

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1298 OF 2025

Harsharaj Madhukar Jadhav)
An adult Indian Inhabitant, Age : 52 years,)
having address as Room No.3/53, B.I.T.)
Chawl, Madhav Gangan Marg, Agripada,)
Mumbai – 400 011)Petitioner

V/s.

Jt. Commissioner M.C.G.M. A & C Dept.)
5, Mahapalika Marg, Dhobi Talao,)
Chhatrapati Shivaji Terminus Area,)
Fort, Mumbai, Maharashtra – 400 001)Respondent

Mr. Rajesh Khobragade a/w. Ms. Gayatri Nayak, Ms. Lubdha Bhoir,
Ms. Gargi Gupta and Advocate S. Gaikwad for the Petitioner.
Mr. Shivprasad D. Borade for the Respondent.
Smt. Sneha Joshi, Jt. Chief P.O. (Assessment & Collector)
Department present.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.
DATE : 25th SEPTEMBER, 2025**

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

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

2. The Petitioner has put forth prayer clauses (b), (c) and (d),
as under :

*(b) The Hon'ble Court be pleased to, issue the
Writ of certiorari or any other Writ or directions
or order and call upon the records and*

proceedings of the said suspension Order and after going to the legality and propriety of the Order, quash and set aside the suspension order passed by the LD. Joint Municipal Commissioner (A & C Dept.) being Exhibit- A.

(c) The Hon'ble Court be pleased to, pass or confer Writ of Certiorari or any other Writ or directions in nature of appropriate writ and or order to stay the effect of the impugned suspension order vide dated 31.05.24 passed by Joint Municipal Commissioner (A & C Dept.) against the petitioner, pending the adjudication of the present Writ petition.

(d) Pending hearing and final disposal of the petition Hon'ble Court be pleased to, pass or confer Writ of Certiorari or any other Writ or directions in nature of appropriate writ and or order to stay the effect of the impugned suspension order vide dated 31.05.24 passed by Joint Municipal Commissioner (A & C Dept.) against the petitioner, pending the adjudication of the present Writ petition. Being exhibit- A.

3. It is conceded by the Corporation that, after the Petitioner was suspended on 1st June, 2024, a chargesheet has not been issued. The Petitioner is practically in suspended animation, trying to figure out what destiny has in store for him. This matter was heard on 22nd September, 2025. We gave an ultimatum to the Corporation, which was asking for a long time to prepare the chargesheet. Today, the Petitioner is served with the chargesheet in open Court and a copy is tendered to the Court (page nos. 44 to 54). The same is taken

on record and marked as 'X' for identification.

4. On the point of subsistence allowance, the Corporation contend that unless a suspended employee tenders a written application to the employer declaring that he is not gainfully employed elsewhere, he will not be paid subsistence allowance. The Corporation relies upon a judgment of this Court in the case of *Mr. Nivedan Bhimrao Torne v/s. The Municipal Corporation of Greater Mumbai and Ors.*¹, where a passing reference is made below paragraph no.19(xi) that the Petitioner can receive his subsistence allowance (arrears and current) after he submits a declaration in accordance with the rules.

5. We find that in the said matter, the validity of Rule 72(4) of the Mumbai Municipal Service Rules was not taken up before the Court for testing its validity. Even before us, that issue has not been addressed. However, it is well settled that if an employer suspends an employee, the employer is under a legal obligation to pay subsistence allowance to the employee. If the employer notices that the suspended employee is in gainful employment, he can be deprived of the subsistence allowance.

1 Judgment dated 18th October, 2022 in Writ Petition No.4185 of 2022

6. We would not wish to go into that aspect since the issue has not been addressed to us. Suffice it to say that in the suspension order, the BMC did not mention that the Petitioner would be eligible for subsistence allowance only if he tenders such a written application/declaration. As such, the benefit needs to be given to the Petitioner who has already tendered such application in January, 2025, after he was reinstated in service by revoking his suspension.

7. In view of the above, since the suspension order of the Petitioner has already been revoked and a chargesheet has been handed over to the learned Advocate for the Petitioner in the open Court, which we record as service of the chargesheet on the Petitioner, **this Petition is disposed off**, with the following directions:

(a) The Petitioner would tender his written explanation to the chargesheet within 10 days as mentioned in the chargesheet;

(b) The BMC would conduct the enquiry as expeditiously as possible, strictly in accordance with the rules, but not resorting to undue haste. Principles of natural justice shall be followed in letter and spirit;

(c) The Petitioner could cooperate in the enquiry;

(d) Entire subsistence allowance would be paid to the Petitioner, if not paid, on or before 10th October, 2025 with all admissible allowances. Six percent interest shall be calculated by the BMC within 15 days on the unpaid subsistence allowance, and the said amount should be paid to the Petitioner on or before 10th October, 2025;

(e) In the event any exercise for promoting officers is undertaken and the Petitioner's interest is involved in such a promotion, and if there is no impediment of a pending enquiry for considering a person for promotion, the Corporation would consider the candidature of the Petitioner as well.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)