

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.708 2020

DISTRICT : PUNE

Smt. Sadhana Gulhane)
Age : 33 years, Occ- Junior Clerk,)
Office of Settlement Commissioner, Pune.)
R/o. Ashwini Apartment, Kothrud Stand,)
Pune 411 038.)

...APPLICANT

VERSUS

1. State of Maharashtra,)
Through Principal Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 400 032)
2. Settlement Commissioner And Director,)
Land Records, State of Maharashtra, Pune.)
2nd floor, New Administrative Building,)
Near Vidhan Bhavan, Pune 411 001.)
3. Additional Settlement Commissioner And)
Additional Director Land Records, Pune)
Pune 411 001.)

4. Deputy Director, Land Record,)
 Pune Region, 1st floor,)
 New Administrative Building,)
 Near Vidhan Bhavan, Pune 411 001.) **...RESPONDENTS.**

Ms. Shriya Gune, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for Respondents.

CORAM : **JUSTICE MIRDULA BHATKAR, CHAIRPERSON**
SHRI P.N. DIXIT, VICE-CHAIRMAN

RESERVED ON : **01.04.2021.**

PRONOUNCED ON : **08.04.2021.**

PER : **JUSTICE MIRDULA BHATKAR, CHAIRPERSON**

J U D G M E N T

1. In this Original Application the Applicant challenges the initiation of Departmental Enquiry (D.E.) against her, on the ground that the present applicant gave birth to third child violating the Maharashtra Civil Services (Declaration of Small family) Rules, 2005 (hereinafter for brevity referred as 'Rules of 2005').

2. The Applicant joined Maharashtra Civil Services as Junior Clerk on 10.02.2009 in the office of Settlement Commissioner, Pune. The Applicant thereafter delivered first and second child till 2017. She delivered third child

on 18.12.2019. She went on leave on 20.11.2019 i.e. a month prior to her delivery. She was granted leave till 15.06.2020. She wanted to join on 15.06.2020. However, her request to join was rejected by Respondent No.2 by issuing letter dated 17.06.2020 directing not to attend the office till the decision is taken in her matter. The Respondent No.3 issued show cause notice on 28.07.2020 that why she should not be disqualified from her post under 'Rules of 2005'. The Applicant submitted her explanation on 31.07.2020. However, it was rejected by letter dated 24.08.2020 and thereafter on 11.09.2020 Respondent No.4 issued order of initiation of D.E. against the Applicant under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Hence, this application. The said application as opposed by the Respondents-State by filing the affidavit-in-reply dated 22.02.2021, through Smt. Urmila Ashok Galande, Deputy Superintendent of Land Records of Maval in the office of Deputy Director, Land Records, Pune Region, Pune.

3. The learned Counsel Ms. Shriya Gune appearing for the Applicant advanced her arguments based on two points :-

Firstly : Initiation of enquiry under the 'Rules of 2005' is illegal for want of necessary provision in the said Rules.

Secondly : Factual position in respect of the physical condition of the Applicant (lady) is required to be taken into account which led the third pregnancy.

The learned Counsel for the Applicant has submitted that disqualification under the Rules is illegal as the Rules are applicable only at the stage of recruitment or application for entry in the Government service. At the time of application the candidate should not have three children and the present applicant when she joined service she did not have a single child. Between 2009 till 2017 she delivered two children and thereafter she got pregnant in 2019 and delivered third baby on 18.12.2019. The Rules do not put restriction to have third child during the service. Thus, the Rules are applicable only at the entry level and thereafter if third child is delivered in the family, then against such Government servant neither the enquiry can be initiated, nor he or she can be held disqualified for the Government service under the 'Rules of 2005'. She submitted that the Rules are silent to that extent and while interpreting the 'Rules of 2005' the Tribunal is not free to add the words and stretch the meaning. Further, she submitted that there is no omission of any word or any point. Hence, there is no casus omissus which is to be necessarily fill-in by the Tribunal. The legislature is very clear on the point that the Rules are applicable only at the stage of recruitment and there is no bar of not having third child when the person is in the Maharashtra Civil Services. She further submitted that the applicant has filled-up the Declaration form i.e. Form-A as per Rule 4 of the Act. However, that is only for recruitment purpose and which cannot be considered as declaration for all time during the service.

