

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI, BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.343 OF 2014  
(Subject : Appointment)**

**DISTRICT : JALGAON**

Ravindra Ramdas Bhavsar, )  
R/o. 592, Shahu Nagar, Near Hanuman Temple, )  
Jalgaon, District Jalgaon. )

**...APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through its Additional Chief Secretary, )  
Revenue & Forest Department, )  
World Trade Centre, Cuff Parade, )  
Mumbai 50. )
2. The Collector, )  
Jalgaon District : Jalgaon. )

**.....RESPONDENTS.**

Shri Avinash Deshmukh, learned Advocate for the Applicant.

Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN  
SHRI B.P. PATIL, MEMBER(J)

DATE : 08.03.2017.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

## **J U D G M E N T**

1. Heard Shri Avinash Deshmukh, learned Advocate for the Applicant and Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 08.07.2013 of the Respondent No.1, rejecting the Applicant's request for relaxation of the requirement of "small family" under the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005.

3. Learned Counsel for the Applicant argued that the Applicant applied for the post of Clerk-Typist from Part-time Employees Category pursuant to advertisement dated 17.08.2007 issued by the Respondent No.2. The Applicant was selected from O.B.C.- Part Time Employee Category and appointment letter dated 25.02.2008 was issued. The Applicant has given a declaration that at that time he had two living children and none of his children was born after 28.03.2005. After the appointment letter was issued to the Applicant on 25.02.2008, on 26.02.2008, he informed the Respondent no.2 that his wife has given birth to third child, a daughter on 30.11.2007. The Applicant's wife has conceived in or about February 2007 before the date of issuance of the advertisement on 17.08.2007. The Respondent No.2 forwarded the case to the Respondent No.1, who have powers to relax the condition of small family under Rule 6 of the Maharashtra Civil Services (Declaration of Small Family)

Rules, 2005. Learned Counsel for the Applicant contended that the Senior Secretaries Committee, in its meeting held on 24.05.2013 has rejected the case of the Applicant without assigning any reasons for the same. This is in violation of the Principles of natural justice.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant submitted declaration in form A as per Rules 4 of the small family Rules on 27.08.2007. At that time, as per his own admission, his wife was more than six months pregnant. He already had two living children and knew that third child was expected in two-three months. He has not furnished full information in the aforesaid declaration. The Applicant is, therefore, suppressed vital information and is not eligible for any relief. Learned P.O. further contended that Rule 6 of the said Rules is an exception to the general provision, which is that a person aspiring for Government service should have a small family. It is not a matter of right to seek relaxation. The Applicant was never actually appointed to any post in Government. No notice was, therefore, required to be given to him. The Committee headed by Chief Secretary was apprised of all the facts and decided not to give any relaxation to the rules. Learned P.O. argued that there is no merit in this O.A. and it may be dismissed.

5. We find that the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 have been framed under proviso to Article 309 of the Constitution of India.

Under Rule 3, the declaration of small family is an additional essential requirement for appointment to Group A, Group B, Group C or Group D post in any Government service. A person having more than two children is disqualified from holding a post under the Government. Rule 4 provides for declaration in Form A. Paragraph 3 of the declaration reads :-

“3. I am aware that, if total number of living children are more than two due to children born after....., I am liable to be disqualified from the same post.”

The Applicant declaration was of 27.08.2007. Though he had two living children on that date, he was aware that if a third child was born after 28.03.2006 to him, he would be ineligible for appointment in the Government. Admittedly, third child was born to the Applicant on 30.11.2007. As per his declaration, he is clearly ineligible for appointment in any Government service. The Applicant has represented that his wife was pregnant when he filed the declaration. He must be fully aware of this fact, as he has contended that his wife must have conceived in or around February, 2007. He was less than truthful in disclosing full facts to the Respondent No.2. The Applicant's request for relaxation of the condition of small family under Rule 6 has been rejected by Senior Secretaries Committee. This rules reads :-

“6. Power to relax the provisions of these Rules. Notwithstanding anything contained in these rules, Government may relax the provisions of any of these rules under such circumstances and in such

manner as shall appear it to be just and reasonable and shall record the reasons for any such relaxation.”

Plain reading of this rule will make it clear that ordinarily two child norm is the rule. Relaxation is permissible for just and reasonable circumstances. We do not see any circumstances, which will justify any such relaxation. The Government is required to record reasons for granting relaxation and for not granting relaxation, as having small family is the rule. The Senior Secretaries Committee, though, not required to give any reasons not to give relaxation, appears to have considered all the relevant facts. We are of the opinion that it is not a fit case requiring Tribunal's intervention.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

**(B.P. PATIL)**  
**MEMBER(J)**

**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

**Place : Aurangabad**  
**Date : 08.03.2017**  
**Typed by : PRK**