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

WRIT PETITION NO. 2483 OF 2021

Innus Ramjan Mulla

.. Petitioner

Versus

State of Maharashtra, through
Charge Joint Direction & Ors.

.. Respondents

Mr. M. V. Thorat for the petitioner.

Mr. B. V. Samant, AGP for respondents-State.

**CORAM : DIPANKAR DATTA, CJ &
G. S. KULKARNI,J.**

DATE : AUGUST 5,2021

PC:

1. This is a writ petition directed against a judgment and order dated June 17, 2021 passed by the Maharashtra Administrative Tribunal, Mumbai (hereinafter "the Tribunal" for short) dismissing the petitioner's original application bearing O.A. No. 244 of 2016.

2. An advertisement dated December 1, 2013 was published in the daily SAKAL inviting applications from eligible candidates for appointment on several Group "C" and "D" posts. Condition no.19 of the advertisement required the aspirants for the posts to submit 'small family' certificate as

per Government notification March 28, 2005 whereas the next condition warned the aspirants that if it is detected that false documents have been submitted or relevant information hidden, appointment could be cancelled. The petitioner had applied for appointment on the post of Technical Laboratory Assistant, a Group "C" post. In spite of the clear instructions in conditions 19 and 20, the petitioner made a false declaration in his application for appointment. Although he was the father of three children, the petitioner withheld information with regard to his youngest child who was born on May 20, 2006. By suppressing the fact that he has three children, the youngest of who was born after the cut-off date, i.e., March 28, 2006, the petitioner ultimately succeeded in securing public employment. At the time of joining service, the petitioner submitted a declaration dated June 2, 2014. It is then, for the first time, the petitioner disclosed that he was the father of three children and that the youngest of them was born after March 28, 2006. By a notice dated January 13, 2016 issued by the respondent no.1, i.e., the In-charge Joint Director, Technical Education, the petitioner was informed that since his youngest child was born after March 28, 2006, he was ineligible for appointment; hence, explanation was sought as to why he should not be terminated from service with immediate effect. The defence of the petitioner was that while submitting online application for appointment on the said post, he inadvertently mentioned that he has two children. Such explanation was not considered satisfactory, leading to the respondent no.1 terminating the service of the petitioner

with effect from March 16, 2016 by an order dated February 17, 2016 on the ground that the petitioner was not eligible for appointment in terms of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter "the Rules" for short).

3. Mr. Thorat, learned advocate appearing for the petitioner assiduously argued that there was no breach of the Rules and that the order of termination was passed illegally. According to him, the cut-off date should have been March 28, 2007 and not March 28, 2006 in view of an amendment to the Rules. Next, it has been contended that the petitioner was treated to be a temporary employee by the respondent no.1 although the petitioner was appointed on a substantive basis and the rules governing temporary employees was erroneously invoked. The other contention of Mr. Thorat is that the safeguard provided by Article 311(2) of the Constitution was not extended to the petitioner and he came to be dismissed from service without an enquiry.

4. Whether or not there has been breach of the Rules is a matter which needs examination upon consideration of its terms. Rule 2(d) of the Rules defines a 'small family'. It means wife and husband including two children. As per Rule 3, notwithstanding anything contained in any rule/order/instrument regulating recruitment to Group "A" to "D" posts in Government service, the declaration of a 'small family' shall be an essential additional requirement. The first

proviso thereto ordains that a person having more than two children on the date of commencement of the Rules shall not be disqualified for appointment under Rule 3 so long as the number of children he had on the date of such commencement does not increase. The second proviso thereto, however, envisages 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 Rule 3. Rule 4 mandates a person applying for any post in any Government service to submit along with his application form a declaration in Form 'A' appended to the Rules. We may record here that no such amendment, as claimed, could be produced by Mr. Thorat when called upon by us.

