

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

910 WRIT PETITION NO.10437 OF 2022

Anupkumar Madhukar Turkele,
Age: 32 years, Occ. Private Job,
R/o. Plot No.157, Sarswati Nagar,
Oppo Navnath Temple, Bahadura,
Nagpur, Pin – 441204.

... **PETITIONER**

V/s.

1. The State of Maharashtra
Through the Principal Secretary
General Administration Department,
Mantralaya, Extension Building,
Madam Kama Road, Hutatma Rajguru
Chowk, Mumbai – 400 032.
2. The State of Maharashtra
Through the Principal Secretary
Social Justice And Special
Assistance Department,
Mantralaya, Extension Building,
Madam Kama Road, Hutatma Rajguru
Chowk, Mumbai – 400 032.
3. The State of Maharashtra
Through the Principal Secretary
Industries, Energy and Labour Department,
Mantralaya, Extension Building,
Madam Kama Road, Hutatma Rajguru
Chowk, Mumbai – 400 032.
4. The Administrative Officer,
Maharashtra State Commission for Safai
Karmchari, Administrative Building
No.02, Third Floor, Ramkrushna
Chemburkar Road, Chembur (East),
Mumbai – 400 071.

5. The Chief Engineer,
Maharashtra State Electricity
Transmission Company Ltd.,
EHV PC O&M Zone,
2nd Floor, Administrative Building,
Old Saikheda Road, Siddheshwar Nagar,
Raka Plot, Jail Road,
Nashik Road – 422 101.
6. The Superintending Engineer,
Khadka, Tq. Bhusawal,
Dist. Jalgaon.
7. The Executive Engineer,
Division Jalgaon,
Maharashtra State Electricity
Transmission Company Ltd.,
M Sector, Plot No.32, Near Bharat
Petroleum, 132 KV Upkendra,
New Jalgaon, Jalgaon.
Email- ee521@mahatranasco.in

... RESPONDENTS

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Advocate for Petitioner : Mr. Harshal Prakash Randhir
AGP for Respondents/State : Mr. V.M. Kagne
Advocate for R/5 to 7 : Mr. A.M. Gaikwad
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**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**
DATE : 3rd February, 2023

ORAL JUDGEMENT (Per: Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.
2. The petitioner has put-forth prayer clause-B and C, as under:

“B) This Hon'ble Court by way of appropriate writ, order or directions in the like nature writ of mandamus the communication letter dated 05/11/2020 may be quashed and set aside.

C) This Hon'ble Court by way of appropriate writ, order or directions in the like nature writ of mandamus the respondent no. 7 may be directed to grant the appointment order in favour of the petitioner view of the policy decision implemented time to time by the State of Maharashtra by the Government Resolutions based on the recommendations of the Hon'ble Lad-page.”

3. The petitioner claims to be belonging to the Mehtar community. The petitioner's father was appointed as a Sweeper on 16.04.1980. On 11.08.1988 he was posted as a Line Helper in the class IV category. Later on he was appointed as a Junior Technician and he superannuated on 31.05.2020 as a Junior Technician. Pursuant to the superannuation of the petitioner's father, the petitioner tendered an application on 15.09.2020, requesting for an appointment in his place. The petitioner is 32 years of age, who has declared in the petition that he already has a private job. He is married and has two children. It is suppressed in the petition that he is Bachelor of Engineering (Information Technology).

4. The petitioner relies upon a Government resolution dated 21.10.2011 pertaining to the Laad - Page committee recommendations commonly known as the Vashilaa / Vaarsa Padhat. Clause 1 (c) provides that

any person eligible to have the right of “Varsa”, can be held eligible for appointment as a Safai Kamgar in place of his father. He then relies upon Clause 1 (e) by which, an eligible person from the family of the Safai Kamgar, who was promoted to the class IV category, would also be eligible for the right of “Varsa”. He then relies upon the second last portion of the Government resolution which indicates that if the post of Safai Kamgar is not available, an eligible Varasdar having the requisite educational qualification, can be considered even for appointment in the Class-III category.

5. The petitioner then relies upon the Government resolutions dated 26.02.2014, 10.11.2015 and 11.03.2016, by which, the State Government has decided to continue to implement the Laad - Page committee recommendations and make appointments to the post of Safai Kamgar.

6. The learned advocate representing the erstwhile MSEB and currently, respondent nos.5, 6 and 7 - Maharashtra State Electricity Transmission Company Limited, submits that the father of the petitioner was appointed as a Sweeper in the premises of the MSEB establishment for a short period. He was not a Safai Kamgar as understood in relation to the Safai Kamgar that are appointed in Municipal Councils or Municipal Corporations who clean the sewage pipelines and the drainages. The petitioner has acquired the qualification of Bachelor of Engineering (Information Technology) and by

no stretch of imagination, can he be appointed or can it be expected that he would work as a Sweeper in the respondent company's office. He further adds that the petitioner is already married, has two children and by his own declaration, is in private employment.

7. He then adverts to the affidavit in reply that has been filed on behalf of the company and submits that the petitioner's father was permitted a switch over within eight years of his appointment, as a Line Helper. From 09.05.1988 onwards, he was never working as a Sweeper. Subsequently, he was working as a Junior Technician till his superannuation on 31.05.2020. As such, he worked as a Sweeper for only seven years and was working as a Junior Technician for 32 years. He relies upon a judgment delivered by the Hon'ble Supreme Court in the matter of **Ahmednagar Mahanagar Palika V/s. Ahmednagar Mahanagar Palika Kamgar Union, 2022 III CLR 859**. He refers to the conclusions of the Hon'ble Supreme Court which read as under:

“(1) After the conversion of the Municipal Council to Municipal Corporation the employees of the Mahanagar Palika shall be governed by the Scheme of the State Government at par with the Government employees which does not provide for appointment on compassionate grounds to the heirs of the employees on their retirement / superannuation.

