

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 9916 OF 2014

Mrs. Sunita w/o Navnath Gudhage,
Age: 30 yrs, Occ: Household,
R/o: Sonewadi, Tq. Kopargaon,
Ahmednagar.

... PETITIONER

VERSUS

1. The District Collector,
Ahmednagar, Dist: Ahmednagar.
2. The Sub Divisional Officer,
Sangamner, Dist: Ahmednagar.
3. The Sub Divisional Officer,
Shirdi, Dist: Ahmednagar.
4. Mr. Dagu s/o Mohan Gudhage,
Age- 41 years, Occu. : Business,
R/o: Sonewadi, Tq. Kopargaon.
Dist: Ahmednagar.

... RESPONDENTS

Mr. Chandrakant R. Thorat, Advocate for the Petitioner.

Mr. A.S.Shinde, AGP for Respondent Nos.1 to 3.

Mr. V.H.Dighe, Advocate for Respondent No.4.

CORAM : **S. V. GANGAPURWALA and
V.L. ACHLIYA, JJ.**

RESERVED ON : 19th January, 2015

PRONOUNCED ON : 8th May, 2015.

JUDGMENT: (Per S. V. Gangapurwala, J.)

1 The present Petitioner had filed Original Application No.145 of 2013, before the Maharashtra Administrative Tribunal, Aurangabad, seeking declaration that Respondent – Dagu s/o Mohan Gudhage is not qualified for the post of Police Patil of village Sonewadi, Taluka Kopergaon, District Ahmednagar with further direction that the Respondent No.1 be directed to appoint the Petitioner as Police Patil in place of Respondent No.4 – Dagu s/o Mohan Gudhage. The Tribunal rejected the said original application. Aggrieved by the same, the present petition is filed.

2 Mr.Thorat, learned counsel for the Petitioner during the course of his arguments, strenuously canvassed the following propositions:

- A. Respondent – Dagu s/o Mohan Gudhage is a member of political party and he is participating in

day to day activities of Congress party. The said Respondent had contested the elections of a village level Vividh Karyakari Society and is involved in political activities. The said election is for a period of 2010-11 to 2015-16. According to the learned counsel, as the said Respondent is involved in political activities therefore is ineligible for the post of Police Patil. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Shriram s/o Dattu Dhoyar Vs. Ashok s/o Kashinath Raut and another**, reported in, **2012 (4) Mh.L.J. 439**].

- B. The learned counsel also relies on Rule 5 of the Maharashtra Civil Services (Conduct) Rules 1979 (hereinafter referred to as “the Conduct Rules, 1979”), to state that a Government Servant cannot be a member of, nor can be associated with any political party, or any organization, which takes part in politics nor can subscribe in aid of or assist in any other manner in political movement or activity. As

the Respondent No.4 herein had participated in the election of Vividh Karyakari Society, the Respondent No.4 is disqualified.

- C. The post of Police Patil is a civil post and a person holding the post of Police Patil cannot take active part in politics and elections.

3 Mr.Dighe, learned counsel for Respondent No.4 submits that the Respondent No.4 had never taken part in any political activity. The status of Police Patil cannot be equated with the salaried employee of a Government institution. The Vividh Karyakari Society is a village level society, which does not indulge in politics. It is only meant for the betterment of farmers. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of **Manohar s/o Ganpatji Singanjude Vs. The Returning Officer Bhandara District Milk Producers Federation and others**, reported in, **2000(4) ALL MR 842**.

4 The learned counsel further states that the Respondent No.4 is not associated with any political party nor at any point of time contested the elections as a candidate of any political party.

5 Mr.Thorat, learned counsel states that the judgment of the Division Bench of this Court in the case of *Shriram s/o Dattu Dhoyar (supra)* is *per incuriam* as has not considered the judgment of the learned Single Judge of this Court in the case of Manohar s/o Ganpatji *Singanjude (supra)* and also the relevant provisions involved in the matter. The learned counsel relies on the judgment of the Apex Court in a case of **Madhya Pradesh Rural Road Development Authority and another Vs. LG. Chaudhary Engineers and Contractors**, reported in, **(2012) 3 Supreme Court Cases 495.**

6 We have considered the submissions canvassed by the learned counsel for the respective parties. Before we proceed to deal with the submissions canvassed by the learned counsel for the respective parties, it would be appropriate to refer to the relevant provisions necessary for deciding the present matter.

