

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.329 OF 2020

**DISTRICT: KOLHAPUR
SUBJECT: COMPASSIONATE
APPOINTMENT**

Shri Mohammad Hasan Mhaldar,)
Aged – 29 years, Residing at Plot No.17,)
Aditya Colony, Lakshadweep Vasahat, Kolhapur)... **Applicant**

Versus

- 1) State of Maharashtra,)
Through The Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 32.)
- 2) The Commissioner,)
Commissioner of Social Welfare, M.S.)
3, Church Path, Agarkar Nagar, Pune – 411001.)
- 3) District Civil Surgeon,)
CPR Hospital, Dasara Chowk. Kolhapur,)
Dist. Kolhapur – 416002.)...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 27.09.2022.

JUDGMENT

1. The Applicant has challenged communication dated 06.06.2020 issued by Respondent No.3 – Civil Surgeon, CPR Hospital, Kolhapur thereby rejecting his claim for Appointment in group ‘D’ in terms of recommendation made by Laad Page Committee invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The Applicant's father was appointed as Safai kamgar / Sweeper on the establishment of Respondent No.3 by order dated 21.09.1990. He took voluntary retirement w.e.f. 12.11.2015. He made an application on 16.11.2015 requesting Respondent No.3 to appoint his son in group 'D' in terms of recommendation of Laad Page Committee. On receipt of it, Respondent No.3 sought guidance from Respondent No.2 - The Commissioner of Social Welfare Maharashtra State, Pune who in turn informed to the Respondent No.3 that in terms of G.R. dated 11.03.2016 the recommendation of Laad Page Committee are now applicable to Safai kamgar / Sweeper falling into Schedule Caste (S.C.) category and the Applicant being Muslim he does not fall in S.C. category. On the basis of it Respondent No.3 rejected the claim of the Applicant by impugned communication dated 06.02.2020. The Applicant has challenged the same in present O.A.

3. On behalf of Respondent No.1, Respondent No.2 filed Affidavit-in-Reply *inter-alia* denying the claim of the Applicant stating that in terms of G.R. dated 11.03.2016 the appointment in terms of Laad Page Committee is applicable only to the legal heirs of Safai kamgar / Sweeper who fall in S.C. category only and the Applicant being Muslim he does not belong to S.C. category. Respondents thus sought to justify the impugned communication.

4. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondent.

5. The issue thus pertain to implementation of recommendations made by Lad-Page Committee, which was appointed by the Government of Maharashtra in 1972. The said Committee was appointed to study the conditions of work and employment of Sweepers and Scavengers. The Committee accordingly submitted report to the Government on 07.01.1975. On receipt of it, the Government in Industries, Energy and

Labour Department issued G.R. dated 12.08.1975 incorporating the summary of recommendation amongst others. In Clause No.2, Chapter VIII, the Committee recommended Succession system known as “Vashila System” in the recommendations. Para No.2 of the recommendations about recruitment and appointment is as under :-

“2. Recruitment.-

We recommend that the “Vashila System” under which the near relative of the sweeper or scavenger is given preference in employment should be continued and may be extended to the employment of sweeper and scavengers in Government and private institutions and factories if necessary by relaxing the recruitment rules through employment exchanges.

Working lists of leave substitutes should be prepared and the permanent vacancies should be filled in from them.

Cadre of Leave reserves should be created after studying the average annual requirement of sweepers and scavengers.

Employment of sweepers and scavengers on contract basis should be completely abolished if necessary by suitable.”

