

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

WRIT PETITION NO. 1641 OF 2025

Sayyad Shabbir Ahmed Ibrahim,
Age 59 years, Indian Inhabitant of
Mumbai residing at Shagufa Apartment,
B-803, Shakar Road, Jogeshwari West,
Mumbai – 400 102.

...Petitioner

Versus

1. Municipal Corporation of Greater Mumbai,
Through The Municipal Commissioner,
Mahapalika Marg, Mumbai – 400 001.
2. The Deputy Municipal Commissioner,
Public Health Department, Municipal
Corporation of Greater Mumbai,
M.C.G.M. Head Office, Ext. Building,
6th Floor, Mumbai – 400 001.
3. The Executive Health Officer (F/S Ward),
Room No. 3, 1st Floor, F/South Ward
Office Building, Junction of Dr. B. A.
Road & J. Bhatankar Marg, Parel,
Mumbai – 400 012.

...Respondents

Ms. Panthi Desai (Through VC) a/w Ms. Itisha Ranka i/b M. P. Vashi & Associates, Advocates for the Petitioner.

Ms. Madhavi Nalluri a/w Ms. Rupali Adhate, Mr. Pratik Garde i/b Ms. Komal Punjabi, Advocates for the BMC/Respondents.
Ms. Pooja Sukhtankar, Administrative Officer, K/W Ward is present in the Court.

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

DATE : 14th NOVEMBER, 2025.

JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the learned Advocates for both the parties.

2. The Petitioner is before us seeking a Writ of Mandamus to prevent the Corporation from carrying out recovery of amounts purportedly paid to him, inadvertently. He was promoted as a Sanitary Inspector on 9th April, 2013. The Corporation believed that he had passed the Marathi Examination. Based on this belief, the Petitioner was extended all benefits incidental to the promotion as a Sanitary Inspector. He superannuated on 1st June, 2023. One year later, on 30th May, 2024, the order of promotion was cancelled, retrospectively and it was concluded that the excess payment made to the Petitioner should be recovered and he should be relegated to the position of Junior Supervisor (Avekshak). It is undisputed that a notice of hearing was not issued to the Petitioner.

3. The learned Advocate for the Corporation has strenuously opposed this Petition by virtue of the Affidavit-in-Reply dated 14th November, 2025 filed by the Administrative Officer of Corporation. He submits that the joint head of Joint Chief Personnel Officer (Health), Public Health Department, placed a note in the office file in 2021, that

the Petitioner would not be entitled for the promotion as a Sanitary Inspector since he has not passed the Marathi Examination of 100 marks. It is then submitted that the Petitioner himself confessed by his communication dated 24th March, 2023 addressed to the Administrative Officer-K/West, Brihanmumbai Municipal Corporation, that he has not passed the Marathi Examination and therefore, he was not entitled to the promotion as a Sanitary Inspector.

4. Having perused these two documents, a question naturally crops up. If one officer of the Corporation had brought it to the notice of the superiors that the Petitioner has not passed the Marathi Examination and was not entitled for the promotion, why was the Petitioner continued as a Sanitary Inspector and he continued to draw his salary? So also, if the Petitioner voluntarily confessed in March 2023, which is two months prior to his superannuation, yet the Corporation did not stop the payment of the Pay Scale admissible to the Sanitary Inspector. Moreover, the impugned order is passed on 30th May, 2024, which is one year after the superannuation of Petitioner.

5. In view of the above, considering the law laid down by the Hon'ble Supreme Court in the cases of ***Syed Abdul Qadir and Others v/s. State of Bihar and Others***¹ and ***State of Punjab and Others v/s. Rafiq***

1. (2009)3 Supreme Court Cases 475.

Masih (White Washer) and Others², we do not find that the impugned order directing recovery of the excess payment purportedly made under a wrong belief that the Petitioner has passed the Marathi Examination, could be sustained.

6. The other issue in this Petition would be that if the Petitioner was wrongfully granted the promotion and the pension is calculated on the basis of such Pay Scale admissible to a post to which he may not be legally entitled to, whether the said mistake could be permitted to be perpetuated at the cost of the tax payers' money. The Petitioner's salary as a Sanitary Inspector, which is more than what he was actually entitled to, is paid from the tax payers' money. The Petitioner admits that he had not passed the Marathi Exam and was not eligible to be promoted. If the Corporation has realized its mistake, the way out would be that the Corporation would issue a notice of hearing to the Petitioner and thereafter, pass an appropriate order.

7. In view of the above, **this Petition is partly allowed**. The impugned direction ordering recovery of money, is quashed and set aside. Since the amount has not be recovered, there would be no question of repayment of the amount to the Petitioner.

8. Insofar as the wrongful promotion is concerned, the

2. (2015)4 Supreme Court Cases 334.

Corporation would be at liberty to issue a show-cause notice, to the Petitioner, more so in the light of his communication dated 24th March, 2023, calling upon him to explain as to why he should not be reverted to the earlier position and as to why the pension should not be re-calculated as per the admissible Pay Scale of a Junior Supervisor. After hearing the Petitioner, the Corporation may pass a reasoned order. The order would be served upon the Petitioner, within 48 hours of the passing of the order, on his whatsapp number, i.e. 9820477736.

If an adverse order is passed, the same shall not be effected for a period of 15 days to enable the Petitioner to avail of a remedy as is permissible in law.

9. Rule is made partly absolute in the above terms.

[ASHWIN D. BHOBE, J.]

[RAVINDRA V. GHUGE, J.]