra in Home Department and the 3<sup>rd</sup> Respondent is the Collector, Kolhapur. The 4<sup>th</sup> Respondent as already mentioned above is a private party successful candidate.

4. The challenge is inter-alia on the ground that as per the Government policy and Resolution dated 28.5.2009, preference is required to be given to the heir or dependent of the earlier Police Patil and in as much as the forefathers of the Applicant were working in the capacity, which is now called Police Patil since British days and his father was Police Patil from 14.12.1961 before having retired in 1999, the Applicant by some kind of an inheritance is eligible and entitled to be appointed as such. The documents have been furnished in support of this aspect of the matter by the Applicant. Be it noted here that in the un-amended OA, a claim was laid that the Applicant scored more marks than the 4<sup>th</sup> Respondent and one Shri Bacche but then, no meticulous fact finding is



really necessary in that behalf and I can safely proceed on the basis that the 4<sup>th</sup> Respondent outscored the Applicant.

5. The OA came to be amended and additional grounds were raised. It is the case of the Applicant that in accordance with the relevant Rules, the 4<sup>th</sup> Respondent and in fact, the said Shri Bachhe were disqualified because they did not possess any immovable property in their name in Savarde Village. The heirship aspect of the matter discussed above is reiterated. The third ground is raised that in the Advertisement for the post, there was a condition that the candidate, if selected and appointed to the said post shall not participate in political activity and be a member of any political party. Whereas, in case of the 4<sup>th</sup> Respondent, he participated in the Gram Panchayat meeting on 26<sup>th</sup> January, 2016 as mover/proposer of subject No.20 with regard to Resolution No.50 which according to the Applicant amounts to taking part in the political activity with the consequences of forfeiture of the appointment to the said post.

6. The Respondents 1 to 3 on one side and the 4<sup>th</sup> Respondent on the other filed their separate Affidavits-in-reply both pre and post amendment of the OA. They have emphasized the fact that the 4<sup>th</sup> Respondent outscored the

Applicant. According to them, in so far as the hereditary nature of the post is concerned, the occasion therefor would arise provided there was what can be called a "tie" in the number of marks scored by the contestants. However, if the number of marks scored were distinct than the one securing more marks would naturally not be bound by the hereditary aspect of the matter. Further, the 4<sup>th</sup> Respondent is a member of Undivided Hindu Family (HUF) and the said family has an agricultural land in Village Savarde which stands in the name of his father and he was cultivating the same. In support thereof, 7/12 extract of the Village Form No.8 and a copy of the Ration Card are relied upon.

7. Mr. Mohite, the learned Advocate for the Applicant told me that the condition of giving preference to the descendant of a former Police Patil is such as to override even the performance aspect of the matter, and therefore, once it was clear that the legal ascendants of the 4<sup>th</sup> Respondent were not the Police Patil, then there was no real occasion to fall back upon the competence aspect of the matter in the form of securing of marks, etc. There is a Home Department G.R. of 4<sup>th</sup> August, 2010 at Exh. 'H' (Page 61-C of the Paper Book (PB)) which prescribes the procedure to be followed in case a Police Patil were to pass



away or retire while working as such. The requirement is that an Advertisement would have to be issued (Jahirnama) and in the event, a particular candidate who was the dependent or descendent of the former Police Patil, he should be given preference (Pradhayanya). But this particular word has been explained and it is stated as follows in Marathi.

“ त्याला ‘‘प्राधान्य’’ द्यावे याचा अर्थ नियमानुसार सर्व उमेदवारांचे अर्ज मागवून व परीक्षा घेऊन यामध्ये जर पोलीस पाटलाच्या वारसाला त्याच्याबरोबर इतरही काही उमेदवारांना सर्वाधिक व सारखे गुण मिळाले असतील तर पोलीस पाटलाच्या वारसाची प्राधान्याने निवड करणे असा आहे. मात्र तो महाराष्ट्र ग्राम पोलीस पाटील (सेवा प्रवेश पगार भत्ते आणि सेवेच्या इतर शर्ती) आदेश, १९६८ व त्यामध्ये वेळोवेळी करण्यात आलेल्या सुधारणांनुसार सर्व अटी व शर्ती पूर्ण करित असला पाहिजे, तसेच तो दिनांक १६.१०.२००८ च्या शासन निर्णयानुसार त्या गावासाठी ठरविण्यात आलेल्या जातीच्या प्रवर्गातील असला पाहिजे. ”

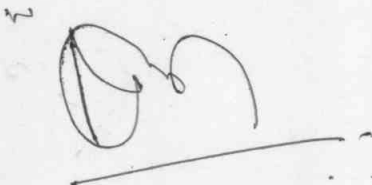
8. Further, in Home Department's G.R. of 22<sup>nd</sup> August, 2014 at Page 99 of the P.B, in Clause 5, it is made clear that the issue of a particular candidate being the legal heir of the earlier Police Patil would arise only if two or more candidates were tied as it were in so far as the performance reflected by the marks obtained is concerned. In that event, the first preference apparently is given to an heir of a former Police Patil. The second one to the one



that held higher qualification. The third one to the ex-armed personnel and then the one who was senior in age.

