

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.82 OF 2023**

**DISTRICT : MUMBAI**

**Sub.:- Termination**

1. Smt. Bharti Mayur Makwana. )  
Age : 43 Yrs, Safai Kamgar, ESIS Hospital )  
G.J. Marg, Worli, Mumbai – 400 018 and )  
Having residential Address as Room No.23,)  
ESIS Hospital Staff Quarter, Type 1, )  
G.J. Marg, Worli, Mumbai – 400 018. )

2. Shri Amit Bhimji Parmar. )  
Age : 41 Yrs, Safai Kamgar, ESIS Hospital )  
G.J. Marg, Worli, Mumbai – 400 018 and )  
Having residential Address as Room No.11,)  
ESIS Hospital Staff Quarter, Type 2, )  
G.J. Marg, Worli, Mumbai – 400 018. )

3. Smt. Kanta Manish Padaya. )  
Age : 40 Yrs, Safai Kamgar, ESIS Hospital )  
G.J. Marg, Worli, Mumbai – 400 018 and )  
Having residential Address as TIA, )  
Ganesh Alap Nagar, Near J.L. Poddar )  
High School Nagar Road, Bhayendar (W). )

4. Shri Ketan Narasinh Garasiya, )  
Aged : Adult, Safai Kamgar, ESIS Hospital )  
G.J. Marg, Worli, Mumbai – 400 018 and )  
Having residential Address as Room No.2, )  
Building No.5, Grace Colony, )  
Nanbhat Road, Virar (W), Bolinj, )  
Thane – 401 303. )

**...Applicants**

**Versus**

1. The State of Maharashtra. )  
Through Chief Secretary, )  
Maharashtra State, Mantralaya, )  
Mumbai – 400 032. )

2. Government of Maharashtra. )  
Through Additional Chief Secretary, )  
General Administration Department,)

- Mantralaya, Mumbai – 400 032. )
3. Government of Maharashtra. )  
Through Additional Chief Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai – 400 032. )
4. Commissioner. )  
State Employees Insurance Scheme, )  
Panchdeep Bhavan, 6<sup>th</sup> Floor, )  
N.M. Joshi Marg, Lower Parel, )  
Mumbai – 400 013. )
5. Director (Administration), )  
Office of Commissioner of State )  
Employees Insurance Scheme, )  
Panchdeep Bhavan, 6<sup>th</sup> Floor, )  
N.M. Joshi Marg, Lower Parel, )  
Mumbai – 400 013. )
6. Medical Superintendent. )  
ESIS Hospital, G.J. Marg, Worli, )  
Mumbai – 400 018. )...**Respondents**

**Shri M.V. Thorat with Shri Amar Bodke, learned Advocates for Applicants.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Debashish Chakrabarty, Member-A**

**DATE : 05.01.2024**

### **JUDGMENT**

1. The Applicants who were working as ‘Safai Kamgars’ in ESIS Hospital at Worli, Mumbai have challenged their ‘Orders of Termination’ dated 17.01.2022 passed by Respondent No.5 i.e. ‘Director (Administration)’ in office of ‘Commissioner of Employees State Insurance Scheme’ at Lower Parel, Mumbai. The ‘Orders of Termination’ dated 17.01.2022 were passed against the Applicants are on grounds that

there was breach of 'Maharashtra Civil Services (Declaration of Small Family) Rules 2005' (hereinafter referred to as 'said Rules of 2005' for brevity). The 4 Applicants were appointed as 'Safai Kamgars' between 2015 to 2019, much after 28.03.2005 when the 'said Rules of 2005' came to be notified. The admitted facts are as follows :-

- (i) All the Applicants are having more than 2 children and the 3<sup>rd</sup> child is born after 28.03.2006, the date of enforcement of 'said Rules of 2005'.
- (ii) All the Applicants have given 'Undertaking' at the time of their appointment as per 'Proforma' prescribed under Rule 4 of 'said Rules of 2005'.
- (iii) All the Applicants belong to 'Valmiki' or 'Mehtar' community and were appointed under 'Varsa/Vashila Hakka' granted to 'Safai Kamgars'.

