

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3984 OF 2022

Shaikh Sohel s/o Saleem,
Age : 31, Occu : At present Nil,
R/o 360, Suleman Tekdi Vijaygad,
Near Filter House, Vijaygad,
Taluka : Kandhar, District : Nanded.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through it's Principal Secretary,
Public Health Department,
M.S., Mantralaya, Mumbai-32.
2. The Dr.Shankarrao Chavan Government
Medical College, through it's Dean,
Vishnupuri, Nanded.
3. The Directorate of Medical Education
and Research. Through it's Director,
Government Dental College and
Hospital Building,
St. George's Hospital Compound,
Fort, Mumbai.

...RESPONDENTS

...
Advocate for the Petitioner : Shri S.V. Deshmukh h/f Shri
Deshmukh Devang R.
AGP for the Respondents/ State : Shri S.G. Sangle
...

**CORAM : RAVINDRA V. GHUGE
&
ANIL L. PANSARE, JJ.**

DATE :- 22nd June, 2022

Oral Judgment (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clause B as under :-

“B) Rule may kindly be made absolute by allowing this Writ Petition, thereby, issuing necessary directions to the Respondent No.2 and 3 i.e. The Dr.Shankarrao Chavan Government Medical College, Through its Dean, Vishnupuri, Nanded and The Directorate of Medical Education and Research Through its Director, Govt. Dental College and Hospital Building, St. George’s Hospital Compound, Fort, Mumbai, respectively, for appointment of petitioner as a Sweeper or as a Laboratory Attendant, as these both posts are under group D category, as per the Government Circular dated 01.10.2003 and Government Resolution dated 11.03.2016 and to accept report/ recommendation of legal committee dated 24.09.2020 and by quashing and setting aside impugned communications dated 29.05.2020 and 20.09.2021, issued by the office of Respondent No.2.”

3. The petitioner is undisputedly Muslim-Bhangi. His father had opted for voluntary retirement on 31.01.2020. He prays for appointment as a Sweeper in the light of the Lad-Page Committee recommendations (popularly known as Vashila

Paddhat). He belongs to the Special Backward category.

4. It calls for no debate that Muslim is a religion and does not indicate any caste or tribe. The petitioner is admittedly a Bhangi and he has the caste validity certificate indicating that Muslim Bhangi caste falls in the Special Backward category.

5. The petitioner places reliance upon the notification issued by the State of Maharashtra dated 25.08.2008 by which, Muslim Bhangi, which was earlier in the Scheduled Tribe category upto 2008, is now included in the Special Backward category.

6. The Lad Page Committee recommendations are meant to recruit the legal heirs of those Safai Kamgars who belong to the Walmiki, Mehtar, Bhangi, etc. castes.

7. The learned AGP submits, on the basis of the record, that no Government Resolution or Notification or any policy of the Government would exclude the petitioner from being appointed as a Sweeper on the basis of the Vashila Paddhat.

8. In *Nitin Ganesh Chandraliya and others vs. The Nagpur Municipal Corporation and others*, Writ Petition No.6155/2014 decided on 07.05.2015, the learned Division Bench at Nagpur, by order dated 07.05.2015, allowed the claims

of the petitioners praying for appointment as Safai Kamgars/ Sweepers. It would be apposite to reproduce some of the observations of this Court in ***Nagpur Municipal Corporation case*** (supra) hereunder :-

“At this stage, we would like to mention that the Lad Committee was constituted at a time when dry latrines and toilets were in vogue and human excreta and faeces, including night soil, were required to be removed by manual scavenging. At the relevant time, when the Committee was constituted, human faeces were removed manually by persons who belonged to a particular Scheduled Caste and carried on the occupation of sweeping and scavenging. The Lad Committee was constituted for devising the measures for stopping the practice of carrying night soil and human faeces manually and keeping the toilets and latrines clean by modern methods, like flush or water-borne toilets. The Committee also considered the upliftment of the sweepers and scavengers who belonged to a particular caste i.e. “Mehtar” caste and other Scheduled Castes. In the circumstances mentioned hereinabove, the Lad Committee decided to apply the ‘partisanship’ or ‘favouritism method’, while making appointment on the post of Safai Kamgars and sweepers. After more than 40 years from the preparation of the report by the Lad Committee, the times and circumstances have changed considerably. So also there is a vast change in the condition of the toilets. Almost every public toilet is modernised and has a flush. We are of the view that the Government cannot reserve 100% posts, either for a particular community or for the dependents of the persons belonging

to a particular community who had earlier worked as Safai Kamgars in the Corporation. The posts are not only reserved for a particular caste but they are reserved in totality for the relatives or the nominees of the sweepers who had earlier worked in the offices of the State Government and the other public bodies. No appointment was made by the Corporation, as we are told during the past more than 40 years by following the regular procedure of recruitment. A Safai Kamgar may be required to clean a toilet, but some of the Safai Kamgars are only required to work as sweepers, on the city roads and other public places. The salary and wages of the sweepers and Safai Kamgars are substantial. The appointments of the Safai Kamgar as per the 'Vashila Paddhat' are initially made in clear vacancies on probation for a period of one year and then they are granted permanency in service. If that be so, persons from all the castes and communities would like to compete on the post, for seeking appointment on the post of Safai Kamgar. There is a great change in the trend in law relating to public employment. It is held by the Hon'ble Supreme Court in the recent past that the appointments made without following the due process of selection, are illegal and no person could be regularized in service in pursuance of such appointments. It would be necessary to refer to the judgments reported in 2007 6 Mh.L.J. 667 ; 2011 AIR SCW 1332; 2014 2 Scale Page 262 and 2014 (7) SCC 223, in this regard. If this Court has quashed the advertisement providing 100% reservation for the "Mehtar" community while making appointments to the posts of Safai Kamgars and sweepers, by the judgment reported in 2009 (50 Mh.L.J. 243, we fail to fathom how by the policy of the State Government, the grand-daughters and great

grand daughters-in-law of the erstwhile Safai Kamgars could be appointed in permanent vacancies without following the due procedure prescribed by law. We are sure that several unemployed persons would like to compete on the post of Safai Kamgars or sweepers. In view of the change in the circumstances, after a lapse of 40 years from the preparation of the Lad Committee Report, we do not find that there is any propriety in the action of the State Government to continue the ‘Vashila Paddhat’ or the ‘partisanship’ or ‘favouritism method’ of appointing the dependents and nominees of the erstwhile Safai Kamgars, in public employment.”

9. We are informed that the State of Maharashtra has issued a GR dated 11.03.2016 and has decided to continue the implementation of the Lad-Page Committee recommendations. Therefore, this Court has granted such claims vide order dated 20.09.2019 in Writ Petition No.7109/2018 filed by ***Shaikh Yusuf Shaikh Yunus vs. the State of Maharashtra and others.*** By order dated 22.11.2019, the Review Application No.243/2019 filed by the Divisional Controller, MSRTC vs. Shaikh Yusuf Shaikh Yunus, was dismissed.

10. In view of the above, this Writ Petition is allowed. Respondent No.2 shall appoint the Petitioner as Safai Kamgar/ Sweeper on or before 30.08.2022. Needless to state, the terms

and conditions, which are normally made applicable to such Safai Kamgars in the light of the Vashila Paddhat, shall be equally applicable to the petitioner.

11. Rule is made absolute accordingly.

kps (ANIL L. PANSARE, J.) (RAVINDRA V. GHUGE, J.)