

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

WRIT PETITION NO.4461 OF 2024

Shama Parveen Abdul Bashir
Shaikh, age 58 years, Indian
inhabitant of Solapur residing
at Flat No.T-5, Unit No.2, 3rd
Floor, Gulmohar Apartment,
Saat Rasta, next to Katikar
hospital, Solapur-413001

....Petitioner

Vs.

1. Municipal Corporation of Greater
Mumbai, through the Municipal
Commissioner, Mahapalika Marg, Mumbai.
 2. The Deputy Municipal Commissioner, Public Health
Department, Municipal Corporation of Greater
Mumbai, M. C. G. M. Head Office, Ext.
Building 6th Floor, Mumbai – 400001.
 3. The Medical Officer of Health (F/S Ward),
Room No.3, 1st Floor, F/South Ward office
building, Junction of Dr. B. A. Road & J.
Bhatankar Marg, Parel, Mumbai -400012.
 4. The Assistant Health Officer, Kasturba
Hospital Campus, Ward No.11,
Sane Guruji Marg,
Chinchpokli, Mumbai- 400011
- ...Respondents.

Adv. Panthi Desai i/b M. P. Vashi and Associates for the Petitioner.

Adv. Shivprasad, D. Borade, for the Respondent BMC No. 1 to 4.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 17th DECEMBER, 2024

ORAL JUDGMENT (RAVINDRA V. GHUGE J.) :-

1. **Rule.** Rule made returnable forthwith. Heard finally by the consent of the parties.

2. The contesting Respondent Corporation has entered an affidavit-in-reply, dated 11th December, 2024.

3. The Petitioner has put forth prayer clauses (a) and (b), as under:-

“ (a) That the writ of mandamus or any other writ, order or direction be issued ordering and directing the Respondents to pay to the Petitioner all retirement benefits such as pension, gratuity, public provident fund etc. along with interest at the rate of 18% p.a.

(b) That pending the hearing and final disposal of the petition, the Respondents be ordered and directed to pay to the Petitioner all retirement benefits such as pension, gratuity, public provident fund etc. along with the interest at the rate of 18% p.a.”

4. The issue before us is that the Petitioner who was working as a Malaria Surveillance Investigator of the Corporation since 28th November, 1991 has superannuated on 1st April, 2024 and

thereafter, subjected to recovery of large amounts on the ground that she had not passed her Marathi exam. Excess amounts were purportedly paid to her by way of an increment under the 6th Pay Commission Recommendations. After retirement, the retiral dues amounts were withheld and the Petitioner approached this court by preferring this Writ Petition.

5. The corporation has not passed any order of recovery which can be assailed before this Court. What has been done is that the retiral benefits of the Petitioner have been withheld, purportedly, to the extent of the recoverable amount of Rs.26,94,238/-, as set out in the affidavit-in-reply dated 11th December, 2024. The Corporation has taken a stand that excess amount of Rs.20,55,975/- was wrongly paid to the Petitioner under the presumption that she has proficiency in Marathi language. It is also set out that the establishment recovery, is of Rs.44,68/-, arrears of rent towards staff quarters, is Rs.1,29,042/- and arrears of payment as per the 6th Pay Commission, are Rs. 4,64,540/- The total amount is computed at Rs.26,94,238/-. The amount payable to the Petitioner is calculated as Rs.32,12,855/- as the post service benefits.

6. It is undisputed that the Petitioner's services was of group C category. An undated declaration is placed on record at page No.49, with several blank spaces. The Corporation submits that the said declaration is an undertaking given by the Petitioner agreeing for a recovery. Similar undertaking is at page No.50, which has several blank spaces. A consent letter is placed on record at page No.51, which is an undertaking permitting the Corporation to recover "any amount", if remained to the recovered. The same is also undated. The Petitioner contends that such documents have been extracted from the Petitioner at the time of her retirement.

7. The learned advocate for the Petitioner has placed reliance upon the judgments of this Court, dated 23rd March, 2023 delivered at Aurangabad in Writ Petition No. 3320 of 2023 and a group of cases (**Shaikh Amir Shaikh Kadar Vs. State of Maharashtra and Ors.**) and dated 9th February, 2024 delivered in the Writ Petition No.6763 of 2023, (**Khan Almas Zohara Vs. State of Maharashtra and Ors.**). The Petitioner also relies on the law laid down by the Hon'ble Supreme Court in *Syed Abdul Qadir vs. State of Bihar and others*, 2009 (3) SCC 475 and *State of Punjab and other vs. Rafiq Masih (White Washer) etc.*, (2015) 4 SCC 334 =AIR 2015 SC 696.

8. Having considered the submissions of the learned Advocates, we find that the Petitioner is obliged to pay the establishment recovery amount and the arrears of rent towards occupation of the staff quarter. The learned Advocate for the Petitioner submits on instructions that the Petitioner would not argue against these two recovery aspects. We find that these amounts have to be recovered, since one component is towards the establishment recovery and the other component is on account of the non-payment or partial payment of rent by the Petitioner after occupying the staff quarters. These amounts are Rs. 44,681/- and Rs. 1, 29, 042/-.

9. Considering the crystallized position of law and keeping in view that though the Petitioner was not able to clear the Marathi language test, we find that there is no allegation that this deficiency created obstruction in the day to day working of the Petitioner, in as much as, the Corporation has not passed any order.

10. As such, this **Writ Petition is partly allowed.**

11. The Corporation would retain the amount of Rs.44,681/- and Rs.1,29,042/-, by deducting the same from the arrears to be paid to the Petitioner. So also, the amount of

Rs.5,18,522/-, that has already been paid to the Petitioner on 30th July, 2024 would be adjusted as against the withheld amount. The rest of the amount shall be paid to the Petitioner on or before 31st January, 2025 failing which, we are granting interest at the rate of 6% on the unpaid amount, from the date it became payable post retirement of the Petitioner, till the same is paid. For such delay, the interest component shall be recovered from the salary account of the Officer, who may have caused a delay in making the payment to the Petitioner, beyond 31st January, 2025.

12. Rule is made partly allowed in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)