

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.1131/2023(S.B.)**

Mrs. Rekha Sandip Channe,
Aged about 34 years, Occupation - Nil,
R/o. Kinhi, Post - Dasgaon,
Tah. and District - Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
Home Department,
Mantralaya, Mumbai-400 032.
- 2) Sub Divisional Officer cum,
Sub Divisional Magistrate, Gondia,
Tah. And District - Gondia.
- 3) Mrs.Meena Lalit Baghele,
R/o. Kinhi, Post - Dasgaon,
Tah. And District - Gondia.

Respondents

Shri I.N.Choudhari, Ld. Counsel for the applicant.
Smt.S.R.Khobragade, Ld. P.O. for the respondents 1 and 2.
Smt.A.Y.Pardhi, Ld. counsel for the respondent no.3.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 22nd August, 2024.

JUDGMENT

Judgment is reserved on 06th August, 2024.

Judgment is pronounced on 22nd August, 2024.

Heard Shri I.N.Choudhari, learned counsel for the applicant, Smt.S.R.Khobragade, learned P.O. for the respondents 1 and 2 and Smt.A.Y.Pardhi, Id. counsel for the respondent no.3.

2. In response to proclamation dated 22.08.2023 (Annexure A-1) issued by respondent no.2, respondent no.3 as well as the applicant applied for the post of Police Patil of village Kinhi, District Gondia and in the examinations they secured scored 68.5 and 64.8 marks, respectively. The applicant submitted objection before respondent no.2 that respondent no.3 was Member of Gram Panchayat, Kinhi, she had not tendered her resignation, she had suppressed these facts and thus she could not be considered for appointment to the post of Police Patil. By order dated 20.10.2023 (at P.37-B) respondent no.3 was appointed as Police Patil at village Kinhi. According to the applicant, the order dated 20.10.2023 also cannot be sustained because respondent no.3 possessed licences (at PP.37-D to 37-M) to sell and store seeds and insecticides issued by Government of Maharashtra which was in breach of Clause-6 of Proclamation (Annexure A-1) and Rule 8 of the Maharashtra Village Police Patils Order, 1968. Hence, this O.A.

impugning the order dated 20.10.2023, and seeking directions to respondent no.2 to appoint the eligible candidate who has secured highest marks (excluding respondent no.3) on the post of Police Patil, Kinhi.

3. Stand of respondent no.2 is that respondent no.3 was the top scorer, she had resigned as Member of Gram Panchayat, her resignation was accepted and only thereafter appointment order was issued to her.

4. Stand of respondent no.3 is that she tendered resignation as Member of Gram Panchayat on 03.10.2023, it was accepted by Gram Panchayat on 20.10.2023 and thereafter appointment order was issued to her.

5. Clause – 6 of proclamation dated 22.08.2023 (Annexure A-1) reads as under-

६. अर्जदारांचे कोणत्याही राजकिय पक्षाशी संबंध नसावा. अर्जदार हा नेमणुकीच्या गावी स्थानिक स्वरुपाचा उद्योग करणारा नसावा. त्याचप्रमाणे इतर ठिकाणी संपूर्ण वेळ नोकरी वा धंदा करणारा नसावा. त्याचप्रमाणे ग्रामपंचायत सदस्य नसावा. तसेच खाजगी किंवा निमसरकारी संस्थेचा सदस्य नसावा, अथवा पुर्णवेळ नोकरी करणारा नसावा याबाबतचे रुपये १००/-च्या स्टॅम्प पेपरवरील प्रतिज्ञापत्र, कागदपत्र पडताळणीच्या वेळी सादर करणे आवश्यक राहील.

Rule 8 of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances And Other Conditions of Service) Order, 1968 reads as under-

8. Engagement in business or trade.

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.

6. According to the applicant, even on the date on which appointment order was issued to respondent no.3 i.e. 20.10.2023, her resignation as Member of Gram Panchayat was not accepted and consequently, appointment order dated 20.10.2023 cannot be sustained. To meet this objection respondent no.3 has placed on record minutes of meeting of Gram Panchayat, Kinhi held on 20.10.2023 (at P.64). As per these minutes in the meeting held on that day resignation of respondent no.3 tendered on 03.10.2023, as Member of Gram Panchayat was accepted. Respondent no.3 has also placed on record at P.65 report of Block Development Officer that on 20.10.2023 the post of Member of Gram Panchayat till then held by respondent no.3 had fallen vacant. On the same day order of appointment of respondent no.3 was issued.

7. The applicant has further assailed appointment order of respondent no.3 on the following ground (pleaded in para 6.9) –

"6.9: That, the applicant respectfully submits that the proclamation dated 27.07.2023 issued by respondent no.2 for the post of Police Patil provided in condition no.6 that the candidate should not have any local business of permanent nature in the village of appointment, also it has been provided that the candidate should not be engaged in full time business. The applicant respectfully submits that the respondent no.3 is having business of Krishi Kendra and dealer in seed and licence to that effect have been issued by the licensing authority i.e. District Superintending Agriculture Officer, Gondia dated 23.11.2021 and the said licence is valid for the period 23.11.2021 to 22.11.2024 and the said licence is issued to the respondent no.3 as a Proprietor of M/s. Baghele Krishi Kendra at address House No.544, Ward No 2, Kinhi, post - Dasgaon. Tah. and District - Gondia. The applicant sought his material information under Right to information Act from the concerned authority. The applicant herewith annexed copy of licence issued by respondent no.2 to respondent no.3 as ANNEXURE - A7."

Documents at PP.37-D to 37-M are collectively marked Annexure A-7. Licence to carry on the business of dealer in seed is at P.37-E. Licence to sell, stock or exhibit for sale or distribution of insecticides is at P.37-L. Both these licences are issued in the name of Baghele Krushi Kendra and respondent no.3 is shown as the Proprietor. In these licences place of business is shown as House No.544, Ward No.2 Kinhi, post Dusgaon at post Kinhi Taluka and District

Gondia. Period of validity of the former licence is from 23.11.2021 to 22.11.2024 whereas period of validity of the latter is from 02.11.2021 to 01.11.2023.

8. It may be mentioned that respondent no.3 filed her reply on 21.11.2023. The O.A. was filed on 12.10.2023. Thereafter, the applicant amended the O.A. and added paras 6.8, 6.9 and 6.10, and prayer clause (i-a) to her pleading on 11.03.2024 as per order of this Tribunal dated 05.03.2024. By the amended prayer clause order dated 20.10.2023 was impugned. To the amended pleading of the applicant respondent no.3 did not file any (additional) reply. Respondents 1 and 2 who are supporting order dated 20.10.2023 also did not file reply to amended pleading of the applicant. Thus, amended pleading of the applicant has gone untraversed. To rebut this pleading respondent no.3 has placed on record a Certificate (at P.62) issued by Sarpanch, Gram Panchayat, Kinhi as follows-

प्रमाणीत करण्यात येत आहे की नामे श्रीमती मिना ललीत बघेले रा. किन्ही पो. दासगाव ता.गोंदिया जि. गोंदिया चे रहीवासी आहे. यानी कृषी डिप्लोमा केला होता व त्या डिप्लोमा वर कृषी केन्द्र ची लायसेंस बनवला पण काही कारणामूळे यानी कधीच आता पर्यंत व्यवसाय सुरु केले नाही.

करीता प्रमाणपत्र देण्यात येत आहे.

I have referred to licences issued in the name of respondent no.3. Considering these licences no reliance deserves to be placed on the certificate issued by Sarpanch, Gram Panchayat, Kinhi. It is difficult to believe that licences were merely obtained and business was never run. Thus, there is reliable material to hold that respondent no.3 was engaged in a full time business at village Kinhi and hence she ought not to have been appointed as Police Patil as per Clause - 6 stipulated in Proclamation dated 22.08.2023 and Rule 8 of Rules of 1968.

