

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

WRIT PETITION NO. 112 OF 2017

Devidas Dhanraj Patil

.. Petitioner

Versus

Bhagwan Narayan Patil and others

.. Respondents

Shri Surendra V. Suryawanshi, Advocate for Petitioner.
Shri Dhananjay B. Thoke, Advocate for the Respondent No. 1.
Shri Y. G. Gujrathi, A.G.P. for Respondent Nos. 2 to 8.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 08TH APRIL, 2019.

FINAL ORDER :

. The petitioner assails the order dated 20th December, 2016 passed by the Maharashtra Administrative Tribunal, Aurangabad in Original Application No. 172 of 2016.

2. The petitioner and the respondent No. 1 participated in the selection process for the post of Police Patil of village Aarve. The Sub Divisional Officer rejected the candidature of the present respondent No. 1 on the ground that he appears to be permanently residing at Pachora and not at Aarve. Present respondent No. 1 filed Original Application No. 172 of 2016 before the Maharashtra Administrative Tribunal. The Tribunal

allowed the original application and directed to consider candidature of the present respondent No. 1.

3. The petitioner has assailed the said order. During the pendency of writ petition, the respondent No. 1 is selected for the post of police patil Aarve. By an amendment same is also assailed.

4. Mr. Suryawanshi, the learned advocate for the petitioner submits that, the respondent No. 1 is permanent resident of Pachora. He is residing there since long. Only because he is having joint family land and house, that would not fulfill the terms of the advertisement, so also rules require a person to be considered for appointment for the post of police patil to be permanent resident of the village where he seeks appointment on the post of Police Patil.

5. Mr. Thoke, the learned counsel for the respondent No. 1 submits that, the respondent No. 1 is permanent resident of Aarve. He is having landed property at Aarve. Only because he is having residential house at Pachora that would not mean that the respondent No. 1 is permanent resident of Pachora. The respondent No. 1 is also voter of Gram Panchayat Aarve. His other documents such as Aadhar card, election card and the resident's certificate show that the respondent No. 1 is

permanent resident of village Aarve.

6. We have also heard the learned Assistant Government Pleader for respondents/State.

7. Initially the Sub Divisional Officer on making an enquiry came to the conclusion that the present respondent No. 1 is permanent resident of Pachora, as such disqualified candidature of the respondent No. 1. The Tribunal in original application filed by the respondent No. 1 probably is swayed away by the Government Resolution dated 30th July, 1970. Said Government Resolution cannot be read in a manner, the Tribunal has read it. The Government Resolution dated 30th July, 1970 relied by the Tribunal and relevant para reproduced by the Tribunal is only to remove anomaly that if a person officiates for the post of police patil at two different villages, then he has to be a resident of one village. Said Government Resolution does not lead to a conclusion that a person to be appointed as a Police Patil of a particular village, and if he resides in another village, he would be qualified for the post of Police Patil. Such reasoning would not be in tune with the terms of advertisement and also Rule 3(C) of the Maharashtra Village Police Patil (Recruitment, Allowance and other Conditions of Service) Order, 1968 (for short "said Order". The said Rule will have to be read in consonance with Rule 5(2) and Rule 6 of the said Order.

8. The Tribunal while passing the impugned order has lost sight of these rules, though has referred to Rules, has not elaborated on it.

9. In the light of the above, the impugned order is modified and we pass following order.

10. The Sub Divisional Officer shall conduct a re-enquiry about the residence of the present respondent No. 1. The petitioner and the respondent No. 1 are entitled to put forth their say before the Sub Divisional Officer. The Sub Divisional Officer after making an enquiry shall confirm the residence of the respondent No. 1, then take appropriate decision afresh. The respondent No. 1 shall give an undertaking with the Sub Divisional Officer within a period of one week from today that he is residing at village Aarve permanently. The Sub Divisional Officer shall also confirm the said fact. Depending upon the decision taken by the Sub Divisional Officer, the further course of action shall be adopted by the State Government and the authorities. The decision shall be taken on its own merits without influenced by the order of the Tribunal. The said decision shall be taken within a period of three (03) months from the date of appearance of the parties. The parties shall appear before the Sub Divisional Officer on 26.04.2019. The writ

petition accordingly is disposed of. No costs.

11. Till the decision is taken by the Sub Divisional Officer, the respondent No. 1 may continue on the post of police patil Aarve.

[A. M. DHAVALA, J.]

[S. V. GANGAPURWALA, J.]

bsb/April 19