



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5685 OF 2024

1. Smt. Ganga w/o Gajanan Shelke
Aged about 35 Years, Occ-Service,
R/O Wagnakh, Tah. Warora,
Dist. Chandrapur

... PETITIONER

...VERSUS...

1. State of Maharashtra, Through
Department of Women & Child
Development, Mantralaya, Madam Kama
Marg, Through its Secretary, 400020
2. Chief Executive Officer, Zilla
Parishad, Chandrapur,
3. Project Officer (Child
Development), Integrated Child
Development Project, Warora,
Dist. Chandrapur
4. Giridhar Vishwanathji Pise,
R/o Wagnak, Tq. Warora,
Dist. Chandrapur.

...RESPONDENTS

Dr. Renuka Sirpurkar a/w Mr. K.R. Giripunje, Advocate for petitioner.
Mr. S. V. Narale, AGP for respondent nos. 1&3/State.
Mr. P.R. Karekar, Advocate for respondent no. 2.

CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.

Shubham

RESERVED ON : 23rd APRIL, 2026.
PRONOUNCED ON : 08th MAY, 2026.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The present petition filed under Article 226 of the Constitution of India, seeks to set aside the order of dismissal dated 30.07.2024, passed by the respondent no. 3. It also seeks a declaration that the Government Resolutions dated 05.08.2010 and 02.02.2023 are not binding upon the petitioner, as any retrospective application thereof violates the fundamental rights of the petitioner.

3. The facts as can be seen from the petition are as follows:

a) The petitioner got married to one Vijay Vilas Shelke on 05.06.2006, and they were blessed with a male child on 13.10.2007. Unfortunately, on 30.12.2008, the husband of the

Shubham

petitioner, namely Vijay Shelke, passed away, leaving behind the petitioner and the said son. On 27.01.2010, the petitioner applied for the post of “Anganwadi Sevika/Madatnis” with the respondent no. 2, and vide order dated 27.01.2010, she was appointed as an Anganwadi Madatnis by the Respondent No. 3, upon directions by the respondent no. 2. On 18.06.2010, i.e., after being appointed as an Anganwadi Sevika/Madatnis, the petitioner performed a second marriage. Out of the said second wedlock, the petitioner and her husband have two daughters, who were born in the years 2011 and 2014, respectively.

b) Thereafter, in the backdrop of these facts, the respondent no. 3 received a complaint on 25.09.2023 alleging that the petitioner, being a widow was appointed on the said post, but now she has remarried and has also begotten two daughters from the second wedlock. It was, therefore, stated in the complaint that the petitioner at present is having three children and has therefore violated the service rules.

Shubham

c) The petitioner was orally called upon to submit her explanation without any specific show cause. She submitted an explanation, thereby admitting that she has got three children, but also stated that the first child, i.e., the son, is born out of the wedlock from the first marriage. However, without considering the said explanation, respondent no. 3, passed an order on 30.07.2024 thereby dismissing the petitioner from the said post of “Anganwadi Madatnis” on a ground that the petitioner has three children and as per the Government Resolutions dated 12.01.2011 and 02.02.2023, the prerequisite condition of a small family is applicable for the said post and, if being infringed, the petitioner is not entitled to continue in service.

4. We have heard Dr. R. S. Sirpurkar, learned counsel for the petitioner, and Mr. S. V. Narale, learned AGP for the Respondent Nos. 1 and 3 as also Mr. P. R. Karekar, learned counsel for Respondent No. 2.

5. Learned counsel for the petitioner submits that the order impugned is without any specific show cause notice, thereby

Shubham

seriously violating the principles of natural justice. It is her further submission that, since the said order is passed without conducting any departmental enquiry, the said order cannot withstand the scrutiny of law. She further submits that the said order is passed in gross violation of the fundamental rights of the petitioner as well as the Maharashtra civil services (Declaration of Small Family) Rules, 2005 (for short 'the Rules of 2005'). By pointing out Rule 2(d) of the said Rules, the learned counsel for the petitioner submits that a small family means wife and husband, including two children. In the case in hand, the petitioner is presently married to one Gajanan Shelke, and they together have only two children, and hence it cannot be said that the petitioner has violated the condition of small family. In nutshell, she submits that the order is unsustainable in law and cannot be countenanced. Additionally, she submits that the impugned order has been passed at the behest of the respondent no. 4, just to spite vengeance against the petitioner for lodging an FIR under Section 354, 354-D, 504, 506 of Indian Penal Code, 1860. Thus, she submits that the respondent nos. 2 and 3 have misused their powers by entertaining the complaint of respondent no. 4 without considering the motive behind it.

