

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

WRIT PETITION NO.534 OF 2020

Ramnath Damodhar Sasane,
Age : 40 years, Occupation : Peon,
R/o at Karetakali, Post Khanapur,
Tq.Shevgaon, Dist. Ahmednagar.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through it's Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Deputy Chief Executive Officer,
Zilla Parishad, Ahmednagar.
3. The Tahsildar,
Shevgaon, Tq.Shevgaon,
District Ahmednagar.
4. The Block Development Officer,
Panchayat Samiti, Shevgaon,
Tq.Shevgaon, Dist.Ahmednagar.
5. The Gram Sevak,
Grampanchayat Karetakali,
Tq.Shevgaon, Dist. Ahmednagar.

...RESPONDENTS

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Advocate for the Petitioner : Smt.S.G.Sonawane.

Amicus Curiae : Shri Deshpande Ajay S.

AGP for Respondents 1 and 3 : Shri S.R. Yadav Lonikar

Advocate for Respondents 2 and 4 : Shri P.P.Kothari

Advocate for Respondent 5 : Smt.M.V.Narwade

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CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 24th September, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.):-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By this petition, the petitioner seeks to challenge a show cause notice dated 26.12.2019 issued by the Gram Panchayat, Karetakali, Taluka Shevgaon, District Ahmednagar thereby, calling upon him to explain as to why action should not be initiated against him for having more than two children.

3. By an order passed by the coordinate Bench in this matter on 09.01.2020, interim relief was granted to the petitioner as under :-

“The learned counsel for the petitioner submits that the petitioner is a Peon with the Gram Panchayat. Notification dated 28/3/2005 for small family would not apply to the employees of a Gram Panchayat as the said Notification was only for Government servants and if subsequent Government Resolutions are issued applying the same to the Gram Panchayat, right of the petitioner would not be affected as the third child is born in the year 2006.

2] *Issue notice to the respondents returnable on 20/02/2020. The learned AGP waives service for*

respondent nos. 1 and 3.

3] *The petitioner shall file reply to the show cause notice. The respondent shall proceed further to take decision on the show cause notice. If the decision is adverse to the petitioner, same shall not be implemented till the next date.”*

4. The petitioner primarily has raised a ground that as he is a peon and an employee of the Gram Panchayat recruited by the Gram Sevak, he cannot be treated as an employee of the Government of Maharashtra.

5. Considering the issue raised, we found it appropriate to appoint the learned advocate Shri Ajay S. Deshpande as an Amicus Curiae.

6. The petitioner submits that a lady from the Gram Panchayat filed a complaint against the petitioner on 11.07.2019 bringing it to the notice of the Tahasildar that the petitioner has three sons and therefore, he needs to be removed from service in view of the bar imposed by the Government vide the notification dated 28.03.2005. The said notification dated 28.03.2005 introduces the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (for short, “the Rules of 2005”), which have been brought into force from 28.03.2005. The petitioner, therefore, submits that when he has been appointed on

24.03.2004 in the service of the Gram Panchayat by the Gram Sevak and the Rules 2005 were introduced on 28.03.2005, the same would not be applicable to him. The petitioner is an employee of the Gram Panchayat. He would not be covered by the Rules of 2005 and Rule 2(c) of the Rules of 2005 defines “service” to mean civil service or any other service under the Government of Maharashtra.

7. The learned advocate for respondent Nos.2 and 4/ Zilla Parishad authorities opposes this petition on the ground that the petitioner should not approach the High Court for challenging a show cause notice. Whatever are the submissions of the petitioner, they should be set out in response to the show cause notice and the petitioner is not precluded from pointing out that these 2005 Rules are not applicable to him.

8. He further submits that though it would be true to say that the petitioner is not an employee of the State Government, the Government is empowered to apply certain rules to the employees of the Village Panchayats though it does not appear to have been so done in this case.

9. The learned advocate representing respondent No.5/ Gram Panchayat, adopts the submissions put forth on behalf of

respondent Nos.2 and 4. The learned AGP also submits that when a show cause notice has been issued by an authority, entertaining a petition would not be appreciable since the law expects a proceeding to be completed unless bias or malafides are attributed to the authority which intends to investigate. In the instant case, as a complaint was lodged with the statutory authority, the least that was expected by law was the issuance of notice to the petitioner so as to consider his explanation and accordingly, take a decision which is within the framework of law.

10. The learned Amicus Curiae has tendered brief submissions before us. He has addressed a larger issue contending that this country, which has unity in diversity, though is facing numerous problems and challenges, is faced with the biggest challenge of population explosion. Placing reliance on information, he submits that this country today is believed to have a population of more than 135 crores. He refers to the steps initiated by the Government of India keeping in view the steps taken by the third world countries. In 1975, when the Government sponsored a programme with the slogan “*Hum do Hamare do*”, various schemes were introduced by the

Government to encourage people to have smaller families so as to reduce the burden of excess population on this country.

11. He then submits that though the employees of the Gram Panchayat may not be the employees of the Government of Maharashtra, considering the Panchayat Raj system introduced by the Constitutional amendment, the small family principle needs to be implemented at all levels and should be applied to all families, irrespective of falling in different strata of the society. The proviso to Article 309 of the Constitution may not be attracted insofar as the services of the Gram Panchayat employees are concerned. However, as local authorities are covered by the definition of the “State” under Article 12 of the Constitution of India and since the salaries of the employees of the Gram Panchayat are borne by the Government, which reimburses the amount from the Rural Development Department, the State is required to initiate steps to include such employees under the 2005 Rules so as to implement the small family principle throughout the country without an exception.

12. He then submits that a major chunk of the revenue is made available at the disposal of the Gram Panchayat from the public exchequer through various schemes, which are introduced

and implemented under the control of the Rural Development Department of the State. The Gram Panchayats, therefore, are not self funded authorities.

13. He has then canvassed that this Court has dealt with an issue of disqualification of an elected representative under the Maharashtra Village Panchayats Act for having more than two children, the birth of the excess children having occurred after the cut off date. He relies upon the judgment of the Full Bench of this Court (to which one of us (Ravindra V. Ghuge, J.) is a party) in the matter of *Subhash Sajesingh Gavit vs. Returning Officer, Zilla Parishad, Nandurbar and others, 2021 (1) ESC 181* (Writ Petition Nos.6993 & 6994/2008, Aurangabad Bench, decided on 17.10.2019) and canvasses that when the people's representatives even upto the grass-root levels have been brought under the purview of the amended provision to the Maharashtra Village Panchayats Act, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, introducing disqualification for increasing number of children beyond two after the cut off date, the State of Maharashtra is required to take progressive steps for making the 2005 Rules and

similar provisions applicable to every employee and citizen of this country.

14. Having considered the submissions of the learned advocates for the respective sides and the admirable assistance rendered by the learned Amicus Curiae, we do find that though this petition need not be entertained as the petitioner seeks to challenge a show cause notice, a larger issue has been addressed by the learned Amicus Curiae.

15. The learned Single Judge Bench of this Court (Coram : Ravindra V. Ghuge, J.) had an occasion to deal with the issue of population explosion in ***Gautam Rama Latke vs. The State of Maharashtra and others, 2019 (1) All MR 318.*** It has been observed in paragraph Nos.14 to 17 as under:-

“14. *The statement of objects with regard to the amendment brought into effect by the Act of XLIV of 2000 on 13/09/2000, has been placed before me. It requires no debate that this amendment was introduced in the Bombay Village Panchayats Act and the Maharashtra Zilla Parishads and Panchayat Samitis Act respectively, by the said Act of 2000. The intent and object was to discourage unnecessary growth in population and to popularize methods of family planning so as to control the growth in population. As has been said by the late Justice V.R.Krishna Iyer in one of his landmark judgments Jolly George Varghese and another Vs. The Bank of Cochin [(1980) 2 SCC 360] that 'to be poor, in this land of Daridra Narayana', excessive growth of population would*

be a heavy burden on this nation.