2. The Applicants were represented by Shri M.V. Thorat along with Shri Amar Bodke, learned Advocates and Smt. K.S. Gaikwad, learned Presenting Officer represented the Respondents.

3. Learned Advocate for the Applicants submitted that under Social Justice and Special Assistance Department's Circular dated 21.10.2011 and GAD GR dated 24.02.2023, multiple family members under 'Varsa/Vashila Hakka' can be appointed as 'Safai Kamgars'. Learned Advocate for Applicants relied on Social Justice and Special Assistance Department's Circular dated 21.10.2011 to submit that as per 'Sub-Clause (3)', the 'Roster for Reservation' has not been made applicable to 'Safai Kamgars'. Learned Advocate also pointed out that as per Social Justice and Special Assistance Department's Circular dated 21.10.2011, classification done for 'Permanent Posts' or 'Temporary Posts' shall not

affect recruitment of 'Safai Kamgars'. So they are altogether a 'Separate Class' of employees serving in various establishments under State Government.

4. The learned Advocate for Applicants pointed out the **judgment in OA No.397/2021 (Nazir G. Shaikh Vs. State of Maharashtra & Ors.) dated 02.09.2022**, which is on point of implementation of 'Lad-Page Committee'. Learned Advocate for Applicant especially pointed out Para 8 of the judgment, which is reproduced under :-

*"It is thus explicit that Scheme has been prepared for educational, financial and social progress of Mehtar, Valmiki and Bhangi Community and the said Community is treated as Special Class irrespective of the caste or religion. It is with the benevolent object of the social progress and empowerment of the said Community, the Government had accepted the recommendations of Lad-Page Committee thereby giving employment in place of retiring Safai Kamgar by way of succession. As such, what was to be seen whether Applicants were belonging to any of the Community referred in recommendations of Lad-Page Committee viz. Valmiki, Mehtar and Bhangi and G.R. dated 11.03.2016."*

5. The learned Advocate for Applicants also pointed out the **judgment in Writ Petition No.11747/2018 [Pratap B. Sonawane Vs. State of Maharashtra & Ors.] dated 15.12.2021**. The learned Advocate for the Applicants also referred to **judgment in Writ Petition No.9666/2018 [Suresh Bajrang Sonawane Vs. State of Maharashtra & Ors.] dated 18.04.2019**.

6. The facts and legal position disputed by the learned Advocate for Applicants is whether 'said Rules of 2005' are applicable to the present 4 Applicants who are 'Safai Kamgars' and therefore they do not fall under any of the Clauses (a), (b), (c) or (d) mentioned in 'Rule 4' of 'said Rules of 2005'.

7. The learned Advocate for Applicants submitted that the 4 Applicants are beneficiaries of the welfare measures proposed in the report of 'Lad-Page Committee'. The 'Summary of Recommendations' of

'Lad-Page Committee' was accepted by Industry, Energy and Labour Department GR dated 12.08.1975. Then onwards the 'Safai Kamgars' have been appointed by way of 'Varsa/Vashila Hakka'. Therefore, Applicants do not come under 'Group-D', as they have been performing only work of 'Safai Kamgar' which includes cleaning of Garbage Collection, Drainage Cleaning, Scavenging Work, etc. which in fact are not done by those serving in Group-D.

8. The learned Advocate for the Applicants then submitted that there was no need for Commissioner of Employees State Insurance Scheme to obtain 'Undertaking' as per 'said Rules of 2005' from the 4 Applicants, it was not applicable to them, as they being 'Safai Kamgars' were 'Separate Class of employees' distinct from Group-D. In order to substantiate his arguments, he relied on GAD Circular dated 01.10.2003 regarding implementation of recommendations of 'Lad-Page Committee'. The learned Advocate for Applicants pointed out that as per its 'Sub-Clause (क)' of 'Clause 2', some posts are specifically reserved for 'Safai Kamgars' and such posts are not to be counted in Group-D. The posts of 'Safai Kamgars' are to be filled-in by direct recruitments only by applying 'Varsa/Vashila Hakka'. The learned Advocate for Applicants submitted that this policy has been followed by all concerned Administrative Departments of State Government.