Shubham

6. Per contra, Mr. S. V. Narale, learned AGP, submits that the Rules, and more particularly the Rules of 2005, cannot be read in such fashion as has been sought by the petitioner. It is his submission that the impugned order was passed on account of violation of the said Rules and not on the grounds of any misconduct, and therefore there is no question of issuing any show cause notice or holding a departmental enquiry, as alleged. He further submits that the fact that the petitioner is having three children has been admitted by her in the explanation submitted by her, and therefore no show cause notice or enquiry was required.

7. The learned counsel for the respondent no. 4 also adopts the submissions of the learned AGP.

8. We have considered the contentions canvassed by the learned counsel for the respective parties and, with their assistance, we have gone through the record of the matter. The Rules, namely the Rules of 2005, were brought into being by the General Administration Department of the State of Maharashtra in exercise of the powers

Shubham

conferred by the proviso to Article 309 of the Constitution of India. The said Rules clearly prescribes the declaration of a small family as one of the essential qualifications for recruitment to Group A, Group B, Group C, and Group D posts in Government Departments. It is thus clear that the said Rules would not apply to a post like Anganwadi Madatnis as they would apply specifically to the said groups in Government Departments.

9. However, the analogy of a small family, as is borne out in the said Rules, is found in a Government Resolution dated 05.08.2010 wherein Clause 2 (३) defines a small family and states that a small family, means two children and husband and wife. Clause 8 of the said Resolution specifically provides that the provision of said Government Resolution would be made applicable on the date of the Resolution, i.e., 05.08.2010. Further, Government Resolution dated 02.02.2023 is also filed on record, which more or less extends the analogy of the earlier Government Resolution dated 05.08.2010. Clause 2 (३) also provides that a small family would mean a maximum of two living children to the candidate. It further contemplates that if there are more than two children alive, the

Shubham

candidate would not be eligible for appointment, and it also further provides that if such a fact is discovered, the said candidate would be forthwith terminated from the service. This Government Resolution also provides that the provision of the said Government Resolution would apply from the date on which it is promulgated or brought into being.

10. Thus, a meaningful reading of the said Government Resolutions would reveal that the said Resolutions are expressly made prospective in nature, and there cannot be any retrospective operation of the said Government Resolutions as has been sought to be canvassed by the learned counsel for the respondents.

11. Furthermore, what is material to note is that the date of appointment of the petitioner is 27.01.2010, while the Government Resolution was brought into force on 05.08.2010, i.e., much after the petitioner was appointed. It therefore follows that, on the date when the petitioner was appointed, there was no such Government Resolution, assuming the said Government Resolution can be made applicable to the case of the petitioner. It would thus follow that, on

Shubham

the date when the petitioner was appointed, there was no Government policy specifying the service conditions for a post like that of the petitioner. Thus, altering the service conditions to her detriment by placing reliance on the Government Resolution which was issued at a subsequent point of time cannot be countenanced . Thus, the reliance placed by the respondent no. 3 on the Government Resolution dated 02.02.2023 is entirely misconceived and cannot withstand the scrutiny of law. As we have already expressed that the said Resolution, as also the Resolution dated 05.08.2010, were not brought into being when the petitioner was appointed, they cannot be made to apply retrospectively. Thus, taking aid of the said Resolutions, the termination/dismissal effected cannot be supported by any legal justification.

12. On more aspect in favour of the petitioner is that admittedly no declaration as contemplated under the Rules of 2005 was ever executed by the petitioner at any point of time.

13. The learned AGP has relied on the judgment of this Court in *Ashok Balasaheb Chaugule v. State of Maharashtra and others*

Shubham

reported in **2012(6) Mh.L.J. 782** and the judgment of this Court in the case of *Khairunisa Shekh Chand Vs. Chandrashekhar Daulatrao Chincholkar* in Writ Petition No. 2482 of 2023 to support his submission. However, in these cases, the disqualification was of a member of a Gram Panchayat on the ground of having more than two children. This is not the present case, where there is a Government policy specifying the service conditions of a persons like petitioner. The analogy which has been sought to be canvassed by the learned AGP, therefore, is without any substance and is liable to be discarded.

14. We, therefore, find considerable force in the submission of the petitioner that the termination is without any legal backing. We therefore allow the petition and set aside the impugned order. In that view of the matter, we, pass the following order.

ORDER

- i) The Writ Petition is allowed.

Shubham

ii) The order of dismissal dated 30.07.2024 passed by the respondent no. 2 is quashed and set aside.

iii) It is further directed that respondent no. 2 and 3 should reinstate the petitioner to the post of Anganwadi Madatnis within two weeks from the date of this order, along with continuity in service and all consequential benefits.

iv) It is further directed that the arrears of remuneration be paid to the petitioner within two weeks from the date of reinstatement.

15. Rule is made absolute in the aforesaid terms. The Writ petition is disposed of.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)