9. It is, therefore, absolutely clear that the fact that a candidate was the heir and LR or dependent of the former Police Patil would not just be occasioned merely by kinship or relationship. The occasion therefor would arise provided the said candidate got tie-up with someone else and such a tie is required to be broken. It can by no stretch of imagination be said that the dependent or descendent of the former Police Patil, merely by virtue of relationship would elbow out the one who was not that lucky or fortunate in that sense. After-all no one has a choice of parents or family before being born. Therefore, in the current state of socio-legal evolution, such an inheritance should not be just for the asking effectuated and no one should lightly be allowed to take benefit of an accident of birth. Here, in this matter, the plain language of the instrument above discussed points out exactly to the same. I, therefore, unhesitatingly reject Mr. Mohite's contention in this behalf.

10. Now, turning to the other facet of the case, the Applicant challenges the appointment of the 4<sup>th</sup> Respondent because the 4<sup>th</sup> Respondent does not hold or



possess the immovable property at Village Savarde. Now, I shall proceed on the assumption that in so far as the Applicant is concerned, he is again fortunate enough to have some property in his name in the said Village and the 4<sup>th</sup> Respondent does not have any property in his name. However, there is material in the form of land record, etc. and 7/12 extract which unequivocally show that the 4<sup>th</sup> Respondent's father and uncles have got the landed property mutated in their names. It is an Undivided Hindu Family. There is absolutely nothing on record to rebut the presumption of jointness of the said family and on facts, it is established that the property standing in the names of the three brothers is a joint family property. Now, if this were so, then the elementary principles of the Shastric Hindu Law and in fact, codified law as well is that once it is proved that the family is joint and it is not disproved that the property is again a Joint Hindu Family property, then the Applicant gets his share therein by birth. He being a son, there should be no difficulty in applying this principle of the Hindu Law and if that be so, then in my opinion, the principle of Hindu Law that in case of a Joint Hindu Family owning a joint family property, each coparcener will be the owner of each and every particle of the property, of course till such time, partition took place, and therefore, in my view, the disability envisaged by the Applicant as against

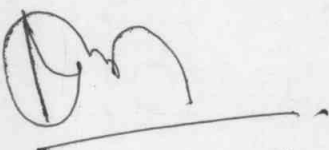




the 4<sup>th</sup> Respondent will not be 4<sup>th</sup> Respondent's undoing. The fact that the 4<sup>th</sup> Respondent is the resident of Village Savarde is completely corroborated by the official document of unimpeachable veracity. There is a documents relating to a decision about the terms and conditions for appointment as Police Patil. It is mentioned therein as follows :

“ तसेच उमेदवार हा स्थानिक रहीवासी असला पाहिजे व त्याचे नावे जीमन असावी.”

11. Similarly, in Exh. 'A' to the OA (Page 19 of the P.B.), the fourth eligibility criteria is “अर्जदार व्यक्तीच्या नावे संबंधित गावी शेतजमीन अथवा घर असणे आवश्यक आहे ”. Now, taking it as it is, the above discussion must have made it clear that the jurisprudential description and understanding of the word, “possession” and “in the name of” will have to be given an interpretation which is contextual and not general. The nature of right of ownership, possession, etc. will have to be properly construed. Therefore, if as discussed above on the basis of the principles of Hindu Law, the Applicant is entitled to a right in the property, then the mere fact that it does not stand in his name would not derogate against his possession because no Government instrument lays down that this possession must be immediate and the possession of a person like the 4<sup>th</sup> Respondent in his joint



family property would not be the possession as such. Having said that, I find that the Respondents have submitted a very recent Government instrument being Home Department Corrigendum to the instrument of 7<sup>th</sup> September, 1999 which eliminates the words in Marathi which in its English translation would mean in effect that this condition of the candidate having the property in his name was deleted. Even assuming that this instrument may not be applicable hereto and this is only an assumption, the earlier discussion must make it clear that the undoing suggested by the Applicant as far as the 4<sup>th</sup> Respondent is concerned is certainly not there. That being the state of affairs, I find no substance in this aspect of the challenge also. It is rejected.

12. Now, turning to the last aspect of the alleged political activity, I find that there is not even a particle of material to show that the Applicant was a member of any political party, at least not after his appointment as Police Patil. In Para 4 of the Affidavit-in-reply of the Respondents 1 to 3, it is pleaded that the order of appointment was of 29.1.2016 while the Resolution based whereon the alleged political role is being ascribed to the 4<sup>th</sup> Respondent was of 26<sup>th</sup> January that year. The 4<sup>th</sup> Respondent in his Affidavit-in-reply (Para 4.1 at Page 104 of the P.B.) has



pleaded that he never participated in any political process. The subject matter of the topic in the meeting of 26<sup>th</sup> January, 2016 by the Gram Panchayat was in the nature of general public good and was having no political overtones. In Exh. 'J' (Page 61-I of the P.B.), the Minutes of that meeting are there. It is in Marathi. I have carefully perused the same and I find that it had no political overtones, no pro or anti this or that political party and it related to the general welfare of the Village relating to some matter about the road, etc. It is, therefore, quite clear that again this aspect of the matter is not the 4<sup>th</sup> Respondent's undoing.

13. The foregoing would lead me to conclude which I do hereby do that the challenge to Respondent No.4<sup>th</sup> appointment has no basis or substance and this Original Application deserves to be and is hereby dismissed though with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**16.12.2016**

Mumbai

Date : 16.12.2016

Dictation taken by :

S.K. Wamanse.

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