



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 13965 OF 2025

Kalpana Chandrakant Gorhe,
age 60 years, Occ. Pensioner,
R/o Plot No.94, Durga Mata Colony,
Lane No.10, Nyana Nagar, Garkheda
Parisar, Aurangabad.

Petitioner.

Versus.

1. The State Of Maharashtra
Through Secretary,
Municipal Corporation, Mantralaya,
Mumbai 400 032.
 2. The Commissioner,
Mahanagar Palika,
Ch. Sambhaji Nagar (Aurangabad).
 3. The Chief Accounts and Finance Officer,
Mahanagar Palika,
Chh. Sambhaji Nagar (Aurangabad)
- Respondents.

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Advocate for Petitioner : Mrs. Ansari Asfia Nuzhat
AGP for Respondents: Mr. V.M. Kagne
Advocate for Respondents no.2,3 : Mr. S.P. Urgunde

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**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

Dated : December 16, 2025

JUDGMENT :- (Per Hiten S. Venegavkar, J.)

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

2. The present writ petition under Article 226 of the Constitution of India has been instituted by the petitioner seeking quashing and setting aside of (i) the order dated 10th May, 2024 passed by respondent no.2 whereby the upgradation earlier granted to the petitioner was revised retrospectively and recovery of alleged excess payment was ordered, and (ii) the consequential order dated 6th September, 2024 passed by respondent no.3 directing recovery of an amount of Rs.4,98,368/-. The petitioner further seeks a direction to the respondents to refund the amount already recovered and to issue a revised pension payment order by reckoning the petitioner's correct pay scale of Rs.57,500/- instead of Rs.55,800/-, along with all consequential pensionary and retirement benefits.

3. The factual matrix, which is largely undisputed, reveals that the petitioner was appointed as an Auxiliary Midwife Nurse on 2nd November 1992 with the respondent Municipal Corporation and continued to serve on the same post without interruption until her superannuation on 31st May, 2023. At the time of her appointment and during the relevant period of service, the service conditions governing employees

of the Municipal Corporation provided for grant of upgradation/higher pay scale upon completion of seven years of continuous service. In accordance with the said prevailing service rules and policy, the petitioner was granted the benefit of upgradation with effect from 4th January 1999 by an order dated 26th April, 2001. At that point of time, there was no dispute or objection raised by any authority, including the audit department, regarding the legality of such grant.

4. It is pertinent to note that after her marriage, the petitioner's name came to be changed to Kalpana Chandrakanth Gorhe, and thereafter, upon completion of 24 years of service, her case was placed before the Selection Committee for grant of the next higher benefit. The Selection Committee, upon due consideration, approved the grant of benefits by an order dated 10th April, 2019 with effect from 1st January, 2016. The petitioner continued to draw salary accordingly till her retirement. Upon attaining the age of 58 years, the petitioner retired on 31st May, 2023. However, her pension was not released immediately and was sanctioned only by an order dated 6th September, 2024, i.e., almost one and a half years after her retirement.

5. Upon receipt of the said pension order, the petitioner was shocked to discover that a substantial amount of Rs.4,98,368/- had been ordered to be recovered from her pensionary benefits. On making inquiries, the petitioner came to know that such recovery was founded upon an earlier order dated 10th May 2024, whereby the upgradation granted to her with effect from 4th January, 1999 was retrospectively revised on the ground that the same was contrary to the Government Resolution dated 24th November, 1999. It was stated therein that on account of such revision, the salary paid to the petitioner from 2nd November 1999 till the date of her retirement was excessive and liable to be recovered.

6. The petitioner contends that at no point during her entire service tenure was any notice or show-cause issued to her alleging excess payment or proposing recovery. The impugned action was initiated unilaterally after her retirement, without affording her any opportunity of hearing, thereby violating the principles of natural justice. The petitioner has further placed reliance upon the office order dated 11th January 2024 issued by the Commissioner of the Municipal Corporation, which categorically protects the upgradation

granted to employees who completed seven years of service during the period from 1st June 1994 to 23rd November, 1999. The petitioner also relies upon the orders passed by this Court in Writ Petition Nos.13451 of 2024 and 13608 of 2024, wherein in identical circumstances, the respondent Corporation had conceded that no recovery would be effected and that the benefit of the office order dated 11th January 2024 would be extended.

7. The learned counsel appearing for the petitioner vehemently argued that the impugned recovery is ex-facie illegal, arbitrary, and unconstitutional. It was contended that recovery after retirement, particularly when the employee is not at fault and has not misrepresented any fact, has been consistently deprecated by the constitutional courts. It was further submitted that the upgradation was granted strictly in accordance with the statutory service rules prevailing at the relevant time and that the benefit of completion of 24 years of service was also granted after due scrutiny by the Selection Committee. The learned counsel argued that the Government Resolution dated 24th November, 1999, even if assumed to be valid, cannot override statutory service rules and, in any event,

cannot be applied retrospectively to divest vested rights already accrued to the petitioner.