9. The learned Advocate for Applicants highlighted 'Sub-Clause (क)' of 'Clause 2' of GAD Circular dated 01.10.2003 which reads as under:-

“मेहतर म्हणून काम करणा-या व्यक्तीची अनुसूचित जातीकरिता वर्ग-चार मध्ये ज्या रिकाम्या जागा राखून ठेवलेल्या असतात त्या जागांच्या संबंधात गणना करण्यात येणार नाही. त्यांची सरळसेवेने भरती करावी. मेहेतरांच्या संख्येच्या वार्षिक विवरणात दर्शविलेल्या वर्ग चारच्या आकड्यांमध्ये समावेश होणार नाही. हे आकडे वार्षिक विवरणपत्रात स्वतंत्र प्रवर्गामध्ये दर्शवण्यात आले पाहिजेत. वर्ग चार संबंधातील आकड्यांमध्ये मेहेतरांची संख्या समाविष्ट नाही अशा अर्थाची टीप वार्षिक विवरणाच्या शेवटी विनिर्देशपूर्वक समाविष्ट करण्यात आली पाहिजे.”

10. The learned Advocate for Applicants further relied on GAD Circular dated 19.04.2018 to point out 'Sub-Clause (क)' of 'Clause 2', which reads as under :-

“२(क) मेहतर व वाल्मिकी म्हणून काम करणा-या व्यक्तीची अनुसूचित जातीकरिता, वर्ग-४ मध्येच्या रिकाम्या जागा राखून ठेवलेल्या असतात, त्या जागांच्या संबंदात गणना करण्यात येणार नाही. त्यांची सरळसेवेने भरती करावी. मेहतर व वाल्मिकी यांच्या संख्येचा वार्षिक विवरणात दर्शविलेल्या वर्ग-४ च्या आकडयामध्ये समावेश होणार नाही. हे आकडे वार्षिक विवरणपत्रात स्वतंत्र प्रवर्गामध्ये दर्शविण्यात यावेत. वर्ग-४ च्या संबंदातील आकडयामध्ये यांची संख्या समाविष्ट नाही, अशा अर्थाची टीप वार्षिक विवरणपत्राच्या शेवटी विनिर्देशपूर्वक समाविष्ट करण्यात यावी.”

11. The learned Advocate for Applicants stated that 3 Applicants were appointed prior to this GAD Circular dated 19.04.2018 while 1 Applicant was appointed on 31.01.2019. The learned Advocate for Applicants argued that State Government has accepted the ‘Summary of Recommendations’ of ‘Lad-Page Committee’ by Industry, Energy and Labour Department GR dated 12.08.1975 and these were being implemented progressively over the years for welfare of this ‘Special Class of employees’ known as ‘Safai Kamgars’ so as to provide them employment opportunity through ‘Varsa/Vashila Hakka’.

12. The learned Advocate for Applicants argued that Respondent No.2 i.e. Public Health Department which is supervisory ‘Administrative Department’ of Commissioner of Employees State Insurance Scheme had in fact moved proposal to GAD stating that the termination of services of the 4 Applicants was required to be reconsidered in view of State Policy to implement the report of ‘Lad-Page Committee’ for ‘Safai Kamgars’.

13. The learned Advocate for Applicants drew attention to the case of one Smt. Jayanti N. Solanki, who was similarly placed ‘Safai Kamgar’ who was working in ‘Raj Bhavan’. She had approached the State Government to challenge her termination on grounds that she was having 4 living children, out of whom 2 were born after 28.03.2006. The learned Advocate for Applicant stated that by GAD GR dated 20.07.2017, dismissal order of Smt. Jayanti N. Solanki was set aside by granting exemption under Rule 6 of ‘said Rules of 2005’ subsequent to judgment passed by Hon’ble Bombay High Court in Writ Petition No.2673/2012 on 31.08.2016. She was reinstated to work as ‘Safai Kamgar’. The learned Advocate for Applicants argued that the case of present 4 Applicants is

similar to Smt. Jayanti N. Solanki. Therefore, the 4 Applicants are required to be given same treatment based on parity by State Government. However, although Public Health Department had recommended the cases of the 4 Applicants, these were rejected by GAD.

14. The learned Advocate for Applicants also pointed out that 'Safai Kamgars' working in 'Municipal Corporation of Greater Mumbai (MCGM)' do not come under 'said Rules of 2005'.

15. Per contra, Smt. K.S. Gaikwad, learned PO while opposing the prayers of Applicant relied on Affidavit-in-Reply dated 05.04.2023 filed by Respondent Nos.3 to 6 through Dr. Shashi G. Kolnurkar, Deputy Director (Medical) in the office of Commissioner of Employees State Insurance Scheme'. The learned PO submitted that State Government has encouraged small family norms in keeping with the overall objectives of 'National Population Policy 2000' framed by Union of India and so has adopted the 'said Rules of 2005'. The 'said Rules of 2005' are unanimously made applicable to all the Government Servants from Group A to Group D including 'Safai Kamgars' i.e. 'Sweepers'. The learned PO argued that no exception was made for 'Sweepers' in 'said Rules of 2005'. The 4 Applicants have more than 2 children including those born after 28.03.2006 but before they joined as 'Safai Kamgars'. However, as complaints had been received against the 4 Applicants, the 'Commissioner of Employees State Insurance Scheme' had issued them 'Show Cause Notices'. The 4 Applicants thereafter admitted that they had more than 2 children who are born after 28.03.2006.

16. The learned PO then submitted that Smt. Bharti M. Makwana and Shri Amit B. Parmar both Applicants had not given the true information to 'Show Cause Notices'. She stated that the names of 2 children and name of 3<sup>rd</sup> child was not furnished by them hence these 2 Applicants

even suppressed true facts to mislead the 'Commissioner, Employees State Insurance Scheme'. Thus, the termination of all 4 Applicants cannot be faulted as it has been passed as per 'said Rules of 2005'.

17. The learned PO has submitted that there was evidence to show that 'Safai Kamgars' are included in cadre of Group-D. The learned PO argued that the 4 Applicants are entitled to 'Pay Scale' of 7<sup>th</sup> Pay Commission given to Government Servants in Group-D. She relied on Social Justice and Special Assistant Department GR dated 24.02.2023 wherein under Clause No.7(1), it is specifically mentioned that 'Legal Heirs' of 'Safai Kamgars' can be appointed either in Group-D or Group-C considering their 'Educational Qualifications'. The learned PO further pointed out to its Clause 8(1) wherein it is clearly mentioned that 'said Rules of 2005' which are applicable to all Government Servants in Group-A to Group-D will henceforth be applicable to those who are appointed as 'Safai Kamgars'.

18. The learned PO further relied on order of this Tribunal in OA No.664/2013 dated 29.06.2021. The learned PO submits that in the said order, the Tribunal has held that 'said Rules of 2005' are applicable to the appointment on 'Compassionate Grounds'.

19. The learned PO also submitted that Applicants do not belong to 'Mehtar' community, but they are from the community of 'Bhangi' and thus not covered by the benefits extended to 'Safai Kamgars' by report of 'Lad-Page Committee' which mentions only about 'Mehtar' and 'Safai Kamgar'.

### **Assessment**

20. The Applicants were appointed as 'Safai Kamgars' in the 'ESIS Hospital' at Worli, Mumbai under the 'Commissioner, Employees State Insurance Scheme (ESIS)' by 'Varsa/Vashila Hakka' and have been doing

work of Scavenger. So, whether Applicants are covered under Group-D is the issue to test the applicability of the 'said rules of 2005'. While dealing with this point, we emphasize that any appointment in 'Government Service' is necessarily to be made as per the notified 'Recruitment Rules'. However, while making appointments of 'Safai Kamgars', the State Government has given the go-bye to 'Recruitment Rules' of Group-D 'Safai Kamgars' have been consciously marked out as 'Separate Class' of employees who are not to be counted in 'Group-D'. In 'Sub-Clause (क)' of 'Clause 2' of GAD GR dated 01.10.2003, it is mentioned that those working as 'Mehtars' are not be shown against posts in Group-D :-

“(क) मेहतर म्हणून काम करणा-या व्यक्तीची अधिसूचित जाती करीता वर्ग-४ मध्ये ज्या रिकाम्या जागा राखून ठेवलेल्या असतात त्या जागांच्या संबंधात गणना करण्यात येणार नाही. त्यांची सरळसेवेने भरती करावी. मेहेतरांच्या संख्येच्या वार्षिक विवरणात दर्शवलेल्या वर्ग-४ च्या आकड्यांमध्ये समावेश होणार नाही. हे आकडे वार्षिक विवरणपत्रात स्वतंत्र प्रवर्गामध्ये दर्शवण्यात आले पाहिजे. वर्ग चार संबंधातील आकड्यांमध्ये मेहेतरांची संख्या समाविष्ट नाही अशा अर्थाची टीप वार्षिक विवरणाच्या शेवटी विनिर्देशपूर्वक समाविष्ट करण्यात आली पाहिजे.”

21. We note that while referring to this particular Sub-Clause (क) of Clause 2 of GAD GR dated 01.10.2023, the learned PO had submitted that 'Mehtars' are included in Group-D. The learned PO stated that only some posts in Group-D have been earmarked and therefore, 'Mehtars' are included in Group-D. These submissions of learned PO are neither acceptable nor are they consistent with the policy decisions taken by State Government since acceptance of the report of 'Lad-Page Committee' as per Industry, Energy and Labour Department GR dated 12.08.1975. After reading Sub-Clause (क) of Clause 2 of GAD, one may get impression that some posts from Group-D are reserved for 'Mehtars'. However, the entire reading of this GAD GR dated 02.20.2003 indicates that it is not reservation of posts for 'Mehtars' in Group-D, but some posts which are consciously carved out for this 'Separate Class' of 'Mehtars' not to be counted in posts of Group-D. If some posts reserved for 'Mehtars', then they are required to be recruited by applying a 'Vertical Reservation' by following the reservation policy of State Government including those for 'SC, ST and OBC'. Thus, for direct recruitment of Group-D, when the

State Government wants to fill-up the vacant posts it has to do so by observing completing 'Roster for Reservation' and by recruitment procedure as per 'Recruitment Rules'. Thus, the posts for 'Mehtars' do not constitute any reserved category in Group-D in view of guidelines in Sub-Clause (क) of Clause 2 of both GAD Circular dated 01.10.2003 and reiterated in GAD Circular dated 19.04.2018.

22. We refer GAD Circular dated 21.10.2011 which reiterates these recommendations of only 'Lad-Page Committee' when appointment of 'Safai Kamgars' are to be made through 'Varsa/Vashila Hakka'. We rely on Clause (इ) & (ऊ) of said Social Justice and Special Assistance Department Circular dated 21.10.2011, which is as under :-

“(इ) सफाई कामगार नोकरी करीत असताना त्याला चतुर्थश्रेणीतच पदोन्नती मिळाल्यास वारसाहक्काच्या नियमास बाधा येणार नाही.

(ऊ) आकृतीबंधामुळे तसेच स्थायी / अस्थायी पदामुळे कोणत्याही सफाई कामगारांच्या वारसाहक्काच्या नियुक्तीबाबत अडचण निर्माण होणार नाही. तसेच, सफाई कामगारांच्या बाबतीत निवृत्त/मरत झालेल्या कर्मचा-यांच्या जागी वारसाहक्काने कर्मचारी लागत असल्यामुळे एकूण कर्मचारी वाढत नाही. त्यामुळे आकृतीबंधाची अट वारसाहक्का पुरती लागणार नाही.”

23. We observe that it would not be out of context to reproduce the contents of 'Para 2' of the Summary of Recommendations under Chapter VII of the report of 'Lad Page Committee' annexed to Industry, Energy and Labour Department GR dated 12.08.1975, which reads as under :-

“2. Recruitment :- We recommended 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 sweepers 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 tem.

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

Employment of sweepers and scavengers on contract basis should be completely abolished if necessary by suitable amendment to the Contract Labour Act.”

24. We now refer to GAD GR dated 24.02.2023 which reiterates that even when 'Safai Kamgars' are promoted after initial appointment, even then benefit of 'Varsa/Vashila Hakka' as per entitlement in 'Lad-Page Committee' report cannot be withdrawn and LRs will still be entitled to appointment by 'Varsa/Vashila Hakka', if promotion is given to them in Group-D but if at all they are promoted in Group-C', then LRs were not to be entitled to 'Varsa/Vashila Hakka'. This GAD GR dated 24.02.2023 further specifies that LRs of 'Safai Kamgar' who are beneficiary of 'Varsa/Vashila Hakka' can be appointed in Group-C and Group-D as per their 'Education Qualification' & fulfillment of other Eligibility Conditions. Thus, in respect of Clause 7.1 of GAD G.R. dated 24.02.2023, the State Government has taken policy decision that 'Safai Kamgars' who are appointed by giving benefit of 'Varsa/Vashila Hakka' as per report of 'Lad-Page Committee', they are to be given opportunity to be promoted to Group-C or Group-D. Hence, by inference 'Safai Kamgars' at the time of appointment are not considered equivalent to posts in 'Group-D' to which they can be promoted. If they possess 'Educational Qualifications' and fulfilled 'Eligibility Conditions' further as per Clause 7.1, the State Government has now clarified that if any person is appointed by 'Varsa/Vashila Hakka' as 'Safai Kamgars', can also be on promotion to several category of posts in Group-C or Group-D. However, if the 'Safai Kamgars' appointed initially as beneficiaries of 'Varsa/Vashila Hakka' are appointed subsequently on the post in Group-D, then they would undoubtedly come under previous 'said Rules of 2005'. So far as appointments of 'Safai Kamgars' continue to service as such they therefore would not be covered by 'said Rules of 2005'. Hence, it is their initial appointments as 'Safai Kamgars' based on 'Varsa/Vashila Hakka' which sets them apart as 'Separate Class' of employees different even from designated posts in 'Schedule' of 'The Group-D posts in the Department of the Government of Maharashtra and officer thereunder (Recruitment) Rules 2017'.

25. We therefore proceed to examine 'The Group-D posts in the Department of Government of Maharashtra and the officers thereunder (Recruitment) Rules 2017' which in its 'Schedule' gives 'Designation of Posts' in various types of posts under Group-D as indicated.

Schedule  
(Posts in Group 'D' Services)

Serial Number (1)	Designation of post (2)
Part A	
1	Jamadar
2	Chopdar
Part B	
3	Hawaldar
4	Naik
5	Liftman
6	Binder
7	Filter
8	Daftari
9	Daftarband
10	Roneo Peon / Roneo Operator
11	Mukadam
12	Gate-Keeper
13	Xerox Operator
Part C	
14	Cleaner Mukadam
15	Sweeper Mukadam
Part D	
16	Peon
17	Assistant Gate-Keeper
18	Messenger
Part E	
19	Cleaner
20	Sweeper

26. We must thus refer next to relevant rules which help further to distinguish between 'Safai Kamgars' and all other 'employees in Group-D'. The definition of 'Group-D' posts as found in 'Rule 2(d) of 'The MCS (Conduct) Rules 1979 reads as follows :-

“2(d) “Class IV posts” means posts which are specifically classified as Class IV posts and such other unclassified non-gazetted posts the maximum of the scales of which are equal to or less than Rs.940/- or a corresponding amount as per the revision of pay scales made from time to time in future.”

27. We need to delve further into the classification of the posts mentioned above in 'Part-A' to 'Part-E' to observe that they all are filled-up by way of either (i) Nomination, (ii) Promotion and (iii) Transfer. In the context of 'Safai Kamgars', it is pertinent to note that in 'Part-E', there are two posts designated as (i) 'Cleaner' and (ii) 'Sweeper' but they are to be appointed only by 'Nomination' by the respective Appointing Authority. These employees who appointed are (i) Cleaner and (ii) Sweeper also have opportunity to be promoted to the posts in 'Part-C' which are of (i) 'Cleaner Mukadam' and (ii) 'Sweeper Mukadam'. The posts in 'Part-C' and 'Part-E' of the 'Schedule' to 'The Group-D posts in the Department of Government of Maharashtra and the officers thereunder (Recruitment) Rules 2017' are those who are primarily entrusted work for regular sweeping and cleaning of work in premises in Government, Buildings but do not do 'Scavengers Work' which is done by 'Safai Kamgars'.

28. We need to take note that 'Safai Karmacharies' who are colloquially referred to as 'Safai Kamgars' had been specifically defined under 'The National Commission for Safai Karmachari Act 1993' in 'Section 2(e)' which reads as under :-

“Section 2(e) 'Safai Karmachari means a person engaged in or employed for manually carrying human excreta or any sanitation work.”

We also went through the few Annual Reports of 'The National Commission for 'Safai Kamgars' which is Non-Statutory Body' since 2004 and refer to contents of the Tenth Report (2010-11) which was submitted on 23.09.2011 and placed both houses of Houses of Parliament on 31.07.2015 so as to find answers to some of the issues raised in course of hearing such as 'Safai Kamgars' being mentioned to belong limited only to communities of 'Mehtar' and 'Safai Kamgars' mentioned in context of the report of 'Lad-Page Committee' and in GR's of 'Social Justice and Special Assistance Department' and GAD Circular dated 21.10.2011. We again refer to the contents of Tenth Report (2010-11) to highlight the difference of work done by 'Safai Kamgars' and those serving on various posts in 'Group-D'. The following extracts from the 'Tenth Report (2010-11) of the National Commissioner for 'Safai Karmachari' (NCSK) mentions that 'Safai Karmachari' are those who (i) Collect Human Excreta from Public and Private Latrines manually; (ii) Go inside the sewers full of filth and clean them; (iii) Sweep roads and streets with bare hands; (iv) Clean public toilets and urinals; Clean trains, platforms & railway tracks; (v) Remove municipal, bio and industrial waste; (vi) Collect garbage from door to door; (v) Remove dead animals from roads etc. while working all major establishments- ranging from Municipal Corporations, Local Bodies, Hospitals, Hotels, Schools, Industries to Slaughter houses & Sanitary Landfills.

29. We refer to the contents of 'Tenth Report (2010-11) of the National Commission for 'Safai Karmachari' which mentions that sweepers and scavengers in India are referred to by different names; the most common among them are Mehtar, Bhangi, Chura, Madiga, Adijambva, Ragi, Mala and the like. Besides, the term Jharna is used in Punjab; Hela in Northern Region, Arundhati in Southern Region and Lal Begi and Valmiki in Uttar Pradesh. The last two names are that of two great saints, the former being a Muslim and the latter Hindu.

30. We further refer to 'The Maharashtra Civil Services (Declaration of Small Family) Rules 2005' which under 'Rule 2(c)' defines 'Service' to mean service or any other service under the 'Government' and the wide set of rules of State Government such as MCS (General Conditions of Service) Rules 1981, MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981, MCS (Leave) Rules, 1981, MCS (Pay) Rules 1981 and MCS (Pension) Rules, 1982 which everywhere under Rule 9(21) defines 'Government' as follows:-

"Government' Unless there is anything repugnant in the subject or context, as respect anything done or to be done after the commencement of the Constitution, shall mean the Governor of Maharashtra."

