

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.577 OF 2025

Shrikrishna Pandurang Nalavde ... Petitioner
V/s.
Sub-Divisional Officer &
Sub-Divisional Magistrate & Ors. ... Respondents

Mr. Mahesh V. Rawool, for petitioner.

Ms. S. A. Prabhune, AGP for State – respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 10, 2025

P.C.:

1. Leave to amend to delete respondent Nos. 5 to 7 at the risk of petitioner.
2. Amendment to be carried out forthwith.
3. The present petition challenges the impugned order dated 20 July 2021, issued by the Sub-Divisional Officer, Karad, and subsequently confirmed by the Principal Secretary, Home Department of the Maharashtra Government. This order dismissed the petitioner's appeal filed under Section 10 of the Maharashtra Police Patils Appointment Order, 1968.
4. The petitioner submits that his appointment to the post of Police Patil was effectuated in reliance on a public advertisement published in a local newspaper on 23 February 2016. Accordingly,

his appointment, effective from 17 June 2016, was for a fixed tenure of five years, conforming to the procedures and criteria set forth in the Maharashtra Police Patils Appointment Order, 1968. However, on 24 March 2021, an application was instituted against him, alleging that his having more than two children rendered him ineligible to continue in the post. Pursuant to this allegation, a notice was duly served on the petitioner, to which he promptly filed his reply. Notwithstanding his response, respondent No.1 passed the impugned order on 20 July 2021 dismissing him from service on the ground of non-compliance with the prescribed statutory qualification.

5. Aggrieved by the said dismissal, the petitioner initially sought redress before the Maharashtra Administrative Tribunal. Subsequently, he pursued an appeal under Clause 12 of the Maharashtra Police Patils Appointment Order, 1968, which was summarily dismissed. In the wake of this dismissal, the petitioner advanced a second appeal before the Maharashtra Government. However, this appeal too was rejected by an order dated 10 June 2024.

6. It is incumbent upon this Court to meticulously examine whether the statutory provisions governing the appointment and subsequent removal of a Police Patil were observed in letter and spirit. Accordingly, this matter warrants a thorough judicial review of the entire administrative process, including the actions of the Sub-Divisional Officer and the subsequent confirmations by the higher authorities, in order to ascertain whether the petitioner's statutory rights have been infringed upon and whether the

impugned decisions stand justified under the applicable law.

7. The learned Advocate for the petitioner has relied upon the judgment of this Court in *Ajit Prabhakar Vaij vs. Sub Divisional Officer and Sub Divisional Magistrate & Ors.* (Writ Petition No.8468 of 2024 with connected matters, decided on 18 December 2024), submitting that in the absence of any disqualification expressly prescribed under the relevant Act or any failure to fulfill qualifications mandated by law, the petitioner cannot rightly be declared disqualified. It is submitted further that analogous contentions were advanced before this Court in Writ Petition No.8468 of 2024, wherein the Co-ordinate Bench held that, in the absence of any law or recruitment rules—such as the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 operative on the date of the petitioner’s appointment—the petitioner could not be disqualified on the ground of having more than two children.

8. At this juncture, the learned Assistant Government Pleader has drawn attention to a circular issued by the Section Officer, Home Department, Government of Maharashtra, dated 14 September 2011, and a subsequent circular dated 18 January 2023. These circulars purportedly direct that the disqualification criterion prescribed under the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005—which mandates a small family of not more than two children—be extended to the post of Police Patil.

9. It is, however, imperative to note that a circular issued by the Section Officer, in the absence of any statutory confirmation or empowerment under the Constitution, does not amount to law within the meaning of Article 12 of the Constitution of India. If the State Government intends to regulate the qualifications or disqualifications of its employees, such regulation must be enacted either through legislation or by an executive order pursuant to Article 162 of the Constitution, duly authenticated by the Governor under Article 166. In the absence of such authentication, any exercise of power by the executive, even if undertaken under Article 162, cannot be said to possess the force of law.

10. Moreover, the circular in question fails to disclose the specific source of power under the statute that authorizes the Section Officer to issue such a directive. In the absence of any explicit statutory or constitutional empowerment, a mere circular issued from within the Mantralaya does not have the capacity to promulgate a regulation under Article 12 of the Constitution of India.

11. Consistent with this, the Co-ordinate Bench of this Court previously observed that, at the time of the petitioner's appointment, no provision was operative which rendered a Police Patil disqualified on account of having more than two children as of the date of appointment.

12. It is also pertinent to observe that the petitioner's appointment was effected on 17 June 2016 for a fixed term of five years, terminating on 16 June 2021. Although the appointment

order intimates that the petitioner is eligible for continuation, such continuation is subject to the petitioner's filing of a formal application. Consequently, the decision regarding the continuation of the petitioner's appointment shall rest with the State Government. The Government is bound to determine, in accordance with law and upon receipt of the petitioner's application for continuation, whether the petitioner's service may be duly continued.

13. The writ petition stands disposed of in above terms. No order as to costs.

(AMIT BORKAR, J.)