

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 8740 OF 2022

Thane Municipal Corporation Transport
Service Retired Employees and Officer
Association.

... Petitioner.

V/s.

Thane Municipal Corporation and others.

... Respondents.

Mr.Sanjay Singhavi, Senior Advocate with Ms.Rohini Thyagarajan
for the Petitioner.

Mr.Siddharth Pitale i/b. Mr.Ajit Ram Pitale for Respondent No.1.

Mr.N.R.Bubna for Respondent No.2.for the Respondents.

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CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.

DATE : 15 January 2024.

P.C. :

Heard the learned counsel for the parties.

2. The Petitioner is an association of the retired employees of Respondent No.2- Thane Municipal Transport Undertaking. The Petitioner has approached this Court by way of petition for a writ of mandamus to direct the Thane Municipal Transport Undertaking to pay the members of the Petitioner- Association the arrears and difference of pay and allowances till the respective dates of their retirement/ superannuation in terms of the recommendations of the

Sixth Pay Commission. The relevant prayer made reads thus:

“(a) Issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of a Mandamus, directing the Respondent Nos.1 and 2 to pay to the members of the Petitioner, listed at Exhibit “A” to the Petition, the arrears of difference of pay and allowances enuring to them with effect from 1st January 2006 till 31 May 2011 (or earlier, as per their respective dates of retirement), in terms of the recommendations of the 6th CPC, along with interest at commercial rate, from the dates on which the said amounts became due to the respective members/retiree employees, till the date of actual payment;”

3. The basis of the Petitioner for claiming this relief is that Respondent No.1- Municipal Corporation had extended benefits of the Sixth Pay Commission to its employees from 1 January 2006. The Petitioner's grievance is that as far as the members of the Petitioner are concerned, Respondent No.2- Transport Undertaking has given the same benefits from July 2011. According to the Petitioner, there is no distinction between the Thane Municipal Corporation and its Transport Undertaking and under the provisions of the Maharashtra Municipal Corporations Act, 1949, the Undertaking is only a Committee and does not have separate statutory status distinct from the Municipal Corporation. Therefore, there cannot be a discrimination between the employees of the Respondent- Municipal Corporation and that of the Respondent- Undertaking. It is also contended that historically also parity is always maintained including in respect of Seventh Pay Commission and only in respect of Sixth Pay Commission, exception is made

without any logic or reason.

4. We do not find any reason emerging from the Resolution dated 29 August 2008 passed by the Thane Municipal Corporation which is on record and also the Circular dated 30 June 2011 issued based on the said Resolution. Reply affidavit is also entirely sketchy. It only states that Respondent No.1- Municipal Corporation and Respondent No.2- Undertaking are different organizations and their budgets and finances are separate and Respondent No.2 has incurred losses since long. As far as financial condition, Respondent No.2 has drawn our attention to the document dated 19 June 2015 which indicates that even Respondent No.2- Undertaking had stated that in case in future the financial condition of the Undertaking improves then payment of pending dues of the employees and retired employees can be considered. According to us, there has to be a specific decision to be taken by the Municipal Corporation on the above-mentioned issues. In the past as also subsequent Pay Commission, the parity has been maintained between the employees of the Municipal Corporation and the employees of its Transport Undertaking.

5. Whether there is any justifiable and cogent reason for deviation only in respect of Sixth Pay Commission, also whether or not the employees of the Transport Undertaking are entitled to parity with the employees of the Municipal Corporation and whether any cogent reason exists for making this differentiation, this decision

will have to be taken upon examining the statutory scheme of the Act of 1949 and examining whether Respondent No.2- Transport Undertaking enjoys a separate statutory status or it is a part of the Respondent- Municipal Corporation. Let the said decision be taken by the Municipal Commissioner within a period of six weeks, subject to earlier time-bound commitments and urgent public duties. The decision taken by the Municipal Commissioner shall be communicated to the Petitioner- Association.

6. Needless to state that if the decision is favourable to the Petitioner, the Commissioner would issue necessary directions. Considering the issue that may affect substantial number of employees working under the Transport Undertaking, the decision be taken by the Municipal Commissioner and not to be delegated.

7. Writ petition is accordingly disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)