



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13884 OF 2024

Swati Bhiva Gajbhare
@ Swati Milind Pawar
Age : 35 years, Occu.: Service
R/o : Bhukmari, Tal. Kandhar,
Nanded

.. Petitioner

Versus

- 1] The State of Maharashtra
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai
- 2] The Collector, Nanded
- 3] Sub Divisional Officer, Kandhar
Taluka Kandhar, Dist. : Nanded
- 4] Jayshri Rajratna Pawar
Age : 37 years, Occu : Nil,
R/o : Bhukmari, Tal. Kandhar,
Nanded

.. Respondents

...
Advocate for petitioner : Mr. Satyajeet S. Bora
Addl.GP for the respondent – State : Mr. M.M. Nerlikar
Advocate for the respondent no. 4 : Mr. V.A. Dhakne
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 18 DECEMBER 2024

ORDER (MANGESH S. PATIL, J.) :

The petitioner, by resorting to Article 226 of the Constitution of India, is challenging the judgment and order of the Maharashtra Administrative Tribunal bench at Aurangabad in Original

Application no. 763 of 2024 dated 06-12-2024, whereby it has allowed the original application of respondent no. 4 and directed respondent no. 3 to appoint her as a Police Patil of village Bhukmari, Taluka - Kandhar, District - Nanded, if she was otherwise eligible and on verifying the fact that she had tendered resignation from the post of member of gram panchayat, thereby quashing and setting aside petitioner's appointment, being a candidate on the wait list.

2. Learned advocate Mr. Bora submits that the advertisement was published for the appointment of Police Patils in various villages in Nanded District on 01-01-2024. The petitioner as also respondent no. 4 submitted their respective applications. The interviews were held on 18-01-2024 and the selection list was published on 20-01-2024. Respondent no. 4 was selected and the petitioner was figuring in the wait list.

3. Mr. Bora would submit that respondent no. 4 was a member of the gram panchayat of the same village on the date of her application and was not eligible to apply for the post. It was expressly indicated in clause no. 5 of the advertisement as well.

4. Mr. Bora submits that the petitioner raised a detailed objection before respondent no. 3 - Sub Divisional Officer on 23-01-2024. Respondent no. 4 was called upon to submit her say. She submitted that she would tender the resignation before accepting

the appointment. Respondent no. 3, by order dated 24-06-2024 allowed petitioner's objection and cancelled the selection of respondent no. 4. By another order, dated 28-06-2024, respondent no. 3 appointed the petitioner as Police Patil and she joined the post.

5. Mr. Bora would submit that the tribunal has clearly overlooked the stipulation in clause no. 5 of the advertisement, whereby it was expressly declared that the member of the gram panchayat would not be eligible to apply for the post. Respondent no. 4, with an open eye, participated without tendering any resignation and was not eligible to participate in the process. Once having participated, she could not have taken a plea, as was done before the Sub Divisional Officer - respondent no. 3. No fault was committed by him in sustaining petitioner's objection and the tribunal has misdirected itself while allowing the original application.

6. Mr. Bora would, lastly, submit that in spite of the selection list having been published on 20-01-2024, respondent no. 4 failed to tender resignation. Even while the objection was being considered and decided by respondent no. 3 - Sub Divisional Officer, she did not tender the resignation and no fault can be found in appointing the petitioner as the Police Patil and the clock may not be set back by displacing the petitioner. The impugned order is arbitrary and capricious and may be quashed and set aside.

7. Per contra, Mr. Dhakne, learned advocate for respondent no. 4 would submit that clause no. 5 of the advertisement will have to be understood in a manner which would not make it inconsistent or incompatible with the relevant rules, namely, Maharashtra Village Police Patil (Recruitment, Pay, Allowances and Other Conditions of Service) Order, 1968, framed under section 5(3) of the Maharashtra Village Police Patil Act, 1967. He would take us through that order and would submit that in clause 3, prescribing eligibility, there is no such stipulation that a member of the gram panchayat would not be eligible for the post of Police Patil. He would, therefore, submit that at the most pursuant to clause no. 5, respondent no. 4 would have been required to tender the resignation before she was appointed.

8. He would submit that respondent no. 3 - Sub Divisional Officer could not have cancelled her selection. There was no law or rule, preventing a member of the gram panchayat from applying for the post of Police Patil. At the most, she would have been required to tender the resignation while being granted appointment. This was her stand even before him expressly mentioned in the order that she would tender the resignation once she was selected.

9. Mr. Dhakne submits that a similar issue has been considered by the Supreme Court in the matter of ***Dnyaneshwar***

Bhikan Solunke V. The Divisional Commissioner, Aurangabad Division, Aurangabad and others in Special Leave to Appeal (Civil) No. 21256 of 2018 decided on 11-03-2019. The tribunal has correctly appreciated the fact situation and has applied the law correctly by relying upon the decision and the petition be dismissed.

10. Mr. Dhakne would refer to the government resolution dated 02-06-2022, whereby the guidelines in the government circular dated 10-05-1983 have been reiterated in respect of appointments of Police Patil. He adverts our attention to a stipulation therein, that a candidate selected for the post of Police Patil would be given appointment only if he tenders the resignation from membership of the local authority.

11. We have considered the rival submissions and perused the papers.

12. There is no dispute on facts and we need not repeat those.

13. The issue is merely in respect of following the recruitment rules. A bare look at the Order of 1968, would reveal that there is no specific bar for a member of the gram panchayat to apply for the post of Police Patil.

14. Government resolution dated 02-06-2022, which is merely a reiteration of government's earlier stand in the form of guidelines

dated 10-05-1983, clarify that a member of the local body can be considered for the appointment to the post of Police Patil, however, before issuing order of appointment, the candidate has to tender the resignation from such post.

15. The issue, in the light of circular dated 10-05-1983, has been considered by the Supreme Court in the matter of ***Dnyaneshwar Bhikan Solunke*** (supra). The appellant therein had tendered the resignation from the post of member of gram panchayat on 17-03-2016. He also resigned from the post of member of Zilla Parishad, School Managing Committee on 28-03-2016. He submitted affidavit to this effect on 23-05-2016. One of the candidates who had secured lesser marks than him, filed a complaint before the Sub Divisional Officer on 13-06-2016. The objection was rejected on the same day and the appellant was appointed on 27-06-2016. The candidate who had raised the objection approached the Maharashtra Administrative Tribunal. The tribunal set aside appellant's appointment and his challenge before this Court in writ petition, was rejected. In the backdrop of such facts, the appeal was allowed, resulting in quashing and setting aside the order of this Court.

16. True it is that it is only after respondent no.4 would have tendered the resignation from the post of member of the gram panchayat that she could have been appointed. However, for the

reasons best known to respondent no. 3 - Sub Divisional Officer, in stead of soliciting the resignation from respondent no. 4 and making her file some affidavit, he proceeded to undertake an enquiry on a complaint by the petitioner about her eligibility and set aside her selection, even when by a specific undertaking on a stamp paper of Rs.100/-, she had expressly undertaken to resign from the post of member of gram panchayat, if she was elected and would thereafter accept the appointment. Respondent no. 3 could have easily asked her if she was ready to tender the resignation and after ensuring that she had tendered the resignation, could have issued the appointment order. Such approach and conduct of respondent no. 3, clearly overlooks the relevant rules contained in the Order of 1968 and the order passed by him was indeed arbitrary and capricious.

17. The tribunal has correctly applied the law to the fact situation of the matter and has taken a plausible view which cannot be interfered with in exercise of the powers under Article 226 of the Constitution of India.

18. There is no merit in the petition. It is dismissed.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/