4. In support of the submissions made by learned Counsel for the Applicant, she relied on the judgments of Hon'ble Supreme Court in case of ***Union Of India Versus Hansoli Devi & Ors, Appeal (Civil) No. 9477 of 1994, decided on 12.09.2002*** and also in case of ***Padmausundara Rao (Dead) & Ors Versus State Of T.N. & Ors, reported in (2002) 3 SCC 533.*** In order to elaborate her point she further pointed out that the Government Resolution (G.R.) dated 05.08.2010 issued by the Women and Child Development Department is in respect of Anganwadi Sevika employees. In the said G.R. the rules of restrictions to small family are made applicable and the declaration Form which is at Appendix-B to the said G.R. is like a FORM-A of the Rule No.4 of the 'Rules of 2005'. She further argued that, on comparison it is found that the said Appendix B is very specifically worded,

“in future if more than two children are born to me in the service then I will be disqualified from the service”.

(emphasis placed)

Had the legislature intended to apply this restriction on the birth of third child during the service then the declaration would have been worded on the same line of Appendix-B of Anganwadi Sevika G.R. However, it is not so because the Small Family Rules are in fact not applicable to the Civil Servants during the service.

5. The second leg of submission is based on the facts. The learned Counsel pointed out that the Applicant had her second delivery on 11.09.2017. She submitted that in the year 2017 the applicant delivered her second child and during the period of lactation she was conceived and therefore it was not noticed by the Applicant. The Applicant when went to her gynecologist for periodical checkup, after her second delivery her Doctor informed her about her conception. It was too late for her to go for medical termination of the pregnancy. The learned Counsel submitted that the period between second delivery and third pregnancy was very short and termination of pregnancy was not advised by the Doctor and it was also late and dangerous for mother's health i.e. applicant. The learned Counsel submitted that the applicant has clarified her physical condition through her explanation dated 30.07.2020. However, it was not considered by the Respondents.

6. The learned Counsel further in support of her submissions relied on the information given by the State on 09.02.2021 under Right to Information (RIT) to the application made by Mr. Raju Tukaram Parte, Public Information Officer and she pointed out that it is specifically informed that the Rules are not applicable to the Government employees who have joined earlier to 28.03.2005, if the third child is born to the employees. Similarly, there are no special orders available if the third child is born to the Government

employee when he or she is in service. Hence the Departmental Enquiry is illegal and be quashed and set aside.

7. The learned Presenting Officer for the Respondents while responding the arguments of learned Counsel for the Applicant has submitted that the Rules are applicable not only at the time of recruitment but throughout when the person is in the Government service. It will be absurd to say that once you enter the service, the restriction of small family is lifted and you may have more children. He submitted that in the Rules the definition of small family is given as a husband, a wife and two children. After joining the Government service the applicant is required to keep his/her family, a small family. The applicant has breached her undertaking given in FORM-A after delivering third child on 18.12.2019. The learned Advocate for the Applicant has conveniently misinterpreted the Rules and the provisions of Maharashtra Civil Services (Conduct) Rules, 1979. The learned P.O. argued that the Central Government has adopted the family planning policy and in furtherance of the same the small family policy was pressed into service by the Union as well as the State Government. On the point of object of the Rules the learned P.O. relied on the judgment of Hon'ble Supreme Court in case of ***Javed & Ors Versus State Of Haryana & Ors, reported in (2003) SCC 369.***

8. The learned P.O. heavily relied on the Rule No.4 and the declaration FORM-A of the 'Rules of 2005'. He submitted that when the Government servant joins the services, he / she is required to give a declaration that he/she has two children and if at all he /she will have more than two children, then he / she will be disqualified to remain in the service. Thus the Rules are clear on this point and there is no ambiguity. He further submitted that the applicant was absent from duty for 209 days without seeking permission or having granted leave. The applicant, though was aware of the Rules and the declaration which she has given at the time of joining of service, should not have violated the Rules. The small family is the condition of the service and therefore the respondents have rightly initiated D.E. against the applicant. The learned P.O. submitted that the Applicant has participated in the D.E. Her explanation is considered and the enquiry is at the fag end. Hence, the application be dismissed.