6. Notably for implementation and recommendation of Laad Page Committee, Government thereafter from time to time issued various G.R. and Circulars. Government in Urban Development Department issued circular dated 11.08.2006 thereby reiterating the recommendation of Laad Page Committee for its effective implementation in the Municipal Council and Corporation. Then it comes the circular dated 21.10.2011 issued by Government of Maharashtra, Social Justice as Special Assistance Department having found that recommendation of Laad Page Committee are not implemented properly and again issued directions prescribing 30 days time limit for decision on Application for appointment to the heirs of Safai kamkar / Sweeper. Then again Respondent No.2 by communication dated 19.08.2013 again reiterated it an instructed all Government Departments for effective implementation of the recommendation of Laad Page Committee making it clear that this appointment are applicable to Safai kamkar / Sweeper after retirement /

death / voluntary retirement / retirement on medical ground. Notably in the said communication it is specifically highlighted that on recommendation of Laad Page Committee are not restricted to one particular caste but it applied to all Safai kamgar / Sweeper. The said communication is it page 20 of paper book. Thereafter again same decision was reiterated by Respondent No.3 by circular dated 28.03.2015 giving following directions.

१. लाड व पागेसमितीच्या शिफारशीअंतर्गत वारसाहक्काची प्रकरणे ३० दिवसांत निकाली काढण्यात येतील याची दखता घ्यावी.
२. लाड व पागे समितीच्या शिफारशीबाबत वेळोवेळी निर्गमित झालेले शासन निर्णय/परिपत्रक याद्वारे देण्यात आलेल्या निर्देशांच्या अनुषंगाने सफाई कर्मचारी यांच्या वारसदारांना नियुक्ती देणे कामी तंतोतंत पालन करण्यात यावे.
३. लाड व पागे समितीच्या शिफारशी अंतर्गत नोकर भरती करतांना वारसादार हा कोणत्या जाती संवर्गातील आहे. याचा विचार न करता त्याला त्यांच्या शैक्षणिक पात्रतेनुसार नियुक्ती देण्यात यावी.
४. सामाजिक न्याय व विशेष सहाय विभाग यांचे परिपत्रक दिनांक २६ फेब्रुवारी २०१४ अन्वये २१ ऑक्टोबर २०११ पुर्वीच्या वारसाहक्क अंतर्गत अर्ज करणा-या वारसदार यांना अर्ज करण्याची मुदत लागू राहणार नाही. मात्र नविन प्रकरणांना वारसाहक्कांच्या नियुक्तीकरीता अर्ज करण्याची मुदत शासन परिपत्रक दिनांक २१ ऑक्टोबर २०११ नुसार सफाई कर्मचारी दिवंगत किंवा सेवानिवृत्त किंवा विकलांग झाल्याच्या दिनांकापासुन १ वर्षाची राहिल असे स्पष्ट करण्यात आलेले आहे. त्यानुसार सन २०११ पुर्वीचे वारसाहक्क अंतर्गत नियुक्तीची प्रकरणे तात्काळ निकाली काढण्यात यावी.

7. In the mean time, Writ Petition 6155/2012 filed by one Nitin Chandralika questioning the recommendation of Laad Page Committee came up for hearing before Hon'ble High Court, Nagpur Bench. In the said Writ Petition Hon'ble High Court raised question as to whether the recommendation made by Laad Page Committee for appointment to the legal heirs of Safai kamgar / Sweeper by way of succession still needs continuation. Thereon, Government of Maharashtra again took policy decision by G.R. dated 10.11.2015 and continued to implement the recommendation of Laad Page Committee. By said G.R it was again reiterated that no heirs Safai kamagar / Sweeper should be deprived of getting appointment in terms of recommendation of Laad Page

Committee and all such claim should be disposed of expeditiously. In this behalf instruction No.19 of G.R. dated 10.11.2015 is important which is as follows:-

“१९. राज्यातील सफाई कामगार /कर्मचारी म्हणून काम करणा-या कामगारांच्या/कर्मचा-यांच्या वारसास वारसापध्दतीने नियुक्ती देण्याबाबतचा सदरहू शासन निर्णय राज्यातील सर्व सफाई कामगारांच्या/कर्मचा-यांच्या वारसांना लागू राहिल.”

8. Then it comes G.R. dated 11.03.2016 issued by Social Justice and Special Assistance Department which is issued in supersession of G.R. dated 10.11.2015 and by G.R. following decision was taken.