15. *It cannot be ignored that worldwide and especially in several Asian countries and countries from Europe, America and Scandinavia, steps are taken for encouraging family planning and birth control alongwith the use of contraceptives for controlling the growth of population. The term "family planning" is more than often used as a synonym for birth control. Family planning is as important from the point of view of the mothers' health, as well as, keeping in view the financial and economic condition of a particular family. The uncontrolled growth of population is one of the most important reason, which creates economic problems in India. Unemployment, poverty, illiteracy and growing cost of living are intricately connected with the unnecessary growth in population. It is seen all around and in all walks of life that cities, temples, markets, educational institutions, railway stations, bus stands etc., are over crowded. The Government of India has also formed a Family Planning Commission to control the increasing growth of population. Laws are introduced to curb child marriages which are said to be one of the main causes for such a growth.*
16. *India has a total area of 3287263 Sq.Kms out of which only 2973193 Sq.Kms constitutes land. China has a total area of 9596960 Sq.Kms out of which 9326410 Sq.Kms is the land area. It is projected that if effective steps are not taken for population control, India would cross the 1.5 billion mark by 2030. The population growth of India is 1.2% as in 2012-2013 and in China it is 0.5%. The population density of India is 367 persons per Sq.Km. as against 142 persons per Sq.Km in China. India is 2.58 times more dense than China. It is estimated as in July 2017 that the population of India is 1281935911 and China is 1379302771. As such, the necessity for population control, therefore, requires no debate.*
17. *Needless to state, the amendment to these two Acts in the State of Maharashtra was apparently introduced to ensure that importance of family*

planning is brought to the notice of every individual and the citizens are educated to have lesser children considering population explosion. Since the arena of politics appears to be very attractive to a large chunk of the population, the legislature, in its wisdom, thought it fit to restrict the political aspirations of those candidates who have more children, as a measure of ensuring population control and to popularize family planning from the doorstep of the peoples' representative. With this object, the disqualification was introduced under the 1958 Act and the 1961 Act. The fact situation in this case will therefore have to be visualized from the object of the State to control the growth of population."

16. The learned AGP submits that the State Government is committed to controlling the growth of population and therefore, the amendments were introduced to the Maharashtra Village Panchayats Act, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, making it mandatory to have only two children. Those candidates who have more than two children before the cut off date and there was no preordained pregnancy as has been said in ***Subhash Sajesingh Gavit (supra)***, no elected representative is permitted to occupy his position if he incurs the disqualification for having enlarged his family beyond two children or those preexisting, after the cut off date.

17. In *Maharashtra Rajya Gram Panchayat Karmachari Mahasangh vs. Secretary, Rural Development Department, 2015*

(3) *Mh.L.J. 385*, this Court has held in paragraphs 8 to 13 as under :-

- “8. The servant of the Village Panchayat is appointed U/s 61 of the Maharashtra Village Panchayat Act and would be governed by the Bombay Village Panchayats Servants (Recruitment and Conditions of Service) Rules, 1960. The said rules are framed by virtue of powers U/s 176 of the Maharashtra Village Panchayats Act. The said rules regulate the qualification, eligibility, appointments, condition of service etc. of the employees of Village Panchayat. The employment of a person would be governed by the enactment under which he is appointed so also the rules framed thereunder. If the service conditions of particular employees are governed by a statute, they could only be altered or amended by another statute and in case they are governed by the statutory rules then the service conditions of such employees can be altered only by a statute or statutory rules. Pay-scale or emoluments of an employee is a part of the condition of service.
9. The grievance put forth by the petitioners is that the employee of the Grampanchayat should be paid the salaries, wages allowances and pensionary benefits on par with the State Government employees and/or Zilla Parishad employees or the Municipal Council employees functioning in the respective cadres. The State Government has clarified that on and from 1.11.2005, the Government of Maharashtra has discontinued the pension scheme to all its employees employed after 1.11.2005.
10. The State has clarified that none of the employee of Village Panchayat shall get less than the minimum wages and the State Government has also taken up the responsibility to contribute 50% of the burden of the minimum wages paid to the Village Panchayat Employees.

