



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8468 OF 2024

Ajit Prabhakar Vaij,]
Age : 52 yrs., Occ: Agriculturist,]
R/o: House No. 297, Bhairwadi,]
Nirawade, 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) Principal Secretary (Special)]
Home Department, Mantralaya,]
Maharashtra.] **...Respondents.**

WITH

WRIT PETITION NO. 8469 OF 2024

Mahesh Mohan Aroskar,]
Age : 46 yrs., Occ: Agriculturist,]
R/o: Aaros (Gavthan) (Gavthanwadi),]
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.]

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| 3) Additional Commissioner,
Konkan Division, Mumbai. |] | |
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| 4) Principal Secretary (Special)
Home Department, Mantralaya,
Maharashtra. |] | |
| |] | |
| |] | <u>...Respondents.</u> |

WITH
WRIT PETITION NO. 8470 OF 2024

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

Versus

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| 1) Sub Divisional Officer and
Sub Divisional Magistrate,
Sawantwadi, Tal. Sawantwadi,
Dist : Sindhudurga. |] | |
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| 2) The Collector, Sindhudurga,
Dist: Sindhudurga. |] | |
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| 3) Additional Commissioner,
Konkan Division, Mumbai. |] | |
| |] | |
| 4) Principal Secretary (Special)
Home Department, Mantralaya,
Maharashtra. |] | |
| |] | |
| |] | <u>...Respondents.</u> |

WITH
WRIT PETITION NO. 11325 OF 2024

Jitendra Gangaram Jadhav,	]	
Age : 48 yrs., Occ: Agriculturist,	]	
R/o: Aronda,	]	
Tal. Sawantwadi,	]	
Dist. Sindhudurga.	]	<u>...Petitioner.</u>

Versus

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| 1) Sub Divisional Officer and
Sub Divisional Magistrate, |] | |
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| Sawantwadi, Tal. Sawantwadi, |] | |
| Dist : Sindhudurga. |] | |
| 2) The Collector, Sindhudurga, |] | |
| Dist: Sindhudurga. |] | |
| 3) Additional Commissioner, |] | |
| Konkan Division, Mumbai. |] | |
| 4) Principal Secretary (Special) |] | |
| Home Department, Mantralaya, |] | |
| Maharashtra. |] | <u>...Respondents.</u> |

WITH
WRIT PETITION NO. 11326 OF 2024

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| Nivrutti Keshav Gawas, |] | |
| Age : 45 yrs., Occ: Agriculturist, |] | |
| R/o: House No. 42, Khalachiwadi, |] | |
| Dongarpal, Post Kalane, |] | |
| Tal. Sawantwadi, Dist. Sindhudurga. |] | <u>...Petitioner.</u> |

Versus

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| 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) Principal Secretary (Special) |] | |
| Home Department, Mantralaya, |] | |
| Maharashtra. |] | <u>...Respondents.</u> |

Mr. Mahesh V. Rawool, Mr. Sachin Gawade and Mr. Sahil S. Ghule for the Petitioners.

Mr. Y. D. Patil, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : December 18, 2024.

Judgment :

1. **Rule.** With consent, Rule made returnable forthwith and taken up for final hearing.
2. By this group of petitions, the challenge is to the order of disqualification of the Petitioners from the post of Police Patil by applying the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005. The order of Sub Divisional Officer [for short **“SDO”**] disqualifying the Petitioners was carried upto the State Government and was upheld leading to the filing of present petitions.
3. Facts in all these petitions are identical as the Petitioners are similarly placed though their date of appointment may differ. Common submissions were advanced and the petitions are being disposed of by this common judgment.
4. Undisputed facts are that the Petitioners came to be appointed in the years 2008, 2010 and 2012 by following the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 [for short **“the Police Patils Order, 1968”**]. Clause 3 of the said order prescribes the eligibility criteria for appointment of Police Patil. The eligibility for appointment did not contain any condition of compliance with the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005. In the order passed by the SDO, the only ground for the disqualification of Petitioners is by applying the Maharashtra Civil Services (Declaration of Small Family)

Rules, 2005.

5. Learned Counsel appearing for the Petitioners would submit that at the time of appointment of the Petitioners, though the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 were in existence, the eligibility criteria as contemplated under the Police Patils Order, 1968 did not prescribe any criteria of having not more than two children as per the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005. He submits it is by way of notification dated 16th August 2024 that sub-clause (f) was introduced into Clause 3 of the Police Patils Order, 1968 and therefore, the same would apply to the appointments made after August 2024. He submits that the said fact was not taken into consideration by any of the authorities and the orders are therefore vitiated.

6. *Per contra* learned AGP would not dispute the dates of appointments of Petitioners as Police Patil and that the amendment to the Police Patils Order, 1968 has been effected by notification issued on 16th August 2024. He would, however, submit that in event any disqualification is incurred, it should be open for the State Government to take appropriate steps in accordance with law.

7. I have considered the submissions and perused the records.

8. The Maharashtra Village Police Act, 1967 was enacted to consolidate and amend the law for the regulation of village police in

the State of Maharashtra. Section 5(3) of the Maharashtra Village Police Act, 1967 provided that the recruitment, remuneration and other conditions of service of Police Patils shall be as determined by the State Government by general or special order. In exercise of said powers conferred under the Maharashtra Village Police Act, 1967, the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 came to be issued. The Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 contain the eligibility criteria for appointment of persons which read thus :

“Eligibility for appointment. -- No Person shall be eligible for being appointed as a police patil who

- (a) Is under twenty five years or over forty five years of age at the time of appointment,
- (b) Has not passed the VI standard examination in a primary school or who does not possess equivalent or Higher educational qualification.
 Provided that, when no suitable candidates with this minimum qualification are available, the competent authority may appoint a candidate who has passed at least IV standard examination in a primary school,
- (c) Is not a resident of village concerned,
- (d) Is physically unfit to perform the duties of a Police patil,
 Provided that, the candidate may be required by the competent authority to undergo medical examination to determine his physical fitness, if deemed necessary.
- (e) Is adjudged by the competent authority after a summary inquiry to be of bad character or has, in the opinion of that authority, such antecedents as render unsuitable for employment as Police patil.”

9. It is clear from the eligibility criterion that there was no condition

prescribed of compliance with Maharashtra Civil Services (Declaration of Small Family) Rules, 2005, that there should not be more than two children.

10. Despite the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 coming into force, there was no amendment to eligibility Clause contained in the Police Patils Order, 1968 and for the first time by way of notification dated 16th August 2024, an additional condition was introduced in Clause 3 of the Police Patils Order, 1968 providing that at the time of appointment of Police Patil or for the renewal of appointment, the compliance will be required of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 and of various Government Resolutions and Circulars in that respect as may be issued. The issuance of notification dated 16th August 2024 would support the contention of learned Counsel appearing for the Petitioners that at the time when the Petitioners were disqualified by Application of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005, there was no such eligibility criteria.

11. There is also substance in the submission of learned Counsel for the Petitioner that the rule cannot be made applicable retrospectively. It is thus clear that the impugned order disqualifying the Petitioners is clearly unsustainable.

12. In the light of above, the Petitions succeed. The impugned order dated 10th April 2024 passed by the Principal Secretary (Special) Home Department, the order dated 2nd January 2024 passed by the Additional Commissioner and the order dated 2nd June 2023 passed by the SDO in all the appeals concerning the present Petitioners are hereby quashed and set aside. Rule is made absolute.

[Sharmila U. Deshmukh, J.]