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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.732 OF 2026

Mohan S/o. Kundlik Gaurkar
Age: 61, Occupation: Pensioner,
R/o. N-11, Hudco, H. No.A-32-3,
Sudarshan nagr,
At Present Shubh Arambh Society,
Flat No.701, Alandi, Pune.

.... Petitioner

Versus

1. State of Maharashtra
Through Secretary,
Nagar Vikas Department
Mantralaya, Mumbai 400032.
2. The Commissioner,
Municipal Corporation,
Chhatrapati Sambhajanagar,
(Aurangabad)
3. The Medical Health Officer,
Municipal Corporation,
Chhatrapati Sambhajanagar,
(Aurangabad)

.... Respondents

.....

Ms. A.N.Ansari, Advocate for Petitioner
Mr. V.M. Kagne, AGP for Respondent No.1 – State
Mr. Parth Salunke, Advocate for Respondents No.2 and 3

.....

CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATED : 27 FEBRUARY, 2026

JUDGMENT [Per Smt. Vibha V. Kankanwadi, J.] :-

1. Rule. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal at the stage of admission.

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2. The present petition challenges the order dated 12.09.2023 passed by Respondent No. 2, whereby recovery from the retirement benefits of the petitioner on account of not passing the MSCIT examination within time was directed.

3. It is not in dispute that the petitioner was appointed as a Multi-Purpose Worker in the Health Department by order dated 08.03.1985. He stood retired on 31.07.2022 upon attaining the age of superannuation. The petitioner was granted exemption from passing the MSCIT examination with effect from 31.07.2014, i.e., on completion of 50 years of age. However, after retirement, the petitioner was served with office order dated 12.09.2023, stating that recovery of the amount for the period from 01.01.2008 to 31.07.2014 was to be effected on the ground that he had not passed the MSCIT examination, and further stating that an excess amount of Rs. 2,14,597/- should be recovered from the petitioner's gratuity. The petitioner states that, in fact, he had passed the MSCIT examination and submitted the certificate to the respondents before retirement. This fact appears not to have been taken note of. Further, the petitioner is a Class-III employee, and in view of the decisions of the Apex Court as well as this Court, recovery of the excess amount cannot be ordered from the retiral benefits.

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4. Heard the learned advocate for the petitioner. Learned AGP waives for respondent No.1-State and learned advocate Mr. Parth Salunke waives for respondents No.2 and 3.

5. The learned advocate for the petitioner, after taking us through the documents on record, placed reliance on the decision in Writ Petition No. 6763 of 2023 (*Kahn Almas Zohara d/o. Gulam Ahmed Khan vs. The State of Maharashtra and others, decided on 09.02.2024*). Reliance was also placed on the decisions in *Sayyed Abdul Qadir vs. State of Bhihar*, 2009 (3) SCC 475 and *State of Punjab & Others vs. Rafiq Masih (White Washer) and others*, 2015 (4) SCC 334.

6. Here, it is to be noted that, as per the petitioner's statement in paragraph 5 of the petition, he has passed the MSCIT examination and submitted the certificate to the respondents before retirement; however, this fact appears not to have been taken note of, and therefore, entry of the same was not taken in the service book. In fact, as per the Government Resolution dated 02.09.2003, the Government had made the said course of MSCIT, i.e., the Computer Course, compulsory and had given time to the employees to appear for the examination. It also prescribed that if they failed to clear it, then they would not be entitled to the increment. Later on, the duration to pass the said MSCIT examination came to be extended from time to time, but it could not

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have been beyond 2006 as per the extended time in the Government Resolution. Respondent No. 2 appears to have later realized that granting exemption upon the petitioner attaining the age of 50 years was incorrect, and thereafter recovery was initiated.

7. Here, it is to be noted that the order granting exemption came to be passed on 31.07.2014. The petitioner stood retired on 31.07.2022. The said order granting exemption was never recalled by respondent No. 2. It is not in dispute that the petitioner is a Class-III employee and that recovery has been ordered after his superannuation. Therefore, the ratio laid down in *Sayyed Abdul Qadir* (supra), *Rafiq Masih* (supra), as well as *Khan Almas Zohara* (supra), would apply. Accordingly, the petition stands allowed.

8. The impugned order dated 12.09.2023 passed by respondent No.2, directing recovery stands quashed and set aside.

9. If the amount has been recovered from the petitioner, the same shall be refunded along with interest at the rate of 6% per annum within a period of ninety (90) days.

10. If all other consequential retirement benefits have not been paid, they shall be paid to the petitioner along with interest at the rate of 6%

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per annum for the delayed payment, save and except the gratuity amount, which shall carry the statutory interest component at the rate of 10% per annum.

11. Rule is made absolute in above terms. No order as to costs.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

S P Rane