

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

WRIT PETITION NO.5838 OF 2019

Hirachand s/o Sadashiv Yamgar,
Age; 30 years, Occ; Labour,
R/o; Yamgarwadi, Post; Nanduri
Tq.Tuljapur, Dist. Osmanabad.

...PETITIONER

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai 400032.
2. The Sub-Divisional Magistrate,
Osmanabad and President,
Selection Committee for
Recruitment of Police Patils.
3. Maruti s/o Haridas Patil,
Age; 26 years, Occ; Unemployed,
R/o. Yamgarwadi, Tq. Tuljapur,
District; Osmanabad.

...RESPONDENTS

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Advocate for the petitioner : Mr.C.R.Thorat
AGP for the Respondent Nos. 1 & 2 : Mr. K.N.Lokhande
Advocate for Respondent No. 3 : Mr. Prakash G.Gunale
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 16.09.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule.

2. Rule made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

3. By the present petition, the petitioner challenges the judgment and order dated 06.05.2019 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad (for short 'MAT') in Original Application No. 306 of 2018. The Original Application was instituted by respondent No. 3 herein, with following prayers :

“a) Pending hearing and final disposal of this O.A., the respondent No. 2 may please be directed to allow the applicant to go through further states of recruitment i.e. written test, oral interview and selection process, as per the Advertisement No. 01/2018 dated 18.04.2018 issued by respondent No.2;

b) Pending hearing and final disposal of this O.A., further stages of recruitment of Police Patil as per the Advertisement No. 01/2018 dated 18.04.2018 issued by the respondent No. 2 to the extent of post of Police Patil of village Yemgarwadi, Tq. Tuljapur, Dist.; Osmanabad may please be stayed;

c) Pending hearing and final disposal of this Original Application, the respondent NO. 2 may please be directed not to appoint any candidate to the post of Police Patil of village Yamgarwadi, Tq.; Tuljapur, Dist.; Osmanabad.”

4. By the judgment impugned before us, the Tribunal has allowed the Original Application in terms of prayer Clause 'b'. The effect of order passed by the Tribunal is that respondent No. 3 is

permitted to go through the further stages of recruitment on the post of Police Patil. The petitioner claims to have been selected and his selection would be affected on account of the impugned judgment and order of the Tribunal, on account of which he has filed the present petition.

5. A short issue that was involved in the Original Application filed before the Tribunal, is whether respondent No. 3 was eligible to participate in the selection process on account that he being below the prescribed minimum age of 25 years as on the cut-off date prescribed in the advertisement. The advertisement prescribed that the age of the candidate as on 19.04.2018 would be taken into consideration when respondent No. 3 was aged 24 years, 9 months and 1 day. The Tribunal has taken into consideration the provisions of recruitment Rules and has come to the conclusion that as per the recruitment Rules, the prescribed age limit was required to be computed on the date of appointment. On this basis, the Original Application of respondent No. 3 has been allowed, directing his candidature to be considered in the selection.

6. Since the issue involved is about the interpretation of recruitment Rules, the relevant portion of the same is reproduced herein below :

“3(1) Eligibility of appointment :- No person shall be eligible for being appointed as a Police Patil, who

- a) Is under twenty five years or over forty five years of age at the time of appointment.
- b) Has not passed the VI standard examination in a Primary School or who does not possess equivalent or Higher Educational Qualification ;
- c) Is not a resident of village or one of the villages in the case of a group of villages, for which the appointment is to be made;
- d) Is physically unfit to perform the duties of Police Patil."

7. The only controversy is about the use of the expression "at the time of appointment", in the recruitment Rules. These words have been interpreted by the Tribunal to mean that the age criteria is required to be applied on the date of issuance of the appointment order. The Tribunal has held that the advertisement was contrary to the recruitment Rules. We, therefore, reproduce the relevant portion of the advertisement as under :

क्र.	पदनाम	किमान आवश्यक अर्हता
१.	पोलीस पाटील	१. 2- अ) वयोमर्यादिकरिता अर्जदाराचे दिनांक १९.०४.२०१८ रोजीचे वय विचारात घेतले जाईल. ब) अर्जदाराचे वय दिनांक १९.०४.२०१८ रोजी २५ वर्षपेक्षा कमी नसावे व ४५ वर्षपेक्षा जास्त नसावे. क) पोलीस पाटील पदांकरिता वयोमर्यादा शिथीलक्ष्म नाही.

