



{1}

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1116 OF 2026

Sayada Shaheda Parveen
W/o. Syed Khurshid Ali
Age: 58 years, Occu.: Pensioner
R/o. H.No.1.23.17,
Behind Zam Zam Hotel,
Bhadkar Gate, Chh. Sambhajinagar. Petitioner

Versus

1. The State of Maharashtra
Through Secretary,
Municipal Corporations,
Mantralaya, Mumbai – 32.
2. Commissioner,
Municipal Corporation,
Chhatrapati Samabhajinagar,
Tq. & Dist. Chhatrapati Sambhajinagar
3. Education Officer,
Municipal Corporation,
Chhatrapati Sambhajinagar, Respondents

.....

Mr. A.N.Ansari, Advocate for Petitioner
Mr. S.B. Narwade, AGP for Respondent No.1
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.

{2}

2. The present petition challenges the order dated 05.07.2024, whereby Respondent No. 3 has directed recovery of the amount of excess payment on account of non-passing of the Marathi/Hindi language examinations. The proposed recovery is to the tune of Rs. 4,53,834/-.

3. The facts, which are not in dispute, are that the petitioner was serving with Respondents No. 2 and 3 on the post of Assistant Teacher, which is a Class-III post. She was appointed with effect from 01.11.1991 and retired on attaining the age of superannuation on 31.12.2024. At the time of her appointment, no condition was imposed requiring her to pass the Marathi/Hindi language examination. The petitioner further states that she was exempted from passing the Marathi/Hindi language examination vide order dated 18.01.2022, wherein her name appears at Serial No. 259. She also states that during the course of her service, she passed the MSCIT course in the year 2003. It is her contention that as per the Government policy/communication dated 10.08.2020, no recovery can be effected from Class-III and Class-IV employees who are on the verge of retirement, nor can recovery be made where the excess payment has been continued for more than five years. However, Respondent No. 3 has proposed recovery from the pensionary benefits of the petitioner, which, according to her, is impermissible in law.

4. Heard learned Advocate Ms. Ansari for the petitioner, learned AGP for Respondents No. 1 and 2, and learned Advocate Mr. Parth Salunke for Respondents No. 2 and 3.

5. Learned counsel for the petitioner, after taking us through the relevant documents, submits that recovery after the superannuation of the petitioner is wholly illegal. It is further submitted that passing the Marathi/Hindi language examination cannot be said to be mandatory, and even assuming that it was so, recovery after retirement is impermissible in view of the decision of the Hon'ble Supreme Court in *State of Punjab v. Rafiq Masih (White Washer)*, 2015 (4) SCC 334. Reliance is also placed on the decision of this Court in Writ Petition No. 6763 of 2023 (*Kahn Almas Zohara d/o Gulam Ahmed Khan v. State of Maharashtra & Ors., decided on 09.02.2024*). Further reliance is placed on the judgment of the Hon'ble Supreme Court in *Syed Abdul Qadir v. State of Bihar*, 2009 (3) SCC 475.

6. It is to be noted that by order dated 18.01.2022, the petitioner was exempted from appearing in the Marathi/Hindi language examination. The said order remains in force and has not been recalled. In such circumstances, recovery of the alleged excess amount from a Class-III employee after retirement is barred. The decision in *Rafiq Masih* (supra) clearly lays down that excess payment cannot be

{4}

recovered from employees belonging to Class-III and Class-IV cadres. The impugned order does not demonstrate any fault or misrepresentation on the part of the petitioner, particularly when the increments were granted and pension papers were processed by the competent authorities. In view thereof, we are of the opinion that the petition deserves to be allowed.

7. The impugned order dated 05.07.2024 and order dated 21.01.2025, directing recovery stands quashed and set aside.

8. 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.

9. 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% 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.

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

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE