

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

WRIT PETITION NO. 642 OF 2022

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Veena V. Mestry

.. Petitioner

Vs.

**Municipal Corporation of Greater
Mumbai and ors.**

.. Respondents

Ms. Neeta Karnik, for the Petitioner.

Ms. Rupali Adhate, for the Respondent-MCGM.

Mr. Vinod K. Singh, Deputy Chief Facilitator Shop &
Establishment Department-MCGM present.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: MARCH 11, 2022

P.C.:

1. The petitioner was an employee of the Municipal Corporation of Greater Mumbai (hereafter "Corporation", for short). She has been retired compulsorily from service on completion of 55 years of age on medical ground with effect from April 1, 2020. It is the specific grievance of the petitioner that prior to the order of compulsory retirement dated January 24, 2020, she was not medically examined; therefore, the order of compulsory retirement is *non est* in the eye of law.

2. Be that as it may, challenging the order of compulsory retirement, the petitioner preferred an appeal before the Additional Commissioner (City) of the Corporation on July 31, 2020. The appeal was not decided, resulting in institution of this writ petition wherein the petitioner has prayed that the

order of compulsory retirement dated January 24, 2020 may be set aside.

3. On the last occasion, we had enquired of Ms. Adhate, learned advocate for the Corporation with regard to the fate of the petitioner's appeal dated July 31, 2020. We are informed by Ms. Adhate that there was no provision for preferring any appeal on the date the petitioner preferred the appeal; however, by circular dated March 24, 2021 read with subsequent circular dated October 4, 2021, an appellate authority for hearing and passing an order on the appeal preferred against an order of compulsory retirement has been provided and the Corporation is ready and willing to consider the petitioner's appeal in terms of such circulars. It is also submitted by her that the Additional Municipal Commissioner (City) would be the appellate authority in this case.

4. The order of compulsory retirement has been passed, upon the Deputy Commissioner (Special) of the Corporation sanctioning a proposal of a three-member committee that was constituted for the purpose of ascertaining whether the petitioner is fit to be retained in service. Since we are informed by Ms. Adhate that the Additional Municipal Commissioner (City) is the appellate authority to consider the petitioner's appeal, we find no reason to keep this writ petition pending. The same stands disposed of with the following directions:

(i) Since Ms. Karnik, learned advocate for the petitioner submits that the petitioner will be desirous of adding further points in support of her claim that the order of compulsory retirement is

non est in law, we grant the petitioner a week's time to file a supplementary appeal petition before the Additional Municipal Commissioner (City);

(ii) The Additional Municipal Commissioner (City) shall consider the appeal upon affording the petitioner an opportunity of personal hearing; and

(iii) The appeal of the petitioner shall be disposed of in accordance with law as early as possible, preferably within four (4) weeks from date of receipt of the copy of the supplementary appeal petition from the petitioner in terms of this order.

5. All contentions are left open for the petitioner to urge before the Additional Municipal Commissioner (City), who shall pass a reasoned order if the appeal is not granted.

6. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)