

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 562/2015

Manohar s/o Namdev Nemnar,
Aged about 40 years, Occ. Agriculture,
R/o Mohoj, P.O. Bhadgaon,
Tah. & Distt. Buldhana.

Applicant.

Versus

- 1) State of Maharashtra
Through the Additional Chief Secretary,
Department of Home, Mantralaya,
Mumbai-32.
- 2) Sub-Divisional Officer & Chairman
of the Committee Constituted for
Selection of Police Patil 2015, Mohoj, P.O. Bhadgaon,
Tq. & Dist. Buldhana.
- 3) Sub Divisional Police Officer,
Buldhana & Member of Committee
For selection of Police Patil, 2015
Tq. and Dist. Buldhana.
- 4) Tasildar, Buldhana Member
Secretary, Committee for Selection
of Police Patil, 2015, Tq. & Dist. Buldhana.

Respondents

S/Shri S.V. Pawar, D.T. Patil, Advocates for the applicant.

Shri A.M. Ghogre, P.O. for the respondents.

**Coram :- Hon'ble Shri B. Majumdar,
Vice Chairman.**

Dated :- 6th April, 2016.

ORDER -

Heard Shri A.M. Ghogre, Id. P.O. for the respondents. There was none for the applicant when the matter was heard on 29-1-2016 and 12-2-2016 when it was closed for order. However, it was re-opened to consider the issues related to the Small Family Rules and it was taken on board on 16-2-2016. On that date again none was present for the applicant. Thereafter again on 17-2-2016 none was present. Hence, the matter is finally decided at the admission stage itself in consultation with the learned P.O.

2. The applicant has filed this O.A. as he is aggrieved that his application for the post of Police Patil has been rejected on the ground that he does not fulfil the conditions of the Small Family Rules.

3. The Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 were notified on 28-3-2005. The applicant's wife gave birth to twins on 1-5-2012. The third child, Tanuja, was born on 15-7-2015.

4. On 19-8-2015 SDO, Buldhana (R/2) issued a proclamation for filling up the post of Police Patil for the village Mohoj. The applicant applied in response to the proclamation. On 3-9-2015 R/2 published the list of candidates who had applied for the post. The applicant is shown as ineligible on the ground that his third child was

born after 28-3-2005. The applicant has challenged this list in the O.A. The applicant submits that R/2 could not have rejected his application on the ground that his third child was born after the Small Family Rules were notified on 28-3-2005. Though he has three children, two were born as twins in a single delivery on 1-5-2012 and the third child was born subsequently on 15-7-2015. Hence, the twins are required to be treated as a single entity for the purpose of the MCS (Declaration of Small Family) Rules, 2005.

5. The SDO, Buldhana in his affidavit-in-reply states thus –

“ The applicant is having twin female child in one and same delivery born on 1-5-2012 and whereas the wife of the applicant given birth to the third child on 15-6-2015. Therefore, after considering the Notification dated 28-3-2005 issued by the G.A.D. and more particularly after perusal of the Rule 2 and its Explanation (i) and Rule 3, proviso Cl-2 itself it clear that the applicant is considered to be not entitled for the post of Police Patil, as he is having three child on the date of making an application for the post of Patil ”.

6. I find that the issue requires to be adjudicated in the present O.A. is whether the applicant fulfilled the provisions of the Small Family Rules when he had applied for the post. The applicant's wife gave birth to twins on 1-5-2012. The third child was born on 15-7-2015. The Small Family Rules were notified on 28-3-2005. Thus

on the date of notification the applicant did not have any child. "Explanation (i)" of Rule 2 (Definition), it is stated as follows –

"Where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity".

7. As per this explanation, the applicant would have been entitled to count the twins as one entity if prior to the birth of the twins he already had one child.

8. The second proviso to rule 3 also deals with the issue of twins. It states as follows -

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

9. This provision will also not be applicable to the applicant as the twins as also the third child were born prior to 28-3-2005.

10. Thus we find that the applicant does not fulfil the conditions of the Small Family Rules and hence his application was rightly rejected by R/2.

11. The O.A. is therefore devoid of any merit and stands rejected.

sd/-

(B.Majumdar),
Vice Chairman