

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.11193/2015

Rajendra Pandurang Ide,
Age:40 years, Occu: Agriculture,
R/o. At: Mutkhel, Tal.Akole,
Dist.Ahmednagar. **...Petitioner**

Versus

1] The State of Maharashtra,
Through the Secretary,
Home Department, Mantralaya,
Mumbai.

2] Sub-Divisional Officer, Sangamner,
At Post & Tal : Sangamner,
Dist.Ahmednagar.

3] Devidas Jayram Ide,
Age:30 years, Occu: Agriculture,
R/o At:Mutkhel, Tal.Akole,
Dist. Ahmednagar.

...Respondents

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Shri S.T.Shelke, Advocate for the Petitioner.
Shri M.B.Bharaswadkar, AGP for Respondent Nos.1 & 2.
Shri V.Y.Bhide, Advocate for Respondent No.3.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

JUDGMENT RESERVED ON: 24.10.2016

JUDGMENT PRONOUNCED ON 16.11.2016

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

1] Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken up for final disposal at this stage.

2] The applications were invited for the post of Police Patil of village Mutkhel Tq.Akole. Pursuant to the selection process, the petitioner came to be selected. The respondent no.3 objected to the petitioner's selection. The said objection was disposed of. On 28.8.2014, the petitioner was issued appointment order of Police Patil. The respondent no.3 filed Original Application No.655/2014 challenging the selection and appointment of the petitioner to the post of Police Patil. The Tribunal allowed the Original Application. Aggrieved thereby, the present petition is filed.

3] Mr.Shelke, learned counsel for the petitioner strenuously contends that the original application is allowed on the ground that the petitioner had allegiance with the political party. According to the learned counsel, the petitioner had categorically taken a stand that he is not a member of any political party and he

would resign from the post of Sarpanch before his appointment as a Police Patil. The said stand of the present petitioner was accepted by the Sub Divisional Officer and thereafter only appointment order was issued. The respondent no.3 in fact was the opponent of the petitioner in the grampanchayat elections. As he did not succeed, the respondent no.3 had opposed the appointment of the petitioner as Police Patil.

4] The learned counsel further submits that the petitioner is Adiwasi and studied up to 12th Standard. The petitioner had got the letter from the President of the Congress (I) party of Akole Taluka under misconception that the Congress (I) would pass a resolution stating therein that the petitioner has resigned. The petitioner was never a member of the Congress (I) party. Even the President of the Akole Congress (I) party issued a certificate stating therein that after 2010, there is no registration of members till 2013-14. According to the learned counsel, the affidavit filed before the Tribunal by the petitioner is against the record and the same is due to ignorance and the ill-advice. The learned counsel submits that under any circumstances, the

petitioner was not a member of political party on the date of his appointment i.e. on 28.8.2014. The learned counsel further submits that even the condition no.5 of the advertisement is silent regarding the cut-off date for not being a member of the political party. The said condition no.5 will have to be read in a manner that as on the date of issuance of the appointment order of Police Patil, the person should not be a member of political party. These aspects have not been considered by the Tribunal in its correct perspective while allowing the original application.

5] According to the learned counsel, even the Rules governing the appointment of Police Patil nowhere contemplate that on the date the application is submitted pursuant to the advertisement, the petitioner should not be a member of a political party. The learned counsel relies on the judgment of Division Bench of this Court delivered in Writ Petition No.2623/1995 dated 9.4.2012 at Nagpur so also the judgment of the Division Bench of this Court in a case of *IVO Almeida Coutinho & others v. P.M. Naik & others* reported in **2012 (3) Mh.L.J., 627**. The learned counsel submits that defective clause in the

advertisement cannot override the rules. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of *Chandrakant Gajananrao Pise & others v. Collector, Nagpur & others* reported in **2010(1) Mh.L.J., 268.**