“शासन निर्णय :-

३. लाड समितीच्या शिफारशीनुसार सफाई कामगारांच्या वारसांना शासकीय/निमशासकीय सेवेत देण्यात येणा-या नियुक्ती संदर्भात पुनर्विचार करून संदर्भीय दिनांक १०.११.२०१५ रोजीचा शासन निर्णय रद्द करून सुधारित निर्णय खालील प्रमाणे घेण्यात येत आहे :-

- १) वाल्मीकी, मेहतर समाजाला सामाजिक, आर्थिक संरक्षण देण्यासाठी सफाई कामगारांच्या नियुक्तीबाबत लाड समितीने शिफारस केलेली वारसा पद्धत पुढे चालू ठेवण्यात यावी.
- २) लाड समितीच्या शिफारशी जरी ४० वर्षांपूर्वी लागू केल्या असल्या तरी सद्यःस्थितीत सदर शिफारशी चालू ठेवणे आवश्यक आहे. त्यानुसार शासन परिपत्रक, सामाजिक न्याय व विशेष सहाय्य विभाग क्र. 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 सेवानिवृत्ती घेणा-या किंवा सेवेत असताना निधन पावलेल्या अनुसूचित जातीमधील इतर सफाई कर्मचा-यांच्या वारस किंवा नातेवाईक यांस सादर योजनेचा लाभ देण्यात यावा.
- ४) सदरहू निर्णय राज्यातील सर्व विभागातील सफाई कामगारांच्या वारसांना लागू राहिल.

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

9. It is this explicit from the recommendation of Laad Page Committee as well as various G.R. and circulars issued by the Government that the scheme was prepared for educational, financial and social progress of Safai kamgar / Sweeper committee known as Mehtar,

Valmiki and Bhangi community and said community is treated as special class irrespective of caste and Religion. It is with this benevolent object of the social progress and empowerment of the said community the Government had accepted recommendation of Laad Page Committee by giving appointment to the heirs of Safai kamgar / Sweeper by way of succession.

10. Undisputedly, the Applicant's father was appointed as Safai kamgar / Sweeper. Respondent No.2 rejected the claim of the Applicant solely on the ground that in terms of last G.R. dated 11.03.2016 the appointment is now permissible to Safai kamgar of S.C. category only. In my considered opinion, such restriction would defeat the purpose of Laad Page Committee recommendation which are accepted by the Government and implemented throughout. Religion of the Government servant is not relevant consideration. All that required to be seen as to whether the claimant belongs to Safai kamgar / Sweeper committee. Muslim is Religion and same not to be relevant. The Respondents ought to have considered that the Applicant belongs to Safaikamgar / Sweeper community and the same was only to be considered. Therefore stand taken up by Respondents that the recommendation of Laad Page Committee are only restricted to S.C. category does not appear sound and rational.

11. That apart, as rightly pointed out by learned Advocate for the Applicant, the Applicant's father took voluntary retirement on 12.11.2015 and applied for appointment to his son on 16.11.2015 i.e. before the issuance of G.R. dated 11.03.2016 wherein for the first time this scheme is said restricted to Safai kamgar / Sweeper of S.C. only. At the relevant time the matter was governed by G.R. dated 10.11.2015 in which clause No.19 it was clearly stated that "राज्यातील सफाई कामगार / कर्मचारी म्हणून काम करणा-या कामगारांच्या/कर्मचा-यांच्या वारसास वारसापध्दतीने नियुक्ती देण्याबाबतचा सदरहू शासन निर्णय राज्यातील सर्व सफाई कामगारांच्या/कर्मचा-यांच्या वारसांना लागू राहिल." .

