

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15550 OF 2023

Vijay Jagannath Gawade,]
Age : 39 yrs., Occ.: Agriculturist,]
R/o. Phansawde, Tal. Sawantwadi,]
Dist. Sindhudurga.] .. Petitioner

Versus

1. Sub-Divisional Officer and]
Sub-Divisional Magistrate,]
Sawantwadi, Tal. Sawantwadi,]
Dist. Sindhudurga.]
2. The Collector, Sindhudurga,]
Dist. Sindhudurga.]
3. Additional Commissioner,]
Konkan Division, Mumbai.]
4. The State of Maharashtra] .. Respondents

Mr. Mahesh V. Rawool for the Petitioner.

Mr. P.P. Kakade, Govt. Pleader, with Mr. S.L. Babar, AGP, for the Respondents.

CORAM : A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ

DATE : 18TH DECEMBER, 2023.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. RULE. Rule made returnable forthwith and, by consent, heard learned counsel for the parties. Learned AGP waives notice for the respondents.

2. The petitioner came to be appointed as “Police Patil” initially on 29th June 2010 for a period of five years and thereafter on 31st May 2020 for a period of

ten years. On the ground that the provisions of the Maharashtra Civil Services Rules, 2005 as regards “small family” are applicable to the post of “Police Patil”, the petitioner came to be removed from the said post by an order dated 2nd June 2023 on the ground that he had more than two children. Being aggrieved, the petitioner has preferred an appeal before the Additional Commissioner (Kokan Division), Mumbai on 30th June 2023. Along with that appeal, an application for seeking stay to the order passed by the Sub-Divisional Magistrate has also been preferred. The grievance of the petitioner is that during pendency of the said proceedings, fresh process of recruitment on the post of Police Patil has been initiated.

3. The learned counsel for the petitioner submits that the provisions with regard to “small family”, as contained in the Government Resolution dated 14th September 2011 and 28th March 2005 are not applicable to the post of “Police Patil”. Though the Additional Commissioner has sought guidance in this regard from the State Government, the same has not been received, as a result of which the petitioner’s stay application has not been considered.

4. Considering the fact that the petitioner’s statutory appeal along with the stay application is pending with the Additional Commissioner, coupled with the fact that the post of “Police Patil”, that has fallen vacant with the removal of the petitioner, is now sought to be filled in, the following order would serve the ends of justice :-

- (i) Within a period of three weeks from today, the petitioner’s stay application, that has been preferred seeking stay of

the order dated 2nd June 2023, shall be considered and decided on its own merits.

- (ii) Within a further period of three weeks from that date, the petitioner's appeal challenging the order dated 2nd June 2023 shall be decided on merits.
- (iii) The process initiated for filling-in the post of "Police Patil", due to the removal of the petitioner, would be subject to outcome of the appeal preferred by the petitioner.
- (iv) It is, however, made clear that the stay application shall be decided by the Additional Commissioner (Kokan Division), Mumbai on its own merits without being influenced by any observations made in this order. All points in that regard are kept open.
- (v) To enable the stay application to be considered, the petitioner shall appear before the Additional Commissioner (Kokan Division), Mumbai on 21st December 2023.
- (vi) Parties to act on the authenticated copy of this order.

5. Rule is disposed of in the aforesaid terms.

[FIRDOSH P. POONTIWALLA, J.]

[A.S. CHANDURKAR, J.]