

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5869 OF 2018

Avinash s/o Shankar Bavne,
Aged 33 years, Occupation – Nil,
R/o Gondeda, Post – Kevada Mokasa,
Tahsil – Chimur, District – Chandrapur,
Maharashtra.

.... **PETITIONER**

VERSUS

1) The Government of Maharashtra,
through its Chief Secretary, Home
Department, Mantralaya, Mumbai,
Maharashtra.

2) The Sub-Divisional Officer,
Chimur, Administrative Building,
Chimur, District – Chandrapur.

3) Vishnudas s/o Pandurang Mangare,
Aged 38 years,
Occupation – Ex-Sarpanch, Village
Gondeda, R/o Gondeda, Tahsil -
Chimur, District - Chandrapur

.... **RESPONDENTS**

Mr. S.M. Bahirwar, Counsel for the petitioner,
Mr. S.M. Ukey, Addl.G.P for respondents 1 and 2,
Mr. B.W. Patil, Counsel for respondent 3.

**CORAM : ROHIT B. DEO &
MRS. VRUSHALI V. JOSHI, JJ.**
DATED : 03-05-2023

ORAL JUDGMENT : (PER : ROHIT B. DEO, J.)

Heard. **Rule.** Rule made returnable forthwith with consent of the parties.

2. The petitioner is assailing the judgment dated 17-7-2018 rendered by the Maharashtra Administrative Tribunal (MAT) in Original Application 839/2017 whereby the MAT allowed the Original Application in terms of prayer clauses 8(i) and (ii) and quashed the appointment of the petitioner as Police Patil of Village Gondeda.

3. In the interest of clarity, we extract prayer clauses 8(i) and (ii) of the Original Application preferred by Mr. Vishnudas Mangare - respondent 3 herein.

“(i) Pass an appropriate order thereby declared that acceptance of an application of respondent No.3 for post of Police Patil, which was filed without submit and annexed character certificate was illegal.

(ii) Pass an appropriate order thereby declaring that an application submitted by respondent No.3 was not eligible and was accepted by breach of mandatory conditions as well as respondent No.2 did not follow principle of equality and has wrongly accepted the

same.”

4. The petitioner and Mr. Vishnudas Mangare were desirous of holding the post of Police Patil and responded to the recruitment advertisement, along with others.

5. The petitioner emerged successful in the recruitment process and was appointed as Police Patil vide order dated 04-3-2016 (Annexure-F). It appears that on 09-10-2017 Mr. Vishnudas Mangare questioned the petitioner's appointment in Original Application 839/2017, which is allowed by the order impugned as noted supra. The appointment of the petitioner as Police Patil is held illegal on the premise that since the petitioner did not submit the character certificate along with the application, he was ineligible to participate in the recruitment process.

6. The MAT noted the admission of the Sub-Divisional Officer, Chimur that the petitioner herein did submit the character certificate on 30-3-2016. It is further admitted that the petitioner secured more marks than Mr. Vishnudas Mangare.

7. The petitioner contended that while he did apply for the

character certificate within time, he could not meet the deadline of 15-2-2016 since the character certificate was issued by the office of the Superintendent of Police, Chandrapur on 18-2-2016.

8. The MAT observed that there is no reason why the petitioner was allowed to participate in the process. The MAT then noted the judgment of the Coordinate Bench of the MAT in Original Application 789/2016. Referring to the said decision of the Coordinate Bench, the MAT observed that in that matter the Tribunal was pleased to hold that the cancellation of the appointment order on the ground of failure to submit the character certificate, is legal. On the premise that the case of respondent 3-Mr. Vishnudas Mangare is squarely covered by the decision of the Coordinate Bench, the MAT allowed the application and quashed the petitioner's appointment.

9. We have heard the learned Counsel for the petitioner Mr. S.M. Bahirwar, the learned Additional Government Pleader for respondents 1 and 2 Mr. S.M. Ukey and the learned Counsel for respondent 3 Mr. B.W. Patil.

10. We are of the considered view that the judgment of MAT is erroneous and unsustainable in law. We may briefly spell out the reasons.

11. The service conditions of Police Patils are governed by the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and Other Conditions of Service) Order, 1968 (Order) which is made by the Government of Maharashtra in exercise of powers conferred by sub-section (3) of Section 5 of the Maharashtra Village Police Act, 1967 (Act of 1967). Clause-3 of the Order prescribes eligibility conditions and reads thus :

“3. *Eligibility for appointment.*

(1) 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 the village of 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 a

police-patil;

Provided that, the candidate may be required by the competent authority to undergo a medical examination to determine his physical fitness, if deemed necessary'

(e) is adjudged by the competent authority after a summary inquiry to be of bad character, or has, in the opinion of that authority such antecedents as render him unsuitable for employment as Police Patil.

(2) Notwithstanding anything contained on paragraphs (a), (b) and (c) of sub-clause (1), if no candidate, within the age limit mentioned in the said sub-clause (a), or possessing the minimum academic qualifications mentioned in the said sub-clause (b) or residing in the village or one of the villages in the case of a group of villages for which the appointment is to be made as mentioned in the said sub-clause(c), is available, then the competent authority (not being the State Government) may, with the previous approval of the Divisional Commissioner, appoint any suitable candidate in relaxation of the said provision or provisions, as the case may be."

Sub-clause (1)(e) of Clause 3 of the Order provides that no person shall be eligible for being appointed as a Police Patil who is adjudged by the competent authority after a summary enquiry to

be of bad character, or has, in the opinion of that authority such antecedents as render him unsuitable for employment as Police Patil.