12. Notably in circular dated 28.03.2015 issued by Respondent No.3 also it was clarified that “लाड व पागे समितीच्या शिफारशी अंतर्गत नोकर भरती करतांना वारसादार हा कोणत्या जाती संवर्गातील आहे. याचा विचार न करता त्याला त्यांच्या शैक्षणिक पात्रतेनुसार नियुक्ती देण्यात यावी”. This being the position, the Applicant’s entitlement to the appointment in terms of Laad Page Committee cannot be taken away by subsequent G.R. dated 11.03.2016. In this behalf, learned Advocate for the Applicant rightly referred to the decision of Hon’ble Supreme Court in **(2007) 9 SCC 571 (State Bank of India v/s. Japal Kaur) and (2015) 7 SCC 412 (Canara Bank v/s. M. Mahesh Kumar)** in which it has been held that the claim for compassionate appointment under a scheme of a particularly year cannot be decided based on subsequent scheme or policy that came into force later. Hon’ble Supreme Court held, matter needs to be decided within the parameters of the scheme prevailing when application for compassionate appointment was filed and not as prevailing on the date of decision of Court. Thus, it is no more *res-integra* that the relevant date would be the date on which the application was made by the Applicant and when there was no such restriction of providing the appointment only to S.C. Suffice to say right once accrued to the Applicant cannot be taken away or defeated by subsequent policy. As such, rejection of the claim of the Applicant on the basis of G.R. dated 11.03.2016 is totally erroneous and unsustainable in law. Even, assuming that after the implementation of G.R. dated 11.03.2016, this scheme is restricted only to S.C. Safai kamgar / Sweeper in that event also there could be no retrospective effect to the G.R. dated 11.03.2016 and the decision ought to have been taken in terms of G.R. dated 10.11.2015 which was applicable at the relevant time.

13. Apart, as rightly pointed out by learned Advocate for the Applicant, Respondents have appointed legal heirs of Safai Kamgar / Sweeper even from open category and one of the candidate namely Shri Sanjay Banshilal Sakal was appointed by order dated 11.03.2016 i.e. after the implementation of the G.R. dated 11.03.2016. The Applicant has filed

Rejoinder to that effect and raised issue of discrimination. The Applicant had obtained this information under R.T.I. Act and details are as under:-

Sr. No.	List of Information received Sr. No.	Name	Designation	Caste	Category	Way of Appointment	Date of Joining
1.	4.	Shri Kasimbeg Rajubeg	Safaigar	Muslim	Open	Being Legal heir	20/12/2007
2.	14.	Shri Shaikh Sheru Shaikh Abdulla	Safaigar	Muslim	Open	Being Legal heir	13/02/2009
3.	17.	Shri Ayjajbeg Muneerbeg	Safaigar	Muslim	Open	Being Legal heir	11/06/2009
4.	24.	Shri Moh. Jameer Moh. Azam	Safaigar	Muslim	Open	Being Legal heir	11/06/2009
5.	40.	Shri Sanjay Banshilal Sakal	Safaigar	Hindu	Open	Being Legal heir	19/03/2016
6.	--	Shri Francis Mrisuse Josef	Safaigar	Christian	Open	Being Legal heir	04/03/2014

14. Respondents did not depute this position. However, in Affidavit-in-Rejoinder Respondents sought to contend that this appointment were made prior to implementation of G.R. dated 11.03.2016. Whereas, one of the candidate at Sr. 40 namely Shri Sanjay Banshilal Sakal was appointed by order dated 11.03.2016 which is obviously after implementation of G.R. dated 11.03.2016.

15. In this view of the matter, in my considered opinion the impugned order rejecting the Applicant claim for appointment is clearly unsustainable and liable to be quashed. Respondents

ought to have considered the Applicant's claim in reference to G.R. dated 10.11.2015 and Circular dated 28.03.2015. Hence, the order.

ORDER

- A) The Original Application is allowed partly.
- B) Impugned communication dated 06.02.2020 is quashed and set aside.
- C) Respondents are directed to consider the claim of the applicant in right perspective in the light of observation made in the order and shall pass order accordingly within a period of two months. It be communicated to the Applicant within two weeks thereafter.
- D) No order as to costs.

**Sd/-
(A.P. Kurhekar)
Member (J)**

Place: Mumbai
Date: 27.09.2022.
Dictation taken by: N.M. Naik.

Uploaded on: _____