

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2496 OF 2025

Shrinivas Ramchandra Dangat
Age : 58 Years, Occ.: Asst. Commissioner,
Pimpri Chinchwad Municipal Corporation,
R/o. 23/8, Sheetalbaug Complex,
Pune Nashik Road, Bhosari, Pune – 411039 ...Petitioner

Versus

1. The Pimpri Chinchwad Municipal Corporation,
Thr. its Commissioner, having his office at
Pimpri Chinchwad Municipal Corporation,
Pune-Mumbai Road, Dr. Babasahe
Ambedkar Chowk, Pimpri, Pune – 411018
2. The Municipal Commissioner/Administrator,
Pimpri Chinchwad Municipal Corporation,
Having its Office at PCMC Building,
Pune Mumbai Road, Dr. Babasaheb
Ambedkar Chowk, Pimpri, Pune – 411018
3. The State of Maharashtra,
General Administration Department
Thr. its Principal Secretary,
Having its office at Mantralaya, Hutatma
Rajguru Chowk, Madame Cama Road,
Mumbai – 400032
4. Vikas Daulat Shinde,
Age : Adult, Occ.: Service,
R/o. 8/10, Harshada Housing Society,
Pimpri Chinchwad Link Road,
Near Tulsidas Chowk, Chinchwad,
Pune – 33 ...Respondents

SUNNY
ANKUSHRAO
THOTE
Digitally signed
by SUNNY
ANKUSHRAO
THOTE
Date:
2025.03.04
19:38:23 +0530

Mr. Vikram Walawalkar, Advocate for the Petitioner.

Mr. K.B. Dighe, Addl. G.P. a/w Mr. S.P. Kamble, AGP for Respondent No.3/State.

Mr. Kedar Dighe, Advocate for Respondent Nos.1 & 2/PCMC.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

DATE : 26th FEBRUARY, 2025

ORAL JUDGMENT (PER : RAVINDRA V. GHUGE, J.)

1. Rule. Rule made returnable forth with and heard finally by the consent of the parties.

2. The Petitioner has put forth Prayer Clauses (a) to (d), below Paragraph No.31, as under :-

“a) to call for records and proceedings pertaining to the impugned Order dated 07.01.2025 bearing No.साप्रवि/०९/कावि/०६/२०२५ (Exhibit- “W” hereto) passed by Respondent No.2 Municipal Commissioner and after going through the legality, validity and propriety of the same;

b) to quash and set aside the impugned Order dated 07.01.2025 bearing No.No.साप्रवि/०९/कावि/०६/२०२५ (Exhibit- “W” hereto) passed by Respondent No.2 Municipal Corporation and;

c) to direct Respondent Nos.1 and 2 to consider that the Petitioner continued to service till the date of superannuation i.e. 28.02.2025;

d) to stay the effect, implementation of the impugned Order dated 07.01.2025 bearing No. No.साप्रवि/०९/कावि/०६/२०२५ (Exhibit- “W” hereto) passed by Respondent No.2 Municipal Commissioner till the hearing and final disposal of the present petition;”

3. This matter was heard for quite some time. We have gone through the Petition paper book with the assistance of the learned Advocates and perused the dates and events tendered by both the respective Advocates, both of which are marked as ‘X-1’ and ‘X-2’, respectively, for identification. The issue is as regards a specific bar to the selection and appointment of a candidate as an Assistant Commissioner with the Corporation, if he has more than two children, provided a child is born after the cut-off date 28th March, 2005, notwithstanding the number of children born prior to the cut-off date. It was on this date that the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (for short ‘Rules of 2005’), were notified.

4. It is undisputed that the Petitioner is a father of three biological children from the same biological mother (his wife). The first girl child is born on 23rd October, 1995. The second girl child is born on 5th March, 2001 and a male child is born on 13th June, 2011.

5. The Corporation published an advertisement for direct recruitment to the post of Administrative Officer, Class-II on 29th July, 2013, clearly setting out that a person having children, more than two, if the child beyond the number of children had prior to 28th March, 2005, is born after the cut-off date. The Petitioner applied for the said post. Apparently, it has gone unnoticed that the Petitioner had a third child born after the cut-off date.

6. The bone of contention between the Petitioner and the Corporation is that, the Petitioner points out that he got the third child entered into his service book as one of the nominees, as per Rule 115(1) of Maharashtra Civil Services (Pension) Rules, 1982, on 12th March, 2012. Per contra, the Corporation contends that the Petitioner has suppressed the birth of the third child after the cut-off date for the fear of facing consequences on account of violating the Rules of 2005, which would have led to his disqualification for applying to the post of Administrative Officer.

7. Another bone of contention between the parties is that the Petitioner claims that his appointment as an Administrative Officer, Class-II is in continuity with his engagement as a Clerk on 4th

November, 1989. Per contra, the Corporation points out that it was a fresh selection and appointment and the Petitioner was relieved from his earlier posting after he was selected to the post of Administrative Officer, Class-II and was put on probation for a period of one year.

