

(2001) 12 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 931 of 2001

Niraj Kherde

APPELLANT

Vs

Member, Maharashtra Administrative Tribunal, Nagpur and
Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Maharashtra Village Police Patils (Recruitment, Pay, Allowances and Other Conditions of Service) Order, 1968 — Rule 5(2)

Citation : (2002) 3 ALLMR 841 : (2002) 3 BomCR 673 : (2002) 3 MhLj 285 :
(2002) 2 MhLj 253

Hon'ble Judges : V.M. Kanade, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : D.M. Tilwani, for the Appellant; A.M. Deshpande, A.G.P. and V.G. Bhamburkar, for the Respondent

Final Decision : Allowed

Judgement

H.L. Gohale, J.—This petition is filed by a person, who was initially selected as Police Patil on 14th March, 2000, for a period of five years, but whose appointment came to be subsequently cancelled on 19-8-2000. The petitioner challenged that decision in the Maharashtra Administrative Tribunal but, that proceeding was dismissed on 7-3-2001. In place of the petitioner, respondent No. 5 came to be appointed, by an order dated 1st of March, 2001. The petition seeks to challenge the orders dated 19-8-2000, 1st of March, 2001 and the order dated 7-3-2001 by M.A.T. and seeks consequential reliefs.

2. When this matter came up earlier, some interim orders were passed from time to time, which will be subsequently referred. This is however, a matter which will have to be heard finally at the admission stage itself and accordingly, it is being heard and disposed of. The respondents have already filed their reply. Accordingly, Rule returnable forthwith and heard by consent of the parties. The respondent No. 1 is Maharashtra Administrative Tribunal, Nagpur and there is no

need to represent the tribunal. Counsel for all other parties are heard.

3. An advertisement was issued on 22th November, 1999, for appointment to the post of Police Patil of village Jalka-Jagtap, Taluka Chandur (Railway) District. Amravati, by the Sub-Divisional Officer, Chandur Railway, who is respondent No. 4 herein. The advertisement stated that along with the application, the candidates were supposed to enclose documents about their educational qualifications; agricultural holding; ownership of any house; document indicating their caste and a certificate given by Village officer, certifying that the candidate is a resident of that particular village. The advertisement stated that following will be the qualifications for the post:--

- (1) The age of the candidate should not be below 25 years and should not be above 45 years;
- (2) The candidate ought to have passed 6th Std. Primary school examination;
- (3) The candidate has to be a resident of the particular village;
- (4) The candidate ought to be physically capable of discharging the duties as Police Patil;
- (5) The candidate should not be one, who is found guilty, after a summary enquiry by the competent officer;
- (6) Preference will be given to the candidates, who belong to the Scheduled Castes/Scheduled Tribes/D.T.N.T., and who are found eligible after considering all the other conditions.

4. As slated above, the petitioner, along with some 17 candidates was considered for this post and was issued an appointment order on 14th of March, 2000, for a period of five years. Thereafter, he was issued a notice on 31st July, 2000, asking him to show cause as to why, his appointment should not be cancelled. The petitioner filed his reply to this notice on 8th of August, 2000. Thereafter an order was passed by the then Sub-Divisional Officer, Chandur Railway on 19th August, 2000, stating that he had gone through the record as per the directions of the Commissioner of Amravati Division. The order further states that in the advertisement for the particular post, it was mentioned that the persons from reserved categories were eligible for preference. Thereafter the order states that the then Sub-Divisional Officer, had not looked into this aspect on a comparative basis and issued the appointment order. Therefore, the order was being cancelled. It is material to note that whereas the appointment order was issued by one Sub-Divisional Officer, the order of cancellation came to be issued by another Sub-Divisional Officer. It is very clear from the order that no hearing was given to the petitioner before issuing this order of cancellation. The reply filed in this Court also does not state that any hearing was given to the petitioner.

