

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.664 OF 2013
WITH
MISCELLANEOUS APPLICATION NO.303 OF 2016**

Shri Amir Hasanso Kakitkar,)
Forest Guard, presently undergoing)
Training at Training School, Shahapur,)
And having residential address at)
Post Walsang, Taluka Jath, District Sangli.) **... Applicant**

Versus

1. Government of Maharashtra,)
Through Principal Secretary)
Revenue and Forest Department,)
Mantralaya, Mumbai 400 032.)
2. Chief Conservator of Forest, Kolhapur)
Kolhapur Circle, District Kolhapur.)
3. Deputy Conservator of Forest,)
Sawantwadi Forest Division, Forest)
Bhavan, Salaiwada, Sawantwadi,)
District Sindhudurg 416 510)
4. Chief Secretary,)
Government of Maharashtra,)
Mantralaya, Mumbai.)

5. Principal Secretary,)
 General Administration Department (Service))
 Mantralaya, Mumbai.)

...Respondents

Mr. M.D. Lonkar, learned Advocate for the Applicant.

Mr. A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Shri P.N Dixit (Vice-Chairman) (A)

RESERVED ON : **22.06.2021**

PRONOUNCED ON : **29.06.2021**

PER : **Justice Mridula Bhatkar, Chairperson**

J U D G M E N T

1. The Applicant, working as Forest Guard challenges his order of termination dated 18.07.2013 issued by the Respondent No.3, Deputy Conservator of Forest. His services were terminated pursuant to the undertaking given by him under Maharashtra Civil Services (Declaration of Small Family) Rules of 2005 (hereinafter referred as 'Rules of 2005' for brevity) dated 28.06.2005. The Applicant worked in Indian Army in the capacity of Technical Assistant from 28.10.1993 till 31.12.2009. In August, 2011 the Respondent issued the Advertisement for the post of Forest Guard wherein the post for ex-servicemen was advertised. The Applicant applied for the same and after taking his physical test he was declared successful by letter dated 14.10.2011 and was further directed to produce certain

documents. By order dated 23.11.2011 he was asked to take charge. He was sent for training for the period of 6 months at the Forest Training, School, Shahapur on 06.05.2013. However, he received a show-cause notice on 01.07.2013 that why his services should not be terminated due to reply of the relevant information contemplated under 'Rules of 2005', that he was having 3 children before 2013 and his 3rd child was born on 23.02.2009.

2. It is also alleged that the Applicant has misguided the Government and obtained the appointment for which he alone is responsible. The Applicant thereafter filed this O.A praying that the 'Rules of 2005' the condition of 2 children be relaxed and notice of termination given to him be set aside and quashed. The Respondent-State filed affidavit-in-reply dated 13.09.2013 on behalf of Respondents No.1 to 3, through one Mr. Tanaji Pandurang Patil, Assistant Commissioner of Forest, Sawantwadi, office of Deputy Conservator of Forest, Sawantwadi, wherein denied all the contentions raised in the Original Application. It was stated that the Applicant though was not eligible as per the Advertisement dated 08.08.2011 and 10.08.2011 has applied for the post and has also given declaration in Form-A, (Rule 4). It is further submitted that since the applicant is not eligible he cannot be continued in the service. As he has intentionally not pointed out specifically that he is having 3 children at the stage of recruitment process, he is liable to be terminated from the service.

3. The Additional affidavit-in-reply on behalf of Respondents No.1 to 3, through Mr. Tanaji Pandurang Patil, Assistant Commissioner of Forest, Sawantwadi is filed on 17.12.2013. The Applicant filed affidavit-in-rejoinder, where the date of filing is shown on 26.03.2015. Further, affidavit-in-reply was filed through Mr. Dattatraya Laxman Thorat, Joint Secretary (Forests) office of Revenue and Forest Department, Mantralaya, Mumbai on 23.04.2015. Again the applicant filed affidavit-in-rejoinder on 18.06.2015, wherein he mentioned that at no point he has suppressed any information and he has mentioned on 25.08.2011 that he has 3 children and the last child was born on 23.02.2009. He submitted that under such circumstances he is to be given benefit of provision of relaxation of 'Rules of 2005'. The affidavit-in-sur-rejoinder dated 15.07.2015 was again filed through Mr. Dattatraya Laxman Thorat, Joint Secretary (Forests) to the said rejoinder, wherein it was mentioned that the Applicant was given opportunity of hearing by giving show cause notice. It was mentioned by the State that the word "False" is to be read on the background that the Applicant was aware that the person having more than 2 children is not entitled for the Government job. Thereafter, short affidavit dated 20.01.2016 was filed on behalf of Respondents No.4 & 5, through Shri Eknath Kashinath Gagare, Under Secretary, General Administration Department, (G.A.D.) Mantralaya, Mumbai.

4. Meanwhile, the Applicant filed M.A.No.303/2016 seeking order directing the Respondents to take decision of the representation submitted by him for exemption to the condition of 'Rules of 2005'. The State filed additional affidavit-in-reply, dated 19.03.2021 on behalf of Respondent No.1, through Shri Atul Ashok Kode, Joint Secretary, office of Revenue and Forest Department, Mantralaya, Mumbai and again the applicant filed further Additional affidavit, dated 06.04.2021.

5. The learned Advocate Mr. Lonkar has submitted that the Applicant's service was continued by the Respondent in view of the order passed by this Tribunal and he is in service since last 10 years, so removing him from the service at this stage will be a great injustice to him. In support of his submissions he relied on the judgment of the Hon'ble Supreme Court in the case of **Narender Chadha & Ors Versus Union Of India & Ors reported in 1986 (2) SCC 157**. The learned Advocate has submitted that the Applicant did not suppress the fact that he was having 3 children at the time of submitting the application and therefore the order of his termination is faulty. The Respondents ought to have considered that he has disclosed that he was having 3 children and yet he was taken in the service. Replying on Rule 6 of 'Rules of 2005' he argued that the Government has not taken proper steps for the formation of the Committee which is contemplated under Rule 6 as per Circular dated 12.02.2001 issued by the General Administration Department (G.A.D.). The subjects

which cannot be fit in the rules and which are the special subjects, then the Committee consisting of Principal Secretary headed by Chief Secretary is to be constituted and the proper procedure is to be followed as per the said Circular of 12.02.2001. Thus in absence of the compliance of the said procedure the order of rejection of the relaxation dated 03.09.2013 is illegal. The learned Counsel further submitted that if the existing provision of Rule 6 of relaxation, if not applied, then the Rule will become redundant. The Applicant submitted representation and the said representation was required to be decided by the appropriate Committee.

6. The learned P.O. while assailing submissions relied on the Additional affidavit-in-reply of Mr. Atul Ashok Kode, Joint Secretary, office of Revenue and Forest Department. He argued that the Government has passed order dated 18.07.2013 and the representation dated 09.07.2013 of the Applicant was considered and correctly rejected. By order dated 12.09.2013 the said order was communicated to the Respondents and therefore the rejection of the Government is on merit, with the approval is given by the Hon'ble Minister on 12.09.2013. He relied on the Exhibit-R1, which is the copy of the noting sanctioned by the Hon'ble Minister. The learned P.O. on facts submitted that the applicant who continued in service by virtue of the order passed by this Tribunal on 23.07.2013 and thereafter the matter could not reach. The learned P.O. further relied on the judgment dated 08.04.2021 passed by this Tribunal in

O.A.No.708/2020, Smt. Sadhana Gulhane Versus State of Maharashtra & Ors.

7. On perusal of the judgment of **Narender Chadha (supra)** we found that the Hon'ble Supreme Court in the said case was dealing with the issue of seniority and promotion of the direct recruits and promotes, where the Hon'ble Supreme Court held that, “

If adhoc promotees or appointees are allowed to continue as such for long years without being reverted or challenged, they would be deemed to have been regularised.”

Thus, the said judgment has no bearing over this matter.

8. It is admitted fact that the applicant is having 3rd child after 2006 and in the advertisement for the post of Forest Officer, the persons who are having more than two children are ineligible. The candidates who want to enter the Government service are required to give an undertaking as per Section 4 of 'Rules of 2005' which reads as follows:-

“DECLARATION
FORM-A
(See Rule 4)

I, Shri/Smt./Kum.
son/daughter/wife of Shri aged
..... years, resident of

do hereby declared as follows :-

1. That I have filled my application for the post of
2. I have (Number) living children as on today.
Out of which No. of children born after is
(mention date of birth, if any).
3. **I am aware that, if any total number of living children are more than two due to the children born after.....**

I am liable to be disqualified for the same post.

Place :

Date :

(Signature)"

Thus, as per the undertaking, if the Government servant is having more than 2 children born after 2006, then he is liable to be disqualified for the post. Thus, the applicant who is having 3 children though ineligible, applied for the post was taken in the service cannot plead that it was the responsibility of the State to verify the fact. The information about number of children is the personal information and so the individual is required to disclose accordingly. Moreover, even if the mistake is committed by any employee who verified the documents at the time of selection process, yet the candidate who is not eligible cannot claim any right on account of such mistake committed by either of the employees. Moreover the mistake was corrected by the State within a month. We rely on the judgment in O.A.No.708/2020 (supra), where we have considered laudable object of these rules in view of the uncontrollable population of our State and Country.

9. The submissions of Mr. Lonkar that constitution of appropriate committee in view of circular of 2009 are not convincing. Provision of relaxation is mentioned in the Rule 6 of 'Rules of 2005'.

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

Thus the power to relax or not to relax the condition of more than 2 children vests with the Government. It is to be noted that the circular of 2001 is not mentioned in the Rule 6. Thus it is not expected that the constitution of committee should be as per circular of 12.02.2001 only. Once the State has invoked the powers under Rule 6 and has taken a particular decision and when it is procedurally correct, this Tribunal will not interfere in the said decision.

10. Moreover 2001 is the circular and we are dealing with the Rule 6 of the 'Rules of 2005' which undoubtedly stands on higher footing and hence the power of relaxation vests only with the Government and cannot be given to any other Committee, unless it is formed under the Rule 6 of the 'Rules of 2005'.

11. The Applicant continued for 10 years in the service on account of interim stay granted by this Tribunal. We note that the old matters are taken out in special drive by the Tribunal. However, we do not want to justify the delay. Hence, Original Application is dismissed. The interim relief granted earlier accordingly stands vacated.

12. M.A.No.303/2016 is filed for directing the Respondent No.1 to consider the representation dated 22.03.2016. In view that O.A. is dismissed, M.A.No.303/2016 does not survive and the same is disposed off.

Sd/-

(P.N Dixit)
Vice-Chairman (A)

prk

Sd/-

(Mridula Bhatkar, J.)
Chairperson