

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 790 OF 2023
WITH
CAVEAT NO. 29 OF 2023**

(Subject:- Police Patil)

DISTRICT:- JALGAON

Dinesh s/o Chagan Mailagir)
Age: 31 years, Occu Agri.)
R/o. Sonkhedi Tq. Amalner,)
District Jalgaon.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Principal Secretary,)
Revenue Department,)
Mantralaya, Mumbai-32.)
2. **The Collector, Jalgaon.**)
3. **The Sub-Divisional Officer,**)
Amalner, Dist-Jalgaon.)
4. **Ganesh s/o Vijay Baviskar**)
Age 34 years, Occ. Agril)
R/o Sonkhedi, Tq. Amalner)
District Jalgaon.)
5. **Pradeep s/o Ramesh Mailagir**)
Age 30 years, Occ. Agri.)
R/o as Above.) **RESPONDENTS**

APPEARANCE : Shri Bharat Waramaa, learned counsel
for the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

: Shri P.B. Patil, learned counsel for
respondent No.5 /Caveator.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**
DATE : **26.07.2024.**

ORDER

Heard Shri Bharat Waramma, learned counsel for the applicant, Shri D.M. Hange, learned Presenting Officer for the respondent authorities and Shri P.B. Patil, learned counsel for respondent No.5/Caveator finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking quashing and setting aside the communication dated 23.08.2023 thereby excluding the name of the applicant from the eligible candidates to appear for oral interview and resultant final select list dated 25.08.2023 published by the respondent No.3 declaring the selected candidates for respective villages of Amalner Taluka and to the extent of entry at Sr. No. 237 of the said list. The applicant is also seeking direction to respondents to consider the candidature of the applicant for the post of Police Patil of village Sonkhedi, Taluka Amalner.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The respondent No.3 being a Chairman of the recruitment committee to drive for the post of Police Patil in Amalner Taluka published the advertisement for recruitment of the candidates for the post of Police Patil. In the advertisement dated 14.07.2023 the post of Police Patil for village Sonkhedi was reserved for the candidate belonging to Scheduled Caste category. The applicant is belonging to the Scheduled Caste category being a Hindu-Mahar. He has acquired the educational qualification of B.A. D.Ed. He has also passed the MS-CIT examination. The applicant has thus filled an application form for the post of Police Patil of village Sonkhedi as he was complying the criteria for the said post. After scrutiny, the applicant was issued hall ticket/ admit card for appearing for the written examination scheduled on 13.08.2023.

(ii) The applicant further contends that four candidates who belonging to the Scheduled Caste category including the applicant were declared as eligible to appear for written examination and out of four candidates, the applicant

had secured highest marks i.e. 43 out of 80 marks and he stood first amongst them. The applicant has further secured 13 marks in documents verification.

(iii) It is the further case of the applicant that he was also elected as Grampanchayat Member of village Sonkhedi for the term 2021-2025. However, since there was condition prescribed in the advertisement for the post of Police Patil that the candidate should not be the member of Grampanchayat, the applicant has submitted his resignation and also submitted the affidavit to respondent No.2 about the same.

(iv) The respondent No.3 has issued the letter dated 21.08.2023 to the applicant to attend the oral interview scheduled on 24.08.2023 at 10:00 a.m. in the office of respondent No.3. However, other candidates who secured less marks than the applicant filed complaint/objection dated 18.08.2023 to the respondent No.3 on the ground that the applicant being a member of Grampanchayat and his resignation though submitted is yet not accepted by the Sarpanch, he is not eligible to participate in the recruitment process.

(v) The respondent No.3 has fixed the hearing of the objection on 23.08.2023 and accordingly, notice dated 18.08.2023 was issued to the applicant. The applicant attended the hearing before the respondent No.3 and submitted copies of the affidavits before the respondent No.3. Upon submitting the said documents, the respondent No.3 vide letter dated 21.08.2023 asked the applicant to appear for oral interview scheduled on 24.08.2023. However, letter issued by the office of respondent No.3 dated 23.08.2023 was served upon the applicant intimating thereby that the applicant is excluded from further recruitment process and he is restrained from participating in the recruitment process. Further, in place of applicant the respondent No.4 and respondent No.5 are asked to attend the oral interview on 24.08.2023 by respondent No.3. In the final select list, the respondent Nos. 5 is selected as a candidate for the post of Police Patil of village Sonkhedi. Hence, this Original Application.

