



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

904 WRIT PETITION NO. 12182 OF 2024

Usha w/o Gomaji Yelane,
Age : 30 years, Occu.: Service,
R/o.: A/o.: Patnoor, Tq. Ardhapur,
District : Nanded

.... **PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Secretary,
Rural & Textile Department,
Mantralaya Mumbai-32
2. The District Collector,
Nanded, Collector Office, Nanded
3. The Sub-Divisional Officer,
Nanded, Chikhalwadi Corner,
Nanded
4. Sau. Gangasagar Balu Kokate @
Gangasagar Tukaram Sable,
Age : 26 yeas, Occu.: Agril.,
R/o. A/o.: Patnoor, Tq. Ardhapur,
District : Nanded

.... **RESPONDENTS**

...
Mr. Joshi Rhshikesh A., Advocate for the Petitioner
Mr. D. R. Korde, AGP for Respondent Nos.1 to 3-State
Mr. Thorat Mohanish V., Advocate for Respondent No.4
....

**CORAM : R. G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 03/04/2025.

ORAL JUDGMENT : (Per : R. G. AVACHAT, J.)

1. Heard.

2. This writ petition takes exception to the judgment and order dated 24/10/2024 passed in Original Application (OA) No.114 of 2024, whereby the order dated 31/01/2023 passed by the Sub-Divisional Magistrate, Nanded accepting the objection to the appointment of respondent No.4 to the post of Police-patil of village Patnoor, was set aside.

3. Both the petitioner and respondent No.4, preferred applications pursuant to the advertisement dated 01/01/2024 issued for filling up a post of the Police-patil. The applications of both of them, were found in order and therefore, they appeared for written examination. After having been successful therein, both of them along with three others, were interviewed. Respondent No.4 secured total 59 marks. While the petitioner got 57. Since respondent No.4 secured the highest marks, she was appointed for to post. As per the procedure, a notification was issued calling upon objections to selection of respondent No.4. The petitioner in response thereto, preferred the objection on the ground that on the date on which the advertisement was issued, respondent No.4 was

holding a post of village Sarpanch. The same amounts to breach of clause No.5 of the advertisement. The learned counsel for the petitioner would submit that the said clause is clear and admits of not more than one interpretation. He would further submit that in terms of the said condition, respondent No.4 was required to submit an affidavit to that effect when the scrutiny of documents was to be made. According to the learned counsel, respondent No.4 did not comply with the said condition and, therefore, she is ineligible to hold the post of village Police-patil. He would further submit that respondent No.4 indulged in manipulating documents. According to him, when the advertisement was issued on 1st January, how come respondent No.4 got knowledge well in advance and submitted resignation on 29/12/2023. He invited our attention to respondent No.4's application in that regard, which is for permission of the Block Development Officer, for making an application for the post of Police-patil. According to him, if really respondent No.4 had tendered resignation on 29/12/2023, what prompted her to again submit resignation on 19th January. He brought to our notice some information obtained under the Right to Information Act indicating that the resignation tendered by respondent No.4 was registered in the inward register by

interpolating entries therein. According to him, inward No.1532 was incorrect, instead it ought to have been 3532.

4. Placing reliance on the judgment of this Court in the case of ***Shikshan Prasarak Mandal vs. State of Maharashtra and others, 2009 (6) Bom.C.R.1***, he would submit that the judgment relied of the Apex Court in **Civil Appeal (s) 2712 of 2019 (arising from SLP (C) No.(s) 21256 of 2018** is not a precedent. He would submit that when an issue of law is raised and argued by both the sides and thereafter, decided by the High Court or Apex Court, that would only amount to precedent in terms of Article 215 or 141 respectively of the Constitution of India. He took us through said judgment to submit that no arguments were made in the matter. Counsel appearing for the State Government simply made a statement that circular dated 10th May 1983 holds the field and relying on the same, the Apex Court passed the judgment.

5. The learned counsel for the petitioner also argued on the point of distinction between 'recruitment and appointment'. Then, he relied on the Apex Court's judgment in the case of ***Dheeraj Mor. vs. Hon'ble High Court of Delhi, AIR 2020 SC 1084*** to submit that having regard to the general law as to a candidate appearing

for any competitive examination, he should hold a particular qualification either on the date of preferring application, or on the last date of submitting application for such post or on the date of making appointment if so prescribed by the rules concerned. The learned counsel ultimately urged for remanding the matter back to MAT since it has not addressed the issue as regards whether, respondent No.4 had in fact tendered resignation before he preferred application. According to him, the learned Member of the MAT simply relied on Apex Court's judgment and passed the order impugned herein.

6. We have considered the submissions advanced. Perused the order impugned herein. We need not go into the issue as to whether, respondent No.4 had in fact tendered resignation of the post of Sarpanch twice before she preferred the application for the post. It is true that perusal of some record available indicates some manipulations and the fact remains that if respondent No.4 has really indulged in such manipulation activities, then such person ought not to be appointed to the post. Be that as it may, since we are not going into that issue, we leave it at that only.

