

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

905 WRIT PETITION NO. 894 OF 2024

**NISHA VIJAY PAWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

...
Mr. Yateen Thole, Advocate for the petitioners.
Mr. A.S. Shinde, A.G.P. for respondent Nos.1 to 5.

...

**WITH
CIVIL APPLICATION NO. 3716 OF 2025
IN WRIT PETITION NO. 894 OF 2024**

**THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS
VERSUS
NISHA VIJAY PAWAR AND OTHERS**

...
Mr. A.S. Shinde, A.G.P. for applicants/State.
Mr. Y.I. Thole, Advocate for respondents/original petitioners.

...

**WITH
CIVIL APPLICATION NO. 3714 OF 2025
IN WRIT PETITION NO. 894 OF 2024**

**NISHA VIJAY PAWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

...
Mr. A.B. Chalak, Advocate for the applicants.
Mr. A.S. Shinde, A.G.P. for respondent Nos.1 to 5.
Mr. Y.I. Thole, Advocate for respondents/original petitioners.

...

**CORAM : R.G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 29 APRIL 2025

Per Court :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. For the reasons stated in Civil Application No.3714 of 2025 for intervention, it stands allowed in terms of prayer clause (B) and disposed of.

3. This petition, under Article 226 of the Constitution of India, is filed mainly for the following reliefs :

“A) By issuing appropriate Writ, Order, direction or any other order in nature of Writ, the Hon'ble Court may please to direct the Respondent No. 2 to pay monthly wages with arrears w.e.f. 19/07/2017 applying pay scale of Class-IV employees of sweeper category of Rs. 15000-47600 per month and consequential payments and all benefits thereof and further be directed to continue to pay such pay scale and consequential benefits to the Petitioners applying principles of "Equal work equal benefits".

OR/in alternative

By issuing appropriate Writ, Order, direction or any other order in nature of Writ, the Hon'ble Court may please to direct the Respondent No.

2 to pay to the Petitioners rates of minimum wages with its arrears applicable to scheduled employment of "Sweepers or Scavengers" under The Minimum Wages Act and house rent allowance w.e.f. 19/07/2017 and further be directed to continue to pay such rates of minimum wages and house rent allowance notified by the Government of Maharashtra from time to time.

B) By issuing appropriate Writ, Order, direction or any other order in nature of Writ, the Hon'ble Court may please to direct the Respondent No. 2 to pay 10 times of difference of pay scale or difference of minimum wages from 19/07/2017 towards penalty to the Petitioners.

(C) By issuing appropriate Writ, Order, direction or any other order in nature of Writ, the Hon'ble Court may please to direct the Respondent No. 2 to pay statutory rates of overtime wages of the period the Petitioners were not allowed to enjoy weekly day off, paid leave casual leave, sick leave, privilege leave w.e.f. 19/07/2017 to the Petitioners.

(D) By issuing appropriate Writ, Order, direction or any other order in nature of Writ, the Hon'ble Court may please to direct the Respondent No. 2 to give benefits with its arrears of Welfare Legislature of Employees Provident Fund Act.

(E) By issuing appropriate Writ, Order, direction or any other order in nature of Writ, the Hon'ble Court may please to direct the Respondent No. 2 to pay to the Petitioners deducted amount of Rs. 333.67 towards TDS and GST of each month effective from 19/07/2017 with 12% interest per annum.

(F) By issuing appropriate Writ, Order, direction or any other order in nature of Writ, the Hon'ble Court may please to direct the Respondents to absorb and regularize the services of the Petitioners on account of their long services as sweepers on vacant posts.

(G) By issuing appropriate Writ, Order, direction or any other order in nature of Writ, the Hon'ble Court may please to direct the Respondents to quash and set aside the advertisement dated 28/12/2023 of the Respondent No. 5 calling applications of candidates to fill up vacancies of 26 (24+2) posts of Class-IV employees of sweepers”.

4. The petitioners claim to have belonged to ‘*Walmiki Mehtar*’ community. The learned advocate for the petitioners would submit that the community would do manual scavanging. For years together such posts have specially been earmarked for the candidates belonging to *Walmiki Mehtar* community. According to him, the respondent No.2, way back

in the year 2017, engaged the petitioners on the posts of Sweepers. Since then the petitioners have been rendering their services without break and even without there being weekly off. Sometimes they were required to work overtime. According to the learned advocate, the petitioners have consistently being paid a sum of Rs. 8,000/- per month, each. He would further submit that a sum of Rs. 333/- is deducted from each months' salary towards Goods and Services (GST) and TDS. Whatever service agreement entered into between respondent No.2 and Shri Sai Sundardas Baba Walmiki Mehtar Samaj Rojgar Va Swayanrojgar Seva Sahakari Sanstha Maryadit, Dhule (hereinafter referred to as the "Society"), was nothing but sort of forced labour. Relying on Article 23 of the Constitution of India and Apex Court's judgment in the case of *People's Union for Democratic Rights and others vs Union of India and others* reported in *AIR 1982 Supreme Court 1473*, he would submit that such practice needs to be abolished. He would further submit that the Dean of respondent No.2 had even made a communication to the Collector/respondent No.5 on 19.12.2023 informing that the posts of Sweepers with the College be filled up and the petitioners have preferential right to work on the said posts. The Collector/respondent No.5 turned a blind eye. He being head of the District Selection