4. Learned counsel for the applicant submits that in terms of condition No. 6 of the said advertisement, the candidates applying for the post of Police Patil should not be

member of Grampanchayat. In view of aforesaid condition, the Chairman of the recruitment committee i.e. the Sub-Divisional Officer, Amalner accepted the objection raised on behalf of the respondent Nos. 4 and 5 and vide order dated 23.08.2023 declared the applicant not to be eligible for the post of Police Patil and restrained him from participating in further selection process. Learned counsel for the applicant submits that Chairman of the recruitment committee has mainly relied upon the ratio laid down by the Hon'ble High Court of Bombay, Bench at Aurangabad in **Writ petition No. 14191/2017 (Dnyaneshwar Bhikan Solunke Vs. Divisional Commissioner, Aurangabad & Ors.)**.

5. Learned counsel for the applicant submits that the order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in above stated **Writ Petition No. 14194/2017** had been set aside by the Hon'ble Supreme Court in **Civil Appeal No (s). 2712/2019 (arising from SLP (c) No (s). 21256/2018)**. Learned counsel for the applicant submits that the Hon'ble Apex Court in the aforesaid **Civil Appeal No. 2712/2019** has referred the circular dated 10.05.1983 issued by the Government in this regard wherein it is specifically

stated that an officer bearer or member of a local body who is the candidate for a post of Police Patil may be considered for such post but he could be appointed Police Patil only on his actual designation from that body being effect.

6. Learned counsel for the applicant submits that the respondent No.3 has illegally, incorrectly and improperly excluded the name of the applicant from further recruitment process and restrained him from participating in the further recruitment process. Learned counsel for the applicant has fairly accepted that the appointment of the applicant on the post of Police Patil would be subject to the result of the further stage of recruitment process such as interview etc. Learned counsel for the applicant thus submits that the Original Application deserves to be allowed.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No.3 submits that the respondent Nos. 4 & 5 have filed complaint/objection application independently on 17.08.2023 and 18.08.2023 respectively stating therein that the applicant being a member of Gram Panchayat, Sonkhedi and his resignation though submitted is not accepted by the Sarpanch and other

members of the concerned village Gram Panchayat i.e. Gram panchayat, Sonkhedi, the applicant is not eligible to call and participate in the recruitment process. Consequent upon receiving the said objections, the preliminary hearing was fixed on 23.08.2023 in the office of respondent No.3 and accordingly, notices are served on the incumbents. It revealed in the said communication that the applicant has tendered his resignation from for the post of Gram Panchayat member. It was not accepted by the competent authority till the date of hearing of the complaint and therefore, in view of the judgment dated 16.07.2018 passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in **Writ Petition No. 14191/2017 (Dnyaneshwar Bhikan Solunke Vs. Divisional Commissioner, Aurangabad & Ors.)**, the applicant found ineligible as per condition No. 6 of the proclamation issued by the respondent No.3. Thus the respondent No.3 has passed the speaking order dated 23.08.2023 and declared the applicant disqualified for the further recruitment process scheduled on 24.08.2023. The said order was served on the applicant on 24.08.2023 itself and accordingly the applicant was not called for the interview.

8. Learned Presenting Officer submits that the judgment of the Hon'ble Apex Court was not brought to the notice of respondent No.3 during the course of hearing and therefore, the respondent No.3 could not follow the same. Learned P.O. submits that further the interim order passed by this Tribunal dated 30.08.2023 has been scrupulously followed by the respondent authorities and the recruitment process for the post of Police Patil of village Sonkhedi is stopped until further orders and the said post is lying vacant.

9. Learned counsel for respondent No.5 submits that the applicant has suppressed the information about his resignation. He has filed false affidavit stating therein that he has resigned from the post of member on 17.08.2023. Learned counsel for respondent No.5 submits that even assuming that the applicant has submitted resignation on 17.08.2023, however, from the proceeded of meeting dated 25.08.2023 of Gram Panchayat it appears that the applicant has participated in the Gram Panchayat meeting. Learned counsel for respondent No.5 submits that the suppression of material fact is fatal. Learned counsel to substantiate his contention has placed his reliance on the following case laws:-

- (i) **Avtar Sing Vs. Union of India & Ors.,** reported in **AIR 2016 SC 3598** .
- (ii) **State of Madhya Pradesh & Ors. Vs. Parvez Khan,** reported in **(2015) 2 SCC 591**.

