

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.261 OF 2016

DISTRICT : KOLHAPUR

Smt. Rajashree Rajgonda Patil.)
Age : Major, Occu. Medical Practitioner,)
R/o. Khidrapur, Tal. : Shirol,)
District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. Collector.)
Kolhapur having office at Swaraj)
Bhawan, Nagala Park, Kolhapur.)
3. Sub-Divisional Officer.)
Ichalkaranji Sub Division,)
District : Kolhapur.)
4. Tahasildar.)
Shirol, Tal. : Shirol, Dist : Kolhapur.)
5. Dipali Balaso Patil.)
Age : Major, Occu.: Household,)
R/o. Khidrapur, Tal. Shirol,)
District : Kolhapur.)

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6. Vidyadevi Ramgonda Patil.)
 Age : Major, Occu. Household,)
 R/o. Khidrapur, Tal.: Shirol,)
 District : Kolhapur.)...Respondents

Mr. D.V. Sutar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents 1 to 4.

Mr. P.V. Patil, Advocate for Respondent No.5.

Mr. Amit Sale, Advocate for Respondent No.6.

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

DATE : 03.03.2017

JUDGMENT

1. This Original Application (OA) relates to a dispute with regard to the post of Police Patil of Village Khidrapur, Taluka Shirol, District Kolhapur. She was earlier declared to have been selected, but on complaint of the Respondent No.5, the Applicant's selection was cancelled by the impugned order which is at Exh. 'J' (Page 65 of the Paper Book (PB)) dated 29.1.2016/8.3.2016 stung thereby, the Applicant is up before me by way of this OA.

2. I have heard Mr. D.V. Sutar, the learned Advocate for the Applicant, Mrs. A.B. Kololgi, the learned Presenting Officer for

Respondents 1 to 4, Mr. P.V. Patil, the learned Advocate for Respondent No.5 and Mr. Amit Sale, the learned Advocate for Respondent No.6.

3. I must make it very clear right at the outset that in view of the events that have happened and the principles of natural justice having been faithfully observed in its complete breach by the Respondent No.3 – SDO, Ichalkaranji, it will be on that short ground alone that this OA will have to be worked out. I express no opinion with regard to the contentious facts at issue.

4. The Applicant responded to what has been described as Jahirnama (Advertisement) for the post of Police Patil which is at Exh. 'A' (Page 13 of the PB). The 3rd stipulation was that the Applicant should be the resident of that particular Village and he/she should have complete knowledge of the local situation. The Applicant admittedly has annexed hereto also, to exemplify that she was the resident of that particular Village, the documents like for example School Records, Degree of BAMS, Certificate in Marathi for Residence, a document about No Dues from Grampanchayatm Khidrapur, Toilet Certificate and certain other documents of agricultural land records.

5. The issue arose because the 5th Respondent made a complaint to the 3rd Respondent mentioning therein that the Applicant was not the resident of Village Khidrapur, but she was the resident of Village Jugul in Belgaon District of state of



Karnataka. Without entering any judicial finding and to state merely as a narrative, I can proceed on the basis that there may have been some documents to show that the name of the Applicant appeared in the Ration Card of that Karnataka Village and may be as far as the domestic Gas connection is concerned. I must immediately mention that Mr. D.V. Sutar, the learned Advocate for the Applicant raised a clear dispute thereabout. I record this fact and at the same time, I make it clear as I have already done before that I am entering, no factual determination thereabout in this particular order.

6. It becomes very clear from the perusal of the impugned order which is in Marathi that the order was made by the 3rd Respondent for all practical purposes relying solely on the complaint of the 5th Respondent. It is an indisputable factual position that he did not issue notice to the Applicant asking her to show cause. Much less did he hold any enquiry which was in my view a *sine-qua-non* for visiting upon the Applicant the momentous and formidable consequences of loss of post of Police Patil of a particular Village. In such a state of affairs, it can hardly be gainsaid that without hearing the Applicant, such an adverse order could not have been made by the 3rd Respondent and this is not a procedural irregularity or a curable irregularity at that, but in the context of the present facts, it is an incurable illegality, and therefore, although the learned PO and the learned Advocates for the private Respondents may have tried to support the impugned order, in

my opinion, it is indefensible, and therefore, the impugned order will have to be set aside with necessary directions.

7. Mr. Sutar, the learned Advocate for the Applicant pointed out that as a result of the impugned order, the 5th Respondent is now actually working as a Police Patil and he wanted this state of affairs to cease to exist. Now, in so far as this aspect of the matter is concerned, I find that in view of the manner in which the 3rd Respondent has conducted this whole matter, at this stage, it may not be possible for me to provide immediate remedial measures to the Applicant. However, I am going to lay down an outer time limit post remand for the Respondent No.3 to act in the matter and that time limit will be of three months from today. Though this OA will not remain pending from today onwards, but then if this time limit is not kept by the 3rd Respondent, needless to say, he will have to face consequences, if the Applicant decides to move against him an appropriate proceeding. Having mentioned that, I do not have to elaborate anything further.

8. I make it clear while remanding this matter that the 3rd Respondent has to take an appropriate decision in the matter after affording an opportunity of being heard to the Applicant and also to the 5th Respondent. He has also to decide the issue of residence of the Applicant as a fact at issue and has to consider the material in that behalf and not necessarily treat it as an adversial matter. He will have to try

A handwritten signature, possibly "B. Sutar", is written in black ink. A long, straight diagonal line extends from the bottom of the signature towards the bottom right corner of the page.

and collect the material, both documentary and oral from Village Khidrapur and if need be also from that Village in the state of Karnataka. I must repeat that he has to determine the fact of residence of the Applicant as the fact at issue and does not have to pay only a lip service to the principles of natural justice but has to follow it in letter and spirit. With these directions, this OA is allowed as above. The matter is remanded to the 3rd Respondent to act in accordance with the directions herein issued and render a decision within three months from today and inform its outcome to the Applicant within one week thereafter. No order as to costs.

Sd/-
(R.B. Malik)
Member-J
03.03.2017

03.03.17

Mumbai

Date : 03.03.2017

Dictation taken by :

S.K. Wamanse.

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