



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

WRIT PETITION NO. 1939 OF 2026

Shashikant Anant Kale

...Petitioner

Vs.

The State of Maharashtra, through Department
of Urban Development & Ors.

...Respondents

Mr. Prashant Kulkarni a/w. Ms. Rachna Mamnani and Ms. Ritika Rajeev for the
petitioner.

Mr. Suraj Gupte, AGP for the State.

Ms. Pushpa Yadav for BMC.

CORAM: G. S. KULKARNI &
AARTI A. SATHE, JJ.
DATE: 3 AUGUST, 2026.

P.C.

1. This petition under Article 226 of the Constitution is filed praying for the
following substantive reliefs:

a) this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, calling upon the records and proceedings pertaining to Appeal filed by the petitioner and after examining the validity of the said order be pleased to quash and set aside letter/order dated 13.11.2025 rejecting the petitioner's appeal on the ground that there is no provision of appeal;

b) this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, this Hon'ble Court be pleased to quash and set aside disciplinary inquiry, charge sheet, show cause notice and findings holding the petitioner guilty;

c) this Hon'ble Court may be pleased to issue a Writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, this Hon'ble Court be pleased to quash and set aside the termination order dated 16.07.2021 and 08.02.2022 issued by the respondent Corporation, whereby the petitioner has been terminated from services;

d) this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, directing the respondents to consider and decide the petitioner's appeal on merits, and municipal commissioner and corporation to condone

the termination under pension rule 15 a & b and release his pension & retrial benefits like gratuity, leave encashment etc. within 60 days period and further direct to give pension to the petitioner.”

2. As seen from the prayers, the only question which requires determination is whether the petitioner has the remedy of a departmental appeal under Brihanmumbai Municipal Corporation Services (Discipline and Appeal) Rules, 2015 (for short **“2015 Rules”**) against an order of termination passed by the Municipal Commissioner.

3. Briefly, the facts are : On 16 February, 1989 the petitioner was appointed as an Assistant Station Officer in Mumbai Fire Brigade. Between the period from 1996 to 2012, the petitioner was awarded promotion from the post of Station Officer to Deputy Chief Fire Officer. It is the petitioner’s case that on 10 August, 2020, the petitioner was given charge of Chief Fire Officer (Acting). Thereafter, on 9 October, 2020, recommendation letter/Minutes of meeting were issued under which the petitioner was recommended as an officer for Specific President’s Fire Service Medal for his meritorious service.

4. It is the petitioner’s case that although the petitioner had meritorious service from 1989, on 14 December, 2020 a charge sheet was issued to the petitioner initiating departmental enquiry. Against the issuance of the charge sheet, the petitioner approached this Court in Writ Petition No. 1370 of 2020 challenging withdrawal of additional charge. On 27 March, 2021, the Municipal Commissioner directed initiation of departmental enquiry against the petitioner. On 16 July, 2021, the Municipal Commissioner passed an order terminating the

service of the petitioner.

5. It appears from the record that the said order was issued after the approval of the Standing Committee. On such backdrop, the petitioner invoked the provisions of appeal, i.e., on 21 June, 2021 the petitioner preferred an appeal before the Municipal Commissioner challenging the disciplinary proceedings and the order of termination. However, such appeal was not entertained. The petitioner was in fact called upon to file an appeal before the State Government, which he filed on 29 April, 2025 on purported invocation of Section 520B and 520C of the Mumbai Municipal Corporation Act, 1888 (for short “MMC Act”). As the petitioner was informed by communication dated 13 November, 2025 that there is no provision for appeal with the Municipal Corporation, it is in these circumstances, the present petition is filed.

6. With the assistance of learned counsel for the parties, we have perused the record. We have also perused the 2015 Rules of the Municipal Corporation as framed by the Municipal Corporation exercising powers under Section 64(3) of the MMC Act. Part III of the 2015 Rules provides for “Penalties and Disciplinary Authorities”, under which Rule 5 provides for “Penalties”. Rule 5(A) provides for “Minor Penalties”. Rule 5(B) provides for “Major Penalties”, which includes dismissal from service, removal from service etc. The relevant extract of the said Rule is required to be noted, which reads thus:

“5. Penalties -

Without prejudice to the provisions of any Law for the time being in force, the following Penalties may for good and sufficient reasons and as hereinafter provided, be imposed on a Corporation Employee Viz;

(A) Minor Penalties:-

As per section 83(3) of the Mumbai Municipal Corporation Act, 1888 following Minor Penalties can be imposed:-

- (i) Censure
- (ii) Fine
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Corporation by negligence or breach of orders.
- (iv) Withholding the increments of pay (with or without permanent effect).

