

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

910 WRIT PETITION NO.1615 OF 2021

KACHARU BHASKAR LANDGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri B.L.Sagar Killarikar i/b.
Shri M. B. Sandanshiv
AGP for the Respondents – State : Shri A. R. Kale
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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATE : 18th FEBRUARY, 2021

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PER COURT :

1. The petitioner seeks writ of quo warranto against respondent No.5. The petitioner seeks explanation from respondent No.5 about his eligibility and qualification to hold the employment with present respondent No.4 on the ground that respondent No.5 has a third child born in the year 2008.

2. Mr. Sagar Killarikar, the learned Advocate for the petitioner strenuously contends that the Respondent No. 5 is working as a Chief Engineer with respondent No. 4 / Maharashtra State Electricity Distribution Company Limited at Aurangabad. He was appointed as a Chief Engineer by nomination. The selection process was pursuant to the advertisement. The advertisement referred to the provisions

of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005. Respondent No. 5 was ineligible even to apply for the selection process. Still the application of respondent No. 5 was accepted and was selected. The learned Advocate submits that for the same reason i.e. Respondent No. 5 has a third child born in the year 2008, he is denied the promotional post, viz. the post of Regional Director/Executive Director. The same disqualification applies to the post of Chief Engineer also. The respondents cannot be continued as a Chief Engineer as he is disqualified. The learned Advocate submits that though the petitioner may not be concerned with the employment of respondent No.5, still the same is not a consideration while entertaining the writ petition seeking writ of quo warranto. The learned Advocate relies on the judgment of the Apex Court in case of ***B.R. Kapur Vs. State of Tamil Nadu and another reported in (2001) 7 Supreme Court Cases 231***, to contend that if the appointment is illegal, the said person cannot continue to hold the post and the courts can always entertain the writ petition for seeking writ of quo warranto. There is no prohibition for entertaining the writ petition on behalf of a third person.

3. The learned Advocate relying on the judgment of the Apex Court in the case of ***Hari Bansh Lal Vs. Sahodar Prasad Mahto and others reported in (2010) 9 Supreme Court Cases 655***, submits that

in service matters also, the PIL would be maintainable so far as quo warranto is concerned. The Apex Court in the said case observed that PIL is not maintainable in service matters except by way of writ of quo warranto. In view of that it is submitted that the present writ petition is perfectly maintainable. Respondent No. 4 has adopted the Small Family Rules 2005. Once the said Rules are adopted, respondent No.5 would be holding Government office. The learned Advocate relies upon the definition of service as detail in Rule 2(c) of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005.

4. We have considered the submissions.

5. Admittedly, the petitioner is not concerned with the employment of respondent No.5 with respondent No.4. He is a stranger so far as the relationship of employer and employee between respondents No. 4 and 5 is concerned. Merely by adopting the Rules, respondent No. 5 would not become a civil servant.

6. Be that as it may, the petitioner has placed on record writ petition filed by respondent No.5 before the Principal Seat at Bombay bearing Writ Petition No. 1187/2020. In the said Writ Petition, the respondent No. 5 accepted that he has a third child born in the year

2008. The said Writ Petition was filed by respondent No. 5 seeking direction against respondent No.4 to consider his candidature for relaxation of condition as per Rule 6 of the Rules 2005. The Division Bench at the Principal Seat under its order dated 04/03/2020 disposed of the said writ petition. The Division Bench in paragraph 3 observed thus :

"3. On the aspect of relaxation we note that power exists under the rules to relax condition No.6. We also note that on 8 February 2016 when Petitioner's case for earlier appointment was considered, this rule was relaxed. While this Petition was pending an order is passed by the Respondent on 21 January 2020 rejecting the request of the Petitioner for relaxation of the Rules. There are no reasons given in this order as to why the representation is rejected particularly, when it was granted for some other post earlier. The learned Counsel for the Petitioner submitted that suitable directions be given to the Respondents to exercise these powers. In a writ jurisdiction it is not possible for us to issue a mandamus to exercise the power in a particular manner, but we do note that the Select list would expire on 8 March 2020.