6] Mr.Bhide, learned counsel for the respondent no.3 submits that the parties had applied for the post of Police Patil pursuant to an advertisement. The advertisement specifically states that a person applying for the post of Police Patil should not be a member of political party. The said terms of advertisement are now not open for challenge. On the date of advertisement and on the date the application was filed by the petitioner, the petitioner was a member of a political party. The same is clear from the affidavit filed by the present petitioner before the Tribunal and also the receipt of payment of membership fee by Congress (I) party. The learned counsel submits that on 6.3.2013, the political party certified that the petitioner is not a member from 2.1.2013 as his resignation is accepted. This itself shows that the petitioner was a member of the political party on the date of application so also on the date of

advertisement. According to the learned counsel, on 18.12.2011 also, the receipt of accepting membership fee from the petitioner is issued by the political party, which shows that as on the said date, he was a member of the political party. The last date for filing application was 9.11.2011 and the date of publication of proclamation was 17.10.2011. The learned counsel submits that if after the last date of filing the application, if any act is done, the same is not relevant. The learned counsel relies on the judgment of the Apex Court in a case of *Dr.M.V. Nair v. Union of India & others* reported in **1993 AIR SCW 1412**. The learned counsel further submits that in absence of fixation of any cut-off date specified in the advertisement or in the Rules, the last date of filing the application is to be considered as a cut-off date. The learned counsel, to buttress his submissions, relies on the judgment of the Apex Court in a case of *Ashok Kumar Sonkar v. Union of India & others* reported in **(2007) 4 SCC 54**. The learned counsel submits that the Sub Divisional Officer has no power to relax the conditions laid down in the advertisement. The conditions of the advertisement were required to be

scrupulously adhered to. The learned counsel relies on the judgment of the Apex Court in a case of *Bedanga Talukdar v. Saifudullah Khan & others* reported in **AIR 2012 Supreme Court 1803**.

7] We have also heard the learned AGP for the State.

8] The advertisement inviting the applications for the post of Police Patil is placed on record. The same is in vernacular language. Relevant clause no.5 reads as under:-

"(५) अर्जदार हा कोणत्याही राजकीय पक्षाचा / संघटनांचा सदस्य नसावा."

The said condition specifically stipulates that the applicant shall not be a member of any political party / association.

9] Rule 1(3) of the Maharashtra Civil Services (Conduct) Rules, 1979 categorically lays down that Rules 2,3,5,6,11,15,29 and 30 of the said Rules, 1979, apply to the persons appointed as Police Patil under the Maharashtra Village Police Act, 1967. In the instant matter, Rule 5 of the Rules, 1979, is relevant. The same reads as under:-

"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 organization 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 of 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 organization 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 any election in due performance of a duty forced on him by or under any law for the time being in force or by any 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."

10] The moot question involved in the present matter is whether the present petitioner was eligible to apply pursuant to the advertisement and could have been appointed as a Police Patil ?

11] From the available material on record, it is manifest that the present petitioner was a member of grampanchayat of village Mutkhel from the year 2008. The petitioner was also elected as Sarpanch of the said grampanchayat. One of the essential clauses in the advertisement inviting applications for the post of Police Patil is that the applicant shall not be a member of any political party / association. The advertisement did not lay down the cut-off date i.e. till which date the person should not be a member of a political party. In absence of any cut-off date being prescribed, the last date for filing applications has to be considered as a cut-off date. A useful reference can be had to the judgment of the Apex Court in the case of *Ashok Kumar Sonkar*, referred to supra. The terms of the advertisement are not assailed. The petitioner has participated in the selection process pursuant to the advertisement and its terms. The selection procedure stipulated in the advertisement has to be scrupulously followed. The advertisement also does not give power to the authority to relax any condition. As the petitioner has participated in the selection process, he is bound by

the stipulations and the conditions laid down in the advertisement. The petitioner now cannot turn around and contend that the terms in the advertisement are not in consonance with the Rules.

12] It is clear from the affidavit filed by the present petitioner that the petitioner was a Sarpanch and he has resigned from the post of Sarpanch in the year 2013. The petitioner pursuant to the advertisement had filed an application for the post of Police Patil. The last date for applying as per advertisement was 9.11.2011 and the date of publication of advertisement was 17.10.2011. On the said date, the petitioner was the Sarpanch of the grampanchayat and was also a member of a political party. The petitioner even as per his own contention before the Sub Divisional Officer, had resigned as a member of a political party on 2.1.2013 i.e. much after the last date of filing of application. The Sub Divisional Officer had given him 15 days time to resign as a member. In fact, the Sub Divisional Officer did not have any authority to do so nor could have sat over the stipulation in the advertisement. This shows that the petitioner at the relevant time was a member of

a political party. The terms of advertisement were never assailed. The parties are bound by the stipulations and the covenants in the advertisement. The petitioner still continued as a member of the grampanchayat though he resigned as a Sarpanch of the grampanchayat. Considering the terms of the advertisement, it would be irrelevant as to whether the petitioner was a member of a political party as on the date of issuance of appointment order.

13] The Police Patil is a civil post. The policy of law is to keep the Government servant aloof from politics. The nature of the functions and the duties of the Police Patil as envisaged in Section 6 of the Maharashtra Village Police Act, 1967, are such that the Police Patil has to be impartial and cannot show any partisan attitude to the members of a particular group. Section 6 of the Maharashtra Village Police Act, 1967, delineates the duties of the Police Patil, which reads as under:-

"Section 6 - Duties of Police Patil:

Subject to the orders of the District Magistrate, the Police Patil shall, -(i) act under the orders of any other Executive

Magistrate within whose local jurisdiction his village is situated;

(ii) furnish such returns and information as may be called for by such Executive Magistrate;

(iii) constantly keep such Executive Magistrate informed as to the state of crime and all matters connected with the village police and the health and general condition of the community in his village;

(iv) afford every assistance in his power to all Police Officers when called upon by them in the performance of their duty;

(v) promptly obey and execute all orders and warrants issued to him by a Magistrate or Police Officer;

(vi) collect and communicate to the Station Officer intelligence affecting the public peace;

(vii) prevent within the limits of his village the commission of offences and public nuisances and detect and bring offenders therein to justice;

(viii) perform such other duties as are

specified under other provisions of this Act, and as the State Government may, from time to time, by general or special order specify in this behalf."

14] Perusal of the aforesaid nature of duties, it transpires that the Police Patil is entrusted with important duties so as to ensure prevention within the limits of his village the commission of offences and public nuisances and to detect and bring offenders therein to justice. Even the Sub Divisional Officer had given 15 days time to the petitioner for giving resignation of his post of Sarpanch and as the member of political party and pursuant to the same, the petitioner submitted his resignation as a member of a political party i.e. Bhartiya Rashtriya Congress. The said order of the Sub Divisional Officer is dated 22.2.2013 i.e. much after the last date of filing of applications and the same is after the culmination of the selection process. The condition no.14 of the advertisement relied upon by the petitioner is also not of any avail. The said condition no.14 does not bestow any powers on the Sub Divisional Officer to relax and change the basic

condition in the advertisement. It only states that appointing authority will have every right in respect of appointment. The same does not specifically speak about relaxing the condition with regard to the eligibility for appointment as detailed in the advertisement.

15] The contention of the petitioner that the advertisement could not have been against the Rules cannot be accepted. It would be too late in the day for the petitioner to contend that the Maharashtra Village Police Patil Recruitment (Pay, Allowances and Other Conditions of Service) Order 1968, do not require a person applying for the post of Police Patil from being a member of a political party and the clause in the advertisement being contrary to the Rules. The petitioner had pursuant to the aid advertisement filled in the application, participated in the selection process, knowing fully well the terms and conditions of the advertisement. More over, the said condition in the advertisement cannot be said to be alien to the Rules. As such the reliance placed by the learned counsel for the petitioner in the case of *Chandrakant Gajananrao Pise*, referred to supra, may not be of any assistance to

the petitioner.

16] The stipulations and the covenants in the advertisement with regard to the eligibility of the person to apply is unambiguous and does not admit of any other interpretation. The person on the date of filing his application could not have been a member of any political party or association. It is no gain saying on the part of the petitioner that on the date of appointment, the petitioner has resigned as a member of political party. The affiliation of the petitioner with the political party on the last date of filing application and even during the continuance of the selection process is clear. The Tribunal has not committed any error in setting aside the appointment of the petitioner on the ground that on the date of submission of the application for the post of Police Patil, the petitioner was associated with a political party and was a member of political party. The affidavit filed by the petitioner in support of his contention itself disproves the case of the petitioner of not being a member of political party. The said affidavit unequivocally states that the petitioner had resigned as

a member of Bhartiya Rashtriya Congress on 5.3.2013.

17] In view of the aforesaid reasons, the writ petition is dismissed. Rule is discharged, however, with no order as to costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)