IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 WRIT PETITION NO. 2408 OF 2026

Sunita Madhukar Pothdar,
Age: 62, Occupation: Pensioner,
R/o. Aurangabad
At present: G.K. Royal Hills, Chandrabhaga
Corner Ravaet, Pune. …. Petitioner

Versus

1. The State of Maharashtra
Through Nagar Vikas Department
Mantralaya, Mumbai 400032.
2. The Commissioner,
Municipal Corporation,
Chh. Sambhajinagar (Aurangabad)
3. Chief Account, Finance Officer,
Municipal Corporation,
Chh. Sambhajinagar (Aurangabad)
4. Medical Health Officer,
Chh. Sambhajinagar (Aurangabad) …. Respondents

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

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

DATED : 16 MARCH, 2026

JUDGMENT [Per Smt. Vibha 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. The present petition challenges the order dated 05.10.2023 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. So also, order dated 03.05.2024 issued by respondents No.3, to the extent of recovery of the amount of Rs.3,87,104/-.

3. The petitioner joined service in the Health Department by order dated 01.06.1991 and stood retired on 30.11.2022 upon attaining the age of superannuation. The petitioner was granted exemption from passing the MSCIT examination with effect from 01.12.2014, i.e., on completion of 50 years of age. However, after her retirement, the petitioner was served with an office order dated 05.10.2023, directing recovery of the amount for the period from 01.01.2008 to 01.12.2014 on the ground that she had not passed the MSCIT examination. Further, by order dated 03.05.2024, recovery of an amount of Rs. 3,87,104/- was shown to be effected from the petitioner's gratuity. The petitioner states that, in fact, she had passed the MSCIT examination in 2019. 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.

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. 2166 of 2025 with companion matters (***Bhimrao Jadhavrao Patil v. The State of Maharashtra and others***, ***decided on 18.06.2025***), wherein reference has also been made to Writ Petition No. 6763 of 2023 (***Kahn Almas Zohara d/o Gulam Ahmed Khan v. The State of Maharashtra and others, decided on 09.02.2024***). Reliance was further placed on the decisions in ***Sayyed Abdul Qadir v. State of Bihar***, 2009 (3) SCC 475; ***State of Punjab & Others v. Rafiq Masih (White Washer) and others***, 2015 (4) SCC 334.

6. Here, it is to be noted that the petitioner passed the MSCIT examination in the year 2019; however, this fact appears not to have been taken note of, and therefore, entry of the same be 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 have been beyond 2006 as per the extended time in the Government Resolution. The petitioner appears to have passed the course in 2019, and therefore, 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 02.12.2014. The petitioner stood retired on 30.11.2022. 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) and ***Bhimrao Jadhavrao Patil*** (supra), would apply. Accordingly, the petition stands allowed.

8. The impugned order dated 05.10.2023 passed by respondent No. 2 and the order dated 03.05.2024 passed by respondent No. 3, directing recovery, stand 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% 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