Committee, issued an advertisement dated 28.12.2023 for filling up the posts of Sweepers with respondent No.2 and other posts as well. It was also pointed out by the learned advocate that a surprise visit was made by a team of All India Institute of Medical Science to respondent No.2. During the said visit it noticed pathetic condition as regards sanitation. Respondent No.2, therefore, engaged the services of the petitioners w.e.f. 19.07.2017. The posts on which the petitioners have been serving, are sanctioned and clear vacant posts. According to him, none of the petitioner has ever been paid even the minimum wages. Whatever was paid in the first month of their service, is paid even today without any increase even towards dearness allowance. According to him, it is nothing sort of exploitation of human labour. Whatever documents are relied on by the respondents, would not bind the petitioners, since those were executed out of compulsion. He would further submit that respondent being a welfare State, the petitioners ought to have been paid house rent allowance. There ought to have contribution towards provident fund and application of ESI scheme. Learned advocate, therefore, urged for allowing the writ petition.

5. The learned A.G.P. would, on the other hand, submit that an agreement was entered into between respondent No.2 and the Society. In terms of the said agreement, the Society had provided the petitioners for doing sweeper job at the monthly pay of Rs. 8,000/- each. The petitioners now cannot go back on the terms of the contract. He adverted our attention to certain paragraphs in the affidavit in reply. According to him, whatever is being paid to the petitioners, is in terms of Government Resolution dated 07.06.2017. According to him, the Constitution Bench of the Apex Court in the case of *Secretary, State of Karnataka & ors vs Umadevi and ors; 2006 (4) SCC (1)*, has frown upon the back door entry in public employment. He adverts our attention to the order dated 23.01.2024 passed in this petition. According to him, the petitioners were allowed to participate in the recruitment process. Only one of them participated, but unsuccessfully. According to him, no benefit of permanency could be conferred upon the petitioners more so when the recruitment process went ahead and has now been completed. The Recruiting Authority is awaiting the Court's nod to issue appointment orders. He would further submit that the petitioners have rendered service only for 8 hours a day. They have been given weekly off. Their services have never been

exploited.

6. The learned advocate for the intervenors made submissions on the lines of the submissions made by the learned A.G.P. and ultimately urged for dismissal of the petition.

7. We have considered the submissions advanced. It is true in affidavit filed by the Dean in a matter before the Maharashtra Administrative Tribunal, it was submitted that the petitioners need to be appointed on the vacant posts with respondent No.2/Hospital. In relation thereto, the Dean had even requested the Chairman of District Selection Committee to give the petitioners appointment and reserve these posts only for the petitioners, and go for recruitment drive in respect of those posts.

8. It is admitted fact that the petitioners have been rendering their services as Sweepers since 19.07.2017 at a monthly pay of Rs. 8,000/- each. About 8 years have passed since they joined the service, still there is no increase in their pay by even a rupee. On the contrary, a sum of Rs. 333/- is deducted per month towards GST. They have been employed through Walmiki Mehtar Samaj Rojgar Va Swayanrojgar Seva

Sahakari Sanstha Maryadit, Dhule, meaning thereby, the Society must have been taking something from the salary of the petitioners. There are documents on record to indicate that the authorities concerned had sometime paid the petitioners wages as scheduled employees (sweepers and scavengers). It is unfortunate that the authority concerned had recovered back that amount from the petitioners.

9. In our view, the petitioners are entitled to be paid minimum wages for the services they have rendered and going to render until they are displaced by duly recruited appointees. We are, therefore, inclined to direct the State to pay the petitioners minimum wages attached to the post of Sweeper/ Scavenger since the day of their appointments to the date of their displacement from the job. The arrears shall be paid with interest at the rate of 6% per annum thereon from the date those were due to the date of actual payment.

10. So far as regards prayer of the petitioners for direction to appoint them on the vacant and clear posts with respondent No.2 concerned, we are not inclined to grant the relief more so when the recruitment process has now been completed. The petitioners have not undergone due

recruitment process before being appointed with the respondent No.2. Directing the respondent to appoint them would amount to back door entry and breach of mandage of the Constitution Bench judgment in the case of **Umadevi** (supra) The candidates have been selected and the District Selection Committee is awaiting the Court's nod to issue them appointment orders. This Court, vide order dated 23.01.2024, had even allowed the petitioners to participate in the recruitment process. Only one of them appeared unsuccessfully. Be that as it may, it is our hope that whenever the concerned respondents would undertake any recruitment process, the petitioners' claim would be considered sympathetically considering them to have served for last 8 years. Whenever temporary vacancies are there with respondent No.2, we hope that the Dean would give the petitioners preference, provided the petitioners would not stake any claim of permanency. The petitioners are at liberty to agitate their other grievances before the appropriate forum i.e. the Labour Court, Industrial Court or Provident Fund Office.

11. Payment of the dues of the petitioners is condition precedent for appointment of new recruits in the place of the petitioners.

12. The exercise of payment of arrears in terms of minimum wages be completed within a period of six months from the date of receipt of this order.

13. The petition is disposed of alongwith pending Civil Application No.3716 of 2025.

(SANDIPKUMAR C. MORE, J.)

(R.G. AVACHAT,J.)