7. Clause No.5 of the advertisement reads thus :

“5. अर्जदारांचे कोणत्याही राजकिय पक्षाशी संबंध नसावा त्याचप्रमाणे इतर ठिकाणी संपूर्ण वेळ नोकरी करणारा नसावा त्याचप्रमाणे ग्रामपंचायत सदस्य नसावा. तसेच खाजगी किंवा निमसरकारी संस्थेचा सदस्य नसावा अथवा पुर्णवेळ नोकरी करणारा नसवा याबाबतचे रुपये 100/- च्या स्टॅम्प पेपरवरील प्रतिज्ञापत्र, कागदपत्र पडताळणीच्या वेळी सादर करणे आवश्यक राहिल.”

8. In the first blush it may appear that the said clause mandates the candidate should not be holding any post of profit / remuneration or a member of a Grampanchyat on the date on which he makes an application for the post of the Police-patil. However, Clause-19 of the advertisement reads thus :

“19. याशिवाय महाराष्ट्र ग्राम पोलीस अधिनियम 1967 व त्यास संलग्न असलेले नियम आणि वेळोवेळी शासनाने निर्गमित केलेले आदेश, शासन निर्णय, परिपत्रकांतील नेमणूकीसाठी इतर प्रचलित असलेल्या अटी सुध्दा बंधनकारक असतील.”

9. Reading thereof indicates that clause-19 overrides clause-5 in the advertisement by mandating that the provisions of the Maharashtra Village Police Act and orders, circulars, Government Resolutions etc., would also be applicable. If we again peruse clause-5 of the advertisement that simply mandates that the applicant should not have connection with any political party or should not be a member of Grampanchyat. The clause does not say in so many words as to whether, this condition shall be on the date of preferring application or on the date on which appointment is to

be made. For that purpose, it is necessary to refer to the provisions of the Maharashtra Village Police Act, 1967, rules, regulations, GR and circulars issued by the Government in that regard. Section 5 (3) is therefore, reproduced for ready reference as under:-

“5 (3). The recruitment, remuneration and other conditions of service of Police-patils shall be such as may, from time to time , be determined by the State Government by general or special order.”

The Act does not specifically spell out the conditions of service of the post of Police-patil. It leaves to the discretion of the State Government to determine such conditions from time to time. We have, therefore, to refer to the Government order issued on 04/11/1968 in exercise of power under Section 5(3) of the Maharashtra Village Police Act 1967. Clause 8 thereof reads thus:

*“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.”*

10. The petitioner does not dispute the Government circular dated 10/05/1983. In the petition, the said circular was sought to be interpreted in different way. There is no challenge to the said circular. Meaning thereby, the circular holds the field. The said circular reads thus:

“ पोलीस पाटील हा गावातील शासनाचा निवासी प्रतिनिधी असतो. त्याच्या पदाचा दर्जा कामाची भूमिका आणि जबाबदा-या पाहता, त्यांनी कोणत्याही राजकीय कार्यात स्वतःला सहभागी करून घेणे अपेक्षित नाही. महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, 1979 च्या नियम 5(1) नुसार पोलीस पाटील यांना राजकारणात भाग घेण्यापासून अथवा विधानमंडळाच्या अथवा स्थानिक स्वराज्य संस्थेच्या कोणत्याही निवडणूकीत सहभाग घेण्यास प्रतिबंधित केले आहे. पोलीस पाटील पदासाठीचा उमेदवार हा कोणत्याही राजकीय पक्ष किंवा राजकीय संघटनेचा सदस्य, किंवा त्यांच्याशी संलग्न असता कामा नये. स्थानिक स्वराज्य संस्थांचे पदाधिकारी किंवा सदस्य यांचा पोलीस पाटील पदासाठी उमेदवार म्हणून विचारात घेतले जाऊ शकतात. तथापि, त्यासर्व पदावरून प्रत्यक्षात राजीनामा दिल्यानंतरच त्यांची नियुक्ती पोलीस पाटील पदारवर केली जाऊ शकते.”

11. In case of **Bhikan Solunke vs. The Divisional Commissioner, Aurangabad and others**, in Special Leave to Appeal (Civil) No.21256/2018 decided on 11.03.2019, the Apex Court relying on the said circular held that appointment of a member of a Grampanchyat to the post of Police-patil is valid since he had tendered resignation before taking over the charge of the said post, although he had held the said post while he preferred application.

12. When clause-19 of the advertisement specifically states that one has to adhere to the statutory provisions and rules, regulations, circulars issued thereunder and more so when the circular dated 10/05/1983 holds the filed and permits a member of the village Panchyat to participate in the recruitment process for the post of Police-patil and on recruitment such candidate could be appointed to the post if he resigns from his post as a member of the village Panchyat and the same view has been taken by the Division Bench of this court in case of ***Swati Bhiva Gajbhare vs. The State of Maharashtra and others in Writ Petition No.13884 of 2024.***

13. For all the aforesaid reasons, we are not in agreement with the submissions advanced by the learned counsel for the petitioner. The petition, therefore, stands dismissed.

(**SANDIPKUMAR C. MORE, J.)**

(**R. G. AVACHAT, J.**)