



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

Writ Petition No. 7814 of 2019

[Shri Rakesh Deoraoji Mathure ..vs.. Shri Ashok Laxman Talekar and ors.]

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

Court's or Judge's orders

Mr. P. D. Randive, Advocate for the petitioner
Mr. P. V. Thakre, Advocate for respondent no. 1
Ms. K. P. Marpakwar, AGP for respondent nos. 2 and 3

CORAM : ANIL L. PANSARE J.

DATED : 13-09-2024

The petitioner is aggrieved by the order dated 14-8-2019 passed by the respondent no. 2 – Divisional Commissioner, Nagpur thereby dismissing the appeal filed by the petitioner against order dated 1-6-2019 passed by the Sub Divisional Officer (SDO), Umred, District Nagpur.

2. The petitioner filed compliant against the respondent no. 1, Police Patil before the SDO alleging inappropriate behaviour and for extending the family by having third child. The petitioner placed reliance upon the provisions of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as 'the Rules of 2005').

3. Rule 3 of the Rules of 2005 reads thus :

***“3. Necessity of declaration of Small Family :-
Notwithstanding anything contained in any rules or
orders or instruments made in that behalf, regulating
recruitment to Group A, B, C or D post in Government
Service or any other order or instruments made in
that behalf, the declaration of Small Family shall be
an additional essential requirement for an***

appointment to Group A, Group B, Group C or Group D post in any Government service :

Provided that, a person having more than two children on the date of commencement of these rules shall not be disqualified for appointment under these clause so long as the number of children he had on the date of such commencement does not increase :

Provided further that a child or more than one child born in a single delivery within the period of one year from the date of such a commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.”

4. As could be seen, the first proviso provides that a person having more than two children on the date of commencement of the rules shall not be disqualified for appointment under this clause so long as the number of children he had on the date of such commencement does not increase. The use of words “so long as” will mean the appointment made will not attract disqualification so long as the number of children does not increase after the commencement of the Rules of 2005. In case, the number of children increase, the appointment will attract disqualification.

5. The authorities below have dismissed the complaint on the ground that respondent no. 1 was appointed in the year 1999 and, therefore, the provisions of the Rules of 2005 are not applicable.

6. In my view, both the authorities have failed to consider the purport of Rules of 2005, particularly, Rule 3 thereof. Though the Rules of 2005 came into force with

effect from 28-4-2005, clause 3 thereof will attract disqualification to the appointment of the Government service, the moment the number of children increase after commencement of the Rules of 2005, of course subject to clause 5 thereof. In other words, the appointed person would not attract disqualification so long as the number of children he had on the date of commencement of the Act does not increase, on the other hand, the moment number of children increase, the appointment will attract disqualification.

7. These rules are applicable to Government/ Public Servant in Group A to Group D. The Division Bench of this Court in the case of *Atul Ramdas Dabare Vs. State of Maharashtra and ors. in Writ Petition No. 449/2017* on 16-3-2017 has held that Police Patil is a public servant within the meaning of the Maharashtra Village Police Patil Act, 1967.

8. At this stage, learned Assistant Government Pleader tendered across the bar copy of order dated 16-8-2024 passed by the Home Department, Mantralaya, Mumbai. Same is taken on record.

9. By the said order, the Rules of 2005 are made applicable to the appointment of Police Patil. The State Government, in exercise of powers conferred by sub-section (3) of section 5 of the Maharashtra Village Police Patil Act, 1967, has amended Sub-Rule (1) of Rule 3 of the Maharashtra Village Police Patil (Recruitment, Pay Allowances and other Conditions of Service Order), 1968 and following provision has been added as Rule 3(1)(f).

“3(1)(f)-A candidate appointed on the post of Police Patil shall required to submit an affidavit of small family at the time of appointment/renewal as per the provision of the Maharashtra Civil Services (Affidavit of Small Families) Rules, 2005 and rules made thereunder from time to time.”

As could be seen, in terms of amended provision, a candidate appointed on the post of Police Patil is required to submit an affidavit of small family at the time of appointment/renewal as per the provisions of the Rules of 2005.

10. The order dated 16-8-2024 has been brought to the notice of this Court in the present petition. This order was, however, not in force at the relevant time. In the circumstances, though recourse could have been taken to clause 3 of the Rules of 2005, since the State Government has, vide aforesaid order, expressly made the Rules of 2005 applicable to the Police Patil, it will be appropriate to remand the matter back to respondent no. 3 - Sub Divisional Officer, Umred, District Nagpur for consideration afresh.

11. Writ petition is accordingly partly allowed. Impugned orders dated 14-8-2019 passed by the Divisional Commissioner, Nagpur in Appeal No. 4/2019 and 1-6-2019 passed by the Sub Divisional Officer, Umred in Case No. 280/2019 are quashed and set aside.

12. Matter is remanded back to the Sub Divisional Officer, Umred, District Nagpur for consideration afresh in accordance with law and also in terms of what have been said in the body of the order.

13. The parties shall appear before the Sub Divisional Officer, Umred, District Nagpur on 1-10-2024.

(Anil L. Pansare, J.)

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