IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5410 OF 2025

Manohar Babaji Chavan .. Petitioner

Vs.

The Commissioner,
Municipal Corporation of Greater Mumbai & Anr. .. Respondents

Mr. Sanjay Kulkarni, Advocate for the Petitioner.
Ms. Reena Salunkhe with Mr. Santosh Parad, Advocates for the Respondents.
Mrs. Sonali Kharat, Head Clerk (Establishment) from Transport Department is present in Court.

CORAM : SHREE CHANDRASHEKHAR & MANJUSHA DESHPANDE, JJ

DATE : 14TH AUGUST 2025.

P.C. :

The petitioner who joined the Municipal Corporation of Greater Bombay on 19th July 1988 has superannuated from service in the year 2024. After his retirement, an amount of Rs.5,50,793/- was deducted from his pensionary benefits and he was communicated through letter dated 19th December 2024 that Rs.10,089/- shall be deducted from his monthly pension from February, 2025.

2. A counter affidavit has been filed on behalf of the respondent no.2 stating as under :

> "7) *I say that when sixth Pay commission has given to MCGM employee with effect from 01.07.2005. Sixth pay's salary has been based on notional pay (of 1995's grade) as on 01.07.2005 multiply by 1.86 factor. The pay of 01.07.2005 of 1995's grade was not verified but sixth pay was verified without it on 15.12.2011. While employee's final audit was in process that time it shows that the basic salary for sixth pay revision was incorrect and employee has been receiving additional salary increment, which are not applicable. Then this office made revise pay fixation on 03.06.2024 and send for verification to account department. Fifth pay commission's pay is verified by Account Officer (Transport) City on 30.07.2024 and After*

that 6th pay 7th pay is verified by Account Officer/ 51/ Store on 06.08.2024. Herein annexed and marked Copy of 6th pay 7th pay is verification Report by Account Officer dated 06.08.2024 as an Exhibit- B.

8) I say that the respondent had given consent letter for any recovery on the ground of Bank, Rent, society and Municipal dues done from pension/ Gratuity/ NCPF claim and also give declaration in Appendix- IX on 10.06.2024. Hereto annexed and marked Copy of Consent Letter dated 10/06/2024 as an Exhibit-C.

9) I say that the employee take an advantage of pension's commutation. The petitioner has applied for pension's basic salary (40%) in advance. His last basic is 54600/-. And pension's basic is 27300. So, the recovery of Rs. 10,920/- being made from his pension till 15 years. Hereto annexed and marked Copy of commutation application dated 15/03/2024 as an Exhibit- D.

10) I say that as per the Seventh Pay Commission, the arrears are being calculated through SAP system. I say that from 01.01.2016 to 30.06.2024, the amount Rs.2,18,673/- (Rupees two lakh eighteen thousand six hundred seventy-six only). to be recovered from the Petitioner. Hereto annexed and marked copy of the status on SAP system as an Exhibit- E.

11) I say that as per his sixth pay chart verification, Rs. 5,50,793/-is recovery from 01.07.2005 to 31.12.2015. This verification done by concern account department on 25.10.2024 u/n Ca/ WSSD/51/ Store/637. The recovery was done on 31.10.2024 in SAP. About this recovery, this office convey to petitioner u/n. Ex. Eng. (Tr.)/ 6131/ WSSD dt. 19.12.2024 which has been challenged by the petitioner through the present petition. Hereto annexed and marked Copy of Letter dated 19.12.2024 issued by Respondent to Petitioner as an Exhibit-F."

3. In view of the statement made by the respondent no.2 in the affidavit dated 4th August 2025 to the effect that Rs.10,920/- shall be deducted from the pension of the petitioner for fifteen years on account of commutation of pension availed by him to the extent of 40%, in advance, the learned counsel for the petitioner submits that the petitioner shall have no objection to such deduction made by his employer. However, as to recovery of Rs.5,50,793/- from the pensionary benefits payable to the

petitioner, the learned counsel for the petitioner submits that such recovery by the employer on the ground that 6th Pay Commission benefits were given to the petitioner without verifying his grade of 1995 and, that too, without notice to the petitioner has caused serious prejudice to him. The learned counsel for the petitioner has also challenged the proposed recovery of Rs.10,089/- from the monthly pension of the petitioner on the ground that the proposed recovery is without jurisdiction and the respondent-Authority has failed to disclose any basis in the affidavit dated 4th August 2025. The learned counsel for the petitioner has referred to the decision in *"State of Punjab vs. Rafiq Masih"* (2015) 4 SCC 334 to fortify his contentions.

4. The petitioner who in the course of his employment was promoted on a Group "D" post as driver superannuated from service w.e.f. 30th June 2024. He received two additional increments on account of pay fixation which according to the respondent–Authority was provided to the petitioner without verification. Later on, the pay fixation verification in respect of the payment of benefits to the petitioner under 6th and 7th Pay Revisions was done on 6th August 2024. According to the respondent-Authority , the recovery of Rs.5,50,793/- is on account of excess payment made to the petitioner from April 2005 to December 2015. Quite apparently, about ten years thereafter the pay fixation verification exercise was conducted and the aforesaid amount was deducted from the pensionary benefits of the petitioner. In the affidavit dated 4th August 2025, the respondent no.2 did not allege any misrepresentation or suppression of facts on behalf of the petitioner. In the pay fixation exercise and grant of two advanced increments, the petitioner had no role to play. The petitioner was admittedly a Class-IV employee and deductions made from his pensionary benefits cannot be countenanced in law, in the aforementioned facts and circumstances. Therefore, the respondent-Municipal Commissioner of the Municipal Corporation of Greater Bombay

is directed to ensure that Rs.5,50,793/- deducted from the pensionary benefits of the petitioner is refunded to him within a period of six weeks. Insofar as the proposed deduction of Rs.10,089/- is concerned, the respondent no.2 shall issue a notice to the petitioner seeking his response thereon. Such show cause notice shall indicate the reason for making such deductions. Till a final decision is taken after considering the so called reply from the petitioner, the proposed deduction of Rs.10,089/- shall not be made from the petitioner.

5. Writ Petition No. 5410 of 2025 is allowed in the above terms.

[MANJUSHA DESHPANDE, J.] **[SHREE CHANDRASHEKHAR, J.]**

SNEHA ABHAY DIXIT Digitally signed by SNEHA ABHAY DIXIT Date: 2025.09.03 10:20:21 +0530