



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

WRIT PETITION NO. 669 OF 2022

Usha Rambhau Huge

Age : 57 Years, Occ : Retired

Residing at 401/'A' Pawanputra CHS.

Ltd. Sector 5 Charkop, Kadivali (West),

Mumbai 400067.

....Petitioner

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Versus

1. The Commissioner Greater Mumbai Municipal Corporation, Municipal Head Office, Mahapalika Marg Mumbai, Maharashtra 400001.
2. Administrative Officer Ed. H/E Ward Greater Mumbai Municipal Corporation Mumbai, Plot No. 137, TPS IV Road No. 2 Prabaht Colony, Santracurze (E) Mumbai 55.
3. Chief Secretary School and Sports Department Government of Maharashtra. Mantralaya, Mumbai – 400032 Through Government Pleader.
4. The Accounts Officer (FGR)
office of Account Officer (FGR)
Brihanmumbai Mahanagarpalika Head Office Annex Building, 6th Floor, Mahapalika Marg Fort, Mumbai 400001.Respondents

Mr. Vishwanath Patil a/w. Mr. Harshwardhan Karande a/w. Advocate Guruling Samagond i/b. Mr. Deepak Pandey, for the Petitioner.

Mr. Pratik Garde, for Respondent Nos. 1, 2 and 4/BMC.

Mr. Mahendra Sale, Head Clerk, AO (School) H East

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.
DATE : 29th JANUARY, 2026**

ORAL JUDGMENT (PER : RAVINDRA V. GHUGE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally

by the consent of the parties.

2. The Petitioner has put forth the Prayer Clauses (C), (D)

and (E), are as under :

(C) That in exercise of its jurisdiction under Article 227 of the Constitution of India this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Direction or Order directing Respondent Nos. 1 to 2 to prepare and submit to Respondent No. 4 proposal for claim of post retirement benefits of the Petitioner in respect of the total service rendered by her from 06.09.1983 to 24.03.2004.

(D) That in exercise of its jurisdiction under Article 226 of the Constitution of India this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order directing Respondent Nos. 3 and 4 to complete the process of verification of the proposal of claims of pension and gratuity of the Petitioner within a period 1 month after said proposal is received from Respondents Nos. 1 & 2 and determine the amount of monthly pension of the Petitioner.

(E) That in exercise of its jurisdiction under

Article 227 of the Constitution of India this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order directing Respondents Nos. 3 & 4 to release the monthly pension due and payable to the Petitioner and also the arrears of pension from the date of retirement of the Petitioner till the release of the monthly pension with interest at the rate of 18% per annum of the amounts from the date it was due and payable till payment and recover the interest amount from Respondents Nos. 1 & 2.

3. This is a Petition wherein an unfortunate Deputy Headmistress in a Primary Marathi School has suffered 88% permanent paralysis, rendering her paralyzed neck downwards, unable to move, and confined to the bed or, at times, to a wheelchair. She has been regularly paid her pension under the Old Pension Scheme, albeit, as per the pay scale under the 5th Pay Commission. She was a permanent employee as on 31.05.2005 and had put in qualifying service. Technically, she was in employment until she was granted Voluntary Retirement by the Corporation on 05.08.2008. As such, she was entitled to the benefits of the 6th Pay Commission recommendations.

4. Holistically, the issue is as to whether an employer, who has taken the services of an employee and that too, for doing a

rious job of teaching students at the Primary School level, should be treated in a heartless manner. Should the Corporation not have shown empathy towards such an unfortunate employee and should she be compelled to approach the High Court ?

5. The facts regarding the Petitioner's illness are undisputed. The fact that she is entitled to pension under the Old Pension Scheme, is also undisputed. The fact that she has been on leave ever since she suffered 88% permanent paralysis, after she underwent a medical surgery, is also undisputed. The KEM Hospital, Mumbai, issued a Medical Certificate to the Petitioner dated 11.01.2010, indicating that she was treated in the OPD from 26.05.2008 till the date of the certificate, having suffered from Spinal Canal Stenosis with Paraplegia. Permanent incapacity is estimated at 88%.

6. The Corporation has tendered an Affidavit-in-Reply dated 18.12.2025, through Mr. Rajesh Kankal, Education Officer, Education Department. Paragraph Nos. 4, 5, and 6 of the said Affidavit are reproduced verbatim hereunder :

“4. Without prejudice to the other rights

and contentions, brief facts of the case is as under :-

a) The Petitioner appointed as a Trainee Teacher in BMC on 06.09.1983. Thereafter she became full Time Teacher and made permanent on 01.01.1987. The Petitioner became Deputy Headmaster on 11.09.2000.

b) She went on leave from 24.03.2004 and she never resumed in the service of BMC till the 05.08.2008 when she was declared medically unfit for the services. As seen above she was on leave 1595 days. The details of the leave are as follows:-

Sr. No.	Particulars	No. of Days	Period
1.	Half Pay Leave	52	24.03.2004 to 14.05.2004
2.	Earned Leave	2	15.05.2004 to 16.05.2004
3.	Special Leave	365	17.05.2004 to 16.05.2005
4.	Half Pay Leave	240	17.05.2005 to 11.01.2006
5.	Leave Without Pay	936	12.01.2006 to 04.08.2008

As seen above petitioner has never resumed services of the corporation from 24.03.2004. Hence she is not entitled to any annual increment as well as monetary benefits of 6th Pay Commission.