5. Being aggrieved by this order of cancellation, the petitioner filed an original Application before the Maharashtra Administrative Tribunal, Nagpur. The

petitioner applied for stay, but the same was not granted, and hence, one Writ Petition was filed earlier on 23rd October, 2000, bearing Writ Petition No. 3678/2000. In the meanwhile, another advertisement came to be issued on 3rd October, 2000 and by virtue thereof the respondent No. 5 came to be appointed on 1st of March, 2001. Subsequently, the Original Application filed by the petitioner before the Tribunal, came to be rejected on 7th March, 2001. Being aggrieved by the order cancelling his appointment, the decision of the Tribunal and the appointment of respondent No. 5, the petitioner filed this petition on 20th March, 2001 .

6. When this petition was taken up for consideration for admission on 23rd March, 2001, an interim relief as prayed for in terms of prayer Clause (2) of this petition was granted, whereby the order passed by the Tribunal, as also the order passed in favour of the respondent No. 5, were stayed. This matter has been pending-thereafter and has been mentioned for being heard finally before us, since good time has gone since that interim order and a controversy has cropped up with respect to the effect thereof. This is inasmuch as the respondent No. 5 has contended that although, he had, in fact, taken the charge of the post as Police Patil, that was not disclosed to this Court and that is how this Court passed the interim order on 23rd March, 2001. It is, however, material to note that the charge was taken one-sided, as the document, taking over the charge itself discloses. It is another matter that the petitioner is disputing that the charge was ever taken over by the respondent No. 5.

7. Ms. Tilwani, learned counsel for the petitioner submits that the order dated 14th March, 2000, appointing the petitioner as Police Patil was just and proper and there was no reason for the respondents Nos. 2, 3 and 4, to cancel the same. All that the concerned Advertisement stated was that the persons from the reserved categories were to be given preference. It did not say that persons from the other communities, if found better suited, were not to be appointed, In any case, she submits that the petitioner was not given any hearing before issuing the order cancelling his appointment.

8. Mr. Deshpande, learned A.G.P. submitted that the condition No. 6, as mentioned above, indicates that a person from the reserved categories had a preference and that aspect was not considered by the Sub-Divisional Officer, who appointed the petitioner earlier. Secondly, he submitted that under the provisions of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and Other Conditions of Service) Order, 1968, it was relevant to possess land. He pressed into service Rule 5(2) concerning Selection of Police Patils in this behalf, service, which reads as follows :--

"5(2) In making the selection, the Competent Authority shall take into consideration whether the applicant is known to the villagers, is acquainted with all the circumstances of the Village, and is possessed of landed property in the village."

He submitted that as per the information with the respondents Nos. 2, 3 and 4, the petitioner did not own any land.

9. Mr. Deshpande, brought to our notice the order sheet maintained at the time, when both these selection procedures were gone into. He pointed out that when the selection procedure was gone into on the earlier occasion, there was no specific noting with respect to the merits and demerits of the candidates on the basis of their communities: As against that, when the second order was passed, this is very much reflected in that order.

10. Mr. Bhamburkar, learned counsel appearing for the respondent No. 5 supported the submissions of Mr. Deshpande, learned A.G.P. He submitted that the Officer concerned, who issued the order earlier, has not followed the instructions and the conditions, which were mentioned in the advertisement itself. That being so, the appointment order passed thereon, was defective and, therefore, the Government was right in cancelling that appointment. In his submission on the second occasion, all these aspects were considered and thereafter only, the respondent No. 5 was appointed to the particular post. In his submission, the order in favour of the respondent No. 5, deserved to be maintained.

11. In her rejoinder, Miss Tilwani pointed out that the respondent No. 5 also did not belong to any of the reserved communities and this was not disputed by the counsel for the respondent. On the question of land holding, Miss Tilwani, drew our attention to the Division Bench Judgment on the above referred clause, in the case of Arun Tukaram Patil v. State of Maharashtra and Ors. reported in 7999 (3) Mh.LJ 594 wherein a Division Bench has in terms has held that the possession of landed property is not criteria for eligibility under the particular clause. We are in complete agreement with the view taken by the Division Bench, as aforesaid. Taking any other view will deprive all those people, who do not own land for being considered for appointment to the post of Police Patil. A large number of people, in the village also, do not own land, particularly the persons of the very reserved communities (for whom, the preferential provision is made) do not own lands. Any such interpretation of this clause will deprive them of being considered for the post of Police Patil and the post of village Patil will become a prerogative of the persons, who own land. Such an interpretation cannot be accepted.

