

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11402 OF 2019

Kailash Nivrutti Ghule.

...Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. U. P. Warunjikar for the Petitioner.

Mrs. R. M. Shinde, AGP for the Respondent-State.

Coram : RANJIT MORE &
SURENDRA P. TAVADE, JJ.

Date : **December 20, 2019.**

P. C. :

1. Not on board. Upon mentioning taken on board as the companion matter is on board.

2. Heard Mr. Warunjikar, learned counsel for the Petitioner and Mrs. Shinde, learned AGP for the Respondent-State.

. By filing this writ petition under Article 226 of Constitution of India, the Petitioner is challenging the communication / order dated 20th September 2019 passed by Respondent No.3 – SDO, Niphad, District Nashik. The Petitioner is also seeking direction to the Respondents to appoint him to the post of Police-Patil of village Eklahare.

3. In the month of February 2016, the Sub-Divisional

Officer, Niphad, Nashik had published a circular / jahirnama thereby calling upon the applications to fill-in the posts of Police-Patil at various places in Nashik District. The said circular / jahirnama was issued in terms of the Government Resolutions dated 23rd August 2011 and 22nd August 2014. As per the said G.Rs., the process of selection of Police-Patil, consists of written examination of 80 marks and oral examination of 20 marks. The Petitioner in response to the said circular applied for the post of Police-Patil of in respect of village Eklahare. The Petitioner appeared in the written examination and having cleared the said written examination, he was called for oral interview in the month of May 2016. Ultimately, he was declared successful and he was expecting an appointment order in his favour.

4. Thereafter, to the shock and surprise of the Petitioner, Respondent No.3 by his communication dated 27th June 2016 [purportedly issued on the basis of communication of Collector-Respondent No.2 dated 21st June 2016, wherein he has stated that he had received some complaints about the variance and discrimination in the marks allotted to some of the candidates in interview], the Petitioner along with other successful candidates were called upon to explain as to why their

selection should not be cancelled and re-interview should not be taken. The Petitioner as well as other successful candidates were thereafter called upon to remain present personally in the office of SDO on 7th July 2016. Being aggrieved by the same, the Petitioner approached the Maharashtra Administrative Tribunal [for short "**the MAT**"] by filing Original Application No. 1071 of 2016. It appears that the other successful candidates also filed separate proceedings before the MAT. All those applications were decided by the MAT by its following common order dated 11th January 2019 :

- “(A) The Original Application Nos. 1069 to 1074 of 2016 are hereby allowed.
- (B) The impugned show cause notice dated 27.06.016 issued by Respondent No. 3 is set aside.
- (C) the impugned communication (decision of Committee) dated 14.07.2016 is set aside to the extent of decision of re-interview of the candidates.
- (D) Consequently, the impugned order dated 07.01.2019 issued by Respondent No. 2 to take re-interview of the candidates is quashed and set aside.
- (E) No order as to costs.”

5. Thereafter, one Mr. Keshav Binnar and Ravindra Handore challenged the above-said order of the MAT by filing writ

petitions in this Court, being Writ Petition No. 4369 of 2019 (i.e., WP St. No.2746 of 2019) and 4367 of 2019 (i.e., WP St. No.2740 of 2019). On 5th February 2019, those writ petitions, when they were on lodging numbers, were placed before the Court and on that date, this Court after hearing the learned counsel for the Petitioner, learned counsel for Respondent No.1 as well as learned AGP for the Respondent-State, issued notice to Respondent No.2 returnable on 26th February 2019 and by way of ad-interim order directed the parties to maintain status quo.

6. It is pertinent to note that the Petitioner herein had approached the MAT by filing Original Application No.1071 of 2019 challenging the decision of Respondent No.3 calling upon him to remain present for the fresh interview. As stated above, the MAT has set aside this decision by passing common order in various identical proceedings (namely, O.A.Nos. 1069 to 1074 of 2019). In terms of this order of the MAT, Respondent Nos.2 and 3 were under obligation to give appointment order to the Petitioner as per the result of the written examination and oral interview held earlier.

7. It is pertinent to note that the aggrieved party before the MAT in Original Application No.1073 of 2016, has not

challenged the said order of the MAT. Thus, the order dated 11th January 2019 passed by the MAT insofar as the Petitioner's selection process to the post of Police-Patil of village Eklahare is concerned, has become conclusive / final. In that view of the matter, Respondent Nos.2 and 3 are duty bound to issue appointment order to the Petitioner herein.

8. However, Respondent No.3 by the impugned communication dated 20th September 2019 has informed the Petitioner that this Court has granted status quo order in Writ Petition Nos.4369 of 2019 and 4367 of 2019 and therefore appointment orders cannot be issued in favour of the Petitioner unless the said status quo order is cancelled or modified. This communication, as stated above, is under challenge in the present writ petition.

9. Mr. Warunjikar, learned counsel for the Petitioner makes a categorical statement that the aggrieved persons who had approached the MAT assailing the Petitioner's selection to the post of Police-Patil, have not challenged the decision of the MAT dated 11th January 2019. We accept the said statement.

10. If that be so, then the order of MAT has become final insofar as the Petitioner's selection to the post of Police-Patil of

village Eklahare, talulka Sinnar is concerned, and therefore, Respondent Nos. 2 and 3 ought to have given appointment order in favour of the Petitioner.

11. The learned SDO, however, relying upon the orders passed by this Court in some other writ petitions, refused to give appointment order to the Petitioner, on the ground that status quo order has been granted by this Court in Writ Petition No. 4369 of 2019 and 4367 of 2019. In our considered view, the approach of the SDO cannot be justified.

12. Before the MAT, there were in all 5 applicants including the Petitioner herein in respect of 5 different villages. The case of each of the Applicants was different and restricted to particular village. That being position, when the order in respect of the Petitioner's selection process has become final, the SDO could not have refused to issue the appointment order in favour the Petitioner, who was selected to the post of Police-Patil of village Eklahare through a proper selection process. A note is required to be taken that the Petitioners in the aforesaid two writ petitions have restricted their prayers qua their respective villages only.

13. The learned AGP submitted that this writ petition

should be heard along with Writ Petition Nos. 4367 of 2019 and 4369 of 2019. Those writ petitions are today placed before us. However, the advocates representing the petitioners in those writ petitions are not present despite repeated calls.

14. We find that in the absence of challenge to the MAT order dated 11th January 2019 in respect of the Petitioner's selection process of village Eklahare, the stand of learned AGP cannot be countenanced. The learned AGP also pointed out that the aggrieved persons in the case of the Petitioner's selection process are not made party in the instant writ petition. Since the said aggrieved persons have not challenged the decision of MAT in this Court, we do not find any substance in the objection taken by learned AGP.

15. In the backdrop of above discussion, the petition deserves to be allowed. Hence, we pass following order.

-: O R D E R :-

[1] Writ petition is allowed.

[2] The communication dated 20th September 2019 issued by Respondent No.3 is quashed and set aside only insofar as the Petitioner

herein is concerned.

[3] Respondent No.3 is directed to issue appointment order to the Petitioner herein for the post of Police-Patil of village Eklahare, taluka Sinnar, district Nashik.

[4] There shall be no order as to costs.

[SURENDRA P TAVADE, J.]

[RANJIT MORE, J.]