

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 640 OF 2016

Dist. : Beed

Rahul s/o Suresh Thaware,)
Age. 22 years, Occu. Nil,)
R/o Fatemanagar, Near Kaikadi Galli,)
Sadar Bazar, Ambajogai,)
Tq. Ambajogai, Dist. Beed.) **...APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Principal Secretary,)
Social Justice & Special Assistance)
Department, Mantralaya,)
Mumbai – 32.)

2. The Director,)
Medical Education & Research)
Government Dental College and)
Hospital Building, St. George's)
Hospital Compound, Near C.S.T.,)
Mumbai – 400 001.)

3. The Dean,)
Swami Ramanand Teerth Rural)
Medical College & Hospital,)
Ambajogai, Dist. Beed.) **...RESPONDENTS**

APPEARANCE : Shri A.A. Nimbalkar, learned Advocate
holding for Shri Sudarshan J. Salunke,
learned Advocate for the applicant.

: Shri N.U. Yadav, learned Presenting
Officer for the respondents.

CORAM : JUSTICE A.H. JOSHI, CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)

RESERVED ON : 02.04.2019
PRONOUNCED ON : 22.04.2019

J U D G E M E N T

(Per : Justice A.H. Joshi, Chairman)

1. Heard Shri A.A. Nimbalkar, learned Advocate holding for Shri Sudarshan J. Salunke, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.

2. By this Original Application the applicant has challenged the Government decision dated 11th March, 2016.

3. Applicant as prayed for quashing & setting aside of the said G.R. on the ground that it being violative of Article 14 of the Constitution of India etc. The text of the said G.R dated 11.3.2016, is very brief and can be conveniently quoted as below :-

“लाड समितीच्या शिफारशीनुसार सफाई कामगारांच्या नियुक्तीबाबत वारसा हक्काची अंमलबजावणी पुढे चालू ठेवण्याबाबत—

महाराष्ट्र शासन
 समाजिक न्याय व विशेष सहाय्य विभाग,
 शासन निर्णय क्रमांक : सफाई-२०१५/प्र.क.२६८/महामंडळे,
 मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
 मंत्रालय विस्तार भवन, मुंबई - ४०० ०३२.
 तारीख ११ मार्च, २०१६

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शासन निर्णय :-

३. लाड समितीच्या शिफारशी नुसार सफाई कामगारांच्या वारसांना शासकीय / निमशासकीय सेवेत देण्यात येणा-या नियुक्ती संदर्भात पुनर्विचार करून संदर्भीय दिनांक १०.११.२०१५ रोजीचा शासन निर्णय रद्द करून सुधारीत निर्णय खालीलप्रमाणे घेण्यात येत आहे :-

- १) वाल्मिकी, मेहेतरसमाजाला सामाजिक, आर्थिक संरक्षण देण्यासाठी सफाई कामगारांच्या नियुक्तीबाबत लाड समितीने शिफारस केलेली वारसा पध्दत पुढे चालू ठेवण्यात यावी.
- २) लाड समितीच्या शिफारशी जरी ४० वर्षापूर्वी लागू केल्या असल्या तरी सद्यस्थितीत सदर शिफारशी चालू ठेवणे आवश्यक आहे. त्यानुसार शासन परिपत्रक, सामाजिक न्याय व विशेष सहाय्य विभाग क्रं. सफाई २०१४/प्र.क्र.०७/महामंडळे दि. २६ फेब्रुवारी २०१४ अन्वये घेण्यात आलेली भूमिका कायम ठेवण्यात यावी.
- ३) सफाई कर्मचारी म्हणून सेवानिवृत्त झालेल्या किंवा होणा-या अथवा स्वेच्छा निवृत्ती घेणा-या किंवा सेवेत असताना निधन पावलेल्या अनुसूचित जातीमधील इतर सफाई कर्मचा-यांच्या वारस किंवा नातेवाईक यांस सदर योजनेचा लाभ देण्यात यावा.
- ४) सदरहू निर्णय राज्यातील सर्व विभागातील सफाई कामगारांच्या वारसांना लागू राहतील.

४. सर्व संबंधित प्रशासकीय विभाग, शासकीय निमशासकीय विभाग आणि सर्व स्थानिक स्वराज्य संस्थांनी वरील निर्देशांची काटेकोरपणे अंमलबजावणी करणे बंधनकारक राहिल.

५. सफाई कामगारांच्या शैक्षणिक, सामाजिक व आर्थिक उन्नतीकरीता पागे समितीने केलेल्या शिफारशीच्या अनुषंगाने सविस्तर सूचना स्वतंत्रपणे निर्गमित करण्यात येतील.

सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१६०३१११२२३१७९४२२ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षात्कृत करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने.

सहि/-
(चंद्रकांत ह. वडे)
कार्यासन अधिकारी,
महाराष्ट्र शासन”

(quoted from pages 116 & 117 of paper book of O.A.)

4. In the body of Original Application the applicant has averred in para 14 which reads as under:-

“14) The applicant is aggrieved and dissatisfied by the order / communication dated 16.3.2016 issued by the respondent No. 3 Dean, Government Medical College and Hospital thereby disentitling him on the ground that the Government Resolution dated 10th November, 2015 is applicable only to Mehtar, Walmiki, Bhangi and Schedule Caste Category. The applicant is informed that as his grandmother Smt. Tarabai retired from pen category, he cannot avail of benefit of the Government Resolution dated 10.11.2015.

The applicant is also aggrieved by the present Government Resolution occupying the field i.e. the Government Resolution dated 11.3.2016 issued by the respondent No. 1 State i.e. Social Justice and Special Assistance Department.

The applicant states that, the respondent No. 1 State is indulging in unreasonable discrimination against the persons as that of the applicant only on the basis of caste. This action of the respondent No. 1 State is contrary to the constitutional guarantee envisaged in Article 15(1) of the Constitution of India.

Also the action of the State in issuing the said Government Resolution dated 11th March, 2016 is creating impediment in the applicant's right to practice any profession of his choice. Hence, the applicant's constitutional right under Article 19 (1) (g) of the Constitution of India is being grossly violated the said Government Resolution.

A perusal of the decisions / orders rendered by the Hon'ble Bombay High Court, Nagpur Bench in Writ Petition No. 6155/2014 would make it palpably clear that the Hon'ble High Court has never issued any directions to exclude the Safai Kamgar from open category. Also nothing as such is implied in the said decisions / orders.

It is agreed that the said Government Resolution impugned may be a policy decision, however, the same will have to go owing to the same being an impediment in the way of the applicant and his likes enforcing and realizing his fundamental rights as laid above.

The aforesaid Government Resolution so also the impugned communication dated 16.3.2016 are absolutely, arbitrary and irrational. This Government Resolution excludes heirs of persons from open category. These persons have rendered long duration of service; they have earned this right to nominate and to get appointment in their place their legal heirs. Thus they have put in equal service as that put in by the persons from Walmiki, Mehtar or persons from Scheduled Caste Category. Hence, the legal heirs are equally entitled to the benefit of appointment by heirship, their exclusion, is ergo, discrimination among similar situated persons, hence is bad.

The real object behind the entire policy is that such legal heir should take care of the Safai Kamgar in his / her old age. Thus, the actual intention is to provide social security to the nominating Safai Kamgar. Hence, such exclusion of persons from open category lacks rationale. It misinterprets or is against the spirit of the of the actual aim.

Though the applicants claim is rejected under the earlier Government Resolution still the fact remains that the present Government Resolution too does away with the legal heirs of persons retiring from open category. Therefore, the impugned communication as well as the Government Resolution presently in existence both can be challenged.

Thus, in view of the aforesaid grounds and legal submissions both the impugned communication dated 16.3.2016 as well as the Government resolution dated 11.3.2016 are bad and deserves to be quashed and set aside.”

(quoted from page 10, 11 & 12 of paper book of O.A.)

5. The respondent nos. 2 & 3 have filed their common affidavit in reply and resisted the Original Application. In para 8 of the affidavit in reply Respondents have contended as under :-

“8. As regard Para No. VI (6) of the application, I say and submit that the applicant had drawn the conclusion that the Government Resolution dated 10.11.2015 is applicable to all Safai Kamgars in view of appointment to their legal heirs because he had considered only few clauses of the said Govt. Resolution, while it is necessary, that the complete Govt. Resolution should be taken into account to interpret the provisions made in it.

I say and submit that, in the preface of the said Govt. Resolution it is mentioned that the very basis of this Resolution was recommendations given by page Committee. This committee was constituted for devising the measures for upliftment of sweepers and scavengers who belongs to a particular caste that is Mehatar, Walmiki and Scheduled castes. Because various measures implemented by Government to abolish untouchability was found insufficient. So, to suggest the measures for eradication of untouchability Page Committee was formed. In this connection State Legislative Assembly had passed the order dated 16.9.2015 of G.R. dated 10.11.2015, in which it is clearly mentioned that the said Govt. Resolution was applicable to Safai Kamgars of Mehatar, Walmiki and Scheduled caste category. Importantly on page 4 in sub clause 6 of said Govt. Resolution, in most clear terms mentioned that, this Government Resolution is intended for educational, economical and social upliftment of Safai Kamgar of Mehatar, Walmiki, Bhanghi and Scheduled casted category only.

In the light of facts discussed herein above, the interpretation of applicant that, the said Govt. Resolution shall apply to appoint legal heirs of all Safai Kamgars is found to be improper.”

(Quoted from page nos. 123 & 124 of paper book of O.A.)

6. Constitution of India is seen/looked upon by citizens, Courts and the Government as a living organism.

7. The law makers are competent to perceive, take into consideration the level and intensity of backwardness of certain backward classes and in particularly Valmiki & Mehatar communities, who are members of Scheduled Caste.

8. Therefore, it is the duty of the State Government to provide employment opportunities particularly at least at such a pedestal as could be secured in their favour without any competition with other sections of society who are not as backward as the members of those Scheduled Castes are.

9. It is in that background the State Government has taken a decision to afford an opportunity of continuation of concession carved out in favour of that community as recommended by the Page-Lad Committee.

10. Claim by the applicant that he has been denied an equal opportunity of employment by virtue of impugned G.R. amounts to a stake claim contrary to scheme evolved and continued for upliftment of backward class- the members of Walmiki & Mehatar Scheduled Castes and scheme to cause positive discrimination in their favour, which State Government has taken up.

11. Hence present O.A which is aimed at challenging a step taken by executive to advance the cause of oppressed class cannot be viewed from the point of view which applicant intends to pursue.

12. Therefore, present O.A. has no merit and is hereby dismissed.

13. In the circumstances the parties are directed to bear their own costs.

(ATUL RAJ CHADHA)
MEMBER (A)

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad
Date : 22.04.2019

ARJ-O.A.NO. 640-2016 D.B. (CHALLENGING G.R.)