

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6004 OF 2021

Dr. Prakash Borulkar	}	Petitioner
Versus		
The State of Maharashtra and Ors.	} }	Respondents

Mr. Siddhesh Borulkar for the petitioner.

Ms. R. A. Salunkhe, AGP for State.

Mr. Anand S. Kulkarni for the respondents 3 and 4.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: SEPTEMBER 20, 2022

P.C.:

1. The petitioner was employed as a medical officer by the Thane Municipal Corporation (hereafter "TMC", for short). As per the terms and conditions of his service, the petitioner was due to retire on attaining the age of superannuation of 58 years on 31st December 2016. However, based on a Government Resolution dated 3rd September 2015 issued by the Public Health Department, Government of Maharashtra, the TMC permitted the petitioner to continue in service as medical officer till he attained 60 years of age, i.e., till 31st December 2018. After retirement, the petitioner's pension was fixed considering Rs. 28,600/- as the last pay drawn by him. He was also paid gratuity in a sum of Rs. 7,00,000/-. It is not in dispute that he was drawing pension and was paid

gratuity as per his entitlements, reckoning 31st December 2018 as the date of his retirement from service on superannuation.

2. However, based on a clarification provided by the Urban Development Department, Government of Maharashtra dated 8th January 2020 to the effect that the Government Resolution dated 3rd September 2015 was applicable only for medical officers serving the Public Health Department and not medical officers who had served/were serving the Municipal Corporations/Councils, the quantum of pension being paid to the petitioner was reduced. Not only that, the quantum of gratuity was reduced from Rs.7,00,000/- to Rs.4,91,880/-. Since the quantum of pension receivable by the petitioner had been calculated on the basis of Rs.28,600/- as the last pay drawn by him instead of Rs.26,000/-, resulting in excess payment of pension, and more than Rs.2,08,000/- was allegedly paid to him in excess on account of gratuity, process commenced for recovery of such alleged excess payment from the petitioner's retiral benefits in installments. Such process of recovery has triggered this writ petition dated 4th March 2021 instituted by the petitioner.

3. The Government in the appropriate department as well as the TMC have filed reply affidavits. The stand taken in such reply affidavits is common, i.e., the Government Resolution dated 3rd September 2015 could not have been applied to medical officers serving the Municipal Corporations/Councils, for, it was restricted only to medical officers serving the Public Health Department, Government of Maharashtra.

4. In the present case, the petitioner did not on his own seek any increase in the age of his retirement from 58 years to 60 years. There was no misrepresentation on his part. It was the TMC that permitted him to serve for an additional period of 2 (two) years. Last pay drawn by him was Rs. 28,600/-. It is not a case where the petitioner's pay was erroneously fixed and he received salary more than his entitlement. During such extended period of service, the petitioner served the TMC as medical officer and earned his salary. If at all there has been any mistake, such mistake is because of a misreading of the Government Resolution dated 3rd September 2015 by the TMC and the blame therefor must squarely fall on the TMC. The petitioner having worked sincerely and without blemish for over 25 years and more particularly rendered active service as a medical officer during the extended period of service between 58 and 60 years of age, any attempt to recover any sum from the petitioner's retiral benefits on the ground of mistake arising out of misreading of the said Government Resolution would be most unfair and irrational. Not only would the process of recovery be iniquitous and harsh causing hardship to the petitioner, such process would far outweigh the equitable balance of the TMC's right to recover any amount allegedly paid in excess not because of erroneous fixation of pay but mistake as referred to above. A case of excess payment pursuant to erroneous fixation of pay and process of recovery of such excess cannot be equated with a case of the present nature where the quantum of pension and gratuity payable have been fixed considering the length of service of the petitioner

and his unblemished record of service till his retirement on superannuation, which is an essential factor for determining eligibility to receive pension and gratuity.

5. In such view of the matter, we are of the considered opinion that neither can the quantum of pension receivable by the petitioner be reduced nor should any quantum of money be recovered from his gratuity. The additional 2 (two) years of service between 58 and 60 years shall be reckoned as part of the total service rendered by the petitioner from his appointment till the date of his superannuation on completion of 60 years of age on 31st December 2018 for computing pension as well as other retiral benefits, including gratuity.

6. For the reasons aforesaid, the claim in the writ petition succeeds.

7. The TMC is directed to make over to the petitioner all such amounts which have been recovered from him. Also, there shall be an order restraining the TMC to recover any further amount from the petitioner's pension. The petitioner shall be entitled to pension in terms of the office order dated 10th April 2019. Payment in terms of this order shall be made as early as possible, but positively within a period of 2 (two) months from date.

8. With the aforesaid directions, the writ petition stands disposed of. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)

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signed by
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DASHARATH
PANDIT
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