9. The Maharashtra Civil Services (Declaration of Small family) Rules, 2005 is the State legislation. It is useful to reproduce the Notification of all the Rules dated 28.03.2005 and declaration FORM -A :-

"GENERAL ADMINISTRATION DEPARMENT
Mantralaya, Mumbai 400 032, dated the 28th March 2005.
NOTIFICATION

CONSTITUTION OF INDIA.

No.SRV.2000/CR(17/2000)XII – In exercise of the powers conferred by the proviso to the article 309 of the Constitution of India, the Governor of Maharashtra is hereby pleased to make the following rules prescribing declaration of the small family as one of the essential qualification for recruitment of Group A, B, C and D posts in Government Department, namely :-

1. *Short title* – These rules, may be called the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005.
2. *Definitions* – In these rules, unless the context otherwise requires –
 - (a) “Declaration” means a declaration to be given by the candidate applying for Government service ;
 - (b) “Government” means the Government of Maharashtra;
 - (c) “Service” means Civil Service or any other service under Government of Maharashtra;
 - (d) “Small family” means wife and husband including two children.

Explanation – For the purposes of this clause, -

- (i) Where a couple has only one child on or before the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity;
- (ii) “Child” does not include an adopted child or children.
- (iii) Words and expression used in these rules but not defined shall have the same meaning respectively assigned to them in the Maharashtra Civil Service Rules.

3. *Necessity of declaration of Small Family.* – Notwithstanding any things contained in any rules or orders or instruments made in that behalf, regulating recruitment to Group A, B, C or D post in Government service or any other order or instruments made in that behalf, the declaration of Small Family shall be an additional essential requirement for an appointment to Group A, Group B, Group C or Group D post in any Government service :

Provided that, a person having more than two children on the date of commencement of these rules shall not be disqualified for appointment under these clause so long as the number of children he had on the date of such commencement does not increase.

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

4. *Submission of declaration.* - A person who desires to apply for any post in Group A, B, C or D in any Government Service shall submit, alongwith the application form, a declaration in FORM ‘A appended to these rules.

5. *Rules not apply.* – These rules shall not be made applicable where the selection process was started before the date of commencement of these rules.

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.”

*“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)

By order and in the name of the Governor of Maharashtra.

*Sd/-
P.K. LOKHANDE,
Deputy Secretary to Government.”*

10. The ‘Rules of 2005’ consists of only 6 Rules including the Definition Clause. The entire issue revolves around the applicability of the said rules in the event of birth of third child when the Government servant is in service. Let us understand the scheme of the Rules. The words are defined under Rule 2. Rule 3 is about the necessity of declaration of small family, for all the Government servants irrespective of appointment to Group A,

Group B, Group C and Group D post in any Government service in State of Maharashtra. The two exceptions are carved out by any of proviso to Rule 3.

(i) If there are more than two children on the date of the commencement of these rules then the person is not disqualified for appointment as long as number of children he / she had on the date of such commencement does not increase.

(ii) If the child or more than one child born in a single delivery within the period of one year from the date of such a commencement then such person shall not be taken into consideration for the purpose of disqualification mentioned in this clause.

