

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.199 OF 2023**

**DISTRICT : NASHIK**

Shri Shoaib Ahmed Shaikh Hameed, )  
Age 31 years, Occ. Nil, R/at Sanjay Gandhi Nagar, )  
Yeola, District Nashik )..Applicant

Versus

1. The Superintendent of Police, )  
Nashik Rural, Bhujbal Knowledge City, )  
Adgaon, Nashik )
2. The Director General of Police, )  
S.B. Marg, Colaba, Mumbai )
3. The State of Maharashtra, )  
Through the Secretary, )  
Department of Social Welfare & Special Assistance  
Mantralaya, Mumbai )..Respondents

Smt. V.K. Jagdale – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

DATE : 24<sup>th</sup> November, 2023

**J U D G M E N T**

1. The applicant who belongs to Mehtar community challenges the impugned order dated 5.9.2022 whereby he was informed that he is not eligible for appointment after retirement of his father on 31.5.2016. His claim was rejected on the ground that he belongs to Muslim Mehtar community which is included in Special Backward Class (SBC) category as per GR dated 25.6.2008.

2. The applicant belongs to Muslim Mehtar community. His caste certificate was issued by the Sub Divisional Officer, Yeola and the certificate was validated by the Caste Scrutiny Committee, Nashik on 29.5.2014. The father of the applicant who was working as Safai Kamgar in the office of respondent no.1 retired on superannuation on 31.5.2016. Respondent no.1 issued impugned communication dated 5.9.2022 stating that the applicant could not be considered for appointment on the post of Safai Kamgar in place of his father because Muslim Mehtar community is included in the SCB category as per GR dated 25.6.2008.

3. The applicant had approached the Hon'ble High Court by filing W.P. No.15579 of 2022 which was disposed off on 4.1.2023 with liberty to the applicant to avail alternate remedy before this Tribunal.

4. Ld. Advocate for the applicant pointed out that while passing the impugned order dated 5.9.2022 respondents no.1 & 2 had ignored clause 3(1) of GR dated 11.3.2016 and relied on clause 3(3) of the GR. She pointed out that clause 3(1) of the GR states that appointments under the Lad-Page Committee are to be given to the heirs of the Safai Kamgar to grant financial protection to the Valkimi Mehtar Community. She relied on the order dated 20.9.2019 passed by the Hon'ble Bombay High Court

Bench at Aurangabad in W.P. No.7109 of 2018 Shaikh Yusuf Shaik Yunus Vs. The State of Maharashtra & Anr.

5. Ld. PO opposes the submissions made by the Ld. Advocate for the applicant and relied on the affidavit in reply dated 10.4.2023 filed by Kavita Ganesh Phadtare, Sub Divisional Police Officer, Peth Division, Nashik. Ld. PO states that since the applicant belongs to the Muslim Mehtar community which belongs to Scheduled Caste and the said community was later included in the SBC category vide GR dated 25.6.2008. Ld. PO therefore stated that applicant was not eligible for appointment on the post of Safai Kamgar.

6. In this case it will be useful to look at the GR dated 11.3.2016 of the Social Justice and Special Assistance Department. A close study of the GR shows that the scheme has been prepared for the social progress of the Mehtar, Valmiki and Bhangi Community and the said community is treated as Special Backward Class category irrespective of caste or religion. A similar matter has been decided by this Tribunal on 2.9.2022 in OA No.397/2021 Shri Nazir Gulab Shaikh & Anr. Vs. The State of Maharashtra & Ors.

7. It appears from the perusal of G.R. date 11.3.2016 that in addition to Valmiki, Mehtar and Bhangi, the benefit of said Scheme is also extended to Safai Kamgar belonging to SC category, as seen from Clause 3 of G.R. It is difficult to accept that Scheme is restricted to Safai Kamgar of SC category only. Such restriction would defeat the very purpose of Lad-Page Committee recommendations. The religion of a Government servant is not relevant consideration and what was required to be seen whether Applicant belongs to Bhangi, Walmiki, Mehtar and falls within the recommendations made by Lad-Page Committee and G.R. dated 10.11.2015.

8. As rightly pointed out by learned Advocate for the Applicant, the issue under consideration in the present O.A. is already dealt with by Hon'ble High Court, Aurangabad Bench in **Writ Petition No.7109/2018 [Shaikh Yusuf Shaik Yunus Vs. State of Maharashtra & Anr.] decided on 20.09.2019** and it is no more *res-integra*. The Applicant is similarly situated person. In Judgment of Hon'ble High Court, it is held as under :-

*"1. Father of the petitioner was working as Safai Kamgar. Upon his retirement, the petitioner moved an application for appointment as per G.R. dated 10.11.2015. Proposal was forwarded by respondent No.5 to respondent Nos. 2 and 4. The proposal is rejected by the respondents on the ground that the petitioner does not belong to the caste enumerated in the Government Resolution. It is submitted that the caste certificate is issued to the petitioner of Muslim Bhangi, which was included as Scheduled Tribe up to 2008 and as per notification dated 25<sup>th</sup> August, 2008, the same is included in Special Backward Class (SBC). In view that, certificate of S.B.C. is also issued subsequently to the petitioner.*

*2. Muslim is religion. The same cannot be relevant consideration. The respondents ought to have seen as to whether the petitioner belongs to Bhangi. The persons belonging to Walmiki, Mehtar, S.C. Bhangi, S.T. are held eligible under the said G.R. The same was only required to be considered.*

*3. In the light of above, the impugned communications are quashed and set aside.*

*4. The respondents shall, within a period of two months, consider the case of the petitioner and decide the proposal referred to it for appointment as Safai Kamgar, afresh.*

*5. Writ petition is accordingly disposed of. No costs."*

9. Now turning to the facts of the present case, indisputably, the Applicant is Muslim Mehtar. As per Notification dated 25.06.2008 issued

by Government of Maharashtra, Bhangi, Mehtar, Walmiki, etc. (Serial No.12 of the list) are declared Scheduled Caste for which 13% reservation is made applicable, but Bhangi/Mehtar of Muslim religion are shown falling in Special Backward Category for which 2% reservation is kept. Thus, it is on the basis of religion, Bhangi, Mehtar belonging to Muslim religion now included in Special Backward Class. The Applicant has also produced Caste Certificate of Special Backward Class. As observed by Hon'ble High Court, Muslim is religion and it could not have been relevant consideration. Since admittedly, Applicant belongs to Mehtar community, he has to be held eligible under G.R. dated 10.11.2015 as well as modified G.R. dated 11.03.2016. The impugned order is thus totally unsustainable in law and this O.A. deserves to be disposed of on the line of Judgment of Hon'ble High Court in ***Writ Petition No.7109/2018***. Hence, the order.

### **O R D E R**

- (A) The Original Application is allowed partly.
- (B) Impugned communication dated 5.9.2022 is quashed and set aside.
- (C) The Respondents are directed to consider the case of Applicant for appointment as Safai Kamgar, afresh, within a period of three months and shall pass order accordingly.
- (D) It be communicated to the Applicant within two weeks thereafter.
- (E) No order as to costs.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**  
**24.11.2023**

Dictation taken by: S.G. Jawalkar.