11. *Recently, vide Government Resolution dated 7.8.2013, the Government has revised the minimum wages to be paid to the Village Panchayat employees. The Government of Maharashtra has also enacted the Maharashtra Grampanchayat (Employees) Provident Fund Rules, wherein benefits of the provident fund scheme have been bestowed upon the employees through the Village Panchayats for their future welfare. The Government has also issued Government Resolution dated 19.8.2005, wherein 10% of the Grade C and D posts of Zilla Parishad that fall vacant in a year have been reserved for the Village Panchayat employees of the respective Districts and benefit of age relaxation upto 45 years have also been given to these employees and for that purpose has also prepared a common seniority list. It is clear that employee of Village Panchayat would not be getting less than the minimum wages howsoever small the Village Panchayat is.; Even this Court in W.P.No.2893/1986, had directed the payment of minimum wages to the Grampanchayat employees. The said judgment is upheld by the Apex Court. It is clarified by the State that the said orders are complied and minimum wages are being paid to all the employees of the Village Panchayats.*
12. *Reliance placed by the petitioner on the judgment of the Apex Court in a case of "State of Gujarat and another Vs. Raman Lal Keshav Lal Soni and others" reported in (1983) 2 Supreme Court Cases 33, would not be of any assistance. The Apex Court was dealing with the payment of a Government servant who was sent on deputation to work with the Village Panchayat. Moreover, the Gujarat Panchayat Act, 1961 is in no way similar to the Maharashtra Village Panchayats Act, 1958. In Maharashtra, Maharashtra Village Panchayats Act, 1958 is exclusively meant for the Village Panchayats only, whereas the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 governs all aspects relating to Zilla Parishads and Panchayat Samitis, whereas in Gujarat State, Gujarat Act, 1961 covers whole structure of the*

Panchayat Raj system from Zilla Parishad, Panchayat Samiti to Village Panchayat level. In Gujarat State, there exist Panchayat Service which is governed by the Gujarat Panchayat Rules. These rules provide for equation of posts, fixation of seniority, scales of pay and allowances for its employees. The employees working in the service are transferable between the District and hence, the condition of service are common to all employees and posts in all levels of Panchayat bodies. In Maharashtra State, the Maharashtra Village Panchayat Act, 1958 deals exclusively with the Village Panchayats. The employees are not transferable from one Village Panchayat to another. The employees are employed by the Village Panchayats as per their requirements. The Maharashtra Zilla Parishads and Panchayat Samitis Act, deals exclusively with the Zilla Parishads and the Panchayat Samitis. The Zilla Parishad is empowered to appoint its own employees and are governed by the Rules framed under the said Act. The organisational structure, conditions of service are totally different in the State of Maharashtra and the State of Gujarat.

- 13. Pay parity or equal pay for equal work does not have mechanical application. Some similarity in duties and functions is not enough to apply the principle. If there is qualitative difference in duties, functions and responsibility in two organisations, the concept of pay parity can not applied. When there is a difference in the nature, context, quality prescribed for the job, the aspect of equal pay would not arise. The employees of Village Panchayats are not transferable from one Village Panchayat to another. The State has clarified that no similarity exist in the nature of work done by an employee of the Municipal Corporation, Municipal Council or Zilla Parishad on one hand and the employee of the village Panchayat on the other. There exist no similarity in the recruitment process of an employee of the Village Panchayat on one hand and that of the Municipal Corporation and Municipal Council or Zilla Parishad on the other hand. All employees of Municipal Corporation,*

