

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.723 OF 2018

Sangeeta Mahesh Shah

Age 50 years, Occu – Household,

Residing at Russi Mehta Building,

8, Dinbai Petit Street, Grant Road (E),

Off. Balarama Street, Mumbai

... Petitioner

versus

1. Bombay Municipal Corporation,
through Municipal Commissioner,
Mahapalika Marg, Mumbai – 400 001.

2. B.Y.L.Nair Charitable Hospital and
Topiwala Medical College, through
Dean, having office at A.L.Nair Road,
Mumbai Central, Mumbai.

... Respondents

Mr. UdayWarunjikar, for Petitioner.

Mr. Sagar Patil, for Respondents.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

**RESERVED ON : 13th JUNE, 2019
PRONOUNCED ON : 22nd OCTOBER, 2019**

P.C.:

1. The above Writ Petition is filed by Smt. Sangeeta Mahesh Shah, who is the widow of Dr. Mahesh H. Shah, who retired on 31st October, 2010 as the Deputy Dean of the B.Y.L.Nair Charitable Hospital (Respondent No.2) run by the Municipal Corporation of Greater Mumbai (Respondent No.1). After his retirement, between November-2010 to February-2015, Dr. Shah was from time to time appointed by the

Respondents as officer on Special Duty on contract basis.

2. The Petitioner has in the above Writ Petition sought the following reliefs :

“(a) That this Hon’ble Court be pleased to direct the Respondents herein to pay the outstanding retirement benefits amount payable to the deceased husband of the Petitioner – late Dr. Shah inclusive of gratuity and commutation benefits within such period as this Hon’ble Court along with such interest as this Hon’ble Court may deem fit and proper;

(b) That this Hon’ble Court be pleased to call for order dated 26th May, 2017 and after going through the same and after satisfying its validity, propriety and legality, be pleased to quash and set aside the same.”

3. It is submitted on behalf of the Petitioner that, after October 2015, the Petitioner along with Dr. Shah were required to vacate the rental accommodation ; however, the son of the Petitioner was pursuing his 12th Standard examination which was in March 2015 ; Dr. Shah therefore made an application for grant of extension upto October 2015 which was rejected ; however, the said decision was not conveyed to Dr. Shah or to the present Petitioner.

4. It is further submitted on behalf of the Petitioner that after the demise of Dr. Shah in the month of January, 2017, the Petitioner realized that the gratuity amount and commutation leave amount are not paid to Dr. Shah. However, the arrears of the revised pay aggregating to Rs.10 Lakhs was paid and credited in the account of Dr.

Shah. The PF amount of Rs.3 Lakhs was also credited in his account and commutation leave amount of Rs.10 Lakhs was also credited in his account. It is submitted that therefore, the Petitioner made a request for releasing the gratuity as well as commutation leave amount. It is submitted that the amount of Rs.3.45 Lakhs was also not paid to the deceased Dr. Shah towards his nine months consolidated salary payable to him. On making inquiries, a statement was made available to the petitioner from the office of the Respondent No.2 hospital, a copy of which is annexed at Exhibit F to the petition.

5. It is further submitted on behalf of the Petitioner that on 16th August, 2017, the Petitioner made a representation to the Chief Accountant of Respondent No.1 Corporation pointing out that except pension, other dues of Dr. Shah have not been received by the Petitioner. A representation dated 19th August, 2017 was also made to the Additional Commissioner of the Corporation with a request to release payments towards retirement benefits of Dr. Shah. In February, 2017 the Petitioner also made a request to the Additional Municipal Commissioner that the penal rent between 1st April, 2015 to 30th October, 2015 should be reviewed and normal rent should be charged. A copy of the said representation dated 28th February, 2017 is annexed and marked Exhibit-I to the Petition.

6. It is further submitted on behalf of the Petitioner that she later learnt that on 26th May, 2017, the request of the Petitioner was rejected. The Petitioner therefore,

through her Advocate issued a notice dated 17th July, 2017 to the Respondents. Reply dated 11th August, 2017 was received from the Respondents by the Advocate for the Petitioner stating that the Corporation is required to recover the penal rent for use of the service quarter between 1st March, 2015 to 30th October, 2015 as well as the recovery of the excess payment of remaining salary paid to the deceased husband of the Petitioner. In the said reply, it was also stated that on 26th May, 2017, a representation of the Petitioner not to charge the penal rent for staying in the service apartments, was also rejected. It was also pointed out to the Petitioner how the payment made to Dr. Shah was in excess and how the recovery would be made. It is submitted that during the lifetime of Dr. Shah, these issues were not raised. It is therefore, submitted that the interference of the Court is necessary.

7. An Affidavit dated 24th January, 2019 is filed by Smt. Alka Shivaji Bhosale, Administrative Officer, in the employment of the Respondent No.1 Corporation, explaining under what circumstances, only an amount of Rs.2,71,456/- was due and payable by the Corporation to the Petitioner.