8. Per contra, the learned counsel appearing for respondent nos.2 and 3 fairly admitted the petitioner's appointment, service tenure, grant of upgradation on completion of seven years, and grant of benefits on completion of 24 years of service. However, placing reliance upon the Government Resolution dated 24th November 1999, particularly condition (B) thereof, it was argued that the State Government had altered the policy and restricted the grant of higher pay scale only to employees who had completed 12 years of service or had earned promotion earlier. According to the respondents, the office order granting higher pay scale after seven years of service was rendered impermissible in view of the said Government Resolution, and therefore, the audit department rightly raised objections leading to issuance of the order dated 10th May 2024 and consequential recovery.

9. We have given our anxious consideration to the rival submissions and have perused the relevant record, including the Government Resolution dated 24th November 1999. A crucial issue that arises for determination is whether,

in the absence of any amendment to the statutory service rules of the Municipal Corporation, the benefits granted to the petitioner under such rules could be withdrawn solely on the basis of an executive instruction in the form of a Government Resolution.

10. The Government Resolution dated 24th November 1999 was issued in the context of extending the Fifth Pay Commission benefits to employees of the then Aurangabad Municipal Corporation and envisaged certain conditions, including discontinuance of the seven-year upgradation and substitution thereof with a 12-year criterion. Significantly, the said Resolution itself contemplated that the Municipal Corporation would carry out necessary amendments to its service rules to give effect to the changed policy. When a pointed query was put by this Court to the learned counsel for the Corporation as to whether such amendments were carried out, it was candidly admitted, upon instructions, that no amendment to the service rules has been made till date.

11. It is trite law that statutory rules framed under an enabling statute have the force of law and cannot be overridden, supplanted, or diluted by executive instructions or

government resolutions. Executive instructions may fill in gaps where statutory rules are silent, but they cannot run contrary to existing statutory provisions. This principle has been consistently affirmed by the Supreme Court in **Sant Ram Sharma Vs. State of Rajasthan**, reported in **AIR 1967 SC 1910**, wherein, it was held that executive instructions cannot override statutory rules. Similarly, in **State of Uttar Pradesh v. Babu Ram Upadhya**, reported in **AIR 1961 SC 751**, the Constitution Bench authoritatively held that rules framed under statute occupy a superior legal status vis-a-vis administrative instructions.

12. In the present case, it is an admitted position that the service rules of the Municipal Corporation continue to provide for grant of upgradation upon completion of seven years of continuous service. When a benefit flows from statutory rules, it constitutes a vested right in favour of the employee. Such a vested right cannot be taken away except by a valid amendment to the statute or the statutory rules, and that too prospectively, unless the amendment expressly provides for retrospective operation. The respondents, having failed to amend the service rules despite the passage of more

than two decades, cannot be permitted to achieve indirectly what they could not do directly, by invoking a Government Resolution alone.

13. Even otherwise, the application of the Government Resolution dated 24th November, 1999 to the petitioner's case is wholly misconceived. The petitioner completed seven years of continuous service and became entitled to upgradation prior to the issuance of the said Resolution. The benefit was conferred upon her with effect from 4th January, 1999, i.e., before the Government Resolution came into force. Any subsequent change in policy could not have been applied retrospectively so as to nullify benefits already validly granted. It is a settled principle of service jurisprudence that executive instructions affecting conditions of service operate prospectively unless expressly stated otherwise. Retrospective deprivation of accrued benefits offends Articles 14 and 16 of the Constitution.

14. The action of the respondents is further vitiated by violation of the principles of natural justice. No notice or opportunity of hearing was afforded to the petitioner before passing the order dated 10th May, 2024. The civil consequences flowing from the impugned action are grave, as the petitioner's

pay scale, pension, and retirement benefits have been drastically reduced. Such unilateral action is legally unsustainable.

15. Additionally, the recovery ordered from the petitioner after her retirement is clearly impermissible in law. The Supreme Court in case of **State of Punjab v. Rafiq Masih (White Washer)**, reported in (2015) 4 SCC 334, has categorically held that recovery from retired employees, particularly, where excess payment was not the result of misrepresentation or fraud, is arbitrary and inequitable. The petitioner herein is a Class-III employee, retired, and there is no allegation of fraud or misrepresentation. The impugned recovery squarely falls within the prohibited category delineated by the Supreme Court.

16. We also find substance in the petitioner's reliance upon the earlier orders passed by this Court in Writ Petition Nos.13451 of 2024 and 13608 of 2024, wherein in identical circumstances, the respondent Corporation had undertaken not to effect recovery and not to revise the pay scales of retired employees. The respondents cannot adopt a discriminatory approach by denying similar relief to the present petitioner.

17. For all the aforesaid reasons, we are of the considered opinion that the impugned orders dated 10th May 2024 and 6th September, 2024 are unsustainable in law and deserve to be quashed and set aside. The respondents are directed to refund the amount recovered from the petitioner within a period of four (4) weeks from today. The respondents shall further re-fix the petitioner's pay scale by considering her original and correct pay scale of Rs.57,500/- and grant all consequential pensionary and retirement benefits accordingly, within the same period.

18. The writ petition is accordingly **allowed** in the above terms. Rule is made absolute. There shall be no order as to costs.

(HITEN S. VENEGAVKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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S P Rane