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

WRIT PETITION NO. 6523 OF 2021

Dr. Sanjaykumar Vishnupant Vaidya .. Petitioner

Vs.

The Municipal Corporation of City of
Thane & Anr. .. Respondents

Mr. Omkar S. Paranjape for petitioner.

Mr. Ajit Ram Pitale for respondent no.1/TMC.

Mr. M. M. Pabale, AGP for respondent no.2/State.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE : DECEMBER 8, 2022

P.C.:

1. The petitioner was employed as a medical officer by 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 January, 2018. However, based on a Government Resolution dated 3rd September, 2015 issued by the Public Health Department, Government of Maharashtra, TMC permitted the petitioner to continue in service as medical officer till he attained 60 years of age, i.e., till 31st January, 2020.

2. The petitioner's retirement benefits, however, had been computed and released bearing in mind his entitlements as on 31st January, 2018. Aggrieved thereby,

the petitioner, through his learned advocate, had sent a legal notice to TMC dated 11th August, 2020 claiming that retirement benefits should be computed reckoning 31st January, 2020 as the date of his retirement and that consequential relief should be granted. The legal notice was replied to by the Deputy Commissioner (Head Office), TMC on 5th October, 2020. Such reply reads as follows: -

“ Considering your above referred letter it is hereby informed you that, Additional Secretary, Government of Maharashtra Urban Development Department, NV-23 vide its letter dated 8 January 2020 guidance has been taken by the Department of Public Health Government GR dated 3/9/2020 and 29/8/2020 in terms of doing the Retirement age of the Medical officer from 58 years to 60 years is applicable only to the Medical Officers of Public health Department. It has also been mentioned that no decision has been taken by the Urban Development Department to increase the retirement age to the medical officers under the Municipal Corporation.

Vide Office Order No. TMC/Est/UPA(M)-5476 (क. ठामपा/आस्था/उपआ (मु)-५४७६) dated 31/1/2020 the medical officers in the category of 58 years who have served for extra 2 years and have retired at the age of 60, the retirement age of those medical officers will be considered as 58 years for the purpose of Pension. The Medical officers who are still in service after 58 years, have been immediately retired from the service of Thane Municipal Corporation w.e.f. 31/1/2020.

As per the above order, pension has been imposed on you keeping your retirement age at 58 years.”

3. Aggrieved by the said reply of the Deputy Commissioner, the petitioner has approached this Court by presenting this writ petition dated 30th March, 2021 seeking, *inter alia*, the following relief: -

“(a) The Hon’ble Court be pleased to issue Writ of Mandamus and further pleased to quash Office Order of the Respondent No.1 dated 13/03/2020 and Office Order dated 31/01/2020 bearing Reference No. TMC/Establishment/Deputy Commissioner/HO-5476 of the Respondent No.1.

(b) That, the Hon’ble Court be pleased to declare that, the Petitioner is entitled for his Gratuity, Pension, Retirement Benefits and all other incidental benefits on the basis of letter dated 16/10/2019 and Office Order dated 31/01/2020 Reference No. TMC/Establishment/Deputy Commissioner/HO-5437 issued by the Respondent No.1.

(c) That, the Hon’ble Court be pleased to declare that, the Petitioner is entitled for all Retirement benefits to be calculated on the basis of last salary drawn by the Petitioner in the month of January, 2020.

(e) That, the Hon’ble Court be pleased to direct the Respondent No.1 to Re-fix the Retirement Benefits of the Petitioner to be calculated on the basis of last Salary Drawn for the month of January 2020 and direct the Respondent No.1 to pay Basic Monthly Pension of Rs.31,530/-, Gratuity amount approximately amounting to Rs.10,00,000/- and Earned Leave Encashment for the period of 291 days on the basis of last salary drawn by the Petitioner in the month of January 2020.”

