

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1621 OF 2023

DISTRICT : RATNAGIRI

Sub.:- Selection of Police Patil

Shri Suraj Sahadev Chavan.)
Age : 26 Yrs, Residing at Vanaushi,)
Tal.: Dapoli, District : Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)
2. Sub-Divisional Magistrate,)
Dapoli, Division Dapoli.)
3. Smt. Reshma R. Patne.)
Residing at Vanaushi, Tal.: Dapoli,)
District : Ratnagiri – 415 716.)
4. Krushnakant V. Chavan.)
Residing at Vanaushi, Tal.: Dapoli,)
District Ratnagiri – 415 716.)...**Respondents**

Shri S.S. Kothari, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

CORAM : Shri A.N. Karmarkar, Member-J

DATE : 15.10.2024

JUDGMENT

1. The Applicant has challenged the impugned order dated 04.12.2023 passed by Respondent No.2 by which Applicant was held to be ineligible for the post of Police Patil. He has also prayed for setting

aside of the appointment of Respondent No.3 and to appoint him in her place as Police Patil of Village Vanoshi Tarfe Natu.

2. In response to Public Advertisement, the Applicant had applied for appointment as Police Patil Village Vanoshi Tarfe Natu. Applicant and Respondent Nos.3 & 4 were successful in Written Examination. Applicant has got highest marks. All 3 candidates were interviewed on 18.10.2023. Respondent No.4 – Krushnakant V. Chavan forwarded complaint to Respondent No.2 by raising objection that the present Applicant is the owner of Saw Mill. Respondent No.2 conducted an enquiry. Notice was issued to present Applicant. But Applicant No.2 held the Applicant to be ineligible for the post of Police Patil as per Order dated 04.12.2023. According to Applicant, the said impugned order is illegal and without application of mind. Respondent No.2 should have considered that carrying on said business will not affect the duty as Police Patil. It is not his full time business. Respondent No.2 has wrongly considered the citation in case of ***Rajendra P. Ide Vs. State of Maharashtra : (2016) DGLS Bombay 641***. The Applicant is wrongly held to be ineligible in view of Rule 8 of 'Maharashtra Village Police Patil (Recruitment, Pay & Allowances and Other Conditions of Service) Rules, 1968' (hereinafter referred to as 'Police Patil Rules of 1968' for brevity).

3. Respondent No.2 filed Affidavit-in-Reply. It is denied that Applicant furnished required documents while attending Interview. According to them, the Affidavits submitted by Applicant were not as per the Advertisement. Applicant has not disclosed the fact in Affidavit about his ownership over Saw Mill. According to them, the Applicant has suppressed some facts at the time of Interview. The fact that there are 7 workers in Saw Mill was not mentioned by Applicant in Affidavit which was filed during the Interview. According to them, Clause No.6 of Advertisement says that the candidate should not be full time businessman or having full time employment. It is their case that

Applicant is full time businessman and that will affect while working as Police Patil.

4. Respondent No.3 has not engaged Advocate, but she has given in writing that on verification of her documents and considering her marks, she was appointed as Police Patil. She is discharging the duties as per directions of the Government.

5. Respondent No.4 – Krushnakant V. Chavan has also filed Affidavit-in-Reply. According to him, the Applicant is not only running Saw Mill, but also engaged in business of Sale of Sand. His family members own JCB and Dumper. Applicant has falsely shown willingness in Affidavit about transfer of his business in the name of other family member so as to get the post of Police Patil. Respondent No.3 is working as Teacher. But she was not disqualified. The competent candidate need to be appointed as Police Patil as per Rules.

6. I have heard the learned Advocate for Applicant, Respondent No.4 and also heard learned PO.

7. The learned Advocate for Applicant has submitted that on the basis of complaint of Respondent No.4, he was given Show Cause Notice by Respondent No.2. He has contended in his Affidavit filed before learned SDO that there are in all 7 workers. Secondly, his father is looking after the business of Saw Mill with the help of those 7 workers. Applicant is not having full time occupation and so Rule 8 of 'Police Patil Rules of 1968' will not be attracted. In support of his case, he has relied on case of ***Ishwar V. Mohite Vs. State of Maharashtra & Ors. : 2013(1) Mh.LJ 834*** and in case of ***OA No.75/2020 [Jitendra V. Sarde Vs. Sub-Divisional Magistrate & Anr.] : 2023 SCC Online Mah.Sat 184.***

Learned Advocate for Respondent No.4 has submitted that Applicant should have given undertaking as required in Clause 6 of Advertisement before Oral Interview. The Applicant is held ineligible for the post of Police Patil for non-compliance of the said Clause 6. The Respondent No.3 – Smt. Reshma R. Patne did not appear for the argument.

