



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1329 OF 2026

Praful S/o. Vivek Chavan,
Aged about 33 years, Occu.: Nil,
R/o. Quarter No.C-16,
Zilla Parishad Nagar, Khadki,
Akola, District : Akola

.... PETITIONER.

// **VERSUS** //

1. State of Maharashtra through its
Secretary, General Administration
Department, Mantralaya,
Mumbai- 400 032.
2. State of Maharashtra through
Secretary, Ministry of Home Affairs,
Mantralaya, Mumbai- 32.
3. Superintendent of Police, Akola,
Office of the Superintendent of
Police, Akola.
4. Shubham S/o. Harishchandra Datey,
Aged about 28 years, Occ.: Nil,
R/o. Opp. Hedgewar Mangal Karyalaya,
Telhara, District : Akola – 444 108.

.... RESPONDENTS.

Shri Kshitij Kathale, Advocate for Petitioner.
Ms Tajwar Khan, A.G.P. for Respondent Nos. 1 to 3.

CORAM : ANIL S. KILOR AND
RAJ D. WAKODE, JJ.

DATED : MARCH 09, 2026.

P.C.

1. Heard.

2. The petitioner is one of the candidates who participated in the recruitment process for the post of Police Constable under the 'Police Child Quota', raising a challenge to the selection of the respondent No.4 on the ground that the respondent No.4 is illegitimate child, who was born from a second marriage contract by his father, without obtaining a decree of divorce from the Competent Court, from his first wife and as such, the marriage with second wife is void under Section 5(1) read with Section 11 of the Hindu Marriage Act, 1955 and therefore, the respondent No.4 is not eligible. It is further submitted that since the petitioner stood at Sr.No.1 in the wait-list he will be selected in the place of the respondent No.4. The petitioner failed in his attempt to get the relief before the Maharashtra Administrative Tribunal. Hence, the petition.

3. The above referred ground on which the challenge is raised to the selection of respondent No.4 is misconceived in light of the various judgments deciding the issue that even if such child is considered as illegitimate on the ground that the marriage was void or voidable, is entitled to be treated as legitimate.

4. The Hon'ble Supreme Court of India in the case of *Revanasiddappa v. Mallikarjun*, reported in **(2023) 10 SCC 1**, has held thus :

"18. Sub-section (1) of Section 16 provides a declaration of legitimacy ("shall be legitimate") to a child born of a void marriage, while sub-section (2) contains a deeming consequence of the legitimacy of a child ("shall be deemed to be their

legitimate child”) born of a voidable marriage in the situations envisaged in the respective provisions. Sub-section (1) governs a situation where a marriage is null and void under Section 11. Sub-section (2) deals with a situation where a decree of nullity is granted in respect of a voidable marriage under Section 12. Sub-section (1) declares that a child born from a marriage that is void under Section 11 “shall be legitimate” if such a child would have been legitimate if the marriage had been valid. The declaration of legitimacy under sub-section (1) operates whether the child is born before or after the commencement of Act 68 of 1976 which substituted the provisions of Section 16 and whether or not

- (i) a decree of nullity was granted in respect of a marriage; and*
- (ii) the marriage was held to be void otherwise than on a petition under the enactment.*

77.3. Section 16 contains an express mandate that such children are only entitled to the property of their parents and not of any other relation;

77.4. Children who are declared to be legitimate under sub-section (1) or sub-section (2) of Section 16 “cannot be discriminated against and they will be on a par with other legitimate children” and are entitled to all the rights in the property of their parents both self-acquired and ancestral;

77.5. The prohibition in Section 16(3) will apply to such children with respect to property of any person other than the parents;

77.6. With changing social norms what was illegitimate in the past may be legitimate today and Hindu law itself has not remained static with changes in society;

77.7. The HMA, 1955 is a beneficent legislation intended to bring about social reforms and hence the interpretation of Section 16(3) needs to be reconsidered;

77.8. The amended Section 16 alters the common law position that a child of a marriage which is void or voidable is illegitimate ipso jure but that benefit is available only when there is a marriage and the marriage is void or voidable in view of the HMA, 1955;

77.9. In the case of joint family property such children would be entitled to a share only in the property of their parents but cannot claim it in their own right. On the partition of ancestral property, the property falling to the share of the parents of such children is regarded as their self-acquired and absolute property, and there is no reason why such children will have no share in such property since such children are equated under the amended law with legitimate offspring of a valid marriage. However, the only limitation is that during the lifetime of their parents such children cannot ask for partition but they can exercise this right only after the death of the parent;”

5. The Hon'ble Supreme Court of India in the case of *Jinia Kotin ..vs.. Kumar Sitaram Manjh*, reported in (2003) SCC 1 730, while considering the provisions of Section 16 of the Hindu Marriage Act, 1955, has held thus :

“4. We have carefully considered the submissions of the learned counsel on either side. The Hindu Marriage Act underwent important changes by virtue of the Marriage Laws (Amendment) Act, 1976, which came into force with effect from 27-5-1976. Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled, as the case may be, of bastardizing the children born of the parties to such marriage. Polygamy, which was permissible and widely prevalent among the Hindus in the past and considered to have evil effects on society, came to be put an end to by the mandate of Parliament in enacting the Hindu Marriage Act, 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of the parents over which the innocent child had no hold or control. But, for no fault of it, the innocent baby had to suffer a permanent setback in life and in the eyes of society by being treated as illegitimate. A laudable and noble act of the legislature indeed in enacting Section 16 to put an end to a great social evil. At the same time, Section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or inheritance by such children is concerned, to the properties of the parents only.

5. So far as Section 16 of the Act is concerned, though it was enacted to legitimise children, who would otherwise suffer by becoming illegitimate, at the same time it expressly provides in sub-section (3) by engrafting a provision with a non obstante clause stipulating specifically that nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage, which is null and void or which is annulled by a decree of nullity under Section 12, “any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents”. In the light of such an express mandate of the legislature itself, there is no room for according upon such children who but for Section 16 would have been branded as illegitimate any further rights than envisaged therein by resorting to any presumptive or inferential process of reasoning, having recourse to the mere object or purpose of enacting Section 16 of the Act. Any attempt to do so would amount to doing not only violence to the provision specifically engrafted in sub-section (3) of Section 16 of the Act but also would amount to court re-legislating on the subject under the guise of interpretation, against even the will expressed in the enactment itself. Consequently, we are unable to countenance the submissions

on behalf of the appellants. The view taken by the courts below cannot be considered to suffer from any serious infirmity to call for our interference, in this appeal.”

5. Therefore, no error has been committed by the Maharashtra Administrative Tribunal in rejecting the Original Application of the petitioner by treating him a stranger to seek such relief. Hence, no interference is called for.

Accordingly, the Writ Petition is **dismissed**. No order as to costs.

(RAJ D. WAKODE)

(ANIL S. KILOR)

R.Raut.