4. In course of hearing, Mr. Paranjape, learned advocate for the petitioner, has placed before us an order dated 20th September, 2022 passed by a coordinate Bench of this Court [of which one of us (Chief Justice) was a member] on Writ Petition No. 6004 of 2021 (**Dr. Prakash Borulkar vs. The State of Maharashtra & Ors.**). According to him, the grievance of the petitioner is squarely covered by the said decision and, therefore, the petitioner ought to be granted reliefs as claimed in the writ petition.

5. Appearing for TMC, Mr. Pitale, learned advocate, has submitted that the case of the petitioner is different from the case in **Dr. Prakash Borulkar** (supra) and, therefore, such decision has no application. According to him, Dr. Prakash Borulkar had retired from service on 31st December, 2018 upon completion of 60 (sixty) years of age. His retiral benefits were computed based on such date of retirement. On 8th January, 2020, a clarification was provided by the Urban Development Department, Government of Maharashtra to the effect that the Government Resolution dated 3rd September, 2015 was applicable only for medical officers serving the Public Health Department and was not applicable to medical officers who had served/were serving the Municipal Corporations/Councils. In view of the clarification that was provided, TMC initiated steps to recover monies paid to Dr. Prakash Borulkar in excess on account of retiral benefits taking into consideration the extra period of service of (2) two years rendered by him beyond 58 (fifty-eight) years of age. Since the clarification provided by the Government on 8th January, 2020 was not in existence on the date Dr. Prakash Borulkar retired on completing 60 (sixty) years of age, the Court interdicted the process of recovery effected by TMC and directed return of the money so recovered holding that benefits once released could not be taken away after retirement. However, in the present case, the petitioner was in service as on 8th January, 2020 when the Government issued the clarification. Not only that, other medical officers who had been continued beyond 58 (fifty-eight) years but

were yet to complete 60 (sixty) years of age as on 31st January 2020 were asked to step down and superannuate before completing 60 (sixty) years of age. The facts in **Dr. Prakash Borulkar** (supra) being completely at variance with the facts of the present case, it is contended that the petitioner cannot claim benefit of the order dated 20th September, 2022.

6. We have heard learned advocates for the parties and perused the materials on record. We completely agree with Mr. Pitale that the decision in **Dr. Prakash Borulkar** (supra) is clearly distinguishable on facts.

7. The petitioner fortuitously got the opportunity of serving TMC for two more years beyond 58 (fifty-eight) years of age because of a misinterpretation of the Government Resolution dated 3rd September, 2015, which was applicable to the medical officers of the Public Health Department, Government of Maharashtra. As and when the Government detected the fact of conferment of benefit of higher age of retirement to the medical officers of Municipal Corporations/Councils in terms of the said Government Resolution as if the same applied across the board to all medical officers employed in the Municipal Corporations/Councils, the subsequent clarificatory Government order dated 8th January, 2020 was issued to make it clear as to who were supposed to be the beneficiaries of the Government Resolution dated 3rd September, 2015. This resulted in rectification of the mistake that had been committed by the Municipal Corporations/Councils which had allowed their employee medical officers to continue to

remain in employment beyond 58 (fifty-eight) years of age. The petitioner does not dispute that all medical officers of TMC, aged in excess of 58 (fifty-eight) years, were not allowed to continue in service beyond 31st January 2020 and stood retired on completion of the age of superannuation as originally fixed. In such circumstances, the petitioner cannot be heard to claim that his retirement benefits should be calculated on the basis of the last pay drawn by him as on 31st January, 2020. No legally protected right of the petitioner, capable of being judicially enforced, having been infringed, we see no reason to interfere.

8. The writ petition stands dismissed. No costs.

9. At this stage, Mr. Paranjape submits that an amount of Rs.9500/- has been recovered from the retiral benefits of the petitioner by TMC. If indeed that be so, the petitioner shall be at liberty to submit an appropriate representation before the Municipal Commissioner, TMC, who shall proceed to consider and dispose of the same in accordance with law as early as possible but preferably within 4 (four) weeks of receipt of the same.

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)

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