

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.904 OF 2018

DISTRICT : PUNE

Smt. Usha Yallappa Waghmode)
R/at Shelgao, Tal.: Indapur,)
District : Pune – 413 106.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)

2. The Collector, Pune.)

3. Sub-Divisional Officer, Baramati,)
District : Pune.)

4. Smt. Surekha Ashok Shinde.)
R/at Shelgao, Tal.: Indapur,)
District : Pune – 413 106.)...**Respondents**

Mrs. Rekha Musale, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents 1 to 3.

Mr. L.S. Deshmukh, Advocate for Respondent No.4.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 05.07.2019

JUDGMENT

1. The challenge is to the order dated 28th August, 2018 whereby the Applicant is declared ineligible for the appointment to the post of Police Patil of Village Shelgao, Tal.: Indapur, District : Pune.

2. Briefly stated facts giving rise to this application are as under :-

The Applicant Smt. Usha Y. Waghmode as well as Respondent No.4 Smt. Surekha A. Shinde both are resident of Shelgao, Tal.: Indapur, District : Pune. In pursuance of Advertisement issued by Sub-divisional Officer (Respondent No.3), the Applicant as well as Respondent No.4 applied for appointment to the post of Police Patil of Village Shelgao. Accordingly, both appeared in the written as well as oral examinations. Thus, the Applicant stood first in merit and was entitled to appointment on the post of Police Patil. However, the Respondent No.4 lodged complaint on 21.05.2018 with Respondent No.3 alleging that the Applicant is not eligible for the appointment to the post of Police Patil having three children which incurred disqualification for appointment to the post of Police Patil in view of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as 'Rules 2005' for brevity). In pursuance of it, the Respondent No.3 called explanation of the Applicant and conducted enquiry. The Applicant in her explanation admits that she has three children from the wedlock, but explained that all were born before the enforcement of 'Rules 2005' which came into effect on 28th March, 2005. However, the Respondent No.3 rejected her explanation keeping reliance on population policy declared by Government vide G.R. dated 9th May, 2000 and consequently, declared the Applicant disqualified for the appointment to the post of Police Patil by order dated 28.08.2018. Being aggrieved by it, the Applicant has filed the present O.A. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

3. The Respondent No.3 – S.D.O. resisted the Applicant denying the entitlement of the Applicant for appointment to the post of Police Patil and sought to justify the impugned order. He contends that in view of population policy declared by State Government vide G.R. dated 9th May, 2000, the Applicant is disqualified, as she is having more than two children on the date of enforcement of population policy, which came into effect from 01.05.2001.

4. Smt. Rekha Musale, learned Advocate for the Applicant assailed the impugned order contending that the matter in issue was required to be examined by the Respondent No.3 in terms of 'Rules 2005' and not on the basis of population policy declared vide G.R. dated 9th May, 2000. She has pointed out that three children of the Applicant were born prior to enforcement of 'Rules 2005', and therefore, the question of disqualification does not survive. She, therefore, submits that the impugned order is totally erroneous and Applicant be appointed to the post of Police Patil.

5. Per contra, Ms. N.G. Gohad, learned P.O. for Respondents 1 to 3 sought to justify the impugned order. Whereas, Shri L.S. Deshmukh, learned Advocate for Respondent No.4 also supports the impugned order.

6. Undisputedly, in pursuance of Advertisement issued by Respondent No.3, the Applicant as well as Respondent No.4 both applied for appointment to the post of Police Patil and the Applicant had secured highest marks. Thus, she was entitled for appointment to the post of Police Patil. However, the Respondent No.4 raised objection about the eligibility of the Applicant on the ground that she has three children, and therefore, disqualified for the appointment. The Applicant has also produced Birth Certificates of her children, which are at Page Nos.21 to 23 of Paper Book. She has three children viz. Deepali born on 08.07.1995, Swapnil born on 28.08.1999 and Komal born on 05.01.2002. Thus,

there is no denying that the birth of her children is prior to enforcement of 'Rules 2005'.

7. There is no denying that the declaration of the small family is made essential qualification for recruitment to any post in Government service. The Rules viz. Maharashtra Civil Services (Declaration of Small Family) Rule, 2005 came into force w.e.f. 28th March, 2005. As per Rule 2(d), 'Small Family' means wife and husband including two children.

8. Here, it would be apposite to reproduce Rule 3, which is material in the present matter.

"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."

9. Thus, as per first proviso to Rule 3, a person having more than three children on the date of commencement of these Rules shall not be disqualified for appointment so long as the number of children he had on the date of such commencement does not increase. In other words, there should not be increase in the number of children on the commencement of these Rules i.e. 28th March, 2005 so as to incur disqualification under 'Rules 2005'. Whereas, in the present case, children were born on 08.07.1995, 20.08.1999 and 05.01.2002 respectively,

which is an admitted position. As such, there is no child born after enforcement of 'Rules 2005', so as to increase the number of children. This being the position, the Applicant cannot be said disqualified because of having three children. What is material to consider the date of birth of third child vis-à-vis the date of commencement of 'Rules 2005'. The learned Advocate for the Applicant in this behalf referred to decision of Hon'ble High Court, Bench at Nagpur in ***Writ Petition No.6791/2013 (Smt. Yojna C. Paithankar Vs. State of Maharashtra) decided on 17th June, 2014.*** In that matter, the appointment of the Applicant therein to the post of Police Patil was quashed by the Tribunal on the ground that third child was born after the commencement of 'Rules 2005'. However, the Tribunal lost sight of second proviso of Rule 3 of 'Rules 2005'. The Hon'ble High Court, therefore, set aside the order of MAT in view of proviso to Rule 3.

10. In so far as the facts of present case are concerned, admittedly, the children were born prior to commencement of 'Rules 2005', and therefore, the question of incurring any disqualification does not survive.

11. While passing impugned order, the Respondent No.3 though aware of 'Rules 2005', as seen from the impugned order, disqualified the Applicant on the basis of G.R. dated 09.05.2000. In impugned order, he held that as per the State Population Policy declared by G.R. dated 09.05.2000, family should not have more than two children. However, he lost sight that the matter was required to be examined in view of 'Rules 2005' and not on the basis of G.R. dated 09.05.2000. In view of enforcement of 'Rules 2005' w.e.f.28.03.2005, the subsequent appointments are governed by 'Rules 2005' and not by G.R. dated 09.05.2000. As such, the reliance on G.R. dated 09.05.2000 is obviously erroneous, as G.R. dated 09.05.2000 has lost its efficacy with the enforcement of 'Rules 2005'. Thus, the Respondent No.3 misdirected himself by placing reliance on G.R. dated 09.05.2000. The impugned order is, therefore, *ex-facia* erroneous and illegal.

12. The totality of aforesaid discussion leads me to sum-up that the impugned order is unsustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 28th August, 2018 is hereby quashed and set aside.
- (C) The Respondent No.3 is directed to take further steps for the appointment of the Applicant to the post of Police Patil of Village Shelgao as per Rules within a month from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 05.07.2019

Dictation taken by :

S.K. Wamanse.