8. It is undisputed fact that Applicant, Respondent No.3 – Smt. Reshma R. Patne and Respondent No.4 – Krushnakant V. Chavan had applied for the post of Police Patil of Village Vanoshi Tarfe Natu. Admittedly, Applicant, Respondent Nos.3 & 4 have got total 79, 71 & 71 marks respectively in Written and Oral Examination. It is to be seen as to whether the impugned order of Respondent No.2 holding the Applicant ineligible for the post of Police Patil is legal and proper.

It is also undisputed fact that Respondent No.4 – Krushnakant V. Chavan has forwarded complaint dated 25.10.2023 to Respondent No.2 – Sub-Divisional Magistrate, Dapoli Division and raised objection that Applicant runs a Saw Mill and he is having full time occupation. It is also undisputed fact that Applicant had given hearing in which he has filed detailed Affidavit that the father of Applicant is running the said Saw Mill with the help of 7 workers. According to learned Advocate for Respondent No.4, an Undertaking in response to Clause 6 of Advertisement was to be given at the time of Oral Interview, which is not complied. Considering the said objection, it is proper to reproduce Clause 6 of Advertisement (Page 21 of Paper Book), which reads as under:-

“अर्जदारांचे कोणत्याही राजकीय पक्षाशी संबंध नसावा. त्याचप्रमाणे तो इतर ठिकाणी संपूर्ण वेळ नोकरी करणारा व ग्रामपंचायत सदस्य नसावा. तसेच खाजगी किंवा निमसरकारी संस्थेचा सदस्य नसावा, अथवा पूर्णवेळ नोकरी करणारा नसावा याबाबतचे रुपये १००/- च्या स्टॅम्प पेपरवरील प्रतिज्ञापत्र हे कागदपत्र पडताळणीच्या वेळी सादर करणे आवश्यक राहिल.”

9. As per selection procedure as mentioned in Advertisement, the candidate who succeeded in Written Examination was required to produce the relevant documents for verification before the Oral Interview.

The documents on record show that Applicant was called upon to face Interview on 18.10.2023. The documents on record show that Applicant was interviewed. So it can be said that relevant documents were made available by him. The Applicant has placed on record documents (Exb. 'F') which shows that he has complied Clause 6 of Advertisement by filing Affidavit with the contention that he is not in service nor he is having concerned with Political Party.

10. The Respondent No.2 has mentioned in the impugned order Para 2 that it was incumbent on the part of Applicant to produce Affidavit with the contention that he is not having full time local business nor doing any kind of full time work.

11. The learned Advocate for Applicant has invited my attention to Clause 6 of Advertisement and submitted that there is nothing in the said Clause 6 of Advertisement that Affidavit should contain the contention that Applicant is not engaged in local business. There is only contention in Clause 6 of Advertisement that a candidate should not be full time serviceman.

12. The impugned order shows reference of Clause 8 of 'Police Patil Rules of 1968'. It is necessary to produce the said Clause 8, which runs as under :-

"8. Engagement in business or trades :- Notwithstanding anything contained in this Order, a Police Patil may 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 as Police Patil, but he shall not undertake any full-time occupation elsewhere.

This Clause 8 says that Police Patil may 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 as Police Patil. Learned Advocate for Applicant has also made available the copy of License issued by Sub-Divisional Forest Officer (SDFO). It shows that the license was issued to the Applicant to erect or operate Machinery or Saw Mill for Cutting or

Converting Timer of Village Vanoshi Tarfe Natu, Taluka Dapoli. So, it is clear that Applicant is having business in the name of Shivshakti Saw Mill in the same Village Vanoshi Tarfe Natu. In support of his contention, learned Advocate for Applicant has relied in the case of **Ishwar V. Mohite** (cited above). The Hon'ble High Court has held in this case as under :-

“13. The Govt. Resolution dated 13-10-2006 is issued keeping in view Rule 16 of the Maharashtra Civil Services (Conduct) Rules, 1979 (For short, 'Conduct Rules of 1979'). As per Rule 16 of the Conduct Rules of 1979, the Govt. servant is prohibited from engaging directly or indirectly in any trade or business or from undertaking any other employment except with the prior sanction of the Govt.

14. Rule 16 of the Conduct Rules of 1979 will have to be read coherently with sub-rule (3) of Rule 1. The provisions of sub-rule (3) of Rule 1 succinctly and without any reservation exempts the operation of Rule 16 to the persons appointed as Police Patil under the provisions of the Act of 1967. When the statute or the rules specifically exempt the operation of particular statute, the same will have to be strictly construed. We cannot import the provision, which the Legislature in its wisdom has specifically exempted from the operation. The Govt. servants, to whom Rule 16 of the Conduct Rules, 1979 apply, would only be deemed to be covered by the Govt. Resolution dated 13-10-2006. The very prelude to the said Govt. Resolution is clear, unambiguous. It is restricted to the Govt. servants covered by Rule 16 of the Conduct Rules, 1979.

15. Even Rule 8 of the Rules of 1968 does not refrain the Police Patil from engaging in local business or trade in the village. It is not the subject-matter of dispute that the petitioner who is Police Patil of village Ghodki is running his kerosene business in the said village itself. As such, the petitioner running the kerosene shop at Ghodki, is also in consonance and conformity with Rule 8 of the Rules of 1968.

16. The petitioner has been given licence to run the retail kerosene shop. He is entitled to the said licence as per the provisions of law and statute. The said right of the petitioner cannot be taken away except in accordance with the provisions envisaged under the statute and the Rules. None of the statute, rules or order bars the Police Patil from running retail kerosene shop in the village, in which he is officiating as Police Patil. The Govt. Resolution will have to be read strictly in the manner it has been issued. The clauses of the said Govt. Resolution which are in vernacular language lay down the restrictions upon the Govt. servants covered by Rule 16 of the said Conduct Rules, 1979 to do business and no further.”

13. Learned Advocate for Applicant also relied on the order in **OA No.75/2020 : Jitendra V. Sarde** (cited above). Above referred Judgment in case of **Ishwar V. Mohite** (cited above) is also referred in this case. It is held in this case that the Applicant cannot be deprived from appointment on the post of Police Patil on the ground that he is running fair price shop in the said Village. In the case of **Jitendra V. Sarde**, the Applicant was running fair price shop while in present matter, the Applicant is running a Saw Mill in the same Village. So, these Judgments referred above are applicable in the present case.

14. The Respondent No.2 has discussed in impugned order that Applicant is having full time business and so Applicant cannot be said to be entitled for the post of Police Patil. It has to be noted that the impugned order is cryptic. There are no reasons for holding that Applicant runs full time business.

15. First Part of Clause 8 of 'Police Patil Order of 1968' says that Police Patil may cultivate land or engage in any business in the Village in such a manner as is not detrimental to the performance of duties as Police Patil. The second part of said Clause 8 says that concerned Police Patil shall not undertake any full time occupation elsewhere. It is not the case that Applicant is having the said business of Saw Mill at different place. So, in view of Judgments referred above, the Applicant cannot be deprived from appointment as Police Patil on the ground that he owns a Saw Mill in the same Village. So, the impugned order cannot be said to be proper and legal. It needs to be set aside.

16. It is undisputed fact that Applicant has got highest marks in the Examination which was conducted for the post of Police Patil. Since, impugned order is held to be improper and illegal, the subsequent order appointing Respondent No.3 can be said to be illegal. The Respondent No.3 has not come forward to contest this OA seriously. The Respondent No.4 has filed document (Page No.204 of PB) which is a letter of

Respondent No.3 addressed to Sub-Divisional Magistrate, Dapoli. It shows that on 06.12.2023, Respondent No.3 has already joined as a Teacher on that day.

17. For the reasons stated above, this OA deserves to be allowed. Hence, the following order.

ORDER

- (i) The Original Application is allowed.
- (ii) The impugned order dated 04.12.2023 and order appointing Respondent No.3 – Smt. Reshma R. Patne as Police Patil are quashed and set aside.
- (iii) The Respondent No.2 to appoint the Applicant on the post of Police Patil, if otherwise there is no any other impediment for such appointment, within six weeks from the date of this order.
- (iv) No order as to costs.

Sd/-

(A.N. Karmarkar)
Member-J

Mumbai

Date : 15.10.2024

Dictation taken by :

S.K. Wamanse.

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