

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 619 of 2019 (S.B.)

Suryabhna Kisan Borwar,
Aged about 66 years, Occ. Agri.
r/o Katel, Tq. Saongrampur,
Dist. Buldana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home, Mantralaya, Mumbai-32.
- 2) Collector, Buldana.
- 3) Sub Divisional Officer,
Jalgaon Jamod and Chairman of Committee
Constituted for Selection of Police Patil, Katel.
- (4) deleted.
- (5) deleted.
- 6) Sau. Anjaneer Madhukar Kurwade,
Aged : adult, Occ. Housewife,
r/o Katel, Tq. Sangrampur, Dist. Buldana.

Respondents.

S/Shri A.B. Mirza, C.N. Choudhari, Advocate for the applicant.
Shri A.M. Khadatkhar, P.O. for respondent nos.1 to 3.
Shri C.A. Babrekar, Advocate for respondent no.6.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Member (J).**

Dated :- 14/12/2021.

JUDGMENT

Heard Shri A.B. Mirza, learned counsel for the applicant, Shri A.M. Khadatkar, learned P.O. for respondent nos.1 to 3 and Shri C.A. Babrekar, learned counsel for respondent no.6.

2. This is an O.A. filed by the applicant challenging the order passed by respondent no.3, dated 13/5/2019.

3. The respondent no.6 was appointed as Police Patil on 24/9/2008 of village Katel, Tq. Sangrampur, Dist. Buldana for the period of 10 years from 24/9/2008 to 23/9/2018. The respondent no.6 has obtained appointment order of Police Patil of Katel by suppressing material fact that at the relevant time of application for Police Patil and order of appointment of Police Patil, she was having three children. The applicant filed an application for recalling order of appointment as Police Patil of respondent no.6. Respondent no.3 rejected the said application on 11/7/2016. The appeal was filed before the Additional Commissioner, Amravati. Same was rejected on 23/7/2018. The tenure of respondent no.6 expired on 23/9/2018. Again she applied for re-appointment and she is re-appointed on 13/5/2019.

4. The applicant's main grievance in this O.A. is that the respondent no.6 is having three children even though she is appointed as Police Patil, therefore, the order of appointment of respondent no.6 be quashed and set aside.

5. The application is opposed by the respondent nos.1 to 3 stating that the respondent no.6 was the only eligible candidate in village Katel, Tq. Sangrampur, Dist. Buldana and therefore she was appointed for the post of Police Patil. It is contention of the respondent nos.1 to 3 that the criteria of Small Family, i.e., wife and husband including two children is not applicable to the post of Police Patil which is applicable to the employee of Group-A,B,C & D and the post of Police Patil not comes in that category it is honorarium post, therefore, there is no bar to appoint the respondent no.6 on the ground that she is having three children.

6. Heard learned counsel for the applicant and Id. P.O. and learned counsel for respondent no.6. As per the submission of respondent nos.1 to 3, the criteria of Small Family is not applicable to the post of Police Patil and therefore there is no merit in the application and it is liable to be dismissed.

7. Learned counsel for the applicant pointed out the Judgment of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.2074/2018 in case of **Mr. Anna J. Kanire Vs. State of Maharashtra & Ors.** The Hon'ble Bombay High Court held that the definition of Small Family given in Rule 2 (d) of Maharashtra Civil Services (Small Family) Rules, 2005 which reads as under –

“Rule 2 (d) “ Small family” means wife and husband including two children”

8. There is no dispute that respondent no.6 is having three children. The applicant made complaint to the respondent no.3 stating that respondent no.6 is not eligible because she is having three children. The said application was rejected on 11/7/2016. The appeal was filed before the Additional Commissioner, Amravati. The appeal was also dismissed. From reading of both the orders, it is clear that the contention of the applicant was not considered only on the ground that he made complaint belatedly. But both the Officers, i.e., the SDM and the Additional Commissioner not considered the main grievance of the applicant in respect of the definition of Small Family. It is held by the Additional Commissioner, Amravati that the Small Family rules are applicable only to the employee of Group-A,B,C & D, as per Government Notification dated 28/3/2005. The copy of Government Notification is taken on record. The definition of Small Family is given as under –

“2 (d) “Small Family” means wife and husband including two children”.

9. As per the Clause-4 of the said Notification “ a person who desires to apply for any post in Group-A,B,C & D in Government service shall submit, along with the application form, a declaration in FORM “A” appended to these rules”. From reading of Government

Notification dated 28/3/2005, it nowhere says that the person having more than two children is entitled to get the post of Police Patil.

10. The Id. counsel for applicant pointed out publication / advertisement of the post of Police Patil dated 10/7/2008 and submitted that there was no such condition in the advertisement. From reading of the advertisement in the last column, it is specifically mentioned that 'all conditions are applicable which are applicable to the Government servants'. It means that the conditions which are applicable to the Government servants of Group-A,B,C & D, those are applicable to the post of Police Patil also. Therefore, the respondent no.6 was not eligible to be re-appointed, as she was having three children on the date of re-appointment order dated 13/5/2019. The Hon'ble Bombay High Court, Bench at Nagpur in the case of **Mr. Anna J. Kanire Vs. State of Maharashtra & Ors** (cited supra) has held that petitioner who was having three children was not entitled for the post of Police Patil. The petitioner was selected as Police Patil and thereafter he was terminated on the ground that he suppressed existence of third child in the family. In the present case also the respondent no.6 suppressed about the existence of third child when re-appointment order was issued to her.

11. The Hon'ble Bombay High Court, Bench at Nagpur has held that the definition of Small Family means " wife and husband

including two children". It is applicable to the post of Police Patil also. Therefore, the order of Maharashtra Administrative Tribunal (MAT) dated 16/2/2018 dismissing the O.A. No.415/2017, has been maintained by the High Court.

12. In view of the Judgment of Hon'ble Bombay High Court, Bench at Nagpur in the case of **Mr. Anna J. Kanire Vs. State of Maharashtra & Ors** (cited supra), the respondent no.6 is not entitled to continue her post as Police Patil. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned orders dated 13/5/2019 and 31/5/2019 are hereby quashed and set aside.
- (iii) It is hereby declared that the respondent no.6 is disqualified for the post of Police Patil.
- (iv) No order as to costs.

Dated :- 14/12/2021.

(Justice M.G. Giratkar)
Member (J).

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 14/12/2021.

Uploaded on : 16/12/2021.