

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4591 OF 2017

Padmavati Anil Dudhankar .. Petitioner

Versus

Commissioner, Solapur Municipal .. Respondents
Corporation & Ors.

...

Ms.B.R.Mangale for the Petitioner.

Mr.Suhas S. Inamdar for the Respondent Nos.1 to 4.

Ms.T.J.Kapre, A.G.P. with Mr.Abhijeet K. Naik, AGP for the
State/Respondent.

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CORAM: BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.
DATED : 20th JANUARY, 2025

P.C:-

1. The Petitioner was appointed on compassionate ground in place of her father, working as driver and while in permanent service of the Solapur Municipal Corporation, he demised on 31/12/2011.

The mother of the Petitioner and the widow of the employee, who was in service, accorded her No-Objection for appointing her on compassionate ground and necessary affidavits to that effect were filed.

The Petitioner, his daughter, also filed an affidavit, which she affirmed on 22/08/2013, declaring her relationship with deceased Anil Shantaram Dudhankar and identifying herself.

She gave a specific declaration that she is unmarried as on date and also affirmed that the information given by her in the affidavit is true and if it is found to be false or incorrect, she will be liable for punishment under Sections 199/200 of the Indian Penal Code and also to pay fine.

2. Based upon the application preferred and as per the policy of the Solapur Municipal Corporation, on 07/07/2015, an appointment order was issued in her favour, appointing her in the pay scale on Rs.4440-7440 with grade pay of Rs.1300/- in accordance with the Resolution passed by the Corporation on 03/07/2015, on probation for a period of one year.

The appointment order was subject to certain conditions, which include the condition of she undergoing the medical examination before she resume the post.

Clause No.8 of the appointment order categorically stipulated that pursuant of her appointment, if it is revealed that she had furnished documents pertaining to her educational qualification or other certificates/affidavits misguiding the Municipal Corporation, her services would be liable to be terminated immediately.

3. Pursuant to her appointment, a complaint was received in the office of the Commissioner, Solapur Municipal Corporation on 24/09/2015, pointing out to the Commissioner that Smt.Padmavati Anil Dudhankar, who was appointed on compassionate ground in place of deceased Anil Dudhankar, is married and she has three children, but despite this, she has given a false declaration that she is unmarried.

4. This constrained the Corporation to seek an explanation from the Petitioner and on 10/12/2015, she recorded her statement stating that she had no knowledge of law and because of illiteracy, she had filed the said affidavit.

She pleaded before the Corporation that no adverse shall be taken against her, as her entire family is dependent upon her and she is also taking care of the mother i.e. widow of the employee.

5. Since the Petitioner herself admitted that she had filed a wrong affidavit and that she had three children, at the time of her recruitment, as per the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (for short, **"Rules of 2005"**), she was ineligible to be appointed by the Corporation.

Ultimately on 04/02/2016, an order was issued putting an end to the services of the Petitioner on two counts; the first being that the appointment is in violation of the Rules of 2005, as it prohibits appointment of a person after 28/03/2006, who have three children as on the said date and on the second ground that despite being aware that she is married and having three children, she has concealed the said information and rather submitted a false affidavit for the purpose of securing the job with the Corporation and, since, the appointment was found in violation of clause 8 of the appointment order, her appointment made on compassionate ground, was put to an end w.e.f. 05/02/2016.

6. It is this order, which is assailed in the present Writ Petition and we have heard the learned counsel for the

Petitioner as well as the learned counsel representing the Respondents.

The counsel for the Respondents has heavily relied upon the affidavit-in-reply filed on behalf of the Respondents, affirmed by the Assistant Commissioner, Solapur Municipal Corporation, who had categorically stated that the Petitioner was appointed on compassionate ground on the post of “Aaya” in Health Department w.e.f. 07/07/2015, pursuant to an order of appointment being issued in her favour.

The Petitioner accepted the terms and conditions stipulated in the appointment order, which clearly indicated that if any declaration given by her is found to be untrue/false, her appointment is liable to be cancelled.