8. Thus, the advertisement prescribed the cut off date as 19.04.2018 for determination of age limit.

9. Appearing for the petitioners Mr. C.R.Thorat, learned Advocate would submit that respondent No. 2 was entitled to prescribe the cut-off date for determination of the eligibility criteria. He questioned the timing of filing of the Original Application by respondent No. 3 when the selection process was already completed. Even though the final judgment and order of the Tribunal is impugned in the present petition, since the same relied upon interim order passed by the Tribunal on 19.09.2018, he also questioned the correctness of the passing of such interim order by the Tribunal. He would further submit that respondent No.3 had not challenged the advertisement, under which he was not eligible to participate in the selection. In absence of challenge to the advertisement, respondent No. 3 could not have sought the relief to declare him eligible for selection.

10. Mr. Thorat, has relied upon the following judgments in support of his contention.

1. Jasbir Rani and others Vs. State of Punjab and another 2001 AIR SCW 4568.

2. Bhupinderpal Singh and others Vs. State of Punjab and Others 2000 AIR SCW 1888.

11. On the other hand, Mr. Gunale, the learned Advocate appearing for respondent No. 3, would submit that the provisions of recruitment rules would prevail over the conditions stipulated in the advertisement. He further submits that the advertisement was clearly

contrary to the recruitment rules and the Tribunal is therefore justified in holding respondent No. 3 eligible to participate in selection. He would further submit that respondent No. 3 had intimated to the Appointing Authority by letter dated 08.05.2018 that he was completing the age of 25 years on 10.05.2018, by which the time of the selection was still underway and that therefore, his candidature ought to have been considered. Mr. Gunale, relied upon the following judgments in support of his contentions:

1. **Ranjit Kumar Meher v. State of Orissa and Others (2017) 4 Supreme Court 568.**
2. **Duddilla Srinivasa Sharma & Ors. V. V.Chrysolite 2014 ALL SCR 118.**
3. **Commissioner of Municipal Administration and Another v. M.C.Sheela Evanjaline and Others (2020) 19 Supreme Court Cases 317.**
4. **Hirandra Kumar v. High Court of Judicature at Allahabad and Another (2020) 17 Supreme Court Cases 401.**

12. Mr. Lokhande, learned Assistant Government Pleader appearing for respondent Nos. 1 & 2, supports the case of the petitioner submitting that the State Government had opposed the Original Application of respondent No. 3 before the Tribunal. He, therefore, adopts the submissions of Mr. Thorat.

13. At the outset, we must express our displeasure in the manner in which the Tribunal has proceeded to decide the Original Application. Rather than deciding the Original Application by considering the merits of the contentions raised before it, the Tribunal appears to have allowed the same only because the Sub-Divisional Officer had filed Affidavit-in-Reply justifying rejection of candidature of Respondent No. 3 after passing of interim order by the Tribunal. The Tribunal had passed interim order on 19.09.2018. In paragraph Nos. 11 to 13 of the same it was directed as under :

“11. Learned Advocate for the applicant prays for ex-parte interim relief on very limited grounds, namely :-

- a) Recruitment Rules provides that a candidate to be appointed on the post of Police Patil shall not be below the age of 25 years.
- b) Advertisement provides to the contrary of the Recruitment Rules.
- c) In this case contrary to the Recruitment Rules and in adherence to the advertisement, applicant's candidature is rejected.

12. Rejection of applicant's candidature is denial of fair opportunity to him in the recruitment process. Hence, applicant has made out a good case for grant of interim relief in his favour.

13. By way of interim relief, the respondent No. 2, the appointing authority is restrained from appointing respondent No. 3 as Police Patil.”

14. After passing of the interim order, the official Respondents filed affidavit-in-reply justifying the ineligibility of respondent No. 3 to participate in the selection. In our opinion, the official respondents

were entitled to do so. However, merely because the official respondents filed affidavit-in-reply, seeking to justify their action, the Tribunal has made following observations in paragraph No. 7 of the impugned judgment:

“7. The attitude of the Sub-Divisional Officer to neglect the recruitment rules and even the caution given by this Tribunal through the order dated 19.09.2018 is astonishing, apart that it is shocking.”

15. The net result of the Original Application appears to have been influenced mainly by this conduct on the part of the Sub Divisional Officer. In our opinion, the Sub Divisional Officer was entitled to put across his stand on the merits of the Original Application even after passing of the interim order passed on 19.09.2018. Merely because he did so, there was no reason for the Tribunal to criticise him and in any event to allow the Original Application of Respondent No. 3 for that reason alone. We, therefore, express our displeasure about the manner in which the Original application has been decided by the Tribunal. This could have been a reason enough for us to set aside the Order of the Tribunal and remand the Original Application for fresh consideration on merits. However since we have heard the learned Counsels for the parties in depth on merits of the matter, we proceed to decide the same.

16. The recruitment Rules for the post of Police Patil prescribe minimum age limit of 25 years and maximum age limit of 45 years.

However, the Rules use the words "*at the time of appointment*". It is the contention of respondent No. 3 which is upheld by the Tribunal that the age limit is required to be determined 'at the time of appointment'. As against this, the advertisement has prescribed the cut off date as 19.04.2018 for determining the minimum and maximum age limit. The question is which would prevail?

