

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8623 OF 2014

Rajendra @ Raju s/o. Sheshrao Dalvi **....Petitioner.**

Versus

The State of Maharashtra & Ors. **....Respondents.**

Mr. S.B. Talekar, Advocate for petitioner.

Mrs. R.K. Ladda, AGP for respondent Nos. 1, 3 and 4.

Mr. G.P. Mapari, Advocate for respondent No. 2.

Mr. Ajay Deshpande, Advocate for respondent No. 5.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 9th April, 2015.

ORDER :

1. The petition is filed to challenge the judgment and order of Original Application No. 220/2013, which was pending before Maharashtra Administrative Tribunal, Mumbai (Bench at Aurangabad) (hereinafter referred to as 'MAT' for short). The proceeding was filed by present respondent No. 5 to challenge the appointment of petitioner made by Sub Divisional Officer, Ahmednagar on the post of Police-patil of village Dedgaon, Tahsil Newasa. MAT allowed the proceeding and quashed and set aside the appointment of petitioner. Both the sides are heard. The learned AGP supported the decision of MAT.

2. It is the case of respondent No. 5 that when the application was made for the post, present petitioner was having two wives and two children from each wife. He contended that if second wife was not legally wedded wife, her status can be considered as concubine and in that case, it needs to be presumed that the present petitioner was not having of good moral character and so, he was not fit to get appointment on the post of Police-patil, which is the post of public servant. Before MAT, present petitioner denied that the lady by name Smt. Seema is his legally wedded wife, but he admitted that he has two children born from Smt. Seema and he contended that he has affair with this lady. He contended that it was consensual relationship and it was not prohibited and so, this act cannot be called as immoral act.

3. Before MAT, the authority, SDO filed affidavit and contended that correct information was not supplied by concerned Talathi, Tahsildar and police and if such information was available, the authority would not have given appointment to the petitioner on such post. In the affidavit, it is contended by the authority that even if, it is presumed that it is extramarital relationship, it is immoral behaviour.

4. The MAT has considered the aforesaid admission given by present petitioner and has set aside the appointment order. The learned counsel for the petitioner took this Court through the provisions of the Maharashtra Village Police Act, 1967 (hereinafter referred to as 'the Act' for short) and he placed reliance on two reported case like **2014 CRI.L.J. 784 [Suresh Kumar Koushal and Anr. Vs. NAZ Foundation and Ors.]** and **(2010) 5 Supreme Court Cases 600 [S. Khushboo Vs. Kanniammal and Anr.]**.

5. The provisions of the Act show that the Police-patil is the person of the same village, he works under the supervision of Executive Magistrate having jurisdiction over that village and he is the person responsible to collect and communicate to the Police Station Officer the intelligence affecting the public peace. He is expected to afford every assistance in his power to all police officers when called upon by them in performance of their duties and he is expected to execute the orders and warrants issued to him by Magistrate or Police Officer. The provisions of sections 6 and 7 of the Act show that Police-patil has the authority to require all village servants to aid him in performing the duties entrusted to him and even Talathi of the village is

expected to follow his directions. Thus, it can be said that he is there in the village as the representative of the District Magistrate and he also works as a part of police force. There are duties entrusted to him under the provision of Criminal Procedure Code also. Under section 14 of the Act, he has the power even to arrest a person involved in a serious offence and under section 15, power of search is also given to him. The provisions of Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) Order 1968 show that the State Government can make applicable Civil Services Rules to Police-patil (Rule 12). These Rules are for Recruitment, Conduct, Discipline etc.

6. Under the aforesaid Order, the eligibility conditions for appointment on the post of Police-patil are given (Rule 3) and the relevant condition, Rule 3 (e) is as under :-

"3. Eligibility for appointment :- No person shall be eligible for being appointed as a Police-patil, who -

(a)

(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"

7. It is not disputed that the provisions of notification of General Administration Department of the State Government bearing No. SRV 2000/CR (17/2000)/XII, dated 28.3.2005 are made applicable to the post of Police-patil. In section 2 (d), the definition of "small family" is given and it runs as under :-

(d) "Small Family" means wife and husband including two children.