(B) Major Penalties: -

As per section 83(1) of the Mumbai Municipal Corporation Act, 1888 following Major Penalties can be imposed: -

- (i) Dismissal from service, which shall ordinarily be a disqualification for future employment under Corporation.
- (ii) Removal from service, which shall ordinarily be not a disqualification for future employment under Corporation.
- (iii) Reduction in pay or Demotion from post.”

7. Further, Part V of the said Rules provides for “Appeals”, in which Rule 16 provides for “Orders against which no appeal lies”. Rule 17 provides for “Orders against which appeal lies”. Rule 18 provides for “Appellate Authorities”. It would be necessary to note the said rules, which read thus:

“Rule 16. Orders against which no appeal lies -

Notwithstanding anything contained in this Part, no appeal shall lie against -

- (i) any order made by the Standing Committee/ Education Committee/Corporation;
- (ii) any administrative order made by the Municipal Commissioner;
- (iii) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a Disciplinary Proceeding, other than an order of suspension; (iv) any order passed by an Enquiring Authority in the course of an Enquiry under Rule 8 of these Rules.

Rule 17. Orders against which appeal lies -

Subject to the provisions of Rule 16, a Corporation Employee may prefer an appeal against all or any of the following orders, viz:-

- (i) an order of suspension made or deemed to have been made under Rule 4 of these Rules;
- (ii) an order imposing any of the Penalties specified in Rule 5(A) and 5(B) of these Rules;**
- (iii) an order enhancing any Penalty, imposed under Rule 5(A) and 5(B) of these Rules;
- (iv) an order which:-

- (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by Rules or by Agreement; or
- (b) denies promotion to which he is otherwise eligible according to the Recruitment Rules and which is due to him according to his seniority;
- (c) interprets to his disadvantage the provisions of any such Rule or Agreement;
- (v) an order:-
 - (a) reverting him while officiating in a higher service, grade or post to a lower service, grade or post, otherwise than as a Penalty;
 - (b) reducing or withholding the pension or denying the maximum pension admissible to him under the Rules governing pension;
 - (c) determining the subsistence and the other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or any portion thereof;
 - (d) determining his pay and allowances:-
 - (i) for the period of suspension, or,
 - (ii) for the period from the date of his Dismissal, Removal from service or from the date of his Reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his re-instatement or restoration to his service, grade or post; or
 - (e) determining whether or not the period from the date of his suspension or from the date of his Dismissal, Removal from service or Reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his re-instatement or restoration to his service, grade, or post shall be treated as a period spent on duty for any purpose.

Explanation – In this Rule :-

- (i) the expression "Corporation Employee" includes a person who has ceased to be in Corporation Service; (ii) the expression "Pension" includes additional pension, gratuity and any other retirement benefits.

Rule 18. Appellate Authorities -

An appeal against the orders passed by a Competent Authority shall ordinarily lie to the Authority next higher to such Competent Authority;

- (1) where the order of Penalty is made by the Head of the Department, the appeal may be made to the Deputy Municipal Commissioner in-charge of that Department.
- (2) where the order is made by a Deputy Municipal Commissioner, the appeal may be made to the Additional Municipal Commissioner of concerned Department. The Additional Municipal Commissioner may either dispose of the appeal himself or direct another Deputy Municipal Commissioner or two Deputy Municipal Commissioners to dispose of it.
- (3) where the order is made by the Additional Municipal Commissioner, the appeal may be made to the Municipal Commissioner. The Municipal Commissioner may dispose of it himself or direct another Additional Municipal Commissioner or two Additional Municipal Commissioners or two Deputy Municipal Commissioners to dispose of it.