17. If the language used in the recruitment rules is to be strictly interpreted, the same would lead to several difficulties. If the words "at the time of appointment" are considered in the light of maximum age limit of 45 years, the same would mean that the candidates who are within the age limit of 45 years on the date of issuance of advertisement, would be rendered ineligible in the event of selection process being delayed. Even if, the said wordings are to be strictly interpreted in the context of minimum age limit, a candidate completing 23 years of age may also apply and will have to be considered as the appointing authority would not know on the date of the issuance of the advertisement, as to how much time would be taken for actual appointments of the candidates. In the event of selection process being delayed by couple of years, such candidate, who was merely 23 years on the date of issuance of the advertisement would acquire the eligibility at the time of actual appointment. This would lead to complete uncertainty about eligibility of candidates. In our opinion, such interpretation of the rules, would lead to absurdity, is required to be avoided.

18. It is axiomatic in service jurisprudence that the eligibility criteria is required to be determined either on the date of issuance of advertisement or on the last date prescribed for submission of the applications. In **Jasbir Rani**(supra) relied on by Mr. Thorat, the situation was identical. The recruitment rule in **Jasbir Rani** (supra) was similar to the rule involved in the present case. In Paragraph 10 of the judgment, rule 5 of the recruitment rules, as it stood before amendment in 1993, has been reproduced as follows :

‘No person shall be appointed to the Service by direct recruitment if he is less than seventeen years or more than twenty-seven years of age **on the date of his appointment.**’”

(Emphasis supplied)

19. Thus, similar words “on the date of his appointment”, were also used in the recruitment Rules involved in **Jasbir Rani**(supra). After considering the provisions of the said Rules, the Apex Court held in paragraph No. 14 of the judgment, reads as under :

“14. The position that emerges from the discussions in the foregoing paragraphs is that the State Government cannot be faulted for fixing a cut off date in the first advertisement and in the circumstances of the case in adopting the same cut off date in the second advertisement. Therefore, there is no merit in these appeals which are accordingly dismissed. There will, however, be no order for cost.”

Thus despite use of the words “on the date of his appointment” in the recruitment rules, the action of the State

Government is prescribing a cut off date is upheld.

20. Since the judgment in **Bhupinderpal Singh** (Supra) has been relied upon in **Jasbir Rani** (supra), and since Mr. Thorat, learned Advocate also placed reliance on **Bhupinderpal Singh** (supra) it would be apposite to reproduce paragraph Nos. 13 and 14 in **Bhupinderpal Singh** as under :

“13. Placing reliance on the decisions of this Court in *Ashok Kumar Sharma v. Chander Shekhar*, (1997) 4 JT (SC) 99; *A.P. Public Service Commission v. B.Sarat Chandra*, (1990) 4 Serv LR 235 (SC); *Dist. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vlizianagaram v. M. Tripura Sundari Devi*, (1990) 4 Serv LR 237 (SC); *Mrs. Rekha Chaturvedi v. University of Rajasthan*, (1993) 1 JT (SC) 220; (1993 AIR SCW 1488); 1993 Lab IC 1250); *Dr. M.V. Nair v. Union of India* (1993) 2SCC 429 :(1993 AIR SCW 1412 : 1993 Lab IC 1111); and *U.P. Public Service Commission, U.P. Allahabad v. Alpana* (1994) 1 JT (SC) 94; (1994 AIR SCW 2861), the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of his case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

14. In view of several decisions of this Court relied on by the High Court and referred to hereinabove, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was appointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualification by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence."

21. The submissions of Mr. Gunale, that respondent No. 3 was short by only 23 days for completing the age of 25 years on the cut off date deserves summary rejection. Since the advertisement prescribed the cut off date as 19.04.2018, respondent No. 3 was clearly ineligible

to apply in pursuance of the same and therefore, the length of period by which he fell short of acquiring minimum age limit, becomes inconsequential. The reliance on various decisions by Mr. Gunale, is also of no avail. The said decisions are relied upon by Mr. Gunale, essentially to buttress his contention that the provisions of recruitment rules must be given effect to. We are in agreement with the said proposition. However, we do not agree with the interpretation of the recruitment Rules sought to be placed by Mr. Gunale.

22. Respondent No. 3 participated in the selection without challenging the advertisement, under which he was clearly ineligible. The Tribunal has completely glossed over this vital aspect while allowing his Original Application.

23. In the result, the petition succeeds. The impugned judgment and order of the Tribunal is set aside. The original Application No. 306 of 2018 filed by respondent No. 3 before the Tribunal stands dismissed. Respondent Nos. 1 and 2 to process the selection further accordingly.

24. No costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE