

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1211 OF 2016

DISTRICT : THANE

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|----|--|----------------|
| 1. | Shri Harishchandra D. Mandavkar. |) |
| | Age : 55 Yrs., Occu.: Service (Sweeper). |) |
| 2. | Mrs. Jyoti H. Mandavkar. |) |
| | Age : 50 Yrs., Occu. Service (Sweeper). |) |
| | Both R/at Room No.706, B-2, Pankaj |) |
| | Sarovardarshan CHS, Almedia Road, |) |
| | Thane. |)...Applicants |

Versus

- | | | |
|----|----------------------------------|-----------------|
| 1. | The Treasury Officer. |) |
| | District Treasury Office, Thane. |) |
| 2. | Joint Director. |) |
| | Accounts & Treasury Department, |) |
| | Konkan Bhavan, Navi Mumbai. |) |
| 3. | Director. |) |
| | Accounts & Treasury Department, |) |
| | Mantralaya, Mumbai. |)...Respondents |

Mr. G.A. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 10.10.2019

JUDGMENT

1. Heard Shri G.A. Bandiwadekar, learned Advocate for the Applicants and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. In the present Original Application, the Applicants claim two reliefs, which are as follows :-

(a) This Hon'ble Tribunal by an order may kindly direct the Respondents to make both applicants permanent in service from February 2016;

(b) This Hon'ble Tribunal by an order may kindly direct the Respondents to pay to both the applicants their difference of i.e. Rs.423/- per day less Rs.290/- per day from i.e. Rs.133/- per day from 1st October 2015 till January 2016 and thereafter on the basis as permanent employees.”

3. The learned Advocate for the Applicants submits that the Applicants are permanent employees working on the post of Sweeper, and therefore, they are entitled for permanency in service. He further submits that as per Notification issued by Labour Department dated 27th January, 2017, the Applicants are entitled to revise wages, and therefore, seek direction to the Respondents.

4. Whereas, Smt. K.S. Gaikwad, learned Presenting Officer has pointed out that the issue of permanency is no more open to debate in view of decision rendered by this Tribunal in O.A.No.215/2005 filed by the Applicant No.1 for grant of permanency. The said O.A. was decided by this Tribunal on 14.10.2005 wherein the relief of permanency was rejected. The learned P.O, therefore, submits that the present O.A. is nothing but abuse of process of law.

5. I have gone through the Judgment in O.A.215/2005, which clearly shows that the relief claimed by Applicant No.1 for regularization in service has been rejected. The Applicant seems to have appointed as Part Time Sweeper but claimed the relief of regularization of service and benefits of permanency, which is

dismissed by the Tribunal. The Judgment in O.A.215/2005 has attained finality. This being the position, the present O.A. is hit by the principles of *res-judicata* as contemplated under Section 11 of C.P.C. and not maintainable.

6. The learned Advocate for the Applicant made feeble attempt to contend that in earlier O.A, the Applicants could not establish their claim, and therefore, now they want to establish their claim in this O.A. Thus, according to him, the decision rendered in O.A.215/2005 is incorrect, and therefore, the present O.A. is filed. This submission is fallacious and totally misconceived. Needless to mention, once the matter in issue is decided by the Court of competent jurisdiction, then it can be re-agitated again in subsequent litigation and the remedy was to challenge the decision before higher forum only. Suffice to say, the present O.A. is hit by the principles of *res-judicata* and the relief of permanency cannot be entertained.

7. As regard second relief, the learned Advocate for the Applicants submits that in view of Notification dated 27th January, 2017, the Applicants are entitled to revised wages, and therefore, seeking direction to the Respondents. So far as this aspect is concerned, there is no such pleading in O.A. about the Notification dated 27th January, 2017. Indeed, the O.A. is filed in 2016 claiming the wages at the rate of Rs.423/- per day on the basis of Circular purportedly issued by Superintending Engineer, Public Works Department Circle, Thane specifying the rates/wages. Page No. 20 of Paper Book shows that the Mazdoor (Unskilled Heavy Male) is entitled to wages at the rate of Rs.423/- per day. Whereas, the Applicants are Sweepers and apparently, does not fall within the definition of Mazdoor (Unskilled Heavy Male). Apart, it is for the Department to see in which category, the Applicants fall to see their entitlement to the wages as per prevailing wages structure.

W. D. ...

8. The learned P.O. pointed out that the Respondents have already granted wages at the rate of Rs.290/- per day as per revised rates w.e.f.10.02.2015.

9. In view of above, there is no merit in O.A. and same is liable to be dismissed. However, the Applicants are at liberty to make an application to the Respondents for revised wages and Respondents should consider the same and if permissible, may grant as per the entitlement of the Applicants.

10. In view of above, I pass following order.

ORDER

(A) The Original Application is dismissed with no order as to costs.

(B) The Applicants are at liberty to make an application to Respondent No.1 – District Treasury Officer, Thane for grant of revised wages in terms of Notification dated 27th January, 2017 and Respondent No.1 shall decide the same in accordance to law. If the Applicants are found entitled to revised wages, then the same be paid to them.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 10.10.2019

Dictation taken by :

S.K. Wamanse.