

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 853 OF 2023
(Subject:- Police Patil)**

DISTRICT:- JALGAON

Swapnali w/o Sandip Patil,)
Age:- 41 years, Occ: Household,)
R/o: Tahakali, Tq. Bhusawal, Dist. Jalgaon,) **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai-32.)
- 2. The Collector/Chairman,**)
District Selection Committee, Jalgaon)
Collector Office, Jalgaon,)
Tq. & Dist. Jalgaon.)
- 3. The Sub-Divisional Officer, Bhusawal,**)
Tq. Bhusawal, Dist. Jalgaon.) **RESPONDENTS**

APPEARANCE : Shri V.R. Jain, learned counsel for the
applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **29.07.2024.**

PRONOUNCED ON : **06.08.2024.**

ORDER

Heard Shri V.R. Jain, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking orders/directions and also declaration that the applicant is qualified to the post of Police Patil of village Tahakali, Tq. Bhusawal, Dist. Jalgaon as per merit list. The applicant is also seeking quashing and setting aside the list to the extent of the applicant where applicant is shown disqualified at Sr. No. 18. The applicant is also seeking quashing and setting aside the impugned order dated 26.08.2023 (Annexure 'R-2') passed by respondent No.3.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The respondent No.2 has issued an advertisement dated 17.07.2023, calling thereby the applications for the post of Police Patil in District Jalgaon. The candidates could have submitted their applications online from 18.07.2023 and the

last date for filling application was 31.07.2023. There are 36 post of Police Patil in the Taluka of Bhusawal. The applicant has filed her application for the post of Police Patil of village Tahakali, Tq. Bhusawal, Dist. Jalgaon on 26.07.2023. The applicant had appeared for written examination which was held on 13.08.2023. The respondents have declared the result of written examination on 13.07.2023. The applicant has passed the written examination by scoring 44 marks. The applicant is only candidate who has qualified for interview.

(ii) The applicant further contends that the respondent No.3 has passed an order dated 14.08.2023 constituting thereby the committee for interview. The Tahsildar concerned had issued the letter dated 17.08.2023 and directed to remain present for verification of documents. Furthermore, the Tahsildar, Bhusawal has issued another letter dated 19.08.2023 to remain present for interview on 23.08.2023.

(iii) Learned counsel for the applicant submits that one Manisha Sanjay Mahajan and Jagruti Kiran Choudhari have filed their objections before the respondent No.3 stating therein that the applicant is having third child after the year

2005. Consequently, the respondent No.3 did not conduct interview of the applicant for the post of Police Patil. On the other hand, the respondent No.3 has issued notice dated 23.08.2023 to the applicant to remain present on 25.08.2023 for hearing/inquiry.

(iv) According to the applicant, she has performed second marriage with Sandip Patil on 26.06.2010. There are two issues from the said wedlock. The applicant had performed her first marriage with deceased Sanjay Kadu Patil in the year 2005. There is one issue from the said wedlock who born on 04.04.2006. The first husband of the applicant namely Sanjay Kadu Patil died on 25.10.2007 in accident. In such a circumstances, the applicant got married with Sandip Patil and residing with him since 2010 as his wife.

(v) The respondent No.3 has published the list on authorized website. As per list, the name of the applicant was shown at Sr. No. 18. However, in the column of remark the applicant is shown as disqualified. Hence, this Original Application.

4. Learned counsel for the applicant submits that the objectors have no locus to file the objections when they are

not eligible and qualified for the post of Police Patil. The objectors have failed to pass the written examination.

5. Learned counsel for the applicant submits that the applicant got remarried with Sandip Patil on 26.06.2010. She gave birth to Hemangi on 05.06.2011 and after that she gave birth to Kaustubh on 26.01.2014. Thereafter there is no other issue from the wedlock with the Sandip Patil. The applicant is wife of Sandip Patil as on today and residing with him at village Tahakali, Tq. Bhusawal, Dist. Jalgaon.

6. Learned counsel for the applicant submits that the applicant had performed her first marriage with deceased Sajay Kadu Patil in the year 2005. She gave birth to Swayam on 04.04.2006. The said Sajay Kadu Patil died in accident on 25.10.2007. After the death of deceased Sanjay Kadu Patil, the first marriage was dissolved. Therefore, the child from the previous marriage which is not existent, should not be considered as third child.

7. Learned counsel for the applicant submits that in terms of advertisement No. 2/2023 at Clause No.(6), it has been mentioned that as on the date of filing of the application

the candidate should not have more than two children and the candidate has to file the affidavit about the small family in terms of the provisions of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as 'the Rules of 2005').

8. Learned counsel for the applicant submits that in view of aforesaid provisions and considering Rule 2 (d) of the said Rules, the "Small Family" means wife and husband including two children. The applicant has two children from the present marriage and as such covered by the definition of the small family. The respondent authorities have, however, not considered the same.

