

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4056 OF 2025

Kailas Yadavrao Meshram ... Petitioner
versus
State of Maharashtra & Ors. ... Respondents

**AND
WRIT PETITION NO. 3480 OF 2025**

Shyam Pandurang Thorbole ... Petitioner
versus
State of Maharashtra & Ors. ... Respondents

**AND
WRIT PETITION NO. 3507 OF 2025**

Devchand Gardal Rathod ... Petitioner
versus
State of Maharashtra & Ors. ... Respondents

**AND
WRIT PETITION NO. 4053 OF 2025**

Harishchandra Amrut Patil ... Petitioner
versus
State of Maharashtra & Ors. ... Respondents

**AND
(NOT ON BOARD)
WRIT PETITION NO. 3471 OF 2025**

Bhaginath Babu Pagare ... Petitioner
versus
State of Maharashtra & Ors. ... Respondents

**AND
(NOT ON BOARD)
WRIT PETITION NO. 3498 OF 2025**

Anant Mahadev Pawar	... Petitioner
versus	
State of Maharashtra & Ors.	... Respondents

 Mr.C.J.Joveson i/b. Mr.V.N.Upadhye for the Petitioner in all Petitions.

Mr.B.V.Samant, Addl.GP with Mr.K.S.Thorat, AGP for Respondent No.1, State in all Petitions.

Ms.Chaitrali Deshmukh for Respondent No.2– Thane Municipal Corporation in WP No. 3480 of 2025.

Mr.Rohit Sakhadeo for Respondent No.2 – Thane Municipal Corporation in WP No. 4056 of 2025.

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

DATE : 04TH APRIL, 2025

P.C. :-

1. Writ Petition Nos. 3471 of 2025 and 3498 of 2025, are not on board. By the consent of the parties, taken on the production board.

2. We have considered the submissions of the learned Advocates for the respective sides.

3. The gamut in all these matters is that all these Petitioners are facing Anti Corruption Bureau (ACB) cases, which are pending before the Special Courts. All of them were subjected to the disciplinary proceedings prior to their retirement in the light of the ACB cases. All of them have now superannuated.

4. The learned Advocates for the Municipal Corporation point out Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982, which reads as under :

“130. Provisional pension where departmental or judicial proceedings may be pending. -(1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of Rule 27, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

1[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clauses (1) (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government servant.]

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”.

5. We are informed that the provisional pension under Sub Rule (1) is being paid to these Petitioners in the interregnum.

6. The learned Advocates for the Municipal Corporation, on instructions, have apprised us that though all the departmental enquiries have concluded with the recording of oral and documentary evidence and the Enquiry Officers have tendered their respective reports in these cases, the Management has decided to put

the decisions on these enquiry proceedings, on hold in order to enable the Special Courts to deal with the pending ACB cases.

7. It is well settled that the proceedings before the Court having criminal jurisdiction and the departmental disciplinary proceedings under the service conditions, are conceptually distinct and different.

8. In the present cases, evidence has already been recorded in the departmental enquiries, all of the enquiries have concluded and the enquiry reports have also been tendered to the Management.

9. In this backdrop, the situation is referable to clause (c) of Rule 130 (1) which indicates that the payment of gratuity would not be made until the conclusion of the departmental or judicial proceedings and issuance of final orders thereon.

10. What meets the eye is that the Government servant would not be paid the gratuity, subject to the decision in the departmental enquiry or the judicial proceedings and the final orders

to be passed either by the employer on the departmental proceedings or by the competent Court in the judicial proceedings.

11. It could be a case of an employer that he may not proceed with the departmental proceedings on the ground that identical evidence is to be led in the criminal trial and, therefore, the employer may not desire to expose its evidence in departmental proceedings, which is to be recorded in the criminal trial. However, this is not the case before us. Oral and documentary evidence has already been recorded and the Enquiry Officers have tendered their reports.

12. In our view, there is no impediment for the employer to proceed to take a final decision on the departmental enquiry by following the law laid down by the Hon'ble Supreme Court in *Managing Director, ECIL vs. B.Karunakar*¹.

13. Reason for us to permit the employer to proceed with the final decision in the disciplinary proceedings is that it would release the Petitioners from the condition of being in *suspended*

1 1993 (4) SCC 727

animation, so as to realise as to what is the final decision of the employer. If they are exonerated, at least, they would be entitled to the gratuity.

14. In view of the above, **these Writ Petitions are disposed off.**

15. Let the employer proceed with the disciplinary proceedings by issuing the second show cause notices along with the copy of the Enquiry Officer's report, to each of the Petitioners by granting them a reasonable time of 15 days to submit their written explanation. The Petitioners shall submit their written explanation, within such period of 15 days, from the date of receipt of the second show cause notice.

16. After such written explanation is tendered, the employer would be at liberty to deliver a final verdict keeping in view that if the Petitioners' past service records are clean and unblemished, they would operate as a mitigating factor.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)