

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

WRIT PETITION NO. 1515 OF 2017

Rukhmin d/o Maruti Shinde ... **Petitioner**
Aged 26 years, Occu: Service,
(As police Patil, Village
Sarangpur), Tal. & Dist.
Parbhani, R/o Sarangpur,
Taluka and Dist. Parbhani

VERSUS

1. Pralhad s/o Munjaji Raner
Age 28 years, Occu:Agriculture,
R/o Sarangpur,
Taluka & Dist. Parbhani
 2. The State of Maharashtra,
Through its Secretary,
Home Department, M. S.
Mantralaya, Mumbai-32
 3. The Collector, Parbhani
 4. The Sub-Divisional Magistrate,
Parbhani, Tq.& Dist. Parbhani
 5. The Tahsildar, Parbhani
Taluka and Disit. Parbhani.
- ... Respondents**

Mr. Avinash S. Deshmukh, Advocate for the petitioner,
Mr. N. B. Khandare, Advocate for respondent No.1.
Mrs. V.H. Patil, A.G.P. for the respondents State.

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

RESERVED ON : 17th February, 2017

PRONOUNCED ON : 31st March, 2017

JUDGMENT (Per K. L. Wadane, J.):

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.
3. The petitioner has assailed the order dated 24.01.2017 passed by the Maharashtra Administrative Tribunal allowing Original Application No. 585 of 2016.
4. The case of the petitioner, in brief, may be stated as follows:
 5. On 22.12.2015, respondent No.4 issued an advertisement for filling in posts of Police Patil including the post of Police Patil at village Sharnapur, which was earmarked for "Open General" category. Respondent No.1 applied for the said post. In the selection process, five candidates were found to be eligible, including the petitioner and respondent No.1. All of them were called for interview.
 6. On 11.02.2016, before the interview could be conducted, the petitioner has submitted an application before respondent No.4 contending that Crime bearing

C.R.No.218/2015 was registered against Respondent No.1 with the Parbhani(R), Police Station on 20.12.2015 for the offence punishable under sections 323, 504, 506 read with section 34 of the Indian Penal Code. The petitioner has specifically contended that respondent No.1 has suppressed the said information regarding registration of offence against him. On 13.03.2016, the Superintendent of Police, Parbhani sent a confidential report to respondent No.4, informing that non cognizable offence was registered against respondent No.1, in which prohibitory action was taken against him by the Executive Magistrate, Parbhani on 22.12.2015. In spite of the above aspects, respondent No.4 has rejected the objections submitted by the petitioner and by order dated 22.02.2016, held respondent No.1 to be eligible to participate in interview.

7. On 27.02.2016, interviews were held and consequently respondent No.4 published final select list and wait list. Respondent No.1 was selected for being appointed as Police Patil. The petitioner was named as wait listed candidate.

8. On 23.03.2016, the petitioner submitted another

objection before Respondent No.4 pointing out as to how and why respondent No.1 could not be appointed as Police Patil. In view of the objections, respondent No.4 withheld the appointment order in favour of respondent No.1 and called his explanation on 16.04.2016. While dealing with the objection submitted by the petitioner, respondent No.4 has held that while submitting application for the post of Police Patil, respondent No.1 had suppressed the true information regarding his character and as such he has misled the Government by answering question regarding clean character in the application form.

9. Being aggrieved by such finding, respondent no.1 filed the original application. On 26.07.2017, the Tribunal was pleased grant interim stay to the order dated 16.07.2016. However, other interim prayer as sought by respondent No.1 in the nature of direction to respondent No.4 not to give appointment to any other candidate was not granted.

10. Though the learned Tribunal was pleased to pass interim order on 26.07.2016, however, on the same day, respondent No.4 was pleased to issue appointment order in favour of the petitioner. The petitioner joined on

the post of Police Patil and started discharging duties. In view of the development of issuance of appointment order in favour of the petitioner, respondent no.1 carried out amendment in the original application and assailed the said appointment.

11. Learned Tribunal allowed the Original application on 24.01.2017. The order passed by respondent No. 4 dated 16.07.2016 was set aside and also quashed and set aside the order of appointment of the petitioner as Police Patil. Hence this writ petition.

12. We have heard Mr. Avinash S. Deshmukh, learned Advocate for the petitioner, Mr. N. B. Khandare, learned Advocate for respondent No.1 and Mrs. V. H. Patil, learned A.G.P. for the respondents State.

13. Mr. Deshmukh, the learned counsel appearing for the petitioner submitted that respondent No.1 has suppressed the material fact about registration of crime against him. This aspect is sufficient ground to disqualify the respondent No.1 for the appointment as Police Patil.

14. As against this, Mr. Khandare, the learned

counsel for the respondent No.1 has argued that non cognizable offence is not the offence within the meaning of term "offence" under section 40 of the Indian Penal Code. Furthermore, that proceeding is concluded. The learned counsel argued that objection of the petitioner about suppression of information was rejected by respondent No.4 on 22.02.2016. The petitioner has not challenged the said order before any appropriate forum. Therefore, that order attains finality. According to Mr. Khandare, the subsequent order dated 16.07.2016 passed by respondent No.4 on the same objection of the petitioner is without jurisdiction. The learned counsel submitted that there is no provisions in law to review the order dated 22.02.2016 nor the respondent No.4 can sit as an Appellate Authority over its own order. Therefore, the order passed by respondent No.4 i.e. the same officer on 16.07.2016 is illegal.

15. We have perused the affidavit submitted on behalf of respondents 2, 3 and 4 before the Tribunal, wherein, it is mentioned that there is no provisions in law to review the order of appointment of Police Patil. However, it is further sated that the Sub-

Divisional Magistrate i.e. Respondent No.4 is acting in dual capacity, i.e. Administrative as well as quasi judicial authority. Therefore in that capacity, if certain orders were wrongly passed, then the Sub Divisional Magistrate can correct it. However, before doing so, it is necessary to issue notice to the persons against whom the order is to be passed. The same is mentioned in the Government Resolution, dated 07.09.1999 issued by Home Department, Mantralaya, Mumbai.

16. Respondent Nos. 2 to 4 have stated in their affidavit that there is no provision in law to review the orders regarding appointment of Police Patil. Here, in the present case, respondent No.4 has reviewed his earlier order dated 22.02.2016 and accepted the same objection of the petitioner on 16.07.2016. No further material or additional allegations are made against respondent No.1. Therefore, we are of the opinion that respondent No.4 cannot reexamine its own earlier order nor can review such orders in absence of any provisions in the law.

17. We have gone through the reasons recorded by the learned Tribunal. It has rightly observed that

respondent No.4 cannot sit as an appellate authority or reviewing authority to re-consider its earlier order and therefore has rightly allowed the original application and has set aside the order dated 16.07.2016.

18. The learned counsel for the petitioner relies on the judgment of the Apex Court in the case of **Avtar Sing Vs. Union of India and others, reported in (2016) 8 Supreme Court Cases, 471**, wherein it is observed that if there is suppression of relevant information or submission of false information in the verification form in regard to criminal prosecution, arrest or pendency of criminal case against candidate/employee, in such circumstance, the employer has to take decision to terminate or retain the employee in service. The above observations are not applicable to the facts of the present case, simply because the petitioner has not challenged the order dated 22.02.2016 by which the respondent no.4 has rejected the objections of the petitioner as to eligibility of the petitioner. Moreover, the offence registered was non-cognizable and the proceeding was concluded.

19. In view of the above, there is no merit in the

petition. Judgment of the Maharashtra Administrative Tribunal does not require any interference.

20. Writ petition is accordingly dismissed. Rule discharged. No order as to costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC