MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.678/2015.

Ku. Sonal Babarao Jagtap,
Aged about 26 years,
Occ- Education,
R/o Datodi, Tehsil-Arni, Dist. Yavatmal. **Applicant.**

-Versus-.

1. The State of Maharashtra,
   Through its Secretary,
   Department of Home,
   Mantralaya, Mumbai-32.

2. The Collector,
   Yavatmal.

3. The Police Patil Selection Committee
   and Sub-Divisional Magistrate, Yavatmal.

4. Bhagyashree Anil Jagtap,
   Aged Major, Occ- Not known,
   R/o Datodi, Tehsil-Arni, Dist. Yavatmal.

5. Sapna Jitesh Raut,
   Aged Major, Occ- Not known,
   R/o Datodi, Tehsil-Arni, Dist. Yavatmal.

6. Savista Narendra Jagtap,
   Aged Major, Occ- Not known,
   R/o Datodi, Tehsil-Arni, Dist. Yavatmal. **Respondents.**

None for the applicant.
Smt. S.V. Kolhe, P.O. for the respondent Nos. 1 to 3.
Shri Vipul Bhise, Adv. for respondent No.4.
Shri D.M. Walthare, Adv. for respondent No.5.

ORIGINAL APPLICATION NO.740/2015.

Sapna Jitesh Raut,
Aged about 27 years,
Occ-Unemployed,
R/o Datodi, Tehsil-Arni, Dist. Yavatmal. **Applicant.**

-Versus-.

1. The State of Maharashtra,
   Through its Secretary,
   Department of Home,
   Mantralaya, Mumbai-32.

2. The President,Police Patil Selection Committee
   and Sub-Divisional Magistrate, Yavatmal.

3. Bhagyashree Anil Jagtap,
   Aged 28 years,
   Occ-Housewife,
   R/o Datodi, Tehsil-Arni, Dist. Yavatmal. **Respondents.**

Shri D.M. Walthare, Adv. for the applicant.
Smt. S.V. Kolhe, P.O. for the respondent Nos. 1 and 2.
Shri Vipul Bhise, Adv. for respondent No.3.

Coram:- B. Majumdar, Vice-Chairman

Dated:- 5/4th July, 2015.

Order

Heard Shri D.B. Walthare, learned counsel for the applicant in O.A. No.740/2015 and for respondent No.5 in O.A. No.678/2015, Shri Vipul Bhise, the learned counsel for respondent No.4 in O.A. No.678/2015 and respondent No.3 in O.A. No.740/2015 and Smt. S.V. Kolhe, learned P.O. for respondent Nos. 1 to 3 in O.A. No. 678/2015 and for respondent Nos. 1 and 2 in O.A. No. 740/2016.

2. As the facts on law issue involved are similar, the O.As are decided through this common order.

3. The applicants are aggrieved that they have not been appointed for the post of Police Patil. Smt. Sapna Jitesh Raut, applicant in O.A.No.740/2015 is also respondent No.5 in O.A. No. 678/2015, while Smt. Bhagyashree Anil Jagtap, who is respondent No.4 in O.A. No.678/2015 is the respondent No.3 in O.A. No. 740/2015.

4. On 10.9.2015, the Sub-Divisional Magistrate, Yavatmal (R.3) issued a proclamation for filling up the post of Police Patil for village Datodi, Tehsil Arni. In the written test held, applicant in O.A. No.678/2015 scored 26 marks out of 80 (32.5%). Respondent Nos. 4 to 6 in this O.A. scored 36 marks out of 80. Smt. Sapna Jitesh Raut, respondent No.5 in O.A. No.678/2015, and applicant in O.A. No.740/2015, was selected, being the highest scorer. Smt. Bhagyashree Anil Jagtap (R.4) in O.A. No.678/2015 and respondent No.3 in O.A. No. 740/2015 was wait-listed, being the second highest scorer.

5. It may be stated here that the applicant in O.A. No. 740/2015 gave birth to three children on 17.6.2008, 25.8.2010 and 15.4.2014. On 18.9.2015, she gave away the second child to her brother by adoption. Sometime in September / October 2015, the

applicant in O.A. No. 678/2015 and one Sheetal Jagtap submitted a complaint to respondent No.2 that the applicant in O.A. No. 740/2015, viz., Ku. Sapna Jitesh Raut was not eligible for appointment as she was the mother of three children which is violative of the Small Family Rules. Respondent No.3, after conducting an enquiry, on 7.11.2015 cancelled the selection of Ku. Sapna Jitesh Raut as she did not fulfill the provisions of the Small Family Rules, and selected in her place, Smt. Bhagyashree Anil Jagtap (R.4 in O.A. No.678/2015 and R.3 in O.A.No.740/2015), as she was in the wait list. On 9.11.2015, he issued an order of her appointment.

6. The applicant in O.A. No. 678/2015 has challenged the proclamation dated 10.9.2015, and the applicant in O.A. No. 740/2015 has challenged the above order of appointment of Smt. Bhagyashree Anil Jagtap.

7. The applicant in O.A. No. 678/2015 submitted that she fulfilled all the conditions of appointment. One Rakhi Sandeep Gadhave had not submitted non creamy layer certificate but she was allowed to appear in the written test. Sangeeta Madhav Gedam who had not submitted her non creamy layer certificate and the applicant in O.A. No. 740/2015, Sapna Raut who had three children was allowed to participate in the selection process. Thus according to her, there were several serious irregularities in the recruitment process.

8. The applicant in O.A. No. 740/2015 submitted that she fulfilled all the conditions of the proclamation and had topped in merit. As per Rule 2 (d) (ii) of the Small Family Rules, an adopted child is not be counted for the purpose of defining a small family comprising two children. Hence as she had given away her third child in adoption, respondent No.3 had wrongly cancelled her appointing holding that she did not fulfill the conditions of the Rules.

9. Respondent No.3 in his affidavit in reply submitted that the applicant in O.A. No. 678/2015 had scored less than 45% marks in the written test and hence she was not called for interview. The applicant in O.A. No. 740/2015, was selected. However on enquiry, it was found that her three children were born after 25.3.2005, the cut off date for application of the Small Family Rules. In her application, she had suppressed the fact that just one day prior to submitting of her application form, she had given away one child on adoption, which was obviously for the purpose of obtaining a government job.

10. None appeared for the applicant in O.A. No. 678/2015. On 10.6.2016 matter was adjourned at the request of Shri R.D. Sontakke, learned counsel for the applicant. However, he did not appear on the next date i.e. 13.6.2016.

11. Shri D.B. Walthare, learned counsel for the applicant in O.A.No.740/2015 mainly reiterated the submission of the applicant in the O.A.

12. Shri Vipul Bhise, learned counsel for Smt. Bhagyashree Anil Jagtap in O.A.No.678/2015 and respondent No.3 in O.A. No.740/2015 submitted that the said respondent was selected as she was next in the select list after the selected candidate (applicant in O.A. No. 740/2015) was found to be disqualified.

13. Smt. S.V. Kolhe, learned P.O. for respondent Nos. 1 to 3 in O.A. No. 678/2015 reiterated the submission of respondent No.3 in his affidavit in reply.

14. Having considered the arguments made on both sides and after going through the documents on record, I find that the applicant in O.A.No.678/2015 had scored 26 marks out of 80 (32.5%) in the written test. Vide G.R. dated 22.8.2015 which lays down guidelines for recruitment to the post of Police Patil, only a candidate who scored a minimum of 36 marks out of 80 (45%) in the written test is eligible for being called for oral test. This is also stated in the proclamation dated 10.9.2015. As the applicant did not score a minimum of 45% marks, respondent No.3 had rightly disallowed her from appearing for the interview. In the O.A., she has challenged the proclamation. However, she has not put forward any specific ground in

this behalf, least of all the above condition stipulated in the proclamation and the G.R.

15. In case of applicant in O.A. No.740/2015, undisputedly all her three children were born after 28.3.2005. The Maharashtra Civil Services (Declaration of Small Family) Rules, 1982 were notified on 28.3.2005, making declaration of a small family an essential requirement for appointment to any category of Government service. Proviso to Rule 3 states that if a person has two children as on 28.3.2005, any further addition to the family will disqualify him / her. Rule 2 (ii) states that "child" does not include a adopted child. The applicant had relied upon Rule 2 (ii) of the Rules by submitting that she had given away one of her three children by adoption. In ***Suleman Abbas s/o Chiragali Hydary V/s Pramod s/o Nandlal Yadav [2007 (5) ALL MR 255]***, Hon'ble the High Court had held that by giving away a child on adoption after the 3rd child born after the cut off date, a person cannot avoid the application of Section 16 (1) (k) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act (1965). Provisions of this section are exactly the same as in the Declaration of Small Family Rules. Hence on having given birth to a 3rd child after 28.3.2005, the applicant has failed to fulfill the conditions of this Rule, even though she had given away one of her

children by adoption. Thus as she has failed to meet the requirements of small family, she is disqualified from the Government service.

16. In view of the above, I find no merit in the O.As and the same stand rejected with no order as to costs.

sd/-
(B.Majumdar)
Vice-Chairman

pdg