7 Rule 1(3), Rule 5 and Rule 16 of the Conduct Rules, 1979, read as under:

“1. Short title, application and saving.-

(3) Except as otherwise provided by or under

these rules, these rules (and also any rules and orders in relation to matters covered by these rules duly approved by Government from time to time and not inconsistent with the provisions of these rules) apply to all persons appointed to civil services and posts in connection with the affairs of the State of Maharashtra provided that, only rules 2, 3, 5, 6, 11, 15, 19, 29 and 30 shall apply to persons appointed as Police Patil under the Maharashtra village Police Act, 1976.

... ..

5. Taking part in politics and elections.-

- (1) No Government servant shall be a member of or be otherwise associated with, any political party or any organisation which takes part in politics, nor shall he take part in or subscribe in aid of, or assist in any other manner, any political movement or activity.
- (2) It shall be the duty of every Government servant to endeavour to prevent any member of his family from taking part in, subscribing in aid of, or assisting in any other manner any movement or activity which is or which tends directly or indirectly to be, subversive of any Government in India as by law established, and where a Government servant is unable to prevent a member of his family from taking part in, subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.
- (3) Whether any party is a political party, or whether any organisation takes part in politics or whether any movement or activity falls within the scope of this rule, the decision of the Government thereon shall be final.

- (4) No Government servant shall canvass or otherwise interfere with or use his influence in connection with, or take part in an election to any legislature or local authority hereinafter referred to as “the election”:

Provided that, a Government servant qualified to vote at such election may exercise his right to vote, and where he does so, he shall give no indication of the manner in which he proposes to vote or has voted.

Explanation.-

- (1) Where a Government servant assist in the conduct of an election in due performance of a duty forced on him by or under any law for the time being in force or by an order of the Government, he shall not be deemed to have contravened the provisions of this rule.
- (2) The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with the election and his proposing or seconding the nomination of a candidate at the election shall amount to taking part in the election within the meaning of this rule, and accordingly, the Government servant shall, in any such eventualities, be deemed to have contravened the provisions of this rule.

... ..

16. Private trade or employment.-

- (1) No Government servant shall, except with the previous sanction of the Government, engage directly or indirectly in any trade or business or undertake any other employment:

Provided that, a Government servant may, without such sanction, undertake honorary

work of a social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his scientific character, subject to the condition that his official duties do not thereby suffer; but he shall not undertake, or shall, discontinue, such work if so directed by the Government.

Explanation.-

- (1) Canvassing by a Government servant in support of the business of insurance agency, commission agency, etc owned or managed by his wife or any other member of his family shall be deemed to be a breach of this sub-rule.
- (2) Every Government servant shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.
- (3) No Government servant shall, without the previous sanction of the Government, except in the discharge of his official duties, take part in the registration, promotion or management of any bank or other company which is required to be registered under the Companies Act, 1956 (I of 1956), or any other law for the time being in force or any co-operative society for commercial purposes:

Provided that, a Government Servant may take party in the registration, promotion or management of a co-operative society, substantially for the benefit of Government servants, registered under the Maharashtra Co-operative Societies Act, 1960, Mah.XXIV of 1961), or any other law for the time being in force, or of a literary, scientific or charitable society registered under the Societies' Registration Act, 1860 (21 of 1860), or any

corresponding law in force.

- (4) No Government servant may accept any fee for any work done by him for any public body or private person without the sanction of the prescribed authority.
- (5) No Government servant in whose case permission to take up commercial employment immediately after retirement is necessary should, while still in service negotiate for any commercial employment after retirement without obtaining prior permission of Government.”

Order (8) of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Orders, 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. ”

There is absolutely no iota of evidence that Respondent No.4, at any material point of time, was associated with any political party. Nor there is even a whisper in the pleadings that Respondent No.4 was a sponsored candidate of any political party.