9. Respondent no.3 sought to rely on the Judgments dated 15.12.2022 and 19.11.2019 of Principal Bench of this Tribunal in O.A.Nos.513/2022 and 941/2017, respectively. In Judgment dated 15.12.2022 it is held-

9. In view of above, question posed for consideration is whether the Applicant was ineligible for the post of Police Patil for the reasons recorded by S.D.O. Perusal of impugned order reveals that S.D.O. came to the conclusion of ineligibility of the Applicant for the post of Police Patil mainly on the following ground:-

A) The Applicant runs Mini Door business for plying Mini Door rickshaw from Dighe to Sarve and is a Member of Mini Door association.

B) The Applicant was Secretary of Panlot Samiti and was getting honorarium of Rs.3,000/- per month.

C) The resignation of the Applicant as the Secretary of Panlot Samiti was not accepted till date of his appointment as Police Patil.

D) There was Chapter Case No.4/2016 under section 116(6) of Criminal Procedure Code, 1973 against the Applicant.

For the above conclusion, S.D.O. held that the Applicant has suppressed material facts and thereby invited disqualification and dismissed him from the post of Police Patil invoking Section 9(f) of Maharashtra Village Police Act, 1967.

10. Shri A.V. Bandiwadekar, learned Advocate for the Applicant made two folds submission to assail the impugned order. He submits that there could be no such dismissal from service from the post without initiating D.E. In 2nd line of submission he urged that conclusion recorded by S.D.O. for dismissing the Applicant is totally incorrect and unsustainable in law and facts.

11. Per contra, learned P.O. sought to justify the impugned order inter alia contending that the conclusion recorded by S.D.O. needs no interference.

12. Insofar as necessity of holding D.E. is concerned, no doubt Maharashtra Village Police Patils (Recruitment, Pay, Allowances and Other Conditions of Service) Order, 1968 (hereinafter referred 'Order 1968' for brevity) provides procedure to be observed for imposing penalties upon Police Patil. Whereas, penalties to be imposed upon Police Patil are mentioned under Section 9 (f) of Maharashtra Village Police Patil Act, 1967 and dismissal is one of the punishment. Such dismissal shall inordinately disqualify from future employment in Government. Suffice to say, it is in the case of mis-conduct committed by the Police Patil during the course of his duty, in that event procedure of adopting regular D.E. is contemplated / provided under order 9 (a) of Order, 1968 is essential.

13. Whereas, in present case there is no case of mis-conduct after appointment of Police Patil. Here is the case of eligibility and suppression of fact while making application for the post of Police Patil. Therefore, it was not a case in which regular D.E. was warranted. Indeed, Respondent No.1 has wrongly quoted the

provision as Section 9 (f) of Maharashtra Village Police Patil Act, 1967. As a matter of fact and law, it was a matter of alleged ineligibility and cancellation of the appointment order and not of dismissal. Be that as it may, next important question comes whether conclusion recorded by S.D.O. are legally and factually sustainable to hold the Applicant ineligible for the post of Police Patil. As per the advertisement, his candidature should not have fulltime service. Indeed, Rule 8 of Order, 1968 permits to cultivate land or engage in business or trade in the village, Rule 8 is as under:-

“8. Engagement in business or trade:- Notwithstanding anything contained in this Order, a Police Patil may cultivate land or engage in business or trade in the village, in such manner as is not determinantal to the performance of his duties as Police Patil, but he shall not undertake any full-time occupation elsewhere.”

14. Now turning to the facts of present case the Applicant admits that he is running Mini Door rickshaw business and Member of Organization of Mini Door rickshaw owners. Since Order, 1968 as referred to above, permit engagement in local business the Applicant cannot be said ineligible on that point. In Affidavit all that he has stated that he is not doing any kind of service with Government or Semi Government or Organization and not doing fulltime business. It is no way the case of Respondents that the Applicant is not available 24 hours or he is doing 24 hours business. This being the situation, running of part time business can hardly be termed disqualification.

