



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3045 OF 2025

Smt. Pushpa W/o Shivaji Kakade,
Age: 46 Years, Occu.: Service,
as Anganwadi Karyakarti Now Terminated,
R/o At Post Kandari (Partur),
Tq. Ghansavangi, Dist. Jalna.

..Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Woman and Child Development Department,
Mantralaya, Mumbai – 32.
2. The Divisional Commissioner,
Aurangabad Divisional Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Jalna.
4. The Child Development Project Officer,
Integrated Child Development,
Service Scheme
Project Ghansavangi No.1,
Tq. Ghansavangi, Dist. Jalna.
5. Sunil S/o. Shivaji Kakade,
Age: Major Years, Occu.: Agril,
R/o At Post Kandari Partur,
Tq. Ghansavangi, Dist. Jalna.
6. Gajanan S/o Vishwambhar Kakade,
Age: Major Years, Occu.: Agril,
R/o At Post Kandari Partur,
Tq. Ghansavangi, Dist. Jalna.
7. Satish S/o Abasaheb Khandagale,
Age: Major Years, Occu.: Agril,
R/o At Post Kandari Partur,
Tq. Ghansavangi, Dist. Jalna.
8. Badri Narayan Nivrutti Kakade,
Age: Major Years, Occu.: Agril,

R/o At Post Kandari Partur,
Tq. Ghansavangi, Dist. Jalna.

9. Bajrang S/o Devidas Kakade,
Age: Major Years, Occu.: Agril,
R/o At Post Kandari Partur,
Tq. Ghansavangi, Dist. Jalna.

10. Santosh S/o Rangnath Kakade,
Age: Major Years, Occu.: Agril,
R/o At Post Kandari Partur,
Tq. Ghansavangi, Dist. Jalna.

11. Arun S/o Dnyanoba Kakade,
Age: Major Years, Occu.: Agril,
R/o At Post Kandari Partur,
Tq. Ghansavangi, Dist. Jalna.

..Respondents

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Mr. M. P. Kale, Advocate for the Petitioner.

Mr. S. P. Joshi, AGP for Respondents-State.

Mr. S. M. Ganachari, Advocate for Respondent Nos.3 and 4.

Respondent Nos.2, 5 to 11 are served.

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CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 29th JULY, 2025.

Pronounce On : 08th AUGUST, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing at admission stage.

2. The petitioner impugns order dated 30.03.2021 passed by Additional Divisional Commissioner, Aurangabad in Appeal No.DB/APPEAL/CELL/259/2019, thereby confirming order dated 19.08.2019 passed by Child Development Project Officer, Zilla Parishad, Jalna, by which petitioner was removed from the post of Anganwadi Karyakarti.

3. The petitioner is resident of village Kandari, Taula Partur, Dist. Jalna. The post of Anganwadi Karyakarti was fallen vacant at village Kandari. The petitioner being eligible and qualified submitted her application for appointment. Eventually, she received communication dated 24.03.2011 from respondent no.3 to remain present and execute agreement on Bond paper of Rs.100/-. She executed such Bond paper and admitted terms and conditions as prescribed in Government Resolution dated 05.08.2010. She has also filed undertaking that she is having only two children and birth of third child would entail disqualification. Eventually, petitioner was given appointment order dated 25.03.2011. The petitioner joined her services on 25.03.2011 on the post of Anganwadi Karyakarti since then she rendered her services sincerely and honestly.

4. On 10.07.2019 respondent nos.5 to 11 filed complaint alleging that petitioner has three children. She filed false declaration that she has only two children. As such, petitioner is not entitled to continue on the post of Anganwadi Karyakarti. Eventually, respondent no.4 conducted enquiry. The petitioner was called upon to remain present in office of respondent no.3 on 07.08.2019. The petitioner denied allegations and submitted that all three children are born prior to 2005, therefore, she has not incurred disqualification. However, respondent no.4 issued termination

order dated 19.08.2019. The petitioner challenged said order before Additional Divisional Commissioner, Aurangabad in Appeal No.259/2019, who dismissed Appeal upholding order of termination.

5. Mr. Kale, learned Advocate appearing for petitioner submits that on 28.03.2005 State of Maharashtra through its General Administration Department issued Ordinance promulgating Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (for short 'Rules of 2005'), which prescribes disqualification for appointment or continuation in service in case employee has more than two children after promulgation of Rules of 2005. However, such disqualification would not attract, if person is having more than two children on the date of commencement of Rules of 2005. Mr. Kale submits that petitioner had three children. However, last child is born on 20.05.2004 i.e. prior to commencement of Rules of 2005.

6. Per contra, Mr. Joshi, learned AGP appearing for respondent-State and Mr. Ganachari, learned Advocate appearing for respondent nos.3 and 4 submits that petitioner has executed Bond at the time of entry in service and declared that she has only two children. According to them, petitioner secured employment on the basis of false declaration. Therefore, termination of petitioner is justified.

7. Having considered submissions advanced, it can be observed that petitioner was appointed as Anganwadi Karyakarti vide order dated 25.03.2011. She has submitted an undertaking/Bond in compliance with mandate under Rules of 2005, in which she declared that she has two children. However, on 16.08.2019 on complaint given by Mr. Sunil Shivaji Kakade and others contending that petitioner has three children, enquiry was initiated and pursuance to provision contained in Government Resolutions dated 05.08.2010, 15.09.2011 and 13.08.2014, petitioner was held to be disqualified, as she has three children. Eventually, termination order came to be issued and she is relieved from service w.e.f. 21.08.2019. Even her Appeal filed before Additional Divisional Commissioner, Aurangabad came to be dismissed.