8 The bone of contention of the Petitioner is that Respondent No.4 herein is ineligible to be considered for appointment to the post of Police Patil as Respondent No.4 had contested the election of a village level Vividh Karyakari Society.

9 There cannot be any dispute with the proposition that by virtue of Rule 1(3) of the Conduct Rules, 1979, Rule 5 of the Conduct Rules, 1979, is applicable to the person appointed as Police Patil. Rule 5 of the Conduct Rules, 1979, lays down an embargo on a Government Servant to be a member of or be otherwise associated with any political party, organization, which takes part in politics nor allows a Government Servant to take part in or subscribe in aid of or assist in any other manner any political movement or activity.

10 It is trite that a provision, which entails civil consequences or imposes any restrictions on the right of any person has to be construed strictly and such a provision cannot be construed liberally. The said Rule will have to be interpreted in a manner it subserves the object and purpose for enactment of such a Rule. All the provisions of the Conduct Rules, 1979, which are made applicable to the Government Servant do not apply to the persons

appointed as Police Patil. By virtue of Sub-Rule 3 of Rule 1 of the Conduct Rules, only Rules 2, 3, 5, 6, 11, 15, 19, 29 and 30 of the Conduct Rules, 1979, apply to the persons to be appointed as Police Patil. Rule 16 of the Conduct Rules, 1979, which prohibits a Government Servant from doing any business or engaging in any other occupation is not applicable to the post of Police Patil. On the contrary, by virtue of clause 8 of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Orders, 1968, the Police Patil is allowed to cultivate his land or engage in local business or trade in the village, in such a manner as is not detrimental to the performance of his duties as a Police Patil.

11 We have perused the Bye-Laws of the Vividh Karyakari Society. The main object of said society is the welfare of agriculturist and do all the jobs necessary for upliftment of agriculturists.

12 A village level Vividh Karyakari Society, which caters to the farmers cannot be said to be a society, involved in any political movement or political activity. If the object of the said Vividh Karyakari Society is perused, it is manifest that it is not even remotely concerned with any political movement or activity.

13 The Petitioner is not associated with any political party or association. In such a circumstance, it would not be possible to invoke Rule (5) of the Conduct Rules, 1979. The phraseology “political activity” includes any activity promoting or propagating the aims or objects of a political party or any cause, issue or question of a political nature by organizing meetings, demonstration, processions, collection or disbursement of funds and includes also such activity or on behalf of a person seeking election as a candidate for any election of Parliament, State Legislature or any local Authority.

14 Political parties are voluntary organisation of electors having distinctive opinions on some or all of the leading political questions of controversy and attempting through their organisation to elect officers of their own party faith and make their political principles the policy of the Government and are governed by their own usages and establish their own rules.

15 Considering the aforesaid conspectus of the matter, the terminology “political movement or activity” as appearing in Rule 5(1) of the Conduct Rules, 1979, cannot be extended to include a village

level Vividh Karyakari Society, whose avowed object is to cater to the upliftment of the farmers within the umbrella of political movement or activity. Rule 5(3) of the Conduct Rules also lays down that the decision of the Government as to whether any party is a political party or whether any organisation takes part in politics or whether any movement or activity falls within the scope of this rule is final. In the present case, the Government nowhere considered that being a member of village level Vividh Karyakari Society, would tantamount to any political activity nor is an organisation, which takes part in politics.

16 There cannot be any dispute that the post of Police Patil is a civil post, but all the provisions laid down in the Conduct Rules would not apply *ipso facto* to Police Patil. Only those provisions which are referable in clause 1(3) of the Conduct Rules, 1979 will apply to the post of Police Patil.

17 In the case of *Shriram s/o Dattu Dhoyar (supra)*, it was held that the person working as a Police Patil took active part in politics and had further played active role in canvassing the candidature and that he was sponsored by the political party in the

election. In the present case, Respondent No.4 is not a member of any political party nor was a sponsored candidate of any political party.

18 In view of the above, the writ petition stands dismissed. However, with no order as to costs.

[V.L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

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