

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 1202 OF 2015

Yashwant Devsing Chavan ... Petitioner

V/s.

The State of Maharashtra & ors. ... Respondents

Mr. Sham V. Walve a/w. Mr. Swapnil V. Walve for the petitioner.

Mr. V.N. Sagare, AGP for the State.

**CORAM : NARESH H. PATIL AND
A.S. GADKARI, JJ.**

23rd February, 2015.

P.C.

The petitioner was appointed in the year 2009 as Kotwal of Taluka Nandgaon, Post Dheku Khurd (Thanda), Dist. Nashik. The respondent Administration challenged the appointment of the petitioner by filing Misc. Application No. 346/2012. There was delay in approaching the Tribunal. The petition came to be dismissed by the Tribunal by an order dated 6th August, 2013 but while dismissing the application, the Tribunal observed in paragraph-8 as under:

“It is made clear that the respondent no.2 and respondent

no.4 may inquire with regard to the allegation that respondent no.1 is having three children and if that be true then the respondents may take appropriate action against the respondent no.1 for cancelling the selection and appointment.”

2. The Tahsildar, Nandgaon issued notice to petitioner to explain as to why he shall not be dismissed from service as petitioner was having three children. After hearing the petitioner, Tahsildar by an order dated 22nd December, 2014 passed order cancelling the appointment of the petitioner as Kotwal. The said order is under challenge before us.

3. Learned Counsel for the petitioner submits that Tahsildar has passed order without hearing the Complainant. The Tribunal committed error in observing in paragraph-8 of the order to enquire into the matter. The learned Counsel further submits that order passed by Tahsildar is unreasoned one. On merits the learned Counsel submits that petitioner had given on adoption third child on 31st March, 2008 i.e. one year prior to his appointment as Kotwal. Therefore, the petitioner is saved from rigors of the provisions dis-entitling the petitioner to be a Kotwal. Learned Counsel submits that the provisions of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 applies to the petitioner's post. The petitioner had submitted a declaration under rules in the form no.8 stating therein that in case of having more than two children, the petitioner would be disqualified.

4. The learned AGP submits that reasoned order has been passed in

accordance with policy of the State. No interference is warranted in the same.

5. We have perused the record and the rules of 2005. It is an admitted position by the petitioner that he has three children. One of such children was given on adoption on 31st March, 2008 one year prior to his appointment as Kotwal. Considering the policy decision taken by the State and rules framed thereof, we are of the view that even if the petitioner had given in adoption one of his child prior to his appointment as Kotwal, he cannot be protected as the same would defeat the purpose of framing of Rules of 2005. A person like the petitioner who has given his one child in adoption is not protected under the Rules of 2005 because he still would be considered as biological father of the child. The Tahsildar, Nandgaon had observed that giving a child in adoption would not save the petitioner from the mandatory requirements in law.

6. In the facts and circumstances of the case, we are not inclined to interfere in the matter in exercise of our extraordinary writ jurisdiction. Writ Petition is dismissed.

7. Learned AGP to communicate the order to the State.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)