IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 WRIT PETITION NO. 3234 OF 2026

Siraj Farooqui S/o Ahmed Mohiuddin
Age 59 years, Occ. Pensioner,
R/o H. No. 4/12/34 New Colony, Roshan Gate
Aurangabad. Mob. 7058494871. **….PETITIONER**

VERSUS

1. The State of Maharashtra
Through Secretory Municipal Corporations
Mantralaya Mumbai

2. The Assistant Commissioner Establishment
Municipal Corporation Chh. Sambhajinagar

3. The Chief Accountant Finance Officer
Chh. Sambhajinagar Municipal Corporation

…

Ms. A. N. Ansari, Advocate for the Petitioner
Mr. S. B. Narwade, AGP for Respondent/s – State

…

CORAM : SMT. VIBHA KANKANWADI AND AJIT B. KADETHANKAR, JJ.

DATE : 29.04.2026

JUDGMENT :-

. Rule. Rule made returnable forthwith. The matter is taken up for final disposal with the consent of the parties.

2. By the present petition under Article 226 of the Constitution of

India, the Petitioner has put-forth prayer clauses B, C, D and E as under :

> *"B) To quash and set aside the order dated 11/12/2025 issued by the Respondent No. 2 and the order dated 13/2/2026 issued by the Respondent No. 3 by passing any appropriate writ, order, or direction as the case may be.*
>
> *C) It may be held that the Petitioner is not of liable for recovery of an amount Rs. 4,45,731/- for non-passing of MS-CIT course by passing any appropriate writ, order or direction as the case may be.*
>
> *D) The Respondents be directed to release the recovered amount of Rs. 4,45,731/-, with interest forthwith by passing any appropriate writ, petition, or order as the case may be.*
>
> *E) The Respondents be directed to release all the retirement benefits i.e. commutation of pension, leave encashment, and DCRG, with interest from the date the same was due till the date the same actually paid by passing any appropriate writ, order, or direction as the case may be."*

3. Mrs. Ansari, learned Advocate for the Petitioner submits that the Petitioner was appointed as a Junior Clerk in the year 1997 possessing requisite qualifications and was subsequently promoted as Senior Clerk on 29.07.2022. After rendering long service, the Petitioner superannuated on 31.07.2025. However after his retirement, the Petitioner has submitted his service book for verification and on 21.11.2025, recovery of Rs.4,45,731/- was directed against him on account of non-passing of MS-CIT exam from

01.01.2008 to 05.07.2017. Therefore, the Petitioner submitted letter dated 02.12.2025 contending that he may be paid retiral benefits without deducting the recovery amount against non passing of MS-CIT exam.

4. According to the Petitioner, he was served with letter dated 11.12.2025 issued by the Assistant Commissioner Establishment, Municipal Corporation for recovery from the retirement benefit from 01.01.2008 to 05.07.2017 for not passing MS-CIT examination, and Rs.10/- from 01.07.2006 to 01.07.2019 for excess pay fixation. Vide letter dated 02.12.2025, the Petitioner has contended that as per the Government Resolution dated 20.11.2018, the Government has ordered not to recover any excess amount paid to the employees despite non passing of MS-CIT examination, if already not recovered. Therefore, the recovery directed against him under impugned order dated 11.12.2025 is illegal and bad in law.

5. Further it was contended that on ***23.03.2023*** this Court passed the judgment in ***Writ Petition No.3320/2023*** and other connected matters ***(Shaikh Amir Shaikh Kadar V/s. The State of Maharashtra through its Secretary and Ors.)*** wherein, the Division Bench of this Court (Coram: Ravindra V. Ghuge and Sanjay A. Deshmukh, JJ.) considered the law laid down in ***High Court of Punjab and Haryana V/s. Jagdev Singh; 2016 AIR***

(SCW) 3523, judgment dated ***01.09.2021*** passed by the Co-ordinate Bench of this Court in ***Writ Petition No.13262/2018 (Ananda Vikram Baviskar V/s. State of Maharashtra and Ors.) and Syed Abdul Qadir V/s. State of Bihar and Ors.; 2009 (3) SCC 475***, wherein it has been held that if the employee did not play a fraud or was personally not involved in wrongful revision of her pay scale or orchestrating wrongful pay revision by manipulating the record, the recovery of excess amount of payment made to the employee shall not be recovered from the Class III and IV employees.

6. The grievance of the Petitioner is that recovery has been directed under communication dated 11.12.2025 to the tune of Rs. 4,45,731/-. The Petitioner contended that, he superannuated on 31.07.2025 and on verge of retirement, recovery has been directed, which is illegal and bad in law.

7. Needless to say that, the Petitioner was granted incremental benefit and later on it was revealed that the Petitioner did not have qualification of MS-CIT. But in view of the Government Resolution dated 27.11.2020, recovery from retired Class III and Class IV employees is prohibited, and recovery on the ground of non-passing of the MS-CIT examination is also barred.

8. The learned counsel for the Petitioner places reliance on the judgments of the Hon'ble Supreme Court in ***State of Punjab vs. Rafiq Masih (White Washer) and Syed Abdul Qadir vs. State of Bihar***, to contend that recovery from Class III employees after retirement is not permissible, especially when there is no fraud or misrepresentation.

9. Per contra, learned AGP submits that the Petitioner had given an undertaking to refund excess payment and had not passed the MS-CIT examination within prescribed time and therefore recovery is justified.

10. We have considered the submissions and perused the record. It is an admitted position that the Petitioner is a Class III employee and has retired from service. The recovery is initiated after retirement without any allegation of fraud or misrepresentation. It is further evident that the Petitioner was never informed about excess payment during service and no opportunity of hearing was granted before passing the impugned recovery orders, thereby violating the principles of natural justice.

11. The contention of the Respondents regarding undertaking cannot be accepted, as any such undertaking obtained at or near retirement cannot be treated as voluntary or enforceable.

12. In absence of any fraud, misrepresentation or misconduct on the part of the Petitioner, recovery of excess payment is not permissible in view of the law laid down by the ***Hon'ble Supreme Court in Rafiq Masih and Syed Abdul Qadir (supra).*** Further, the Government Resolution dated 27.11.2020 clearly prohibits recovery on account of non-passing of MS-CIT examination, which is binding on the Respondents. In view of the above, the recovery sought to be effected from the Petitioner is illegal, arbitrary and unsustainable in law.

13. In view of above discussion and considering the law laid down in above cited cases, the Writ Petition is allowed and the impugned orders dated 11.12.2025 and 13.02.2026 are hereby quashed and set aside. The amount due and payable to the Petitioner after his superannuation, shall be paid to the Petitioner within a period of 90 days with interest @ 6% per annum.

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

(AJIT B. KADETHANKAR, J.) **(SMT. VIBHA KANKANWADI, J.)**

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