12. In any case, what is interesting to note is that although the appointment of the petitioner was cancelled on the ground that he does not belong to the reserved communities, (for whom the preference was meant) the respondent No. 5 also does not belong to any of those communities. The only thing which is being pressed into service in favour of the respondent No. 5 is that the order sheet deciding his appointment, has a discussion with respect to the merits and demerits of various candidates on the basis of their communities. There is no doubt that as far as this aspect is concerned, the order sheet appointing respondent No. 5 does discuss these aspects. However, if one sees the order

sheet prepared by the S.D.O., when the petitioner was selected, it is clear that in para No. 2 of that order, he has considered the statements of the candidates who appeared before him; the documents produced by them (which include documents on caste) thereafter he has prepared the chart, showing the educational qualifications; age; his impression with respect to their personality and intelligence. It is material to note that as far as the petitioner is concerned, he has obtained Master's Degree in Social Welfare, (M.S.W.) Whereas, the respondent No. 5 has passed 8th Std. In the Chart prepared on the first occasion, the personality of the petitioner has been recorded as "impressive" and his intelligence has been mentioned as "extraordinary". It was pointed out by Mr.Deshpande and Mr. Bhamburkar that from amongst the candidates, who appeared before the then Sub-Divisional Officer, the persons at serial Nos. 4 and 6 were belonging to Specified communities. As far as they are concerned, it is stated in the paragraph, after the above chart that their intelligence as well as personality was ordinary. This is stated with respect to some other candidates also. Similarly, there are remarks about all other candidates and finally it is stated that the petitioner is the best one amongst all of them and, therefore, he was selected.

13. We have referred to the six qualifications in the advertisement right at the outset. The petitioner does not suffer from any of the disqualifications and so was undoubtedly eligible for being considered. As stated above, Clause 6 of the advertisement stated that if any of the candidates from the reserved communities fulfill the conditions then such candidate will be considered with preference. Now what is material to note is that the conditions do not say that the post is reserved for the concerned communities. The advertisement only states that they will be considered with preference. This implies that all things being equal, the person from the specified communities will be given preference. As against that, in the order sheet prepared by the then Sub-Divisional Officer, it is clear that the petitioner was far superior to all other candidates, who appeared at the time and his personality has been recorded as "impressive" and intelligence as "extraordinary", as against all of them, who did not have any such remark as against them.

14. Again, what is material to note is that when the order was interfered, only a show cause notice was given and the reply was sought. The petitioner had already been selected and appointment order had been issued to him. In fact, he was functioning as Police Patil for about four months. Thereafter the show cause notice has been issued to him and after he filed a reply, his appointment came to be cancelled though without any hearing. Surely he was entitled to a personal hearing, when his employment in the public office was at stake. Admittedly, he was not given any hearing. This aspect has got to be borne in mind.

15. Having considered all these facts, we are of the view that cancellation of the appointment of the petitioner was erroneous and unjustified. The Maharashtra Administrative Tribunal has not looked into these aspects and its order will have

to be interfered on that count.

16. The submission on behalf of the Government that the order passed earlier was a wrong order, has also to be rejected for one more reason. The petitioner had acted bonafide and had been issued the appointment order by the competent authorities concerned. Any error or mistake on the part of appointing or selecting authority cannot be pressed to his prejudice. That also has been the view taken by the Apex Court in the case of Ashok Chand Singhvi Vs. University of Jodhpur and Others, .

17. Once the cancellation of appointment and the order of the Tribunal is set aside, needless to state that the subsequent advertisement and appointment of the respondent No. 5 will also have to be set aside.

18. Accordingly, we allow this petition and set aside the order dated 19-8-2000, cancelling petitioner's appointment; the order passed by the Maharashtra Administrative Tribunal, dated 7-3-2001 upholding that cancellation and the order dated 1-3-2001 appointing the respondent No. 5 in place of the petitioner. We direct the respondents Nos. 2 to 4 to permit the petitioner to continue to function as Police Patil. The petitioner will be entitled to all consequential benefits.

19. Rule is made absolute accordingly though there will be no order as to costs.