Municipal Council, Zilla Parishads are recruited through the process of qualifying examinations, interviews and educational qualifications required for the posts are prescribed, whereas employees of Village Panchayats do not have to undergo such qualifying process and are employed solely as per the will of the elected representatives of the Village Panchayats. The quantum of functions performed by a Village Panchayat employee and a Municipal Council and Zilla Parishad employee are in no way similar. 82% of the Village Panchayats have to cater to the population of less than 3000. The quantum of work and the salary are relative to the quantum of population and tax collection. The employee of a Village Panchayat on one hand and that of a Zilla Parishad or Municipal Council on another can not be said to be similarly placed so as to claim pay parity. The Recruitment Rules of the employees of the Village Panchayats, more particularly Rule 6 lays down that the pay and allowances of a Panchayat servant shall be such, as may be fixed by the Panchayat having regard to its financial position and not exceeding the pay and allowances fixed for the Government servants or Zilla Parishad servants of corresponding category whichever is less. The petitioners have nowhere demonstrated that the nature of the work performed by the employee of a Village Panchayat is similar to that of a corresponding employee of Zilla Parishad or Municipal Council. As discussed supra, even the process of selection between the employees of Village Panchayat, Zilla Parishads and Municipal Council is different. The eligibility criteria is different.”

18. We find from the memo of the petition that there are no pleadings as regards the selection process in which the petitioner was appointed and as to what is the exact date of his appointment, though it is orally submitted that he was appointed

by the Gram Sevak on 25.03.2004. Rule 5 of the 2005 Rules prescribes that these Rules shall not be made applicable where the selection process was started before the date of commencement of these Rules.

19. The petitioner places before us a copy of the certificate dated 23.09.2021 (issued yesterday) issued by the Sarpanch declaring that the petitioner was appointed on 25.03.2004. The said communication is marked as “X” for identification. The petitioner, however, does not have an appointment order.

20. In this backdrop, we find it appropriate to hold that the competent authority which has issued the show cause notice to the petitioner on 19.08.2019, should proceed in accordance with law to conduct an enquiry as to whether, the 2005 Rules, in the light of Rule 5, can be made applicable to the petitioner and if the answer is in the affirmative, whether, the petitioner has more than two children, the excess child having been born after the applicability of the 2005 Rules. This petition is, therefore, disposed off.

21. Before we part with this matter, we deem it appropriate to address the larger issue raised by the learned

Amicus Curiae. It assumes much significance and we find it to be extremely crucial for this country to control population growth. Certain directions need to be issued to the State Government in view of Rule 6 of the 2005 Rules, which reads as under :-

“6. *Power to relax the provisions of these Rules:- Notwithstanding anything contained in these rules, Government may relax the provisions of any of these rules, under such circumstances in such manner as shall appear it to be just and reasonable and shall record the reasons for any such relaxation.*”

22. We find such rule to be not only unwarranted, but harmful for the reason that on the one hand, this country is grappling with the problem of population explosion and by introducing the 2005 Rules, the State of Maharashtra has taken a progressive step to control the problem and encourage the people to have a small family of only two children. On the other hand, these rules are not made applicable to the employees of the local authorities though similar provisions are made applicable to the persons who seek election to the Gram Panchayat, Municipality and the Zilla Parishad, by introducing the disqualification clause. In this backdrop, Rule 6 permitting the Government to relax the

mandate of small family would be counter productive. So also, these rules need to be made applicable even to the employees of the local authorities like the Gram Panchayat.

23. As such, we express our dissatisfaction and disapproval to Rule 6 of the Rules of 2005 and we request the State Government to delete Rule 6 and make these rules applicable uniformly to all employees of the Government, State instrumentalities, local authorities and local bodies, if the laudable object of controlling the growth of population is to be achieved.

24. We direct the learned Registrar (Judicial) of this Court to place a copy of this order before the Chief Secretary of the State of Maharashtra and the Principal Secretary, Rural Development Department, to initiate appropriate steps in view of our observations.

25. Rule is discharged.

kps

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)