

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1314 OF 2022

DISTRICT : MUMBAI

1. Pichkaran Chinpayan,)
Age 65 years, occ. Nil, R/at Gat No.22,)
Aarey Dairy Quarters, Aarey Colony,)
Goregaon (East), Mumbai 400065)

2. Nithyanand Pichkaran,)
Age 24 years, Occ. Nil, R/at Gat No.22,)
Aarey Dairy Quarters, Aarey Colony,)
Goregaon (East), Mumbai 400065)..Applicant

Versus

1. The State of Maharashtra,)
Through its Secretary,)
Ministry of Agriculture, Fisheries, Animal)
Husbandry & Dairy Development,)
Mantralaya, Mumbai)

2. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai)

3. The Secretary of Social Justice and Special)
Assistance Department, Mantralaya, Mumbai)

4. The Commissioner,)
Dairy Development Department,)
Administrative Building, Abdul Gaffar Khan Road)
Worli, Mumbai 400018)
5. Chief Executive Officer, Aarey Dairy,)
Goregaon (E), Mumbai 400065)
6. The Managing Director, Aarey Dairy,)
Aarey Colony, Goregaon (E), Mumbai 400065)..Respondents

Shri A.S. Gaikwad – Advocate for the Applicant through Vide Conference
Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri Atulchandra M. Kulkarni, Member (A)
RESERVED ON : 30th January, 2025
PRONOUNCED ON: 14th February, 2025

J U D G M E N T

1. Heard Shri A.S. Gaikwad, learned Advocate for the Applicant through Vide Conference and Smt. Archana B.K., learned Presenting Officer for the Respondents at length.

2. Applicant No.1 joined on 1.10.1981 as Sweeper/Scavenger in Aarey Dairy, Mumbai and retired on 30.9.2013. Applicant No.2 is the son of Applicant No.1. The applicant no.2 made an application dated 17.8.2020 to the office of respondent no.5 for appointment in place of applicant no.1 as per Lad-Page Policy. On 21.10.2020 applicant no.1 made an application to the respondent no.5 and requested to provide the benefit of employment in place of applicant no.1 to applicant no.2 as per Lad-Page

Committee. The respondent no.5 by his communication dated 27.10.2020 rejected the application made by respondent no.2 on the ground that application was not made within one year from the date of retirement of applicant no.1. The applicant no.2 again made an application on 23.11.2020 for such appointment and marked copies thereof to the Principal Secretaries Urban Development Department, General Administration Department and Social Justice Department. However, respondent no.5 by letter dated 21.10.2021 informed that his application is already rejected on 27.10.2020. In the same letter, however, respondent no.5 informed to the applicant no.2 that respondent no.5 has been directed by Principal Secretaries, GAD, Social Justice and Urban Development Department that he should act on the applicant's application and submit a report. The respondent no.5 in the same letter asked applicant no.2 to submit certain documents in order to help process his application. The applicant no.2 on 24.11.2021 forwarded letter to respondent no.5 and submitted the desired documents. By order dated 18.10.2022 (the impugned communication) the respondent no.5 informed the applicant no.2 that applicant no.2 is not eligible to get appointment under the provisions of Lad-Page Committee as the caste certificate issued is by the Tamil Nadu Government and that it does not reflect the Walmiki/Mehtar/ Bhangi category.

3. The applicants seek directions to the respondents no.4 and 5 for appointment of applicant no.2 in the place of applicant no.1 on the post of Sweeper/Scavenger under the recommendations/policy of Lad-Page Committee in view of the orders/directions issued by the Government from time to time to the legal heirs like the applicant from the date of first application and also seek directions to set aside the order dated 18.10.2022 issued by respondent no.5 rejecting application for appointment as per Lad-Page Committee.

4. Ld. Advocate for the applicant states that order of superannuation issued by respondent no.5 has not mentioned the details of legal heirs who will be rightful claimant for appointment as mandated by the GRs on Lad-Page Policy. There is failure on the part of the authorities to comply with the mandate of GR dated 24.2.2023 provided in clause 5.4 and 5.5, which reads as under:

