

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14293 OF 2017

Smt. Suchitra D. Tambe ...Petitioner
Versus
State of Maharashtra and ors. ...Respondents

Mr. Pravartak Pathak for the Petitioner.
Mr. N.C. Walimbe, AGP for Respondent Nos.1 to 3/State.
Mr. Akash K. Kotecha for Respondent No.4.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 4th APRIL 2018.

ORAL JUDGMENT

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 5th April 2017 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 799 of 2016 instituted by the petitioner questioning her non-selection/non-appointment to the post of Police Patil and

seeking to set aside the appointment of respondent No.4 as Police Patil of Gonde village, Tal. Sinnar, Dist. Nashik.

4] Mr. Pravarthak Pathak, learned counsel for the petitioner, submits that the petitioner, in the course of the interview had answered all the questions posed to her correctly. Despite this, the petitioner has been awarded only 14 marks out of 20. Mr. Pathak submits that as against item Nos.11,12 and 13 in the mark-list made available to the petitioner, the petitioner has been awarded no marks whatsoever. Mr. Pathak submits that the petitioner possessed qualifications far superior than respondent No.4. For all these reasons, Mr. Pathak submits that there is arbitrariness involved in the award of only 14 marks out of 20 to the petitioner as against 15 marks out of 20 awarded to respondent No.4 by the Interview Panel.

5] Mr. Pathak submits that there are *mala fides* involved in awarding the petitioner '1' mark lesser than respondent No.4. Mr. Pathak submits that admittedly, the petitioner and respondent No.4 secured equal marks in the written test and it is only with *mala fide* intention of appointing

respondent No.4 that the petitioner was awarded 1 mark less than respondent No.4. For all these reasons, Mr. Pathak submits that the marks awarded by the Interview Panel to both the petitioner as well as respondent No.4 are liable to be struck down and the petitioner is liable to be appointed as Police Patil on the basis of her superior qualifications and superior merit.

6] Mr. Pathak also submits that the finding recorded by the MAT that the petitioner had not produced sufficient material on record in support of her claim of residence in the village of Gonde, suffers from perversity. Mr. Pathak points out to the material on record on this aspect and submits that the same has been overlooked by the MAT in order to non-suit the petitioner.

7] Mr. Walimbe, learned AGP for respondent No.1 to 3 and Mr. Akash Kotecha, learned counsel for respondent No.4, defend the impugned judgment and order by submitting that there is no jurisdictional error so as to warrant interference under Articles 226 and 227 of the Constitution of India. They submit that the allegations of

mala fides has been casually made by the petitioner and in any case, the petitioner has adduced no evidence whatsoever in support of the charge of *mala fides*. They submit that scope of interference by tribunals or courts in matters of relative evaluation on merits of candidates is extremely limited and the MAT, quite rightly has not interfered with the marks awarded by the Interview Panel. They point out that no sufficient material was produced on record by the petitioner in support of her claim of residence at Gonde and therefore, there is no perversity in the finding recorded by the MAT. For all these reasons, they urge that this petition be dismissed with costs.

8] The rival contentions now fall for our determination.

9] In this case, the allegation of *mala fides* leveled by the petitioner against the members of Interview Panel are indeed quite casual and unsubstantiated. The petitioner has not even bothered to implead the persons against whom she alleged *mala fide* as parties to the proceedings. Based upon such casual and unsubstantiated statements, the MAT was quite right in not interfering with the marks

awarded by the Interview Panel.

10] From the mark-list produced on record by the petitioner, we find that the petitioner has been awarded 14 marks out of 20 and respondent No.4 has been awarded 15 marks out of 20. On such basis, we are not in a position to accept the petitioner's contention that she has been awarded '1' mark lesser than respondent No.4 on account of some *mala fides*. It is also not possible for us to go into the issue as to whether the performance of the petitioner at the oral interview entitled her to secure more marks than respondent No.4.

11] Even otherwise, the scope of interference by the tribunals and courts in evaluation of relative merits of the candidates seeking selection to a public post, is quite limited. Ultimately, these are matters to be evaluated and determined by the Selection Committee, no doubt, in accordance with rules as may be prescribed. In this case, the petitioner does not allege that the constitution of the Interview Panel was contrary to the rules or that respondent No.4 was not at all qualified to be appointed as

Police Patil in terms of the rules as applicable. The petitioner contends that she is more meritorious than respondent No.4 and therefore, respondent No.4 ought not to have been appointed as Police Patil. But rather, it is the petitioner who ought to have been appointed as a Police Patil. We are afraid, we cannot evaluate and determine the relative merits of the candidates in a matter of this nature.

12] In ***Dalpat Abasaheb Solunke and ors vs. Dr. B.S. Mahajan and ors. - (1990) 1 SCC 305***, the Hon'ble Supreme Court has held that it is not the function of the court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Hon'ble Supreme Court has interfered with the decision of the High Court because, the High Court, had itself assessed comparative merit of the candidates. The Hon'ble Supreme Court held that such experts by the High Court was in excess of jurisdiction. Accordingly, we see no good ground to interfere with the reasoning of the MAT, insofar as the

issue of award of marks by the Interview Panel is concerned.

13] Insofar as the second contention as regards the petitioner fulfilling the residence requirement at village Gonde is concerned, we are of the opinion that the MAT in the facts and circumstances of the present case, need not have returned any specific finding on the said issue, after, it came to the conclusion that there was no infirmity in the marks awarded by the Interview Panel. On the basis of marks awarded by the Interview Panel, there was no reason to disturb the selection and appointment of respondent No.4. Accordingly, we leave open the issue of the petitioner's residence at Gonde to be decided in appropriate proceedings at an appropriate stage, if such occasion, indeed arises. This means that though we are not interfering with the impugned judgment and order, such non interference ought not to be construed as either our approval or disapproval on the finding of the petitioner's residence at Gonde village. We make it clear that such issue is left open and all contentions of all parties in this regard are also kept open for adjudication, if and when, any

occasion for the same, arises in future.

14] Rule in this petition is disposed of in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)