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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12577 OF 2018

Smt. Swati Navnath Kandekar	]	
(Swati Vasantryao Kawale)	]	
Age: 30, Occ:- Service	]	
R/a. Lakhalgaon, Dist. Nashik	]	Petitioner.

Versus

1] Shri Bhausaheb Lukha (Sukhdev)	]	
Kandekar R/at. Post Lakhalgaon,	]	
Dist. Nashik.	]	
	]	
2] The State of Maharashtra	]	
Through the Secretary	]	
Revenue and Forest Department,	]	
Mantralaya, Mumbai	]	
	]	
3] The District Collector,	]	
Old Agra Road, Nashik.	]	
	]	
4] The Sub Divisional Magistrate,	]	
Nashik Sub Division, Nashik	]	
In the premises of District Collector,	]	
Old Agra Road, Nashik	]	... Respondents.

Mr. Ajay Bhise, Advocate for the Petitioner.

Mrs. Vaishali Jagdale, Advocate for Respondent No.1.

Mr. P.G. Sawant, AGP for Respondent Nos. 2 to 4.

**CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ.**

DATE: 22nd JANUARY, 2019

ORAL JUDGMENT: (*Per B.R. Gavai, J.*)

1] Rule. Rule is made returnable forthwith. Respondents waive Service. Heard by consent of parties.

2] Petitioner is challenging the order dated 5/10/2018 vide which the learned Tribunal has allowed the Original Application filed by Respondent No.1.

3] Respondent No.1 had filed an Original Application, challenging the appointment of the Petitioner as Police Patil. By the impugned order, the learned Tribunal has allowed the said Original Application.

4] Perusal of the order passed by the learned Tribunal would reveal that the learned Tribunal has come to a finding that though the present Petitioner was duly served with the notice of proceedings, he chose not to appear in the proceedings and as such, the learned

Tribunal proceeded ex parte against the present Petitioner.

5] The learned Counsel appearing on behalf of the Petitioner submits that, as a matter of fact, the Petitioner was never served with the proceedings before the Tribunal and as such, the impugned order came as a surprise to him.

6] Perusal of the material placed on record would reveal that the Tribunal had issued notice on 6/10/2016 which was made returnable on 27/10/2016. By the said order, the Original Applicant was authorized and directed to serve upon Respondents notice of the date of hearing duly authenticated by the Registry. It will be relevant to refer to the office noting dated 26/10/2016 on the file of the Tribunal which reads thus:-

“26.10.2016

As per order passed by Hon'ble Tribunal dt. 6.10.2016 notice for respondents is not collected by the advocate of the applicant.

Sd/-

26.10.2016”

It could thus be seen from the perusal of record of the Tribunal itself that the Original Applicant i.e. Respondent No.1 herein had not collected the notice. As such, the notice of proceedings was not at all served upon the Petitioner. To a pertinent query, as to whether Respondent No.1 had filed affidavit of service, the learned Counsel for Respondent No.1 fairly states that though no affidavit of service was filed, the present Petitioner was sought to be served, which service was refused.

7] We find that in the absence of proper service on the Petitioner, he has lost an opportunity of representing himself before the Tribunal. We find that the impugned order is in violation of principles of natural justice. The impugned order is therefore quashed and set aside. The matter is remanded to the Tribunal to decide it afresh in accordance with law. Needless to state that we have not touched the merit of the matter. The learned Tribunal to decide the Original Application on merit after hearing the Petitioner as well as Respondent No.1. Taking into consideration that the appointment is for a tenure, we request the learned Tribunal to

decide the Original Application within a period of three months from today.

8] Rule is made absolute in the aforesaid terms with no order as to costs.

(N. J. JAMADAR, J.)

(B. R. GAVAI, J.)