“५.४ वारसास अर्ज करण्याची मुदत : सेवानिवृत्त / स्वेच्छा सेवानिवृत्त झाल्यावर / वैद्यकीय अपात्र झाल्यावर / सेवेत असताना दिवंगत झाल्यावर सफाई कामगारांच्या बाबतीत संबंधित कर्मचाऱ्यास/कर्मचाऱ्याच्या कुटूंबास वारसा हक्काच्या तरतुदीबाबत सविस्तर माहिती देण्याची जबाबदारी संबंधित नियुक्ती प्राधिकारी यांची आहे. संबंधित नियुक्ती प्राधिकाऱ्याने सदर तरतुदीबाबत संबंधित सफाई कामगार/वारस कुटूंबास अवगत केलेले नसल्यास, सेवानिवृत्त सफाई कामगारांच्या वारसा हक्काच्या प्रकरणांमध्ये संबंधित सफाई कामगाराने मुद्दा क्र. ३ येथे नमुद वारसदारांना विहित मुदतीत अर्ज सादर करण्याची अट क्षमापित करुन, संबंधित पात्र वारसास वारसा हक्काने नियुक्ती देण्याबाबत नियुक्ती प्राधिकारी यांनी कार्यवाही करावी.

५.५ वारसा हक्काची माहिती देणे : सेवानिवृत्त / स्वेच्छा सेवानिवृत्त झाल्यावर /वैद्यकीयदृष्ट्या अपात्र झाल्यास / सेवेत असताना दिवंगत झाल्यावर सफाई कामगारांच्या बाबतीत संबंधित कर्मचाऱ्यास/कर्मचाऱ्याच्या कुटूंबास वारसा हक्काच्या तरतुदीबाबत सविस्तर माहिती देण्याची जबाबदारी संबंधित नियुक्ती प्राधिकारी यांची राहिल. संबंधित नियुक्ती प्राधिकाऱ्याने सदर तरतुदीबाबत संबंधित सफाई कामगार/वारस कुटूंबास अवगत केलेले नसल्यास, सेवानिवृत्त सफाई कामगारांच्या वारसा हक्काच्या प्रकरणांमध्ये संबंधित सफाई कामगाराने मुद्दा क्र. ३ येथे नमूद

केल्यानुसार वारसदारांना विहित मुदतीत अर्ज सादर करण्याची अट क्षमापित करुन, संबंधित पात्र वारसास वारसा हक्काने नियुक्ती देण्याबाबत संबंधित नियुक्ती प्राधिकारी यांनी कार्यवाही करावी.

5. Ld. Advocate for the applicant states that the argument that application for appointment was not preferred within one year of retirement is not valid because the responsibility is cast on the authority and not the employee. A corrigendum to the GR dated 24.2.2023 is issued on 11.3.2024. Basically clause 8.1 and 8.4 of GR dated 24.2.2023 have been deleted by this corrigendum dated 11.3.2024.

6. Ld. PO has mainly two grounds. She submits that (i) application for appointment was not made within one year from the date of retirement of applicant no.1 and (ii) the candidature of applicant no.2 has been rejected by respondent no.5 vide his letter dated 18.10.2022 informing that the caste certificate produced by the applicant no.2 belonging to 'Adi Dravida' community which is recognized as scheduled caste by the Tamil Nadu Government, is not valid in the State of Maharashtra. Ld. PO has referred to the GR dated 24.8.1995 and drew my attention to point no.2 thereof, which reads as under:

“(2) एका राज्यातून दुस-या राज्यात नोकरी शिक्षण वगैरे करीता स्थलांतरीत होणा-या अनुसूचित जातीच्या व्यक्तींना ते ज्या राज्यात स्थलांतरीत झाले असतील, त्या राज्यात जातीची प्रमाणपत्रे मिळत नाही. स्थलांतरीतांची ही अडचण दूर करण्याकरीता केंद्र शासनाने त्यांच्या दिनांक २२.०३.७७ च्या पत्र क्रमांक बीसी-१२०२५/२/७६/एससीटी-१, मधील सूचनांना अंशतः बदल करून दिनांक १८.११.८२, ६.८.८४ आणि दिनांक २२.२.८६ च्या वर नमूद केलेल्या पत्रान्वये एका राज्यातून दुस-या राज्यात स्थलांतरीत झालेल्यांत त्यांच्या वडिलांना त्यांच्या मूळ राज्यातील सक्षम अधिका-याने दिलेल्या प्रमाणपत्राच्या आधारावर ज्या प्रकरणात मूळ राज्यामार्फत चौकशी करणे आवश्यक आहे, अशी प्रकरणे वगळता जातीची प्रमाणपत्रे द्यावीत, अशा सूचना निर्गमित केलेल्या आहेत.

स्थलांतरीतांना जातीचे प्रमाणपत्र घेण्यासाठी त्यांना त्यांच्या मूळ राज्यात जावे लागू नये व ते ज्या राज्यात स्थलांतरीत झाले असतील त्या राज्यात त्यांना जातीचे प्रमाणपत्र मिळावे या उद्देशाने ही सवलत दिलेली आहे. या प्रमाणपत्राच्या आधारावर त्यांना त्यांच्या मूळ राज्यात जो दर्जा प्राप्त झालेला आहे व त्या जाती/वर्गासाठी ज्या सवलती देय होतात त्या सवलतीचा लाभ घेता येईल. तसेच केंद्र सरकार तर्फे देण्यात येणा-या सवलती देखील त्यांना देय ठरतील. परंतू महाराष्ट्र राज्यात जे स्थलांतरीत झाले असतील त्यांना राज्यातील सवलती प्राप्त होणार नाहीत असे पुनः एकदा स्पष्ट करण्यात येत आहे.’’

7. Ld. PO has also referred to clause 8.4 of the GR dated 24.2.2023 of Social Justice and Special Assistance Department wherein it is mandated that legal heirs of original employee will have to produce caste validity certificate. Clause 8.4 reads as under:

“८.४ सफाई कामगाराच्या वारसास नियुक्ती देण्यापूर्वी संबंधित वारसाचे जात वैधता प्रमाणपत्र संबंधित कार्यालयाने प्राप्त करून घ्यावे. यासंदर्भात सामाजिक न्याय व विशेष सहाय्य विभागाने वेळोवेळी निर्गमित केलेले शासन निर्णय / परिपत्रके लागू राहतील.”

8. Ld. PO submits that the above corrigendum dated 11.3.2024 will be applicable only with prospective effect and not retrospective effect. As such the impugned order dated 18.10.2022 holds.

9. I have considered the submissions advanced by both the sides and perused the documents produced. In detailed arguments advanced by both the sides, following points were admitted:

(i) Applicant no.1 worked for more than three decades and retired as Sweeper/Scavenger in Aarey Dairy.

(ii) Though mandated by several GRs and circulars starting with the GR of 20.6.1972 all of which are outcome of the report of Lad-Page Committee; the respondent no.5 failed in informing the provisions of Lad-Page Policy to the applicants and/or their family members. Further respondent no.5 failed to mention the name of the successors of applicant no.1 in the undated superannuation order.

(iii) The policy has been clarified from time to time via GRs and Government circulars. One such circular of the Social Justice and Special Assistance Department dated 26.2.2014 directs the Government departments on several counts including:

(a) The retiring Sweeper/Scavenger will have a right to change his heir/nomination before someone is appointed in this fashion.

(b) Even if the retiring Sweeper/Scavenger dies before the appointment of his heir the right of the heir to get appointment will remain intact.

(c) The whole responsibility of implementation of this policy in letter and spirit is cast on the Head of Office from where such Sweeper/Scavenger is retiring. The purpose is to ensure that no Sweeper/Scavenger remains deprived of the heirship rights of getting a job.

10. In the GR dated 24.2.2023 of Social Justice and Special Assistance Department, para 1 defines Sweeper/Scavenger, which is reproduced below:

“१. सफाई कामगाराची व्याख्या:

लाड समितीच्या अहवालातील शिफारशींच्या अनुषंगाने, घाणीशी संबंधीत उदा. शौचाला स्वच्छता, घाणीशी संबंधीत मलनिःसारण व्यवस्था, नाली गटारे, ड्रेनेज तसेच रुग्णाला व शव विच्छेदन गृहातील घाणीशी संबंधीत ठिकाणी सफाईचे काम करणाऱ्या खालील व्यक्ती -

- (१) अनुसूचित जाती व नवबौध्द प्रवर्ग,
- (२) सफाई कामगारांच्या व्याख्येत बसणारे सर्व सफाई कामगार
- (३) पूर्वी ज्या सफाई कामगारांनी डोक्यावरून मैला वाहून नेण्याचे काम केले आहे, अशा सफाई कामगारांच्या वारसांना वारसा हक्काने नोकरीमध्ये प्राधान्य देण्यात ावे.

मात्र सर्वसाधारणपणे रोजंदारी, कंत्राटी तत्वावरील व तसेच बाह्यस्रोताद्वारे काम करणाऱ्या व्यक्ती या योजनेंतर्गत लाभ घेण्यास पात्र असणार नाहीत.

