



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4273 OF 2024

Dr. Bhalchandra Dasarao Karande
Age: 50 years, Occu.: Service,
R/o.9/197/4, Manorama Niwas,
Vidya Nagar, Latur.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary of Higher
Education Department, Mantralaya,
Mumbai-32.
2. The Director of Higher Education
Maharashtra State, Pune.
3. The Joint Director Higher Education,
Nanded Regional Office, Nanded.
4. Maharashtra Udaygiri College,
Through its Principal,
Udgir, Dist. Latur.

.. RESPONDENTS

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Mr. R. R. Deshpande h/f Ms. Priyanka R. Deshpande, Advocate for the
petitioner.

Mr. A. M. Phule, AGP for respondent Nos.1 to 3 – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 24th APRIL, 2024.
PRONOUNCED ON : 7th MAY, 2024.**

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present petition has been filed to challenge the communication
dated 30.11.2016 by respondent No.3 to declare the Maharashtra Civil

Services (Declaration of Small Family) Rules, 2005 as well as amended/substituted Rule 14 and/or Rule 15 of the Maharashtra Civil Services (Medical Attendance) Rules, 1961 as not applicable to the case of the petitioner. Petitioner also seeks declaration that he shall not be disqualified from getting the new appointment or promotion in his service under the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 on the ground that the petitioner has three children.

2. At the threshold we have heard learned Advocate Mr. R. R. Deshpande holding for learned Advocate Ms. Priyanka R. Deshpande for the petitioner and learned AGP for respondent Nos.1 to 3 – State.

3. The facts giving rise to the present petition are that the petitioner is a Lecturer/Assistant Professor in Azad College, Ausa, District Latur since 15.06.1998. He was declared surplus and was accommodated in respondent No.4 college since 10.07.2008 for the subject of Mathematics. The petitioner was married to one Manorama and he has two children from Manorama. Son Onkar was born on 11.10.2001, whereas daughter Shital was born on 05.02.2005. Unfortunately, Manorama died on 30.01.2009. Thereafter, the petitioner has performed second marriage on 27.04.2009 with one Sangeeta. Petitioner has son by name Manesh from Sangeeta. Manesh was born on 05.02.2010. Respondent No.1 by Notification

dated 28.03.2005 made the rules of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 applicable. The said rule lays down a condition of small family declaration will have to be given by the employee of the State Government. The petitioner says that his father was seriously ill on account of renal disease. He was treated and the medical bill was submitted by the petitioner to the competent authorities for reimbursement. Respondent No.3 has declined to sanction the bill by communication dated 30.11.2016 on the ground that the petitioner is not entitled for the reimbursement in view of provisions of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as the "Small Family Rules"). Hence, this petition.

4. Learned Advocate Mr. R. R. Deshpande holding for learned Advocate Ms. Priyanka R. Deshpande has vehemently submitted that the marriage of the petitioner with Sangeeta is legal marriage. Due to the sad demise of the first wife, the petitioner was constrained to perform second marriage. The second wife of the petitioner has constitutional right of becoming mother and she cannot deprive of her natural rights. The third child is not from the same couple. It would be prejudicial to Sangeeta and Manesh if wrong interpretation of the rules is made and the petitioner is deprived from availing the facilities which are offered to the other Government servants. He relies on the

decision of this Court at Principal Seat in **Ms. Kashabai Sheshrao Wagh vs. The Zilla Parishad, Nashik and others, [Writ Petition No.7742 of 2014 dated 03.07.2019]**, wherein the rule prohibiting the third child of a deceased government servant from being appointed on compassionate ground has been declared unconstitutional. He therefore submits that the petitioner is still in service because there is no rule provided to terminate the services of the employee who came to be employed prior to 2005 and the information under the Right to Information Act dated 09.02.2021 states that such person cannot be removed from the service. It was the medical bill of the father of the petitioner, for which the petitioner was entitled for reimbursement.

5. Learned AGP strongly submitted that the intention with which the Small Family Rules were enacted was to control the exploding population. The State Government has made up that policy and it is being implemented. The petitioner cannot challenge the said provisions by misinterpreting the words. Learned AGP also submits that unless there are measures to control the population are adopted by the Government, everything will be blown out of proportion. If population increases, then it would affect the employment. It will also affect the entire social fabric. When the policy has been made for good cause, the rules for the same cannot be considered as unconstitutional.

6. The small question that is before this Court is whether the petitioner would be entitled to get reimbursement, since he has three children. It is to be noted that the Small Family Rules came into existence in 2005 and those recommendations/provisions have been made applicable since the said date of coming into force of the Act. Thereafter, there were corresponding changes in Maharashtra Civil Services Rules. Now, for getting reimbursement, the government servant is required to attach Small Family Certificate. In the case of the petitioner, he performed second marriage after the demise of his earlier wife. We would like to say that the medical reimbursement is a facility given by the Government to its employees. When it comes to reimbursement, then the person claiming such facility would be entitled to put rationale conditions. We can take a note of the fact that if treatment is taken in any private hospital, which is not notified, then upon the compliance under the Act, only certain portion is reimbursed and not entire amount that would be spent by the employee. There are reasonable restrictions those have been put as a condition. Now, after taking note of the fact that the number of population in the country is exploding, the government thought it fit to restrict the facility of giving reimbursement on account of medical expenses to certain aspects only, one of it is that the Government employee should have a small family. When it comes to the interest of larger section of society, then the individual rights will not be governing. Here, the

petitioner could not have been prohibited from performing second marriage, so also, his second wife is allowed to become mother, which she can consider as her natural right, but when it comes to the medical reimbursement, then the rules will govern. Those rules cannot be said to be unconstitutional, as it is not giving special treatment to any class of society/servants.

7. We do not agree with the interpretation that has been tried to be put on behalf of the petitioner that the condition of not having more than two children will have to be restricted between the same couple meaning thereby he wanted to say that the third child should not have been born to the same couple; here, the petitioner and Manorama. We are of the opinion that the word "same couple" cannot be so narrowed down to the names. Here, the couple means the male and the female (husband and wife, but not by name).

8. In **Ms. Kashabai Sheshrao Wagh (Supra)**, it was found that the said rule of third child was held to be unconstitutional for the reason in the given set of facts that the petitioner who was the only child would suffer the brunt of public employment being denied on the reasoning that her deceased husband was blessed with two children from the previous marriage. The facts in the said case show that the State Government prohibited employment to a person, who has begotten a third child after the cut off date i.e. 31.12.2001. The policy

decision concerning appointment on compassionate basis was of 28th March, 2001, which also contain a stipulation that appointment on compassionate basis would not be granted to the dependent of deceased government servant, who had more than three children. Therefore, those policy decision dates were taken into consideration and also the fact that there was discrimination qua the person seeking appointment on compassionate ground. Here, there is no such situation. The facility of reimbursement is to the government servant and taking into consideration the policy, having global social cause, the rule cannot be said to be unconstitutional. It is certainly applicable to the petitioner also though his second marriage is legal and the third child is out of the said second legal marriage. There is no illegality or error in communication dated 30.11.2016 and, therefore, at the threshold, the petition deserves to be dismissed. Accordingly, the writ petition stands dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm