NIKITA KAILAS DARADE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.913 OF 2024

Ajay Vasantrao Naik ….Petitioner
Vs.
State of Maharashtra ….Respondent

WITH

INTERIM APPLICATION (L) NO.30691 OF 2024

IN

WRIT PETITION NO.913 OF 2024

Ajay Vasantrao Naik …Applicant
Vs.
State of Maharashtra ….Respondent

WITH

WRIT PETITION NO.1743 OF 2024

Shirish Govind Ketkar ….Petitioner
Vs.
State of Maharashtra ….Respondents

WITH

WRIT PETITION NO.2443 OF 2024

Sunil Gangaram Jadhav ….Petitioner
Vs.
State of Maharashtra ….Respondents

WITH

CONTEMPT PETITION NO.64 OF 2024

IN

WRIT PETITION NO.1364 OF 2021

Mangesh Krishna Pednekar ….Petitioner

Vs.

Anil Diggikar ….Respondents

WITH

WRIT PETITION (L) NO.15029 OF 2024

Ravindranath Keshav Magar ….Petitioner

Vs.

State of Maharashtra ….Respondents

WITH

WRIT PETITION NO.1183 OF 2023

Mohd. Yusuf Umer Shaikh ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1182 OF 2023

Murtaza Yahya Shethwala ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1343 OF 2023

Pradeep Prabhakar Kulkarni ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.3523 OF 2022

Chitra Narayanan ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.3536 OF 2022

Ramesh Appu Prabhu ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1032 OF 2023

Shashikant Dhonduram Shirke ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1034 OF 2023

Savita Chandrakant Kini ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1041 OF 2023

Rajendra Babu Kanade ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1057 OF 2023

Ravindra Baburao Avhad ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.917 OF 2023

Vasudevan Madhavan Nair ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.870 OF 2023

Ramakant Dnyandeo Mane ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.1012 OF 2023

Shivaji Pandurang Karande ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.970 OF 2023

Ashok Jagannathrao Jawker ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.4834 OF 2024

Lailabi Raosaheb Nadaf ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.1053 OF 2023

Ganpat Bhaurao Khavare ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.1165 OF 2023

Ankush Shivram Dalvi ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.3644 OF 2022

Vijay Sakharam Kadam ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

CONTEMPT PETITION NO.47 OF 2024

IN

WRIT PETITION NO.1364 OF 2021

Dilip Sahebrao Yevale ….Petitioner

Vs.

Vijay Singhal General Manager,
Brihanmumbai Electric Supply
and Transport Undertaking of MCGM ….Respondents

WITH

WRIT PETITION NO.1052 OF 2023

Sunil Ramchandra Deshpande ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1170 OF 2023

Samir Suryakant Gharat ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1137 OF 2023

Ajay Ramakant Sinkar ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1212 OF 2023

Sanjay Shankar Sakhalkar ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1018 OF 2023

Anil Tryambak Patil ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.647 OF 2023

Suchita Umesh Malap ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1033 OF 2023

Kamalakar Mahadeo Kadam ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.881 OF 2023

Pamela Caroline Albert D’souza ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.650 OF 2023

Gurudas Pandurang Pawar ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1024 OF 2023

Dilip Genu Kasle ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1016 OF 2023

Shrikant Gopalrao Dhisle ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.932 OF 2023

Sushama Ajay Rege ….Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Anr. ….Respondents

WITH

WRIT PETITION NO.1127 OF 2023

Vasant Bhaskar Zambare ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.1173 OF 2023

Deepak Kanhaiyalal Shimpi ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.957 OF 2023

Dinkar Damodar Waghulde ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.1114 OF 2023

Praad Kedarnath Dharankar ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.871 OF 2023

Premchandra Yadav Bhirud ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.1164 OF 2023

Devidas Rajaram Pawar ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents
WITH

WRIT PETITION NO.1036 OF 2023

Vilasrao Bapurao Metkari ….Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ….Respondents

Adv. Pranshul Dube i/b Vidvat Associates for the Petitioner in WP/4834/2024.

Adv. R. D. Bhat for the Petitioner in WP/913/2024.

Adv. Sapna Rachure for the Petitioner in WP/1183/2023, 1182/2023, 1143/2023, 3523/2022, 3536/2022, 1032/2023, 1034/2023, 1041/2023, 1057/2023, 917/2023, 870/2023, 1012/2023, 970/2023, 1053/2023, 1165/2023, 3644/2022, 1052/2023, 1070/2023, 137/2023, 1212/2023, 1018/2023, 647/2023, 1033/2023 881/2023, 650/2023, 1024/2023, 1016/2023, 932/2023, 1127/2023, 1173/2023, 957/2023, 1114/2023, 871/2023, 1164/2023, 1136/2023.

Adv. Gayatri Nayak a/w Adv. Raj Gupta, a/w Adv. Lubdha Bhoir, a/w Adv. Akash Tayade i/b R.P. Khobragade for the Petitioner in WP/1743/2024, WP/2443/2024, and WPL/15029/2024.

Senior Counsel Dr. Milind Sathe, a/w Ms. Shilpa Redkar for the Respondent No.2 (BMC).

Senior Counsel Mr. Girish Godbole a/w Av. Vishal Talsania, Adv. Radha, a/w Adv. H. Bhandari a/w Adv. Sumeet Palsuledesai i/b M. V. Kini & Co. for the Respondent BEST in all matters except WP/913/2024, CP/47/2024, CP/64/2024, WP/2443/2024, WPL/15029/2024.

Senior Counsel Mr. Girish Godbole a/w Mr. Vishal Talsania a/w Shraddha Nagaonkar, a/w Adv. Sagar Shetty a/w Adv. Krushika Udeshi i/b Mr. Sagar Shetty for Respondent No. 3- BEST Undertaking in WP/913/2024, WP/2443/2024, and WPL/15029/2024, CP/47/2024, CP/64/2024.

Ms. Vaishali Choudhari, Addl. G. P. a/w Ms. Rita Joshi AGP for the State in WP/913/2024 and WP/1743/2024.

Ms. Vrushali Kobre AGP for the State in WP/2443/2024.

Ms. Uma PalsuleDesai, AGP for the State in WP-1364/2021, CP/64/2024.

Ms. Jaymala Ostwal, Add, GP for the State in WPL/15029/2024.

Mr. Kaustubh Gidh, for the Petitioners in CP/47/2024 and CP/64/2024.

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

DATE : 4th DECEMBER, 2024

P.C. :-

1. In all these matters, this Court [Coram: Nitin Jamdar (as His Lordship then was) and M. M. Sathaye, JJ.] has extensively heard the learned Senior Advocates and the Advocates appearing on behalf of the litigating parties. An extensive order, considering their submissions, has been passed on 10th May, 2024. Thereafter, in the next hearing on 9th August, 2024, again an extensive order has been passed.

2. We do not wish to enlarge the size of this order by reproducing both the orders. Suffice it to say, that the order that is being passed by us today, is only in continuation with the earlier orders dated 10th May, 2024 and 9th August, 2024.

3. The undisputed fact is that all the Petitioner employees who have retired, some of whom are before us and some have not

been able to approach the Court, are waiting for their retiral dues/pensionary dues. As long as they were in service, they were drawing their regular salaries. Having superannuated, they are passing through such a phase in life, that they can survive only on the retiral benefits and spend for medication through such dues.

4. On 10th May, 2024 , this Court has recorded in paragraph Nos. 12 and 13 as under:

> *"12. Both the authorities in question are statutory bodies and should act as model employers. It is unacceptable that the majority of retired employees of this Undertaking are still waiting for their arrears of retiral dues without any commitment from the authorities. We had given sufficient time to the BEST Undertaking to provide a reasonable commitment, but the commitment presented is inadequate. Therefore, we have no option but to issue a direction to the Respondent – BEST Undertaking and bind them to a time limit. While we could have directed the entire amount to be paid in a single installment, we intend to give the BEST Undertaking time to pay at least part of the retiral dues. Based on their conduct, we will consider extending further time or issuing a one-time direction.*
>
> *13. Accordingly, we direct that the Respondent-BEST Undertaking will work out the retiral / terminal dues of each of its retired employees whose dues are unpaid, as*

per the applicable law. After calculating the amount, the Respondent – BEST Undertaking will pay 30% of the retiral dues of each o the retired employees within three months from today. This order will apply to the Petitioners before us and to all the eligible retired employees of the BEST Undertaking since Writ Petition No.913 of 2024 is in a representative capacity. We place the responsibility of complying with this order on the General Manager of the BEST Undertaking."

5. It is, thus, obvious that this Court has considered the financial difficulties faced by BEST and that BEST was praying for financial assistance from the Brihanmumbai Municipal Corporation. To summarize the contentions of the BEST, it said to be running into losses and is surviving on subsidies by the Corporation. It does not have the money to clear all the legal dues of those employees who have retired from service since 2016 onwards.

6. The problems seem to be many, but the problems faced by the retired employees are of such magnitude, that it has become difficult for them to keep their mind, body and soul together without retiral benefits. At an age when medical assistance and proper nourishment would be the key to a long retired life, these people are not only unable to keep themselves well nourished, but they do not

have resources even to spend on medication. They are in such a phase in life, when an aging human body needs medical assistance and treatment, more frequently than when the same bodies were young and energetic and had toiled in service of the BEST. We find it unconscionable to expect them to wait for longer periods, some of whom have already been waiting since 2016.

7. It is due to the orders of this Court dated 10th May, 2024 and the order dated 9th August, 2024, by which 30% of the retiral dues, as the first installment, were directed to be paid. We are informed by the learned Senior Counsel representing the BEST that most of the retired employees have been paid from this first installment, save and except those who have passed away and their legal heirs have not responded to the information which was uploaded on the website of BEST as per the orders of this Court.

8. The learned Senior Counsel Mr. Godbole, representing the BEST has drawn our attention to an earlier affidavit dated 14th November 2024 wherein a host of difficulties have been voiced. It is also tried to be canvased that though the employer-employee relationship between the Petitioners and the BEST cannot be disputed and the relationship is not interjected by any entity, the BEST has always been approaching the Corporation for funding

them. As like any other local transport service in any district in the State of Maharashtra, BEST is suffering losses and can never be a profitable establishment, considering that the transportation activity has to be subsidized in order to ensure that the end users are able to use the transport services at lowest cost.

9. Mr. Godbole has then relied upon one additional affidavit dated 29th November, 2024, wherein it is canvased as under:

> A) BEST is continuously requesting the Corporation for financial assistance.
>
> B) BEST would require Rs.1,031 crores for clearing the remaining 70% of the retiral dues, over and above, the budget of Rs.800 Crores. The BEST is in a precarious financial condition.
>
> C) Under the provisions of the Mumbai Municipal Corporation Act, 1888 (MMC Act), whenever there is a deficit with the BEST to meet the obligations towards its employees, it has approached the Corporation which has obliged by funding such deficit amount from the municipal funds.

10. The following chart is tendered for ready reference, below paragraph No.8 of the said affidavit:

Year	Amount Requested by 3rd Respondent (Rs. in crores)	Provisions made by the 2nd Respondent in Budget (Rs.in Crores)	Amount received by 2nd Respondent (Rs.in Crores)	Deficit against amount requested by 3rd Respondent (Rs.in Crores)
2020-21	1629.29	1000.00	1104.33	524.96
2021-22	6650.31	750.00	1217.29	5433.02
2022-23	2528.59	800.00	2627.12	-
2023-24	2774.37	800.00	1300.03	1474.34
2024-25	2922.90	800.00	737.21	2185.69
Total	16505.46	4150.00	6985.98	9618.01

11. In order to mitigate establishment costs, there are directives issued for prohibiting new recruitment and promotions. Vehicles have been acquired on lease basis. The provisions of the MMC Act 1888, would indicate that the Corporation has to provide financial assistance and aid to the BEST. The Learned Senior Advocate Mr. Sathe, points out from the affidavit filed by the Corporation dated 22nd November, 2024 that the Corporation is not legally obliged to keep funding the BEST and there cannot be a mandate that the Corporation should fund the BEST.

12. As recorded in the opening paragraph of this order, we have perused the earlier orders of this Court and we are taking things forward in view of the reasons assigned in the said orders.

The issue as to whether BEST should be funded or financially supported by the Corporation, is an issue between the two parties, which has been considered at a *prima facie* stage by this Court in paragraph No.9 onwards of the order dated 10^{th} May, 2024. In paragraph No.12 of the order, this Court has expressed a view that these Authorities are statutory bodies and should act as model employee. They ought to take appropriate steps to ensure that the retiral dues are paid within a reasonable time. In the light of such conclusions, rather than directing to make the entire payment of retiral dues, this Court directed that one installment of 30% would be paid within three months and the said order would apply to not only the Petitioners before the Court, but also to all the eligible retired employees of the BEST undertaking. It was observed in paragraph No.15 of the said order that further directions for making the payment of the remaining 70% of the dues would be issued subsequently depending upon the conduct of the BEST undertaking.

13. Retiral benefits is not a bounty. In fact, components of the retiral dues like the provident fund accumulations and the gratuity amount are treated to be properties of the employees. It is for the BEST to generate the funds and ensure that the retiral dues are paid to these persons. The learned Advocates representing the

Petitioners submit that, in not less than two Lok Adalat, the BEST agreed to make the payment of the retiral dues and according to the learned Advocates, such dues have been paid within 45 days. In the Lok Adalat the agreement was for making entire payment of the legal dues.

14. Mr. Godbole contradicts the said statement on instructions, that the BEST was not able to keep its word as per the Lok Adalat settlements due to paucity of funds and some payments are yet to be made. He submits that today, the loan with the BEST as on 31st August, 2024 is Rs.2216.88 Crores and the deficit is Rs.9531 Crores. The family pension is being paid in terms of the provisions of The Employees' Provident Funds and [Miscellaneous Provisions] Act, 1952.

15. In the order dated 9th August, 2024 the statement of BEST that it has received an amount of Rs.332.24 Crores from the Corporation, pursuant to the order of this Court dated 10th May, 2024, was recorded. The said statement was confirmed by the learned counsel for the Corporation. The order to pay 30% of the dues was passed on 2nd May 2024 and the amounts had to be paid within three months. Ideally, the further order directing the second installment to be paid, should have come in the month of October.

Today, we have to consider the aspect of the payment of 70% of the amount which is due and payable. Gratuity calculated as per the old scale of wages has been paid to the retired employees, until 2022. Thereafter, in view of revised pay scale, gratuity amounts have not been paid.

16. In these circumstances, we are inclined to quantify the second installment at 35% of the remaining amount (70%), meaning half of the remainder amount. In tune with the orders passed earlier, the said amount of 35% would be distributed proportionately, depending on the arrears to be paid to the retired employees, by transferring the said amount via electronic mode and the data base available with the BEST Undertaking, so as to complete the procedure for disbursement. Around three months time was granted to the BEST to make the payment of the first installment.

17. We, therefore, direct the BEST to follow the same procedure and mode of making the payment and such disbursement of the second installment of the 35%, would be achieved until 28th February, 2025. This should not be construed to mean that the entire payment is to be made in the last week of February 2025. We would appreciate, if the BEST commences the payment in a staggered manner and complies with our direction, latest by 28th February,

2025.

18. Needless to state, if the BEST approaches the Municipal Corporation, taking into view the earlier arrangement between the two when the corporation funded the BEST for making the payment towards the 30% of the amounts, it would be appreciable if the Municipal Corporation rises to the occasion with a humane heart and helps the BEST to disburse such amount. This should not be construed to mean that the BEST would sit tight without initiating any steps and only wait for the amount to be received from the Corporation or make it an excuse for non-payment. As recorded in the earlier orders, we would place the responsibility of complying with this order on the General Manager of the BEST.

19. List these Writ Petitions on **24th January 2025** at 2.30 pm.

20. Considering prayer clause D (a and b), the State Government shall file its affidavit-in-reply on or before 10th January, 2025 failing which, costs would be imposed on the State.

(ASHWIN D. BHOBE, J.) **(RAVINDRA V. GHUGE, J.)**