8. It is not disputed before this Court that petitioner has three children namely:

०१	कु. संध्या शिवाजी काकडे	०५/०५/१९९६
०२	चि. रामेश्वर शिवाजी काकडे	१३/०६/२०००
०३	चि. अभिजीत शिवाजी काकडे	२०/०५/२००४

9. Apparently, all three children are born during period from 1996 to 2004. It is true that while submitting application for appointment petitioner stated number of children as two and also executed Bond regarding declaration of small family. Pertinently,

Rules 3 to 5 of Rules of 2005 promulgated on 28.03.2005 states as under:

“३. लहान कुटुंबाच्या प्रतिज्ञापनाची आवश्यकता— शासकीय सेवेतील गट अ, ब, क किंवा ड मधील पद भरतीचे विनियमन करण्याच्या बाबतीत करण्यात आलेले कोणतेही नियम किंवा आदेश किंवा विलेख किंवा त्याबाबत करण्यात आलेले इतर कोणतेही आदेश किंवा विलेख यांमध्ये काहीही अंतर्भूत केलेले असले तरी, लहान कुटुंबाचे प्रतिज्ञापन ही, कोणत्याही शासकीय सेवेतील गट—अ, गट—ब, गट—क किंवा गट—ड मधील पदाच्या नियुक्तीसाठी एक अतिरिक्त अत्यावश्यक अट असेल.

परंतु, हे नियम अंमलात येण्याच्या दिनांकास दोनापेक्षा अधिक मुले असणाऱ्या व्यक्तीस, अशा अंमलबजावणीच्या दिनांकास असलेल्या तिच्या मुलांच्या संख्येत जोपर्यंत वाढ होत नाही तोपर्यंत या खंडाखाली, नियुक्तीसाठी अनर्ह ठरविण्यात येणार नाही :

परंतु आणखी असे की, हे नियम अंमलात येण्याच्या दिनांकापासून एका वर्षाच्या कालावधीत एकाच प्रसूतीमध्ये जन्मलेले मूल किंवा एकापेक्षा अधिक मुले या खंडात नमूद केलेल्या अनर्हतेच्या प्रत्योजनासाठी विचारात घेण्यात येणार नाही.

४. प्रतिज्ञापन सादर करणे.—शासकीय सेवेतील गट अ, ब, क किंवा ड मधील कोणत्याही पदासाठी अर्ज करण्याची इच्छा असलेली कोणतीही व्यक्ती, अर्जासोबत या नियमांतील नमुना "अ" मधील प्रतिज्ञापन सादर करील,

५- नियम लागू नसणे—जेथे निवड प्रक्रिया हे नियम अमलात येण्याच्या दिनांकापूर्वीच सुरू झाली असेल त्याबाबतीत हे नियम लागू करण्यात येणार नाहीत.”

10. Declaration Form-A is provided under Rule 4, which states as under:

प्रतिज्ञापन
नमुना" अ
(नियम ४ पहा)

मी, श्री/श्रीमती/कुमारी ,
श्री.यांचा यांची मुलगा/मुलगी पत्नी,
वय वर्षे, राहणार
यांद्वारे पुढील प्रमाणे असे जाहीर करतो/करते की,

(१) मी या पदासाठी माझा अर्ज दाखल केलेला आहे.

(२) आज रोजी मला (संख्या) इतकी हयात मुले आहेत. त्यापैकी दिनांक यानंतर जन्माला आलेल्या मुलांची संख्या आहे. (असल्यास, जन्मदिनांक नमूद करावा.)

(३) हयात असलेल्या मुलांची संख्या दोनपेक्षा अधिक असेल तर दिनांक नंतर जन्माला आलेल्या, मुलामुळे या पदासाठी मी अनर्ह ठरविण्यास पात्र होईल याची मला जाणीव आहे.

ठिकाण :

दिनांक:

(सही)

11. Careful reading of aforesaid provisions, particularly proviso under Rule 3 shows that persons 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. In present case, it is nobody's case that petitioner begotten any child after 28.03.2005.

12. The procedure for appointment of Anganwadi Karyakarti and service conditions are prescribed under Government Resolution dated 05.08.2010 issued by Women and Child Development Department, Maharashtra State. Clause (D) prescribes that condition regarding small family is applicable for appointment on the post of Anganwadi Karyakarti. The provisions made thereunder are *pari materia* to Rules of 2005. Even otherwise, disqualification would attract only when there is contravention of provision under Rules of 2005.

13. In present case, since petitioner had three children born prior to promulgation of Rules of 2005, she cannot be said to have incurred disqualification in terms of Rules of 2005 or Government Resolution dated 05.08.2010.

14. It is true that, petitioner has submitted Bond at the time of her appointment in terms of Government Resolutions and given

declaration as to small family as per format provided to her. *Prima facie*, such declaration appears to be incorrect. At this stage, reference can be given to the observations made by Supreme Court of India in case of ***Pawan Kumar Vs. Union of India and Another***¹, which reads thus.

“11. This cannot be disputed that the candidate who intends to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard.”

15. In light of aforesaid exposition of law, present case needs to be examined. In present case, fundamentally petitioner cannot be considered as disqualified in view of proviso to Rule 3 of Rules of 2005, which exempts person from disqualification having children born before date of commencement of Rules of 2005. Since petitioner had three children born during period from 1996 to 2004, she cannot be considered as disqualified. The termination order passed against her on aforesaid ground is, therefore, unsustainable.

¹ (2023) 12 SCC 317.

16. In result, Writ Petition is allowed in terms of prayer Clause (B).

17. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2025