Pursuant to a complaint being received from Respondent No.5-Rajesh Nivrutti Chavan, when the Petitioner was asked to submit her statement, she categorically admitted that she is married long back and have three children.

The Petitioner also handed over the marriage invitation card, ration card and birth certificates of the three children and it was noted that the third child was born on 28/09/2006, making her ineligible for appointment on compassionate ground in terms of the Rules of 2005. In addition, it was also noted that she filed a false affidavit for the purpose of procuring the appointment, by stating that she is unmarried.

7. Perusal of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005, which were formulated in exercise of power conferred by the proviso to the Article 309 of the Constitution of India, clearly contemplated the necessity

of declaration of small family, 'small family' being defined to mean husband and wife, including two children.

Rule 3 of the Rules of 2005 clearly contemplated a declaration of small family to be an additional essential requirement for appointment to Group A, B, C or D post in any Government Service.

The proviso appended to said provision, however excluded a child or more than one child born in a single delivery within the period of one year from the date of commencement of the said Rules.

The window opened by the second proviso to Rule 3 of the Rules of 2005, therefore, excluded a child born within a period of one year from 28/03/2005, but admittedly the third child of the Petitioner was born on 28/09/2006 i.e. after expiry of the cut-off date of coming into force the Rules of 2005

The Petitioner, therefore, disqualify herself, since the third child is born to her on 28/09/2006.

8. In *Javed & Ors. Vs. State of Haryana & Ors.*¹, while upholding the validity of an identical provision included in Haryana Panchayati Raj Act, 1994, contemplating a stipulation that a person having more than two living children shall be disqualified, the provision came to be tested by applying the parameters of Article 14 and Article 21 of the Constitution of India.

¹ 2003(8) SCC 369

The classification made by the impugned provisions, between the persons having more than two living children came to be distinguished from the persons not having more than two living children, by holding that they constitute two different classes and the classification is founded on an intelligible differentia clearly distinguishing one from the other. The underlying object of the provision was highlighted by categorically observing that one of the objects sought to be achieved by the legislation is popularizing the family welfare/family planning programme and the disqualification enacted by the provision seeks to achieve the objective by creating a disincentive and, therefore, the classification did not suffer from any arbitrariness, as the number of children, namely, two, is based on legislative wisdom and merely because there could have been more or less, was not a matter for interference as it remain within the domain of the policy to be formulated by the State Government. Once such a provision has been upheld, the declaration in the Rules of 2005, which is situated on the same footing, also cannot be said to be bad or arbitrary for the very same reasoning, which was recorded by Their Lordships of the Hon'ble Apex Court in *Javed & Ors.* (supra).

9. Another reason, which we found in the impugned order is about the fraud being played by the Petitioner and reliance being placed on clause 8 of the appointment order, which clearly stipulated that if a declaration given by the Petitioner, subsequent to her appointment, is found to be false, she would be liable for an action and on finding that she had filed an affidavit, declaring herself to be unmarried, but upon a

complaint filed by Respondent No.5, when she clearly admitted that she was married and three children were born to her, one of which being born on 28/09/2006, we do not find any reason to interfere in the impugned order.

The counsel for the Respondents has rightly placed reliance upon the decision of this Court in *Innus Ramjan Mulla Vs. State of Maharashtra, through Charge Joint Direction & Ors. (Writ Petition No.2483 of 2021 decided on 05/08/2021)*, which had somehow similar facts, as the one which are placed before us and by relying upon the decision of the Apex Court in *R. Vishwanatha Pillai Vs. State of Kerala*², since the petitioner secured appointment by practicing fraud, he was not held entitled for any protection under the protective provision in terms of Article 311 contained in the Constitution and we are in complete agreement with the observations in the said decision.

In the present case, we find that in order to secure the job, the Petitioner has resorted to fraud by submitting an affidavit, which is completely untrue and not only that, in the affidavit itself, she has given a declaration that if the information given by her in the said affidavit found to be untrue/incorrect, she would be liable for appropriate action.

10. In the wake of the above, finding no merit and substance, the Writ Petition is dismissed.

No order as to costs.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)

² (2004) 2 SCC 105