

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION No. 562/2015

Manohar s/o Namdev Nemnar

Aged about 40 yrs,

Occ. Agricultur

R/o. Mohoj, Po. Bhadgaon,

Tah. & Distt. Buldhana.

APPLICANT

...VERSUS...

1. State of Maharashtra, through
The Additional Chief Secretary, Department of Home,
Mantralaya
2. Sub-Divisional Officer & Chairman Of the Committee
Constituted for Selection of Police Patil 2015,
Mohoj, P Bhadgaon,
Tah. and District-Buldhana,
3. Sub-Divisional Police Officer,
Buldhana & Member of Committee
For selection of Police Patil,2015
Tah. and District Buldhana,
4. Tahsildar, Buldhana & Member Secretary,
Committee for selection Of Police Patil 2015,
Tah. & District- Buldhana.

RESPONDENTS

Shri D T Patil, Counsel for Applicant (Absent)

Shri A P Sadavarte, PO for Respondents

CORAM : B. Majumdar : Vice Chairman

DATE : 15th February, 2016

Heard Shri A P Sadawarte, Id PO for the respondents. There was none for the applicant. None appeared for him on the previous three dates, that is, 8.12.15, 29.1.06 and 12.2.16. It was therefore decided to dispose of the OA with the assistance of the Ld P.O.

2. The applicant has filed this OA as he is aggrieved that he has not been selected for the post of Police Patil, Vill Mohoj.

3. On 19.8. 15 the Sub Divisional Officer (SDO), Buldhana (R/2) issued a proclamation for filling up of the post of Police Patil for village Mohoj. The applicant applied in response to it but his application was rejected on the ground that his third child was born after 28.3.05 when the MCS (Declaration of Small Family) Rules were notified, barring appointment of anyone who has a 3rd child born after the date of the notification. Aggrieved thereby, he has filed this OA.

4. The applicant submits that though he had more than 2 children he was bestowed with twins in the same delivery of his wife on 1.5.2012 and another child was born on 15.7.15. Hence the birth of twins on 1.5.2012 should be treated as one child, and his candidature is therefore in conformity with the provisions of the MCS (Declaration of Small Family) Rules notified on 28.3.2005.

5. The SDO Buldhana (R/2) in his reply to the OA submitted the following explanation for disqualifying the candidate.

“Para 3 ...verification of the documents filed by the applicant, the respondent no. 2 found that applicant is having twin female child in one and same delivery born on 1.5.2012 and whereas the wife of the applicant given birth to the third child on 15.6.2015. Therefore, after considering the Notification dated 28.3.2005 issued by the G.A.D. and more particularly after perusal of the Rule 2 and its Explanation (i), and Rule 3, proviso Cl-2 itself it (is) clear that the applicant is considered to be not entitled for the post of Police Patil, as he is having three child on the date of making an application for the post of Police Patil. Copy of the Notification dated 28.3.2005 is annexed herewith at ANNEXURE-R-2-I.

Para 4. The answering respondent further submit that on perusal of the documents/birth certificates submitted by the applicant itself is shows that on the first delivery of the applicant's wife she has given birth to two child on 1.5.2012 and thereafter she has given a delivery to the third child on 15.6.2015. Therefore, the applicant is not liable for filing the application for the post of Police Patil."

6. Undisputedly the applicant has three children who were born as follows.

- a) On 1.5.2012: Twins, Anuja Manohar Nemnar and Rituja Manohar Nemnar, were born.
- b) On 13.7.2015: Tanuja Manohar Nemnar was born.

7. The Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 were notified under proviso to Article 309 on 28.3.2005. Rule 2 (*Definitions*) states as follows:

In these rules, unless the context otherwise requires,—

- a) " Declaration" means a declaration to be given by the candidate^{1*} 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 after 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 expressions 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 shall commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.

8. I now consider the fact that all the three children of the applicant were born after 28.3.05, the date from which the Small Family Rules came into force. Hence what is required to be examined is whether in terms of Rule 2 (Explanation) the twins born on 1.5.2012 can be treated as a single child. The said provision of Rule 2 states that where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity. Since the twins were born when the applicant did not have a single child this provision will not apply to him. I therefore find no fault with the conclusion reached by R/2 that the applicant does not fulfil the requirement of a small family in terms of Rules 2 and 3 of the Rules. Hence the OA is devoid of any merit and stands rejected.

(B Majumdar)
Vice Chairman

Skt.