ज्या सफाई कामगारांच्या सेवा न्यायालयीन आदेशान्वये किंवा अन्य निर्णयान्वये नियमित झाल्या आहेत त्यांना या शासन निर्णयाद्वारे वरीलप्रमाणे लाड समितीच्या शिफारशी लागू करण्यात येत आहेत. अशा प्रवर्गातील एखादया कामगाराचे पदनाम काहीही असले तरी त्या कामगारास जर उपरोक्त "सफाई कामगार" या व्याख्येत बसणारे काम दिले जात असेल तर त्यांनाही "सफाई कामगार" म्हणून संबोधण्यात यावे व त्यांना सफाई कामगाराचे सर्व लाभदेण्यात यावेत."

Given the above definition at para 1(2) above, it is expected by the policy makers that benefit of the Lad-Page Policy should be extended to all the Safai Kamgars irrespective of their categories.

11. Para 3 of GR dated 24.2.2023 specifies the categories of heirs eligible to be treated as heirs for Lad-Page policy benefit. Para 3.2 and 3.7 reads as under:

“३.२ मुलगा / मुलगी.

३.७ वरील पैकी कोणीही वारस उपलब्ध नसल्यास अथवा सदर वारसापैकी कोणीही सफाईचे काम करण्यास तयार नसल्यास सफाई कामगाराचा तहहयात सांभाळ करण्याची लेखी शपथपत्राद्वारे हमी देणारी संबंधित "नामनिर्देशित व्यक्ती".

12. It may be noted that son or daughter is included at point no.3.2 whereas point no.3.7 of the GR dated 24.2.2023 enlarges the scope to cover any person beyond family members.

13. Para 5.4 of the said GR dated 24.2.2023 clearly cast the responsibility on the appointing authority to inform the family members about the benefits of Lad-Page Policy. Moreover, if the appointing authority has not done this in time, the appointing authority has to relax the mandatory time period of one year for nominating the heir and take necessary steps to ensure that heirs gets the appointment.

14. In this OA it is noticed that applicant no.2 who was 27 years of age at time of filing this OA has been persuading with the authorities from the year 2020 onwards. So it cannot be said that he has not taken due interest in moving the authorities to seek appointment.

15. Moreover, the so-called GR Ld. PO has relied upon the Government document dated 24.8.1995 is not a GR but a Circular. This circular mandates that caste certificate is to be produced. However, the Lad-Page Committee policy being a welfare measure, its purpose will be defeated, if restrictive view is taken. Incidentally, the category of 'Adi Dravida' in the State of Tamil Nadu falls under the category of Scheduled Caste though not mentioned so under the category of Scheduled Caste in Maharashtra.

16. However, the corrigendum dated 11.3.2024 to the GR dated 24.2.2023 clearly specified as follows:

“२. शासन निर्णय दिनांक २४.२.२०२३ मधील. अनु. क्र. ८ मधील सफाई कामगारांच्या वारसा हक्कासंबंधात इतर तरतूदी मधील अनु.क्र. ८.१ मधील लहान कुटुंबांचे प्रतिज्ञापत्र देण्याची अतिरिक्त अट तसेच अनु. क्र. ८.४ मध्ये नमूद नियुक्ती देण्यापूर्वी जातवैधता प्रमाणपत्र प्राप्त करून घेण्याची अट वगळण्यात येत आहे.”

17. In the light of all the above, I tend to disagree with the contentions of the Ld. PO that the said corrigendum will be applicable with prospective effect and will have no retrospective effect.

18. The Lad-Page policy has been formulated with a very deep thought regarding eradication of untouchability from the Indian society and is pursuant to Article 17 of the Constitution as well as Untouchability (Offences) Act, 1955 which was amended and renamed in 1976 as The Protection of Civil Rights Act, 1955. However, the Lad-Page Policy had to be carved out to overcome the deficiency in eradication of untouchability from the society. Consequently, the policy suggested appointment of successors/heirs of the Sweeper/Scavenger by वारसा हक्क. The policy established in 1970s has been continued till date with amendments from time to time but the basic ethos of the policy remains intact. Needless to say, this policy aims at larger welfare of the most disadvantaged section of the society. Further the policy needs to be viewed liberally and a constrictive view of it should be avoided at all costs.

10. I, thus, pass the following order:

ORDER

(i) The Original Application is allowed.

- (ii) The impugned communication dated 18.10.2022 is quashed and set aside.
- (iii) The Respondents are directed to appoint the Applicant No.2 as Sweeper/Scavenger within a period of two months from today.
- (iv) No order as to costs.

Sd/-
(A.M. Kulkarni)
Member (A)
14.2.2025

Dictation taken by: S.G. Jawalkar.