5. *I say that petitioners leave from 12.01.2006 to 04.08.2008 that is the day she was declared as Leave without pay as petitioner has already exhausted all her applicable leaves. It is pertinent to note that the monetary benefits of 6th pay commission applicable to only to the employees who are in continued service on the date of 01.07.2005.*

6. *I say that as per the Circular no. GAD/Dy/PA(A-2)/RG.CELL/07 dated 30/09/2011 vide Sr. No.13(2) any employee who are absent for any reason before for the period before 1.07.2005 and retired after 1.07.2005 will not be entitled to the revised 6th pay commission. Similar decision also taken on proposal bearing FGR/208 dated 14.08.2014 and communication bearing No DMC/GA/1884 dated 16.08.2014. Copy of the said proposal dated is annexed herewith and marked as **Exht A** is copy of the Circular no. GAD/Dy/PA(A-2)/RG.CELL/07 dated 30/09/2011 and **Exht B**. proposal bearing FGR/208 dated 14.08.2014.”*

7. The Affidavit of the Corporation indicates that the Petitioner was granted approved leave. Out of the above narrated leave period, her leave with pay was sanctioned from 24.03.2004 till 11.01.2006. She was on Leave Without Pay (LWP) for 936 days from 12.01.2006 to 04.08.2008.

8. The learned Advocate for the Corporation has drawn our attention to the Circular issued by the Corporation for the year

2011-2012, dated 30.09.2011. He has specifically drawn our attention to Clause 13(2), which stipulates that a person would not be entitled to the 6th Pay Commission benefits if he or she was under suspension or absent with effect from a date prior to 01.07.2005 and onwards.

9. The learned Advocate has attempted to convey to us that the words 'suspension' and 'absent' should be read in isolation. We reproduce the said clause, which is in Marathi, as under :

"२) दि. १.७.२००५ च्या पूर्वीपासून अद्यापि निलंबित व अनुपस्थित असलेले कर्मचारी"

10. The submissions of the Corporation are fallacious for reasons more than one.

Firstly, the circular would not apply to the Petitioner's case because she had been granted voluntary retirement on 05.08.2008 and the circular was issued on 30.09.2011.

Secondly, assuming that the circular is applicable to her, the said clause would still not be applicable to her. The meaning of the above marathi clause is that the person should be, both, suspended and absent. The word between 'suspended' and 'absent' is 'व' ,

meaning 'and'. Had the word been 'किंवा', meaning 'or', the Corporation could have argued that since the Petitioner was absent, she was, therefore, ineligible for pension as per the 6th Pay Commission Pay Scales.

Thirdly, even this argument would not stand the test of law, as she was on approved leave from 01.07.2005 until 11.01.2006. She was on approved leave without wages from 12.01.2006 till 04.08.2008 and was allowed to retire on 05.08.2008.

11. It is an admitted position that the Corporation was fully aware of the grave illness of the Petitioner and, as set out in the Affidavit-in-Reply, the relevant portion of which is reproduced above, the Corporation has conceded that the Petitioner was granted leave with pay from 24.03.2004 to 11.01.2006, and leave without pay from 12.01.2006 to 04.08.2008.

12. So also, the case of the Petitioner, even otherwise, is squarely covered by the earlier enactment, namely, 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995'.

13. In view of the above, **this Writ Petition is allowed.**

The impugned letter dated 13.11.2019, at Annexure 'D', is quashed and set aside with the following directions :-.

- (a) Respondent Nos. 1 and 2 shall act in terms of Prayer Clauses (C) and (D) as reproduced above.
- (b) In so far as Prayer Clause (E) is concerned, the same is partly allowed, save and except, the rate of interest prayed for. We direct that the rate of interest on the unpaid amounts (difference in the pension based on the 6th Pay Commission recommendations) would be 5% per annum.
- (c) Needless to state, the Authorities would refix the last drawn salary of the Petitioner and accordingly, recalculate the pension amount. The pension being paid as per the 5th Pay Commission recommendations, would be set off and the difference of the pension amount would be subjected to the interest as directed above.
- (d) The same would apply to the recalculation of the gratuity by refixing the last drawn Pay Scale of the Petitioner in terms of 6th Pay Commission recommendations, with statutory interest @ 10% as is statutorily payable.

14. **Rule is made absolute in the above terms.**

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)