(4) where the order is made by the Municipal Commissioner, the appeal shall be made to the Municipal Commissioner and the Municipal Commissioner may direct an Additional Municipal Commissioner or two Additional .Municipal Commissioners or two Deputy Municipal Commissioners to hear the appeal and submit to him alongwith the remarks for orders or hear and dispose it of.”

(emphasis supplied)

8. Even otherwise, it would be difficult to consider a situation that a municipal employee who has been terminated would not have a remedy of departmental appeal, which in fact has been provided, as noted by us hereinabove. It is clear from a conjoint reading of Rule 5(A) and 5(B) read with Rule 17(ii) and Rule 18(4), that certainly a remedy of an appeal is available to a delinquent employee who has been imposed a penalty of termination / removal from service, as in the case of the petitioner.

9. The Municipal Corporation’s contention that the petitioner may approach the State Government under Section 520B of the Mumbai Municipal Corporation Act, 1888 is misconceived. Section 520B is a “Power of State Government to suspend or rescind any resolution or order, etc. of Corporation or other authority in certain cases”, it certainly cannot be held to be a provision conferring any appellate remedy that too before the State Government to assail an order of termination. This would amount to an incorrect reading of provision of Section 520B, which provides for overarching power of the State Government. Section 520B reads thus:

520B. Power of State Government to suspend or rescind any resolution or order etc., of Corporation or other authority in certain cases.—

(1) If the State Government is of opinion that the execution of any resolution or order of the Corporation or any other authority or that the doing, of any act which is about to be done or is being done by or on behalf of the Corporation or such authority is in contravention of or in excess of the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to abuse or misuse, of or to cause waste, of municipal fund against

the interests of the public; [or is likely to be against the financial interests of the corporation or against the larger public interest] the State Government may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act, for such period or periods as it may specify therein. A copy of such order shall be sent forthwith by the State Government to the Corporation and to the Commissioner or the General Manager.

(2) On receipt of a copy of the order as aforesaid, the Corporation or Commissioner or General Manager may, if it or he thinks fit, make a representation to the State Government against the said order.

(3) The State Government may after considering any representation received from the Corporation or Commissioner or General Manager and where no such representation is received within a period of thirty days, either cancel, modify or confirm the order made by it under sub-section (1) or take such other action in respect of the matter as may in its opinion be just or expedient, having regard to all the circumstances of the case. Where any order made under sub-section (1) is confirmed, the State Government may direct that the resolution or order of the Corporation or its authority in respect of which the suspension order was made under sub-section (1), shall be deemed to be rescinded.

(4) Where any order is made by the State Government under sub-section (3), it shall be the duty of every Councillor and the Corporation and any other authority or officer concerned to comply with such order.”

10. We would not agree with the Municipal Corporation's contention that, under the aforesaid provision, the State Government would act as the Appellate Authority. This is more particularly because Rule 17, read with Rule 18(4), categorically provides for a remedy by way of an appeal and designates an Appellate Authority to hear such appeals.

11. In this view of the matter, necessarily the provisions of the 2015 Rules as noted hereinabove need to apply in the petitioner's case. The Municipal Commissioner is accordingly directed to form an Appellate Committee as provided for under sub-rule (4) of Rule 18, so that the petitioner can be heard on his appeal against the order of termination. Let appropriate steps in that regard be taken within a period of two weeks from today. The Appellate Authority is directed to proceed in accordance with law after hearing the petitioner and pass

appropriate order on the materials as placed on record. All contentions of the parties are expressly kept open. Ordered accordingly.

12. Before parting, we record our dissatisfaction with the approach of the authorities, which in fact has resulted to defeat the provisions of the appellate remedy, which was available to the petitioner. In the circumstances in hand, the petitioner was required to run from pillar to post and ultimately approach this Court. We are hence, of the clear opinion that henceforth, in all matters where decision is taken, imposing penalties on municipal employees, the Municipal Corporation needs to clarify that there is remedy of appeal. In fact it is a standard procedure in respect of orders passed by the disciplinary authorities to provide at the bottom of the order that the remedy of an appeal is available to the delinquent employee. Such practice is well settled and followed in regard to orders passed by the Direct and Indirect tax authorities. This is precisely what has not been done, by the disciplinary authority in the present case. In saying so, we may also refer to the celebrated commentary on Principles of Statutory Interpretation by Justice G. P. Singh, 15th Edition, Chapter 5 page 331 where the learned author has made the following observation referring to the decision of House of Lords in **London & Clydeside Estates Ltd. Vs. Aberdeen District Council & Anr.**¹

“A statutory condition that while passing an order a public authority should intimate by the order itself that the person concerned has a right of appeal against the order, has been held to be mandatory.”

