

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2880 OF 2016

Smt.Rekha w/o Prabhakarji Wankhede

-vs-

The State of Maharashtra, thr.its Secretary, Department of Home and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.R.Prajapati, counsel for the petitioner.
Mr. A.A.Madiwale, AGP for the respondent Nos.1 and 2.
Mr. S.B.Tiwari, counsel h/f Mr.R.R.Vyas, counsel for the respondent No.3.

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 15.07.2016.

By this writ petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, dated 05/05/2016 allowing the original application filed by the respondent No.3 and directing the Sub-Divisional Officer to appoint the respondent No.3 on the post of Police Patil.

A proclamation was issued on 07/08/2015 by the Sub-Divisional Officer, inviting applications for appointment on the post of Police Patil from village Weltur from Open Category (female) candidates. According to the proclamation, a candidate was required to be a resident of Weltur and apart from certain other conditions, that were required to be satisfied, was also required to own a landed property in Weltur. The respondent No.3 as well as the petitioner applied for the post of Police Patil along with others. Admittedly, the respondent No.3 had secured more marks than the petitioner. However, the candidature of the respondent No.3 was rejected on the ground that she did not own and possess landed property in village Weltur. The action on the part of the Sub-Divisional Officer in appointing the present petitioner was challenged by the respondent No.3 before the Maharashtra Administrative Tribunal. It was argued

before the Tribunal on behalf of the respondent No.3 that in view of the settled position of law, it was not required for a candidate to own and possess landed property. The Tribunal on an appreciation of the material on record and the judgments, reported in 1993 (3) Mh.L.J. 594 (Arun Tukaram Patil v. State of Maharashtra and others) and 2015 (4) Mh.L.J. 79 (Rajesh Krishna Kale v. State of Maharashtra and others), held that it was not necessary for the respondent No.3 to own and possess the landed property in Weltur. Since the respondent No.3 had admittedly secured more marks than the petitioner, the Tribunal directed the Sub-Divisional Officer to appoint the respondent No.3 on the post of Police Patil. The order of the Tribunal is challenged in the instant petition.

It is canvassed on behalf of the petitioner that the respondent No.3 is not a resident of village Weltur and since a candidate is required to be a resident of Weltur for being appointed as a Police Patil of Weltur, the Tribunal could not have directed the appointment of the respondent No.3. It is stated that the respondent No.3 does not reside in Weltur and resides in village Wakodi, which is ten kilometers away from Weltur.

On hearing the learned counsel for the parties and on a perusal of the order of the Tribunal, we find that there is no scope for interference with the impugned order, in exercise of the writ jurisdiction. Admittedly, the respondent No.3 has secured more marks than the petitioner. The Tribunal has rightly held that it was not necessary for the candidate to own and possess landed property in Weltur, in view of the judgments reported in 1993 (3) Mh.L.J. 594 and 2015 (4) Mh.L.J. 79. Since the candidature of the respondent No.3 was wrongly rejected against the settled position of law, the Tribunal rightly allowed the original application filed by the respondent No.3. The submission made on behalf of the petitioner that the respondent No.3 is not a resident of village Weltur and, therefore, the Tribunal was not justified in directing her appointment on the post of Police Patil for village Weltur, cannot be considered, in exercise of the writ jurisdiction. The said ground is not raised by the petitioner in

the reply filed by the petitioner before the Maharashtra Administrative Tribunal. Also, there is no material on record to show that the petitioner had raised such an objection even before the Sub-Divisional Officer when the selection process was in progress. The said ground appears to be an afterthought and the same cannot be considered at this stage.

Since the order of the Tribunal is just and proper, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

KHUNTE

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : G.S.Khunte,
P.A.to Hon'ble Judge

Uploaded on : 19/07/2016