

(2014) 12 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 1228 of 2014

Rajesh Krishna Kale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Citation : (2015) 6 ALLMR 298 : (2015) 4 MhLj 799

Hon'ble Judges : P.R. Bora, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : S. Borkar, Advocate for the Appellant; M.N. Hiwase, Asst. Govt. Pleader, Advocate for the Respondent

Judgement

P.R. Bora, J.—Rule. Heard forthwith by consent of parties.

2. Order dated 20th February 2014 passed by the Nagpur Bench of the Maharashtra Administrative Tribunal (hereinafter referred to as the "Tribunal") in Original Application No. 188 of 2013 is questioned in the present petition.

3. The present petitioner was appointed as Police Patil for village Waghbodi, Post Gunthara, Tahsil and District Bhandara vide appointment order dated 5.2.2013 issued by the Sub-Divisional Officer, Bhandara. Respondent no. 4 herein challenged the appointment of the petitioner on the post of Police Patil for said village by filing Original Application before the Tribunal. Vide impugned order, the Tribunal has allowed the said application by setting aside the appointment of the present petitioner on the said post.

4. Mr S. Borkar, learned counsel appearing for the petitioner submitted that on an erroneous interpretation of the Government Resolution dated 7.9.1999, the Tribunal has set aside appointment of the present petitioner. Relying on the judgment of the Division Bench of this Court in the case of Arun Patil Vs. The State of Maharashtra and Others, , learned counsel urged that as held by the Division Bench in the said judgment, holding of the land in one's own name is not a requirement of eligibility in the matter of appointment as a Police Patil

under the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and Other Conditions of Service) Order, 1968 under regulation 3 (c), clause 5 (2).

5. Respondents no. 1 to 3 have not filed any reply in this matter. Learned Assistant Government Pleader, however, pointed out that in Original Application before the Tribunal, respondents no. 1 to 3 have supported the appointment of the present petitioner on the post of Police Patil.

6. Respondent no. 4 i.e. applicant in the Original Application though has been duly served, has not appeared in the matter.

7. We have carefully perused the impugned order. It is quite clear that non-holding of land by the petitioner in his own name is the main reason for setting aside his appointment as Police Patil by the Tribunal. The Tribunal has held that holding of land in one's own name as mentioned in the Government Resolution dated 7.9.1999 is mandatory. In paragraph 9 of the judgment, the Tribunal has mentioned that Government Resolution dated 7.9.1999 was brought into force after repealing of the Maharashtra Village Police Patil (Regulation) Rules, 1957 and the Maharashtra Village Police Patil (Service, Appointment, Salary, Allowances and Conditions of Service) Regulation, 1968. The Tribunal has further stated that in the repealing provision, it was not mandatory to hold the land in one's own name. However, facts so recorded by the Tribunal factually appear to be incorrect. Learned counsel for the petitioner has pointed that the Regulations of 1968 have not been repealed nor the Rules of 1957 have been repealed. The petitioner has specifically raised this contention by amending his petition. Learned Assistant Government Pleader conceded the submission made on behalf of learned counsel for petitioner to the effect that there is no such repeal as noted by the Tribunal in its judgment. The petitioner has filed on record Government Resolution dated 7.9.1999. We have carefully perused the contents of the said Government Resolution. The Government Resolution nowhere suggests that holding of land in own name is mandatory for a person aspiring for appointment as Police Patil. This aspect has been considered by the Division Bench of this Court in Arun Tukaram Patil v. State of Maharashtra & ors. (supra). In the said judgment the Division Bench has clearly held that the possession of landed property is not a criteria for eligibility to the appointment as Police Patil. In the said case also the appointment of petitioner was challenged and the Tribunal had set aside his appointment on the ground that he did not possess landed property in Motala village of which he was appointed as Police Patil. While negating the conclusion so recorded by the Tribunal, this Court unambiguously held that possession of the landed property is not the criteria for appointment of a person as Police Patil under the said Order of 1968. Even if it is assumed that in the Government Resolution, as has been interpreted by the learned Tribunal, "to have a land in one's own name" is provided as a mandatory eligibility criteria, the said Government Resolution cannot in any way have the overriding effect on the statutory provisions of Order of 1968.

8. In view of the above, the order passed by the Tribunal is liable to be set aside.

9. The second objection raised before the Tribunal was about the tenure of appointment as mentioned in the order of appointment dated 5.2.2013. Taking support from the Government Resolution dated 7.9.1999, it was urged before the Tribunal that in no case the present petitioner could have been appointed as Police Patil for a period of ten years. Learned Assistant Government Pleader brought to our notice that as per the aforesaid Government Resolution, appointment of Police Patil can be permitted upto the period of five years and the said period thereafter can be extended taking into consideration the performance of the person so appointed. However, in view of the period restricted upto five years in the aforesaid Government Resolution, it appears to us that the petitioner could not have been appointed in one stroke for a period of ten years. Thus, the order dated 5.2.2013 is required to be modified to that extent.

10. For the reasons stated above, the following order is passed :

ORDER

(i) Writ Petition No. 1228 of 2014 is partly allowed.

(ii) Impugned order dated 20.2.2014 passed by the Maharashtra Administrative Tribunal in Original Application No. 188 of 2013 is set aside. However, it is made clear that appointment of the present petitioner will be for the period of maximum five years from the date of his appointment.

(iii) Rule made absolute in the above terms with no order as to costs.