15. As regard honorarium Secretary of Panlot Samiti the Applicant has tendered letter of Taluka Agricultural Officer (Pg 40) in which it is clearly stated that the Applicant has tendered resignation of the post of Secretary on 04.09.2016. In letter it is further clarified that the Applicant had not accepted honorarium from July 2016 onwards. This being the factual position that could not have been a ground of declaring the Applicant ineligible for the post of Police Patil. Apart,

holding honorary post in Panlot Samiti can hardly be construed disqualification or ineligibility. These aspects are made clear by the Government by issuance of letter dated 10.05.1983 whereby it is clarified that Police Patil is paid honorarium and not wages and is expected to have his independent source of livelihood, cultivation of land or engagement in legal business. It is further clarified that candidates for the post of Police Patil should not be a Member or associated with Political party or organization taking part in Politics. Notably it further states that office bearer or Member of local body and his candidature for the post of Police Patil may be considered for such post and he can be appointed for the of Police Patil on his actual resignation from that body. In this behalf Hon'ble High Court in 2015(6) Mh.L.J. 393 (Sunita V/s. District Collector, Ahmednagar) held that at Village level Vividh Karyakari Society, which caters to the farmer cannot be said to be a Society involved in any political movement or political activities since the main object of Vividh Karyakari Society is restricted to the welfare of Agriculturist. In present case the Applicant was honorary Secretary of Panlot Samiti to oversee distribution of water for irrigation and such a Society cannot be termed involved in political activities or movement. As such, the conclusion of S.D.O. that Applicant on that ground is ineligible is obviously erroneous.

16. *Then it comes to Chapter case. All that S.D.O. observed that there was Chapter case against the Applicant however, here he forgot to see the said Chapter case was already closed on 05.08.2016. The Applicant has enclosed closure order on Page 43 of P.B. Thus, the conclusion recorded by S.D.O. are legally and factually incorrect and it does not render the Applicant ineligible for the post of Police Patil. The observation made by S.D.O. that the Applicant has given wrong information is very vague and what information was wrong is not made clear. In Affidavit he made a statement that he is not in private or Government / Semi Government service nor doing any fulltime job.*

It is no way the case of Respondents that the Applicant was doing fulltime service or job or not available to the villagers. Engagement in plying mini rickshaw for his livelihood cannot be termed disqualification or ineligible for the post of Police Patil.

17. *In this view of the matter, I have no hesitation to conclude that Respondent S.D.O. misdirected himself and came to the wrong conclusion of dismissal of the Applicant from the post of Police Patil. The impugned order is thus bad in law and liable to be quashed. He is liable to be reinstated on the post of Police Patil.*

(Emphasis Supplied)

In the instant case, on the basis of licences issued in the name of respondent no.3 it will have to be held that her case attracts the embargo contained in Rule 8 quoted above.

10. In Judgment dated 19.11.2019 it is held-

8. Suffice to say, appointment by Order 1968' or advertisement nowhere stipulates that the candidate should be ceased to member of Gram Panchayat on the date of his application to the post of Police Patil. In absence of any such provision, it cannot be said that the application filed by the Respondent No.5 for the post of Police Patil itself was illegal. Disqualification cannot be inferred in absence of specific provision to that effect.

This ruling will not help respondent no.3 since, on facts I have held that respondent no.3 was not eligible to be appointed as Police Patil by virtue of doing full time business.

11. For all these reasons the impugned order dated 20.10.2023 appointing respondent no.3 as Police Patil, Kinhi is quashed and set

aside. Respondent no.2 shall fill up the post in accordance with law.

The O.A. is allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 22/08/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 22/08/2024.
and pronounced on
Uploaded on : 22/08/2024.