10. Learned counsel for respondent No.5 submits that the respondent No.3 has scrupulously followed the selection process as per the advertisement. The applicant since participated in the selection process in terms of the advertisement, he is bound by the stipulations and conditions as laid down in the advertisement. Learned counsel submits that there is no actual resignation from the post of member as contemplated in terms of G.R. dated 02.06.2022. There is no substance in the Original Application and the same is liable to be dismissed.

11. It appears that the respondent No.3 mainly relied upon the view taken by the Hon'ble High Court of Bombay, Bench at Aurangabad in **Writ Petition No. 14191/2017** wherein the Hon'ble High Court of Bombay, Bench at Aurangabad has upheld the order passed by the Tribunal in setting aside the appointment of the petitioner in the said Writ Petition on the ground that on the last date of submission of the application for the post of Police Patil the

petitioner was Member of Grampanchayat, Amdabad and he was associated with Zilha Parishad School Managing Committee.

12. Being aggrieved by the order passed by the Hon'ble High Court of Bombay, Bench at Aurangabad in a case of **Writ Petition No. 14191/2017** the petitioner namely Dnyaneshwar Bhikan Solunke has filed the **Civil Appeal No. (S). 2712/2019 (arising from SLP (C) No (S). 21256/2018)**.

The Hon'ble Supreme Court in paragraph Nos. 13 & 14 has made the following observation.

“13. The petition was filed before the Tribunal questioning the appointment of the appellant. On 28.03.2016, he had resigned from the service as Member of Grampanchayat, Amdabad and also as the Member of Zila Parishad School Managing Committee on 17.03.2016. He was appointed as Police Patil on 27.06.2016. In view of the instructions in paragraph 2 of the Circular dated 10.05.1983, which still holds the field, he ought to have resigned before he is appointed as Police Patil. He resigned before the appointment. Paragraph 2 of the aforementioned Circular is extracted hereunder:-

“The Police Patil of a village is Government's resident representative in the village. Looking to his status, role and responsibilities he is not expected to involve himself in any political activity. In terms of Rule 5 of the Maharashtra Civil Services (Conduct) Rules, 1979 a Police Patil is precluded from taking part in politics or in an election to any legislature or local

authority. A candidate for a post of Police Patil should not be a member or be otherwise associated with any political party or organization taking part in politics. An office bearer or member of a local body who is the candidate for a post of Police Patil may be considered for such post but he could be appointed Police Patil only on his actual designation from that body being effect.

(Emphasis added)

14. *In view of the aforesaid circular, which still holds field and as per the statement made by the learned counsel appearing on behalf of the State of Maharashtra, we have no hesitation to set aside the order passed by the Tribunal as well as by the High Court. Ordered accordingly. The appointment of appellant was illegally interfered with by the Tribunal and the appellant was rightly appointed to the post of Police Patil.”*

13. The Hon'ble Supreme Court has specifically observed that the circular still holds field and as per the circular dated 10.05.1983, which still holds field, an officer bearer or member of a local body who is the candidate for a post of Police Patil may be considered for such post but he could also be appointed Police Patil only on his actual designation from that body being effect.

14. In the instant case, however, the applicant came to be excluded from the further recruitment process though he had secured highest marks in the written examination and further restrained from participating in the process of

interview. The impugned order is thus liable to be quashed and set aside. The applicant is entitled to participate in the entire process of recruitment/interview and if he secures highest marks in the entire process and he is entitled to be appointed as Police Patil of concerned village only on his actual designation as member from that body being effect. In view of same, this Original Application deserves to be allowed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby allowed.
- (B) The impugned order/communication dated 23.08.2023 excluding thereby the name of the applicant from the eligible candidate to appear for oral interview and resultant final select list is hereby quashed and set aside.
- (C) The final select list dated 25.08.2023 published by the respondent No.3 declaring the selected candidates for village Sonkhedi Tal. Amalnar Dist. Jalgaon to the extent of entry at Serial No. 237 of the said list is hereby quashed and set aside.
- (D) The respondent Nos. 1 to 3 shall commence with further process from the stage of interview at the

earliest and earlier process including the result of the written examination, verification of the documents etc. and allotment of the marks would remain unaffected.

- (E) The respondent No.3 shall select the candidate for the post of Police Patil of village Sonkhedi, Taluka Amalner on completion of entire process on its own merits.
- (F) In the circumstances, there shall be no order as to costs.
- (G) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad
Date : 26.07.2024
SAS O.A. 790/2023(S.B.) Police Patil