8. Insofar as the controversy as to whether the Petitioner today can reckon with his earlier service from 4th November, 1989 or whether he is deemed to be freshly appointed on 14th October, 2013, after being relieved from service of the Corporation w.e.f. 18th October, 2013, in relation to his claim for pension as per the Old Pension Scheme or the Contributory Defined Pension Scheme, is left open and is not being dealt with at this stage.

9. Suffice it to say, that the Petitioner is before this Court having been terminated from service after a full fledged departmental enquiry. The Enquiry Officer held the Petitioner guilty and the proposal for his removal from service, was approved by the General Body. Consequentially, he has been terminated from service on 7th January, 2025. He would have normally superannuated on 28th February, 2025.

10. As we considered the submissions of the learned Advocates for the respective sides, we noticed that the Petitioner fathered a third child, admittedly after the cut-off date. The consequences could be drastic. He has already faced the brunt in the nature of a departmental enquiry having been conducted against him and he having been terminated from service.

11. In the above backdrop, we put it to the parties as to whether a *quietus* could be given to this matter, without laying down a precedent and in the peculiar facts and circumstances of this case. The Petitioner is willing to sacrifice a portion of his retiral benefits provided the Corporation was agreeable to give a *quietus* to the litigation.

12. The Petitioner tendered an affidavit date 26th February, 2025 (3 Pages), which is taken on record and marked as 'Y' for identification. In the said affidavit, the relevant aspect is that he showed his readiness and willingness to forgo an amount of Rs.7,50,000/- out of the gratuity amount, as a punishment for violation of the Rules of 2005, with a request that the order of termination be recalled and other service benefits be made available to him.

13. The learned Advocate for the Corporation was granted a pass-over to have a discussion with the Commissioner of the Corporation. After this matter was called out at 5:30 p.m., the learned Advocate submitted that considering the Rules of 2005, it would be inconvenient to the Commissioner to accord his consent. The Commissioner conveys that this Court may pass an appropriate order considering the charge proved against the Petitioner and to ensure that a commensurate punishment is awarded to him taking into account the seriousness and the gravity of the charge proved against him.

14. Both the learned Advocates for the parties submit that there is no dispute that the Petitioner's past service with the Corporation, whether be it from 1989 or from 18th October, 2013, is clean and unblemished. It is also undisputed that no chargesheet has been issued against the Petitioner, inasmuch as there has been no order of punishment, except the present cause of action. According to us, this clean past service record would operate as a mitigating factor.

15. We have no reason to deal with any other issue except the

fact that the Petitioner's third child was born after the cut-off date inviting the consequences under the Rules of 2005. Nevertheless, the Rules of 2005 are silent with regard to what could be done with an in-service candidate, who fathers a child more than two or more, after the cut-off date. The learned Advocate for the Corporation adverts to Rule 5(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which pertains to the major punishment to be awarded to an Employee for having indulged in a grave and serious misconduct. Section 56(2)(g) of the Maharashtra Municipal Corporation Act, 1949, indicates that the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, permits removal from service.

16. Insofar as Rule 6 of the Rules of 2005 are concerned, this Court, has delivered a Judgment in *Ramnath Damodhar Sasane V/s. State of Maharashtra and Others, 2022(5) Mh.L.J.*, to which one of us is a party [Ravindra V. Ghuge, J.] to which one of us is a party [Ravindra V. Ghuge, J.], wherein it is concluded that the power to relax the mandate of small family would be counter productive. It is contrary to the laudable object of controlling growth of population. The State Government was requested to delete Rule 6 and make the Rules applicable uniformly to all employees of the State as well as

local authorities and local bodies keeping in view the provisions under the Gram Panchayat, Municipality, the Zilla Parishad and the Village Panchayat Acts. The learned AGP is unaware as to whether the Maharashtra Government has acted on this direction.

17. In the peculiar facts and circumstances of this case, when the Corporation has appointed the Petitioner in 2013, after he had fathered a third child on 13th June, 2011 and since the Petitioner has been working till January, 2025 with the superannuation scheduled on 28th February, 2025, that we are of the view that a *quietus* could be given to this matter.

18. We have considered the affidavit tendered by the Petitioner marked as 'Y', wherein he has agreed to let the Corporation forfeit Rs.7,50,000/- from his gratuity amount. Though the Petitioner had entered the third child, born on 12th March, 2012 in his service book, he was exposed on account of a newspaper report in 'Daily Kesari', Pimpri Chinchwad Edition dated 27th May, 2021, which has led to his termination at the stroke of his superannuation. Hence, we accept the affidavit of the Petitioner. We, however, record that this order shall neither be treated as a

precedent, nor would be cited by any person.

19. This **Writ Petition is partly allowed**. The impugned order of termination is quashed and set aside and by way of punishment, the Corporation is permitted to forfeit Rs.7,50,000/- from the gratuity of the Petitioner, in the light of the willingness expressed by him, as punishment. Accordingly, the Petitioner would be permitted to superannuate on 28th February, 2025. The parties would act on this order, which is dictated in the open Court, notwithstanding whether it is uploaded on the official website of the Bombay High Court, by 28th February, 2025.

20. **Rule is made partly absolute** in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)