12. Section 2 of the Order is the definitions clause and sub-clause (c) defines “competent authority” to mean the State Government or the District Magistrate or any other officer who is competent to make the appointment of the Police Patil. In the context of the subject recruitment, it is the Sub-Divisional Officer, Chimur who is the competent authority and the President of the Selection Committee. It is the Sub-Divisional Officer who has issued the order of appointment.

13. The competent authority is empowered to adjudge the candidate to be of bad character, after a summary enquiry. The competent authority may also hold that a candidate is ineligible if the antecedents of the candidate are such as render him unsuitable for employment as Police Patil.

14. The power conferred to hold a candidate ineligible on grounds spelt out in Clause 3(i)(e) of the Order must be exercised with care, caution and circumspection. We have already noted

that the competent authority can, after conducting a summary enquiry, hold that the candidate is of bad character or after considering the antecedents of the candidate, declare him unsuitable to hold the post. In both the situations, due application of mind to the material on record including the antecedents of the candidate is expected.

15. The requirement that the candidate shall submit character certificate from the concerned police station is not *per se* illegal. However, the character certificate is nothing less and nothing more than a relevant material which the competent authority will have to consider before coming to the conclusion that the candidate is of a bad character or antecedents are such as would render him unsuitable for employment. The power which is vested in the competent authority cannot be abdicated in favour of police by mechanically treating a candidate who fails to furnish the character certificate along with the application, ineligible.

16. Considering the statutory scheme, while there is nothing wrong in the condition that the candidate shall submit the character certificate, we are not inclined to hold that the

condition is mandatory. It is clear from the rules which prescribe the eligibility that such condition is not provided. All that the Order/Rules provide is that the competent authority shall be empowered to make a summary enquiry to ascertain whether the candidate is of bad character and/or to assess the suitability of the candidate to hold the post of Police Patil in the context of the antecedents.

17. It would be apposite to reproduce verbatim instruction 7 of the advertisement.

“७. अर्जदाराचे पूर्व चारित्र चांगले असल्याबाबत संबंधीत पोलीस स्टेशनचे प्रमाणपत्र जोडणे अनिवार्य आहे.”

18. Instruction 7 indeed provides that the submission of the character or antecedent certificate from the concerned police station is mandatory. However, the expression “mandatory” must be understood in the context of the statutory provisions. As observed supra, such certificate can be a relevant consideration. However, the consideration must be by the competent authority. If the candidate is held ineligible, and his application is not considered on merit on the premise that instruction 7 is

mandatory, the statutory scheme shall stand frustrated in the sense that there would be no occasion for the competent authority to apply independent mind and then ascertain the suitability of the candidate.

19. In the present case, the competent authority did consider the petitioner suitable for employment. Presumably, the competent authority was made aware that while the last date of submission of the form was 15-2-2016, the petitioner was issued the character certificate by the concerned police station on 18-2-2016, which he submitted to the competent authority, albeit after he was appointed. The MAT laboured under an impression that the non-submission of the character certificate along with the application *ipso facto* renders the candidature ineligible. The MAT referred to certain view of its Coordinate Bench. In fairness to the learned Counsel for the contesting private respondent, we may note that a Coordinate Bench (of which one of us Rohit B. Deo, J. was a Member) rendered order dated 17-12-2019 in Writ Petition 1376/2018. The order is brief and we may extract the same verbatim.

“ORAL JUDGMENT : (PER : SUNIL B. SHUKRE, J.)

Heard. Rule. Heard forthwith finally.

2. *The advertisement issued for inviting applications from the eligible candidates for being appointed as Police Patil had one mandatory condition. The mandatory condition was that alongwith the application, character certificate issued by the concerned police station be submitted. Admittedly, alongwith application no such character certificate was submitted by the petitioner. Therefore, we find nothing illegal or wrong in the impugned order. There is no merit in the petition and it stands dismissed.*

3. *Rule discharged. No costs.”*

20. The facts in the case supra are blurred. In the present case, the petitioner was considered eligible and he was, as a fact, appointed. Respondent 3 herein Mr. Vishnudas Mangare challenged the appointment of the petitioner after passage of one year seven months and five days. It is not clear from the brief order, whether it was even argued that in view of the statutory service conditions, the instructions that character certificate be submitted along with the application cannot be considered mandatory. The Coordinate Bench did not consider the issue on the touchstone of the statutory provisions.

21. In our considered view, it is the principle which is enunciated and not the conclusion, that binds the Coordinate Bench. With due respect to the decision of the Coordinate Bench in Writ Petition 1376/2018 (*Moreswar Vithobaji Shende v. The State of Maharashtra and others*), the said decision is not a binding precedent. It is assumed that the condition that the character certificate be submitted along with the application is mandatory. No submissions are canvassed on the touchstone of the statutory provisions, nor are the statutory provisions considered.

22. The other aspect is that the petitioner was not at fault since he applied on 12-2-2016 and received the character certificate on 18-2-2016, after 15-2-2016 which was the last date of submission of the application. Considering the purpose for which the certificate was sought, the concerned police station was expected to display some sense of urgency. The certificate is issued by the concerned police station presumably on the basis of the record available at the police station. Inaction or delay in action on the part of the said machinery must not prejudice the citizens.

23. Viewed from any angle, we are not in a position to uphold the judgment impugned.

24. We quash and set aside the judgment impugned. We further quash the consequential order of cancellation of appointment dated 11-2-2019 issued by the Sub-Divisional Officer, Chimur.

25. The petitioner shall be entitled to reinstatement with continuity in employment and every consequential benefits.

26. Rule is made absolute in the afore-stated terms.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

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