We would further like to take note that in all policy decisions taken by GAD and Social Justice and Special Assistance Department in all GR and Circulars referred to have particularly mentioned that the 'Safai Kamgars' are to be considered differently because of law. Their 'Social and Economic' status, as they invariably belong to Backward Classes which has also been deprived of Educational Opportunities. The Tenth Report (2010-11) of the National Commission of Safai Karmachari mentions that 'Safai Karmacharies' undoubtedly belong to Scheduled Caste of all the groups among the Scheduled Castes, the most depressed and the cruelly exploited is the group of scavengers and 'Safai Karmacharies' which incidentally comprises of the largest section of the Scheduled Castes. We are of the considered view that decision to reject the proposal of Public Health Department was not taken by 'Government' and therefore was bad in law.

31. We in the above context specifically would like to refer to the case of Smt. Bharti Makwana one of the Applicants as her record shows that she was having 2 children before 28.03.2006 who were 'Daughters' but thereafter her 3<sup>rd</sup> child born on 24.04.2009 was a 'Son'. Thus, it is a fact that such 'Social and Cultural' circumstances exerts today why many Women cannot restrict their family size to only 2 children especially

when they have earlier had only 'Daughters'. Such compelling situations can be even more challenging for 'Women' who are 'Safai Kamgars'. We have considered the order in OA No.664/2013. However, the facts of that case are different than the present case. The Applicant in OA No.664/2013 was working as 'Forest Guard' and was appointed on 'Compassionate Grounds'. The post of 'Forest Guard' which is in Group-C is totally different from that of 'Safai Kamgars'. Naturally, therefore said OA No.664/2013, there are no observations made in respect of 'Varsa/Vashila Hakka' of 'Safai Kamgars'. We take note that comprehensive proposal for reconsideration of the 'Orders of Termination' dated 17.01.2022 by Commission, Employees State Insurance Scheme in respect of these Applicants was in fact submitted by Public Health Department to GAD. However, GAD had rejected the proposal summarily on 02.02.2023.

32. We have gone through the 'File Notings' of GAD to peruse the proposal of Public Health Department which shows that it was put-up for consideration only upto level of Additional Chief Secretary, GAD. Unlike in the case of Smt. Jayanti N. Solanki working as 'Safai Kamgar' in 'Raj Bhavan', GAD did not forward the cases of Applicants by Public Health Department for further consideration of the 'Senior Secretaries Committee' constituted by GAD Circular dated 12.02.2001 and thus their recommendations were never submitted for final decision of 'Hon'ble Minister Incharge of Public Health Department' who was under Rule 6 of the 'said Rules of 2005' vested with powers to decide the cases of Applicants if to be given exemption of 'Government'. We reproduce Rule 6 of 'said Rules of 2005' which is as under :-

**"6. Power to relax the provisions of these rules :**  
Notwithstanding anything contained in these rules. Government may relax the provisions of any of these rules, under such circumstances in such manner as shall appear it to be just and reasonable and shall record the reasons for any such relaxation."

33. We hereby set aside the 'Order of Termination' dated 17.01.2022 passed against Applicants by 'Director (Administration)' in office of 'Commissioner of Employees State Insurance Scheme not because it was bad in law but on the grounds that 'Safai Kamgars' are not covered under 'said Rules of 2005' as they enjoy by inheritance, the unique and exceptional right to be appointed by 'Varsa/Vashila Hakka'. Hence, the following order.

**ORDER**

- (i) The Original Application stands Allowed.
- (ii) The Applicants to be reinstated by 'Director (Administration)' in office of Commissioner, Employees State Insurance Scheme within 3 weeks from uploading of this order with all consequential benefits they are entitled to as 'Safai Kamgars' in establishment of 'ESIS Hospital' at Worli, Mumbai.
- (iii) No order as to Costs.

Sd/-

**(DEBASHISH CHAKRABARTY)**  
**Member-A**

Sd/-

**(MRIDULA BHATKAR, J.)**  
**Chairperson**

Mumbai  
Date : 05.01.2024  
Dictation taken by :  
S.K. Wamanse.

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