

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2894 of 2023

Shri Sanjay S/o Chindhu Borkar and another

Versus

The State of Maharashtra and others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.J. Thakkar, Counsel for Petitioners.

Shri A.A. Madiwale, Assistant Government Pleader for Respondent Nos.1 to 5.

Shri A.P. Sadavarte, Counsel for Respondent Nos.6 and 7.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : 8th JUNE, 2023.

P.C.:

1. **Rule.** Rule made returnable forthwith and heard the learned counsel appearing for the parties.

2. The challenge raised in this writ petition is to the common judgment of the Maharashtra Administrative Tribunal dated 31-1-2023 by which the Tribunal has directed the respondent No.2 to take necessary action to remove the present petitioners from Class-IV post.

3. The respondent Nos.6 and 7 approached the Maharashtra Administrative Tribunal by filing Original Application Nos.193 of 2018 and 194 of 2018 and making the following prayers :

“(i) Quash and set aside the final seniority list dated 02.11.2017 prepared by the Respondent No.2 and also quash and set aside the list of statement of marks dt. 14.2.2016 issued by Respondents No.2 and 3 committee;

(ii) quash and set aside the appointment order dated 28.02.2018 issued by Respondent No.2 to the Respondents No.6 to 9;

(iii) direct the Respondents to appoint the applicant on Class-IV post from Kotwal after considering the procedure mentioned in Circular dated 19.07.2001 and G.R. dated 24.02.2012;

(iv) grant any other reliefs, which will be deemed fit and proper in the facts and circumstances of the case;

(v) allow this original application with costs.”

4. It was the case of the respondent Nos.6 and 7 that the appointment of the present petitioners on the post of Peon on 28-2-2018 was bad in law for the reason that both the petitioners had more than two children on the cut-off date which was 28-3-2005 in terms of the notification of the said date issued by the General Administration Department. As per the said notification, a person having more than two children on the date of commencement of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (for short, ‘the Rules of 2005’) would be disqualified for appointment. The proviso thereto saved such appointment if a person had more than two children on the date of commencement of the said Rules. The present petitioners however did not contest the proceedings before the Tribunal and hence by the impugned judgment, the Tribunal has directed the respondent No.2 to take necessary action to remove the petitioners from Class-IV post.

5. By order dated 3-5-2023, the petitioners were directed to file an affidavit giving details of the date of birth of their children. Such affidavits are accordingly filed by both the petitioners. Undisputedly, the petitioner No.1 had a third child born on 6-7-2007, while the petitioner No.2 had a third child born on 8-6-2013 which is after the commencement of the Rules of 2005. It is thus clear that both the petitioners had more than two children after the Rules of 2005 came into force. The Tribunal was therefore justified in holding that the petitioners were not qualified for being appointed on 28-2-2018.

6. While partly allowing the Original Application, the Tribunal has directed the respondent No.2 to take necessary action to remove the respondent Nos.6 and 7 from Class-IV post. Considering the nature of relief that was sought in the Original Application, which was a declaration that the appointment of the petitioners on 28-2-2018 was bad in law, the operative order passed by the Maharashtra Administrative Tribunal is clarified by directing the respondent No.2 to take necessary steps for removal of the petitioners from the post on which they were appointed on 28-2-2018.

7. Subject to aforesaid, there is no case made out by the petitioners for interference.

8. Rule is made partly absolute with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

LANJEWAR