Rule 4 is very important because the Government servant is required to submit the declaration in FORM 'A' appended to the Rules. Rule 5 states the Rules are not applicable where the selection process has started before the date of commencement of the Rules. Rule 6 states that the power to relax the provisions of Rules ultimately vests with the Government in view of the circumstances, if found to be just and reasonable for any relaxation. Thus under Rule 6 the Government in special circumstances though holding a person guilty for misconduct, may not declare him/ her disqualified and may not terminate his/her services. It is true as argued by the learned Counsel Ms. Gune the words "recruitment" and "apply" are used throughout everywhere in the Rules. The words "during the services" or "in the service period of his/ her service" are absent.

11. Rule 4 needs more deliberation. Under this Rule it is binding on the person who desires to apply for any posts in Government service to submit application form along with the declaration 'FORM-A'. The Clause 3 in the declaration FORM-A (supra), needs to be addressed. Though it is repeated it is reproduced :-

3. I am aware that, if any total number of living children are more than two due to the children born after 28.03.2006, I am liable to be disqualified for the same post."

Undoubtedly, Clause No. 3 is an undertaking not only limited to status of family at entry level, but also in future during the Government Service. While meeting this point the learned Counsel Ms. Gune has argued that the declaration cannot be read outside Section 4 and Section 4 does not say a word about the persons in service, but it only states the persons who desire to apply for any post. We agree to certain extent with the argument of learned Counsel the word "apply" is used in Section 4 and the declaration is under Section 4. However, we do not agree with her further arguments that the Rule and FORM A is not applicable and does not restrict the family of a Government servant during the period of service. We do agree that a specific word putting restrictions to maintain the small family after the appointment in the Civil Services is not available in the said Rules. However it cannot be said that the Rules are totally silent. FORM-A puts condition of small family throughout the service and constitutes a part of the Rule 4, wherein as per Clause 3 the declaration is to be necessarily read for the

future period. When the State makes Rules with a view to have a small family policy to control continuously growing population in India then to have a small family policy throughout the service period is as contemplated under the Rules. It is absurd to say that only at entry level candidate should have a small family and thereafter the said criterion of eligibility is relaxed in service. Moreover, while interpreting we get the internal help from 2nd proviso of Rule 3. The period of one year would not have been mentioned in Rule No.3 as the exception of one year is allowed from the inception of the Rules.

12. Assuming the submissions of the learned Counsel for the Applicant are correct then it may lead to casus omissus. We underline that there is no omission in view of Clause 3 of FORM-A. However even though for the sake of argument if it is accepted, we are fully justified in interpreting the Rules as a whole that Rules are applicable to the Government servants so long as he or she is in Civil Service. The restrictions not to have third child exists throughout when he or she is in service. Being a Welfare State, to have a small family is a State policy.

13. In the case of **Javed (supra)**, wherein Election in the office of Sarpanch was challenged on the ground of disqualification due to the birth of third child while holding the office. The Hon'ble Supreme Court has held that one of the objects of the enactment is to popularize Family Welfare /

Family planning program. This is consistent with the National Population Policy and mandate of Article 243 G of the Constitution of India 1949, which states about the powers, authority and responsibility of Panchayats regarding preparation of plans for economic development and social justice.

14. While interpreting, the statute must be read as a whole. There may be omissions or gap in the statute. We also rely on the judgment of the Hon'ble Supreme Court in the case of ***Padmausundara Rao (supra)*** wherein it is observed that the casus omissus cannot be supplied by the judicial interpretative process, except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. As per ***Padmausundara Rao (supra)***, the courts cannot venture upon the dangerous path of judicial legislation to supply omissions or remedy defects in matters committed to a coordinate branch of the Government. The Supreme Court in the said case has warned the judicial Tribunals not to transcend the just limits and their constitutional powers while creating casus omissus by the interpretation. However, it also says that the Courts

shall find out the intention of the legislation as expressed in the statute while interpreting the statute. In ***Padmausundara Rao (supra)*** it is held,

“Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

Thus the Courts are required to introduce the purposive interpretation to arrive at the real meaning of the words used in the statute. We are also relying on the ratio laid down in the case of ***Sultana Begum Versus Prem Chand Jain, decided on 10 December, 1996, Civil Appeal No. 5631 of 1994***, which states that to avoid any inconsistency with the service conditions at the time of recruitment or application for services and subsequent condition to remain in services are to be read harmoniously.