5. The contention that there was no breach of the Rules is misconceived. It is undisputed that while the petitioner applied for appointment, he had three children. The first two were born on February 17, 2001 and June 20, 2003 and the third on May 20, 2006. The petitioner's family, as on March 27, 2006, i.e., one year from the date of commencement of the Rules, conformed to a 'small family'. However, with the birth of his third child on May 20, 2006, the petitioner breached the 'small family' definition for seeking appointment in Government service. The petitioner could have sought for relaxation in terms of Rule 6; however, by his own conduct, closed the window left for seeking relaxation. We, therefore, find no merit in the first contention of Mr. Thorat.

6. We now turn to the second contention, i.e., whether termination treating the petitioner as a temporary employee was justified or not. Prior to dealing with the same, it needs to be borne in mind that in the present case the petitioner's service was terminated on the ground of suppression of a relevant fact. It is preposterous that an educated individual like the petitioner, who claims to have been associated with the private sector for sixteen long years as an employee, would commit an inadvertent error while applying for public employment and thereby not disclose to the recruiting authority that he has three children. Regrettably thereby, he disowned his third child with the sole view to gain an entry into the zone of consideration by means of deceit. We are inclined to hold that the explanation offered by the petitioner that there being an inadvertent error is nothing but an afterthought to cover-up the deceit that he practiced at the inception of trying for securing public employment.

7. In **Manoj Kumar vs. Government of NCT of Delhi & anr.**, reported in (2010) 11 SCC 702, the Supreme Court in paragraph 8 held that if any candidate furnishes false or incomplete information or withholds or conceals any material information in his application, he would be debarred from securing employment and that even if such a candidate has already been appointed, his service is liable to be terminated for furnishing false information.

8. The decision in **Regional Manager, Central Bank of India vs. Madhulika Guruprasad Dahir & ors.**, reported in (2008) 13 SCC 170, is an authority for the proposition that act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud and selection of an employee conceived in deceit (having obtained appointment by producing false social status certificate) could not be saved by equitable considerations.

9. It is well known that fraud vitiates even the most solemn proceedings in any civilized system of jurisprudence. Generally speaking, in a democratic polity governed by the rule of law, perpetration of fraud by a party has to be viewed with utmost seriousness and concern and should never be condoned. The candour that was required of the petitioner while applying for public employment was sadly missing since, being the father of three children, he was aware that a true and proper disclosure would have dented his chance for consideration of his candidature for such appointment. Once it was found that on the date of his appointment he had three children but had suppressed relevant information while applying for the post, the very foundation vanished rendering his appointment illegal. The conduct of the petitioner is such that it renders him unfit to be continued in service and necessarily deserved termination of service. We are of the considered opinion that the contention under consideration has to be examined having regard to the deceit practiced by the petitioner.

10. The petitioner was on probation for six months. Although there is no clinching evidence that he was confirmed on expiry of the period of probation, we shall assume that he was confirmed in service and, therefore, treating him as a temporary employee was not quite in order. However, nothing substantial turns on it. Even if the petitioner were treated as a permanent employee, the respondent no.1 would still have been justified in terminating his service in terms of clause 20 of the advertisement. The petitioner having applied in terms of the advertisement has to be held bound by its terms. Reference to an incorrect provision does not vitiate an order so long the power is otherwise in existence. The basic facts being undisputed, the petitioner cannot succeed on such specious plea, as raised. The second contention, thus, also stands overruled.

11. We now turn to the final contention that a regular proceeding ought to have been drawn up against the petitioner. The same is squarely answered by the Supreme Court in its decision in **R. Vishwanatha Pillai vs. State of Kerala**, reported in (2004) 2 SCC 105. Since the petitioner secured appointment by practicing fraud, he cannot be considered to be a person holding a post within the meaning of Article 311 of the Constitution and, therefore, the requirement to follow the provisions thereof did not arise.

12. All the contentions that were urged by the petitioner before the Tribunal have been appropriately dealt with,

including the point as to why disciplinary proceedings against the petitioner were not required to be initiated prior to terminating his service and we find absolutely no reason to interfere.

13. The writ petition is wholly devoid of merit. The judgment and order of the Tribunal is upheld and the writ petition stands dismissed. There shall be no order as to costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)