
(1982) 08 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 2844 of 1981

Pandurang Namdeo Dhabekar

APPELLANT

Vs

Vithal Rangrao Patil and Others

RESPONDENT

Date of Decision : 16-08-1982

Acts Referred:

Citation : (1982) 1 BomCR 891

Hon'ble Judges : M.N. Chandurkar, J;M.H. Kania, J

Bench : Division Bench

Advocate : K.Y. Mandlik, for the Appellant; R.M. Dhorde, for the Respondent

Judgement

M.H. Kania, J.—This is a petition under Articles 226 and 227 of the Constitution of India, seeking to impugn an order passed by respondent No. 4-the Sub-Divisional Magistrate, Solapur.

2. This petition is regarding the post of the Police Patil of village Dudhgaon, Taluka Barsi, District Solapur. On 27-9-1962, respondent No. 1 was appointed as a Police Patil of the said village. On 19-2-1964, there was a raid on the house of respondent No. 1 and it was alleged that some illicit liquor was found in that house. Respondent No. 1 was arrested and the police proceedings were launched against him. On 13-4-1964, respondent No. 1 was suspended from his post as the Police Patil of the said village. On 31st January, 1966, the petitioner was appointed as the Police Patil of the said village. The letter of appointment makes it quite clear that the petitioner was appointed temporarily and his services were liable to be terminated without a notice. The said appointment was stated to be u/s 5 of the Bombay Village Police Act, 1867. On 5-6-1968, the Maharashtra Village Police Act, 1967 came into force and by the said Act, the Bombay Village Police Act, 1867 was repealed. On 29-4-1971, the petitioner's appointment as the Police Patil was extended. It is clear that this appointment or extension was made under the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other conditions of Services), Order, 1968 (referred to hereinafter as the "said order"). The appointment of the petitioner was extended by the order dated

29-7-80. The last paragraph of the order dated 29-7-1980, makes it clear that the appointment of the petitioner was extended only till the termination of the criminal proceedings lodged against respondent No. 1 or till 5 years whichever is earlier. Curiously enough, sometimes prior to this order, namely on 31-5-1980, respondent No. 1 had already been discharged in the criminal proceedings lodged against him. It is clear that the aforesaid order of extension was passed in ignorance of that fact. On 7-8-1980, respondent No. 1 applied for the reinstatement to the post of the Police Patil of the said village. On 4-12-1980, respondent No. 4 passed the impugned order wherein he pointed out that the aforesaid order dated 29-7-1980 continuing the petitioner, stood cancelled as respondent No. 1 had been released in the criminal proceedings lodged against him. By the said order, dated 4-12-1980 respondent No. 4 further directed that respondent No. 1 was reinstated in service from the date of the said order for a term of five years i.e. till 30-11-1985 or till he attains the age of 60 years whichever is earlier. It is this order which is impugned before us.

3. The submission of Mr. Mandlik, learned Counsel for the petitioner, is that under the provisions of law, the appointment of the petitioner is the permanent appointment and that he is entitled to occupy the post of the Police Patil till he completes the age of 60 years. In support of his arguments, Mr. Mandlik placed reliance upon paragraph of Clause 11 of the said order. The said paragraph runs thus:

"Notwithstanding anything contained in any order of appointment, every person, who immediately before the date of commencement of this order, is serving as a Police Patil unless he has already attained the age of 60 years, shall on and from that day be deemed to have been duly appointed to that office by the Competent Authority for a period of 5 years and shall continue to hold that office subject, however, to Clauses 5 and 7 and other provisions of this order."

We totally fail to see how this order is of any assistance to Mr. Mandlik's present submission. All that the order provides is that in the case of a Police Patil who was serving as such at the commencement of the said order, he would continue to be the Police Patil till he attained the age of 60 years or for a period of 5 years from the commencement of the order. The said order came into effect from 15-11-1968. Even assuming that the petitioner was entitled to the benefit of that order, all that he could claim on the basis of the aforesaid paragraph 11 was that he should be allowed to continue as the Police Patil till 14-11-1973. This paragraph in no way deals with the situation arising out of an appointment made after the commencement of the said order. Apart from this, the order of 29th July, 1980 whereby the petitioner was continued as the Police Patil is not effective, because by the time that order was passed, respondent No. 1 had already been discharged in the criminal proceeding lodged against him and the said order in terms purported to continue the services of the petitioner till the termination of the criminal proceedings lodged against respondent No. 1. In any event, the appointment of the petitioner under the said order dated 29-7-1980 in

terms was to come to an end on the termination of the criminal proceedings against respondent No. 1. In view of this, we totally fail to see how the petitioner is entitled to any right to continue as the Police Patil of the said village. There is, however, one apparent error in the impugned order that is, that by the said order, respondent No. 1 has been reinstated for a term of 5 years i.e. till 30-11-1985 or till he attained the age of 60 years whichever is earlier. There can be no quarrel with the reinstatement of respondent No. 1 but we fail to see now in the absence of a proper appointment following the procedure under the Maharashtra Village Police Act, 1967, the appointment could be made for a period of 5 years or till the completion of 60 years. That part of the order, directing the appointment of respondent No. 1 to continue for a period of 5 years or till he completes the age of 60 years whichever is earlier, will therefore, be set aside. It is, however, clarified that the order of reinstatement of respondent No. 1 is to stand. Respondent No. 4 is directed to take steps to make a fresh appointment to the post of the Police Patil of the said village in accordance with the law.

Rule discharged save to the extent aforesaid. No order as to costs.