4. In these circumstances it would be appropriate that the unreasoned order dated 21 January 2020 is set aside and Respondent No.1 to take a decision on the aspect of relaxation afresh by giving reasons. This exercise be carried out before 8 March 2020, the date on which Select list would expire. Our attention is drawn to Rule 29(a) of Classification and Recruitment Regulations 2005. It is thus always open under this Rule to the Respondent-authorities to exercise its power of extension if the contingency is so made out."

7. The Division Bench at the Principal Seat in the said order observed that the power exists under the Rules to relax condition No.6. The Division Bench further observed that on 08/02/2016 when

petitioner's case for earlier appointment was considered, the rule was relaxed. The said petition was between the employer and the employee. The earlier appointment that was referred to by the Division Bench is the post of Chief Engineer, which respondent No.5 is holding and for which the quo warranto is sought by the petitioner.

8. Subsequently, pursuant to the order of the Division Bench at the Principal Seat, in Writ Petition No. 1187/2020, the employer considered the request of Respondent No. 5 and while rejecting the request of the petitioner for relaxation of Rule No.6 of Rules 2005 for the post of Regional Director/Executive Engineer observed thus :

“ 8. The case was then deliberated on the following issues :-

(a) The relaxation under Rule 6 of Small Family Rules – 2005 was given to you in February 2016, when you were appointed as Chief Engineer, because these rules had not been adopted by MSEDCL till then. Nor was the Hon.H.C. order dated 11th April 2018, Nagpur Bench, Writ Petition No. 2074 of 2018, in the case of Mr. Anna s/o Jalramji Kanire Vs. the State of Maharashtra and others passed till then, which unambiguously states that the adopted child is to be counted in arriving at the total number of children of a couple.

(b) The Board in its meeting on 08th February 2016 decided to grant relaxation to you under Rule 6 of Small Family Rules-2005 and resolved to appoint you as Chief Engineer, vide BR No. 619, dated 8th February 2016 and in the same meeting adopted the Small Family Rule – 2005 wef 28th March 2005. vide the same BR.

(c) However, in the present case, it was not considered appropriate to grant you relaxation under Rule 6, because as per

the Hon. HC order dated 11th April 2018, Nagpur Bench, Writ Petition No. 2074 of 2018, it is clear that you have three children, one of whom was born in 2008, after the promulgation of Small Family Rules-2005. Also, the Small Family Rules-2005 stand adopted in MSEDCL vide BR No. 619 Dt. 08th February 2016, and were in effect during your present recruitment, unlike in your previous case, when the rules were yet to be adopted.

9. On rejoining of Shri Aseemkumar Gupta from hospital and taking over as Chairman and Managing Director, MSEDCL, the case was put up to him. It has been decided by the Competent Authority not to consider your candidature for appointment to the post of Regional Director / Executive Director, in view of the above reasons."

9. The employer observed that the Rules 2005 were adopted on 08th February 2016 and the appointment of respondent No.5 was prior to the adoption of the said Rules. As such relaxation was granted to him. The Division Bench at the Principal Seat, Bombay in Writ Petition No. 1187/2020 filed by respondent No.5, observed that powers vests with the employer to grant relaxation under Rule 6 of Rules 2005 and the said power was exercised.

10. The employer has considered the provisions of Rules 2005 and relaxed the condition exercising powers under Rule 6 for the appointment of Chief Engineer on the ground that the Rules 2005 is adopted by them, subsequent to the appointment of respondent No.5 as Chief Engineer.

11. The employer consciously exercised its power of relaxation as provided under Rule 6 of Rules 2005. The same was also observed by the Division Bench at Principal Seat in Writ Petition No.1187/2020 under its order dated 04/03/2020.

12. It is not necessary to re-enter into the said arena. In light of that, Writ Petition is disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S. V. GANGAPURWALA, J.)

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