9. Learned counsel for the applicant submits that the view taken by the Division Bench of Hon'ble High Court of Bombay, Bench at Aurangabad in **Writ Petition No. 2482/2023** is not applicable to the present case since the said observations are restricted to the extent of Section 14 (1) (j-1) of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as 'the Act of 1959'). Thus the Original Application deserves to be allowed.

10. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 3 submits that one Manisha Sanjay Mahajana and Jagruti Kiran Chaudhari have filed the objections before the respondent No.3 stating therein that though the applicant has passed the written examination but she has conceived third child and requested to inquire in that aspect. Accordingly, both the objectors and the applicant have been served with the notice of hearing. On going through the applications of the objectors and reply submitted by the present applicant, the respondent No.3 declared the applicant as disqualified to the post of Police Patil by impugned order dated 26.08.2023.

11. Learned Presenting Officer submits that said child Swayam was born on 04.04.2006 from the first husband Sanjay Kadu Patil to the applicant. It reveals from the succession certificate issued by the Civil Judge Junior Division, Raver in the name of Swayam patil that he is child from the first husband to the applicant after marriage. Learned Presenting Officer submits that the objectors have also applied for the post of Police Patil and as such they have right to file objections against the applicant.

12. Learned Presenting Officer submits that the view taken by the Division Bench of Hon'ble High Court of Bombay, Bench at Nagpur in **Writ Petition No. 2482/2023** squarely applies to the present case. Learned P.O. submits that the provisions of Rule 2 (d) and Rule 3 of Rules of 2005 squarely applies to the case of the applicant. There is no substance in the Original Application and the same is liable to be dismissed.

13. The applicant has not disputed about the birth of the first child from her first marriage. There is no denial that the applicant has two children from the second husband with whom she is residing as his wife. There is no dispute that the first husband died in accident way back in the year 2007 and therefore, the applicant got remarried.

14. Learned counsel for the applicant has vehemently submitted that in **Writ Petition No. 2482/2023** the petitioner therein came to be disqualified as the Member of the Gram Panchayat under Section 14 (1) (j-1) of the Act. Therefore, the observations in the said case cannot be made applicable to the preset issue which arises under the provisions of the Maharashtra Village Police Act, 1967.

Learned counsel for the applicant submits that there is no clause regarding third child.

15. In a case of **Khairunisa Sheikh Chand Vs. Chandrashekhar Daulatrao Chincholkar & Ors. (Writ Petition No. 2482/2023)**, the question referred to the Division Bench for consideration is “whether the expression ‘two children’ used in Section 14 (1) (j-1) of the Act of 1959 has been used in generic sense so as to include all children from the present or previous spouse or whether said expression had been used in a restricted sense to mean that only children born from the present spouse ?”.

16. While answering the said reference by order dated 19.08.2023, the Hon’ble High Court of Bombay, Bench at Nagpur in the aforesaid Writ Petition in paragraph No. 6 has reproduced the Clause (j-1) to Sub-Section (1) of Section 14 of the Act of 1959. The said paragraph No.6 reads as under:-

“6. Clause (j-1) to Sub-section (1) of Section 14 which has been inserted pursuant to Maharashtra Act XLIV of 2000 as under:-

“14. *Disqualifications.*

[1] *No person shall be a member of a panchayat continue as such, who-*

(j-1) has more than two children.”

Explanation 5 for the purpose of Clause (j-1) reads as under:-

*“(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”.*

17. In paragraph No. 9 and second portion of paragraph No. 11, the Division Bench of Hon'ble High Court of Bombay, Bench at Nagpur has made the following observation:-

“9. The observations to the effect that if a person sought to be disqualified is responsible for or has given birth to children more than two who are living have been made keeping in mind the purpose sought to be achieved and the evil sought to be cured. Further observations that a male who compels his wife to bear a third child would disqualify not only his wife but himself as well are also material and the same would have to be borne in mind in the present Context. In the light of the observations in paragraphs 62 and 63 referred to hereinabove, it becomes clear that the expression 'person' is required to be applied in the context of a male member who is responsible or who has fathered more than two children and in the context of a female member who has given birth to children more than two. These children could be from the same wedlock or any earlier wedlock of either wedlock of spouse. Where the earlier wedlock of such male or female member has resulted in the birth of a child/ children, the same cannot be excluded while considering as to whether such male/female member has incurred disqualification under Section 14(1) (j-i) of the Act of 1959. To put it otherwise, if a male member through his previous wedlock has fathered a single child and in his subsequent wedlock has fathered two children, the disqualification would be attracted since such male member is responsible for having more than two

children in view of Clause (j-1) to Sub-section (1) of Section 14 of the Act of 1959. Similar analogy would apply if a female member has given birth to a child/children from her earlier wedlock and has again given birth to children/child in her subsequent wedlock resulting in she being the mother of more than two children in terms of Clause (j-1) to Sub-section (1) of Section 14 of the Act of 1959. The children born only from the present wedlock of a male/female member would not govern the situation when such male/female member has had a previous wedlock and has a child/children born from such wedlock.

It will therefore have to be held that the expression 'two children' relates the 'person' who is a member of a panchayat and who is sought to be disqualified under Clause (j-1) to Sub-section (1) of Section 14. In case of a male member, if he is responsible for the birth of more than two children irrespective of the number of wedlocks, the disqualification would be attracted. Same analogy would apply to a female member when she has given birth to more than two children irrespective of the fact that the child/children are born from the previous or present wedlock

11.

In our view, the word 'person' occurring in Section 14(1) of the Act of 1959 when applied in the context of Clause (j-1) would refer to the member itself. The object is to disqualify such 'person' who is responsible for or who has given birth to children more than two. The object behind the said provision is to disable such 'person' from continuing as member of the panchayat if he is responsible for giving birth to more than two children or she has given birth to more than two children irrespective of such children being born from the previous or present wedlock. It is not the object of the said provision to discourage re-marriage of a spouse who has more than two children from his/her previous wedlock. Hence, in the present context, the word 'person' would mean the member of the panchayat alone. When the member of the panchayat is a male, he would be disqualified if he is responsible for the birth of more than two children, irrespective of the number of

wedlocks. Similarly, when the member of the panchayat is a female, she would be disqualified if she has given birth to more than two children, irrespective of the number of wedlocks. The ratio of the decision in Javed (supra) guides us in this regard.”

18. In paragraph No. 13 of the judgment and order, the Division Bench of Hon’ble High Court of Bombay, Bench at Nagpur in the aforesaid Writ Petition has answered the question as referred as follows:-

“ 13. The question as referred is answered as under:

The expression 'two children' used in Section 14(1)(j-1) of the Maharashtra Village Panchayats Act, 1959 in the context of a male 'member' would include all his children for whose birth he is responsible, irrespective of the fact that they were born from his previous and/or present wedlock. In the context of a female 'member', it would include all children whom she has given birth to, irrespective of the fact that they were born from her previous and/or present wedlock. The expression 'two children' has direct nexus with the word 'member' as used in Section 14(1)(j-1) of the Act of 1959.”

19. Clause No. (6) of the advertisement No. 2/2023 in connection with the present case is reproduced herein below:-

“ महाराष्ट्र राज्य सेवा (लहान कुटूंबातील प्रतिज्ञापत्र) नियम २००५ मधील लहान कुटूंबाची अर्हता धारण करणे आवश्यक (अर्जदार याची अर्हता दिनांकास दोन पेक्षा जास्त अपत्य नसावेत.) ”

20. Rule 2(d) of the Rules of 2005 reads as under:-

“ 2(d) " Small family " means wife and husband including two children.

*Explanation.- For the purposes of this clause,-
(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;*

- (i) “Child” dose not include an adopted child or children.*
- (ii) 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.”*

21. It thus appears that word to word of Section 14 (1) (j-1) of the Maharashtra Village Panchayats Act, 1959 and the rule 2 (d) of Rules, 2005 as referred above are same. Further the question referred to the Division Bench of Hon’ble High Court of Bombay, Bench at Nagpur in the aforesaid Writ Petition No. 2482/2023 is very specific as to whether the expression ‘two children’ has been used in a generic sense so as to include all children from the present or previous spouse or whether said expressions had been used in a restricted sense to mean that only children born from the present spouse. In this context, the Division Bench of the Hon’ble High Court of Bombay, Bench at Nagpur in the aforesaid Writ Petition has observed that the expression ‘person’ is required to be applied in the context of a male member who is responsible or who has fathered more than two children and

in the context of a female member who has given birth to children more than two. These children could be from the same wedlock or any earlier wedlock of either wedlock of spouse.

22. It has been specifically made clear in paragraph No. 9 itself by Hon'ble High Court of Bombay, Bench at Nagpur in the aforesaid Writ Petition that the similar analogy would apply if a female member has given birth to a child/children from her earlier wedlock and has again given birth to children/child in her subsequent wedlock resulting in she being the mother of more than two children in terms of Clause (j-1) to Sub-section (1) of Section 14 of the Act of 1959.

23. Though the said observations have been made in connection with the provisions of Section 14 (1) (j-1) of the Act of 1959, however, the analogy drawn by the Division Bench of the Hon'ble High Court of Bombay, Bench at Nagpur squarely applies to the present case since the provisions of Rule 2 (d) of the Rules of 2005 are akin to that of Section 14 (1) (j-1) of the Act of 1959. In view of same, the there is no substance in

the Original Application and the same is liable to be dismissed. Hence, the following order.

ORDER

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances, there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 06.08.2024

SAS O.A. 853/2023(S.B.) Police Patil