8. We have heard the learned Advocate appearing for the Petitioner, who has reiterated what is stated in the Writ Petition and the learned Advocate for the Respondent Corporation, who has repeated and confirmed what is stated in the Affidavit dated 24th January, 2019 by Smt. Bhosale, Administrative Officer of the Corporation. Admittedly, Dr. Shah was appointed as Assistant Medical Officer from

28th April, 1980 to 23rd May, 1995, as Assistant Dean from 24th November, 1995 to 24th June, 2004 and as Deputy Dean of Respondent No.2 Hospital from 25th June, 2004 to 31st October, 2010. After his superannuation with effect from 31st October, 2010, he was appointed as officer on special duty with Respondent No.2 hospital until January 2015. Dr. Shah passed away on 28th January, 2017. Admittedly, he was required to vacate the service apartment allotted to him on and from 1st February, 2015, until the same was vacated in October 2015. He had made an application seeking extension of his stay in the service apartment upto October 2015 on the ground that his son is having his standard 12th examination in March 2015. According to the Corporation, the said request was rejected and according to the petitioner, the rejection was not conveyed to her or to Dr. Shah. The Petitioner admittedly made an application on 28th February, 2017 requesting the Corporation not to charge penal rent for the period 1st March, 2015 to 30th October, 2015. However, the same was also rejected on 25th May, 2017. The Petitioner has prayed that the said rejection should be quashed and set aside. Admittedly, Dr. Shah and his family members overstayed in the service apartment for the period 1st March, 2015 to 30th October, 2015. The Corporation therefore became entitled to charge penal rent for the said period. There is nothing on record to show that the Corporation had allowed the extension as sought. The request made by the Petitioner on 26th May, 2017 was also rejected. No ground is therefore made out for setting aside the Order dated 27th May, 2015 rejecting waiver of the penal

rent charged by the Corporation. However, since the Petitioner is a widow and from the record it appears that in the year 2015, her son was a teenager and pursuing his studies, we request the Municipal Commissioner to use his discretionary powers and sympathetically consider the request of waiving penal rent and allow payment of normal rent for the period 1st March, 2015 to 30th October, 2015, if an Application to this effect is made by the Petitioner within a period of four weeks from the date of uploading of this order. However, we make it clear that this is only a request and not a direction given to the Municipal Commissioner.

9. As far as the terminal benefits of Dr. Shah are concerned, admittedly Dr. Shah after his superannuation, has received the following amounts :

Rs.3,40,341/- towards provident fund

Rs.10,39,032/- towards revise pension arrears

Rs.9,25,500/- towards encashment of leave

10. It is also pointed by the Corporation in its Reply to the notice issued by the Advocate for the Petitioner that the accounts department of the Respondent No.2 Hospital has returned the file pertaining to the retirement claims of Dr. Shah with the remarks that there was an extra payment made to Dr. Shah. It is again explained in the affidavit filed on behalf of the Corporation that Dr. Shah had not only overstayed in his service quarter but inadvertently payment was made to him as per the old Pension Rules, which were revised as per Circular GAD/Dy. CA(Est II/R.G.Cell/03 dated 16th

May, 2012. It is submitted that an amount of Rs.12,16,444/- is to be recovered for excess payment and an amount of Rs.5,26,936/- is to be recovered towards penal rent. It is submitted that the total amount payable to Dr. Shah is Rs.10 Lakhs towards gratuity and Rs.9,96,484/- being the commutation amount. After adjusting an amount of Rs.17,43,380/-, the amount payable to the Petitioner is Rs.2,71,456/-.

11. In our view, there is a serious dispute with regard to the payment required to be made to the petitioner on the ground of excess payment made to Dr.Shah and it is not possible for this Court whilst exercising its powers under Article 226 of the Constitution of India to decide disputes pertaining to accounts between the parties. However, liberty is granted to the Petitioner to move the appropriate Forum/Authority to resolve her grievances.

12. In the circumstances, we pass the following order :

(i) Prayer Clause (a) of the Writ Petition is rejected. However, the Petitioner is granted liberty to move the appropriate Forum/Authority qua her claim for non payment/short payment of the dues payable to Dr. Shah by the Respondents.

(ii) An amount of Rs.2,71,456/- admittedly payable to the Petitioner by the Corporation shall be forthwith paid to the Petitioner. The Petitioner may accept the said amount without prejudice to her rights and contentions to pursue other remedies qua the balance amount claimed by her.

(iii) Prayer Clause (b) is also rejected. However, the Municipal Commissioner of

Greater Mumbai is requested to sympathetically consider the application of the Petitioner to waive the penal interest charged for overstay in the service quarters during the period 1st March, 2015 to 30th October, 2015 but instead charge normal rent for the said period, if an Application seeking such waiver is made by the Petitioner within four weeks from the date of uploading of this Order i.e. 22nd October, 2019. If such Application is made, the Municipal Commissioner shall endeavour to pass his order within four weeks from the receipt of the Application. However, we make it clear that this is only a request and not a direction given to the Municipal Commissioner.

(iv) The above Writ Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)