

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1792 OF 2017

Bhaidas Vitthal Pawar and another .. **Petitioners**

Versus

The State of Maharashtra and others .. **Respondents**

Shri Hemant Surve, Advocate for the Petitioners.

Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 to 3.

Shri S. S. Wagh h/f Shri V. B. Wagh, Advocate for Respondent No. 4.

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATE : 4th June, 2018

PER COURT :

1. The petitioners along with respondent no. 4 applied for the post of 'Police Patil' pursuant to advertisement issued by the Government. Respondent no. 4 was selected. Aggrieved thereby the petitioners filed Original Application before the Maharashtra Administrative Tribunal. The Original Application is dismissed. The petitioners have assailed the said Judgment before this court.

2. Mr. Surve, learned counsel for the petitioners strenuously contends that the respondents did not adhere to the terms and conditions provided in the advertisement. The marks obtained by individual candidates in the written examination were never published on the website. The advertisement mandates the authorities to do so. In respect of other talukas the marks obtained by each candidate in the written examination were published, however, in respect of Kannad taluka the marks were never published. The learned counsel submits that, for written examination the petitioners have got more marks but in oral respondent no. 4 has been given a preferential treatment and by erroneously giving more marks in oral respondent no. 4 has been selected. The said selection is illegal.

3. The learned counsel further submits that, Clause 6 of the advertisement categorically states that the candidate should not carry on any business and that he should be resident of the local village. Respondent no. 4 is not the resident of the local village. Respondent no. 6 carries on three businesses in the said village. In view of Clause 6 of the advertisement, respondent no. 4 is

disqualified. The petitioners brought this fact to the notice of the tribunal by way of an additional affidavit, however, the contention of the petitioners was negated only on the ground that at the relevant time the petitioners have not taken the objection or that in the main petition the said objection was not raised. It was only when the petitioners got the knowledge of the business carried on by respondent no. 4, the petitioners brought this fact to the notice of the tribunal. The tribunal ought to have considered the said aspect. The learned counsel further submits that, the procedure has been followed more in breach as laid down in the advertisement.

4. Learned Assistant Government Pleader submits that the list of candidates qualified for oral was published on the website. After interview the marks were considered. The petitioner no. 1 had secured 67 marks, petitioner no. 2 secured 65 marks and respondent no. 4 secured 68 marks. The petitioners have never raised objection before the authorities at any material point of time of Respondent no. 4 being disqualified. The selection process was conducted in a transparent manner.

5. Mr. Wagh, learned counsel for respondent no. 4 states that respondent no. 4 is not carrying on any business in the said village as contended by the petitioners.

6. We have considered the submissions canvassed by the learned counsel for respective parties.

7. The respondents had published the list of the candidates qualified for oral examination on the website. Pursuant to the said list being published, the petitioners had appeared for oral interview. Clause 15 of the advertisement states that on the website the list of persons who are qualified shall be published and the said list was published by the respondents.

8. This court would not be in a position to sit in appeal over the marks given by the members of the committee unless manifest illegality is shown. There is nothing on record to substantiate that the members of the interview committee had deliberately and erroneously given more marks to the respondent no. 4. The scope of judicial review in such matter would be limited.

9. The contention of the petitioners that malafidely respondent no. 4 has been given more marks in the oral interview on account of extraneous consideration and illegal gratification, so also, the allegations of bribe being made cannot be considered in absence of actual proof of it. These are the bald allegations made without substantiated by any material on record. The allegations of malafides have to be specific and not vague. It is nowhere shown as to whether the members of the interview committee were related with respondent no. 4 or what was the source of the petitioners to allege and make such a grave allegation that the members of the interview committee sided with respondent no. 2 for extraneous consideration and illegal gratification. Such serious allegations in a bald manner without substantiating it cannot be accepted. In fact the petitioners ought to have substantiated the said allegations when the said allegations were made with regard to the illegal gratification. Loosely the allegations cannot be accepted.

10. With regard to the contention of the petitioners that respondent no. 4 was disqualified on account of the businesses

being run by him, the tribunal has considered that the said objection at the eleventh hour and respondent no. 4 did not get any opportunity to rebut the said contention.

11. Be that as it may, the tribunal has considered the said aspect and has observed thus -

“15.....If it is fact that the Respondent No. 4 is really involved in various businesses and therefore, he cannot give justice to the post of Police Patil, petitioners will be liberty to file such complaint before competent authority and if the competent authority comes to the conclusion that, the respondent No. 4 is involved in such businesses or such businesses are hampering his work of Police Patil, the competent authority may take action.”

If respondent no. 4 is carrying on any full time business in the said village as contended in the application, then the competent authority has every right to take action against respondent no. 4 with regard to his disqualification.

12. It is submitted by the learned counsel for the petitioners that after the Judgment of the tribunal the objection to that effect has been raised, application has been filed before the competent authority.

13. In case, such an application is filed before the competent authority naturally the competent authority is required to consider and decide the objection in tune with the Judgment that has been delivered by the tribunal and it cannot sit over the application for indefinite period.

14. In case such an application / complaint is filed by the petitioners, then the respondents shall enquire into the same and take decision preferably within three months from today.

15. Writ Petition accordingly stands disposed of. No costs.

[SUNIL K. KOTWAL, J.] [S. V. GANGAPURWALA, J.]

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