Explanation.-For the purpose of this clause.-

(i) Where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity;

(ii) "Child" does not include an adopted child or children,

(iii) Words and expressions used in these rules but not defined shall have the same meaning respectively assigned to them in the Maharashtra Civil Service Rules."

Section (3) runs as under :-

3. *Necessity of declaration of Small Family.*- Notwithstanding any thing contained in any rules or orders or instruments made in that behalf, regulating recruitment to Group A, B, C or D post in Government Service or any other order or instruments made in that behalf, the declaration of Small Family shall be an additional essential

requirement for an appointment to Group A, Group B, Group C or Group D post in any Government Service :

Provided that, a person having more than two children on the date of commencement of these rules shall not be disqualified for appointment under these clause so long as the number of children he had on the date of such commencement dose not increase :

Provided further that a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause."

Section (4) shows that it is mandatory on the part of the person applying for the post to file declaration which is incorporated in FORM 'A' appended to the Rules. Copy of notification of General Administration Department bearing No. SRV 2000/CR (17/2000)/XII, dated 28.3.2005 is produced to show that the aforesaid notification was made applicable immediately by the State Government and so, it was necessary for the present petitioner to give such declaration. Admittedly, in the application and declaration, present petitioner mentioned that he has one wife and four issues. The definition of "Small Family" which is already quoted shows that it includes only one wife and two

children. It can be said that the petitioner gave false declaration, if the relevant record is considered.

8. The record like voters list shows that the aforesaid lady is cohabiting with the petitioner in the same house where first wife is living and she has given name of the petitioner as husband. Birth extracts in respect of two issues born to this lady from the petitioner are on the record and that record also shows that present petitioner is shown as the father of the said two issues. Thus, apparently petitioner has two wives and so, he was not complying the conditions mentioned in section 2 (d) of the notification. For such purpose there is no necessity of proof as required in section 494 of I.P.C. Interference is possible on the basis of record available for present purpose.

9. If the contention of the petitioner that said lady viz. Smt. Seema is not his second wife, but he has an affair with her is accepted, then it can be said that he had extramarital affair. If it was second marriage, then it is the offence punishable under section 494 of I.P.C. and it shows that he is not law abiding citizen. If the admission of the petitioner is considered as it is, inference needs to be drawn that it is immoral activity and the petitioner was not of good moral character on the date of

application. The condition of eligibility already quoted shows that it is up to the competent authority to decide as to whether the petitioner is of bad character. There is such affidavit of the competent authority on the record.

10. Two reported cases cited supra are altogether on different points and they are in relation to offences and propriety of allowing to continue the criminal proceeding. In the case of **Suresh Kumar**, the power of the Courts of judicial review is discussed. Much was argued by the learned counsel on fundamental rights. This point is not relevant in the present case as there are eligibility conditions laid down by the State, employer and the petitioner needs to satisfy those conditions. So long as such conditions are not held as *ultra-virus*, such contention cannot be accepted.

11. The discussion made above shows that on the date of application, the petitioner was not eligible for getting the post of Police-patil. He concealed the material information from competent authority and competent authority has filed affidavit that the authority would not have given appointment in view of the aforesaid material available against the petitioner. The defence of the petitioner that under the provision of section 198

of Cr.P.C. unless the complaint is made by the persons mentioned in section 198 (1) (c), the cognizance of the offence cannot be taken and so, the aforesaid circumstance cannot be considered, is not acceptable. A person, if he wants to get appointment to the post like Police-patil, he needs to be of good moral character. For the present purpose, the circumstance that unless complaint is given by particular person cognizance of offence cannot be taken is not relevant.

12. MAT has the power to cancel and set aside such appointment. No case is made out for interference in the decision of MAT. So, the petition stands dismissed. On the request made by the learned counsel for the petitioner, time of four weeks is given to the petitioner to challenge the order. Till then the respondents are to maintain status-quo.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/