(2) Such an appointment to the heirs of the employees on their retirement/superannuation shall be contrary to the object and purpose of appointment on compassionate ground and is hit by Article 14 of the Constitution of India.

(3) As held by this Court in catena of decisions, compassionate appointment shall always be treated as an exception to the normal method of recruitment. Appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters including financial position of the family, the economic dependence on the deceased employee.

(4) Therefore the appointment on compassionate ground cannot be extended to the heirs of the employees on their retirement/superannuation.

(5) In view of the above the impugned common judgment and order dated 22.3.2022 passed by the High Court as well as the judgment and award dated 16.9.2016 and 21.9.2016 passed in complaint (ULP) No. 55/2005 and complaint (ULP) No. 83/2005 by the Industrial Court directing the Mahanagar Palika to give appointment to the heirs of the employees on their superannuation/retirement in terms of judgment and award dated 30.3.1981 passed in Reference IT No.51 of 1979 are unsustainable and are therefore quashed and aside.”

8. In view of the above, he submits that though the petitioner may belong to the Mehtar community, his father retired as a Junior Technician, a post on which he was working for 32 years and never as a Safai Kamgar. An employee who has worked as a Sweeper only for seven years and has worked on the post of a Junior Technician for 32 years, can never be considered to be a Sweeper, much less a Safai Kamgar. Granting employment to the petitioner on the basis of the heir ship certificate would actually result in doing injustice to several needy candidates.

9. We find from the pleadings of the litigating parties as under:

- (a) The petitioner is already in private employment.
- (b) He is married and has two children.
- (c) His father was working as a Junior Technician for 32 years prior to his superannuation.
- (d) The petitioner has acquired educational qualification of Bachelor of Engineering in Information Technology.
- (d) The Laad - Page committee recommendations are actually meant to grant employment to the children of Safai Kamgar who have spent a lifetime working in the said capacity.
- (e) The intent and object of the recommendations was to ensure that the children of such Safai Kamgar, who belong to the Valmiki and Mehtar community, who worked as safai kamgar to clean the sewage and drainage pipelines, should be accommodated in employment.
- (f) The object of implementing the Laad - Page committee recommendations was reiterated in the meeting of the Maharashtra State Council of Ministers and the State decided to continue with the recommendations in order to provide employment to such backward category people who had no means of acquiring higher education and had no opportunity of securing employment.

(g) The petitioner is a Bachelor of Engineering in Information Technology, has a private job, is a married person with two children and is well settled in life.

(h) Granting employment to such a candidate would practically amount to a back door entry to a person who is already in private employment.

10. In paragraph no.8, the Hon'ble Supreme Court in **Ahmednagar Mahanagar Palika** (supra) has held as under:

“8. Even otherwise, such an appointment to the heirs of the employees on their retirement and/or superannuation shall be contrary to the object and purpose of appointment on compassionate grounds and is hit by Article 14 of the Constitution of India. As observed and held by this Court in a catena of decisions, compassionate appointment shall always be treated as an exception to the normal method of recruitment. The appointment on compassionate grounds is provided upon the death of an employee in harness without any kind of security whatsoever. The appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. No one can claim to have a vested right for appointment on compassionate grounds. Therefore, appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement. If such an appointment is permitted, in that case, outsiders shall never get an appointment and only the heirs of the employees on their superannuation and/or retirement shall get an appointment and those who are the outsiders shall never get an opportunity to get an appointment though they may be more meritorious and/or well educated and/or more qualified. Therefore, the submission on behalf of the respondent that the appointment is not on compassionate grounds but the same be called as varas hakka cannot be accepted. Even if the same be called as varas hakka the same is not supported by any scheme and even the same also can be said to be violative of Article 14 as well as Article 15 of the Constitution of India.”

11. The Hon'ble Supreme Court in **Ahmednagar Mahanagar Palika** (supra) has, thus, concluded that granting appointments to heirs of employees who have retired or superannuated, is contrary to the object and purpose of appointment by way of compassion and is hit by Article 14 of the Constitution of India. There can be no debate that the Laad - Page committee recommendations, which are commonly known as Vashila Padhat or the Shifaras Padhat, is to ensure that the most needy persons from the families of those who have been working as Safai Kamgar, should be granted employment, as such legal heirs would be incapable of taking up employment on account of lack of opportunities and lack of education. In the instant case, the petitioner who is a B.E. (IT), has a private job, is married and has two children, is settled in life.

12. In view of the above, we do not find that the respondent-company has committed any error in declining appointment to the petitioner as a Safai Kamgar on the retirement of his father who was never a Safai Kamgar, but a sweeper only for 7 years and worked as a Junior Technician for 32 years. The impugned decision cannot be termed as being perverse or erroneous in the light of the law laid down by the Hon'ble Supreme Court in the case of **Syed Yakoob V/s. K.S. Radhakrishnan and others; AIR 1964 SC 477** and **Surya Dev Rai Vs. Ram Chander Rai & others; (2003) 6 SCC 675**.

13. This petition is therefore dismissed.

14. Rule is discharged.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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