15. The case of ***Hansoli Devi (supra)***, the Hon'ble Supreme Court has relied on the rule stated by Tindal, CJ in Sussex Peerage case, (1844) 11 Cl & F.85, is reproduced which states,

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."

In case of ***Hansoli Devi (supra)*** the issue was regarding interpretation of Section 18 in the Land Acquisition Act, 1894. It was about delay in Section 18 and also within the meaning of Section 28-A of the Land Acquisition Act, 1894. It is further held in ***Hansoli Devi (supra)*** that it is not permissible to add words to a statute which are not there, unless on a literal construction being given a part of the statute becomes meaningless. It is further stated that at times, the intention of the legislature is found to be clear but the unskillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective.

16. In the present rules there is no issue of any surplus or additional words, but a specific provision stating that these rules are also applicable to the Government servant in-service is absent except in Clause 3 of FORM-A under Rule 4. True that such addition would have cleared more specifically any doubts in the mind of the reader. However, one has to understand that

the declaration in FORM-A is required to be given by the person who desires to join the Government service. The declaration speaks about the eligibility criterion of the candidates that he/she should not have more than 2 children when he/she applies. Thus, the candidate is required to make declaration about a particular status of the family and he/ she is obviously bound to maintain the same status in future in service. If a person at the time of entry level is having two children and after joining the services he/she desires to have three/ four children, then it will frustrate the object of the 'Rules of 2005' and will defeat the Small Family Policy. When a particular declaration is made about a particular status at entry level, it is legitimately expected that the person is going to maintain the same status in future in keeping the object of such declaration in mind. It is a restriction on Government servant not to increase the number of family members more than two when he/she is in service.

17. We have perused the declaration FORM-A filled-up by the Applicant in 2009, when she joined the services. Thus the Applicant is bound by the undertaking given by her at the time of her entry in the service. It is logical and hence she is not estopped from taking stand that she is not disqualified after the birth of 3rd child during the service. It is expected that she should keep the same status of her family in future and so that the Rules can be made applicable in true meaning and spirit.

18. We agree that in the Appendix-B in Anganwadi Sevika, G.R. dated 05.08.2010, is more specific than what is worded in Clause 3 of FORM-A of the Rules. However, we cannot in any manner read that the declaration, the way it is worded is not an undertaking given for the present and also future. Whatever information is given by the Deputy Secretary under the Right to Information is not so correct. The information given under RTI cannot be considered for interpretation of the statute. It is merely an understanding of a person who furnishes information and thus we do not give any weightage to this information while interpreting the Rules.

19. The Applicant has delivered 2nd child on 11.09.2017 and 3rd child on 18.12.2019. Thus there was a period of nearly 1 year and 6 months. The Applicant may have conceived in the month of February, 2019 or March, 2019. Hence, it is difficult to believe, without any proof or supporting medical documents, that the Applicant did not have her periods /menstruation when she was having lactation. In support of the submissions, no medical proof or documents are produced by the Applicant on her physical condition, so also whether termination of the pregnancy of the Applicant was dangerous or it was beyond prescribed period when it was detected. Thus in absence of these documents we are constrained to hold that the applicant has willingly continued pregnancy and delivered 3rd child.

20. Before parting with the matter we record that in the present case the power to relax the rules fully vests with the State under Rule 6 of the 'Rules of 2005'. We express our appreciation for the able assistance rendered by learned Advocate Ms. Gune for the Applicant and learned Presenting Officer Shri A.J. Chougule for the Respondents.

21. Thus, for the reasons mentioned above, the present Original Application is dismissed with no order as to costs.

Sd/-

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

prk

Sd/-

(Mridula Bhatkar, J.)
Chairperson