13. In such context, in **London & Clydeside Estates Ltd. Vs. Aberdeen District Council & Anr.** (supra) Lord Fraser of Tullybelton in the House of Lords was

1 (1979)3 All ER 876

considering the question in regard to the defect to not include a statement of the applicants' right of appeal to the Secretary of State as contemplated by the provisions in question in Article 3(3) of the Order of 1959. It is in such context, it was held that making a statement of the right of appeal qua the applicant, being not included, was not acceptable, and the failure to do so cannot amount to a mere technicality or procedural irregularity, and such omission was serious and fatal. The observations of Lord Fraser are required to be noted which read thus:

“LORD FRASER OF TULLYBELTON. My Lords, this appeal raises the question whether a certificate of alternative development issued by a local planning authority which was defective in form is valid or invalid and, if invalid, what remedy is available to the party who applied for it. The defect was that the certificate did not include a statement of the applicants' rights of appeal to the Secretary of State as required by the relevant statutory instrument. The appellants (pursuers in the action), on whose behalf the certificate was applied for by their architects, maintain that the defective is invalid. The respondents, who are the local planning authority, maintain that the requirement that the certificate shall include a statement on the rights of appeal is not mandatory but only directory, and that the failure to comply with it does not affect the validity of the certificate that was issued.

... ..
Logically the first point to consider is whether the provision in article 3 (3) of the Order of 1959 to the effect that the local planning authority “shall in that certificate include a statement in writing of ... the rights of appeal “is mandatory or not. I do not think that literal compliance with the provision is mandatory: for example, if a statement of the rights of appeal had not been “included” in the certificate but had been sent with it in a separate sheet, that would in my opinion have been substantial compliance and would have been sufficient. But here there was no compliance at all with the provision. The purpose of the statement required by article 3 (3) clearly is to inform the applicant first that he has a right of appeal and secondly of the time in which the right has to be exercised. These are matters of importance to an applicant and Parliament, acting through the Secretary of State, has considered their importance to be such that they ought to be expressly brought to the notice of an applicant. Failure to do so cannot in my opinion be treated as if it were a mere technicality or a procedural irregularity which might be overlooked. The omission in this case was similar to, but more serious than, the omission of the address for the service of a notice of appeal which was held by the Court of Appeal to invalidate an assessment notice in *Agricultural, Horticultural and Forestry Industry Training Board v. Kent* [1970] 2 Q.B. 19. It was much more serious than the omission in *Rae v. Davidson*, 1954 S.C. 361, 369, which was described by Lord Justice-Clerk Thomson as “the merest technicality,” but which was held nevertheless to invalidate a notice to remove from a farm because the statutory requirements for such a notice had not been exactly complied with. I agree with both those decisions, and I have no doubt that the effect of the omission in this case was to make the certificate invalid in the sense that it cannot stand, if challenged by the appellants. It is not a

complete nullity — for example it could have been appealed against by an appeal taken timeously — and it exists until it is reduced, or set aside in some way. I do not think it is possible to treat the certificate as consisting of two parts, capable of being severed from one another, one part being the actual certificate and the other being the statement of the rights of appeal. Both parts are required by the order and both are of substantial importance. The omission of either part is therefore fatal to the validity of the whole.”

14. Lord Keith of Kinkel in his concurrent decision while holding that failure to comply with the mandatory requirements may deprive the person concerned of his rights of appeal, has made the following observations:

“The word “shall” used in article 3 (3) is normally to be interpreted as connoting a mandatory provision, meaning that what is thereby enjoined is not merely desired to be done but must be done. In many instances failure to obtemper a mandatory provision has the consequence that the proceedings with which the failure is connected are rendered invalid. But that is not necessarily so. s is shown by the case of Brayhead (Ascot) Ltd. v. Berkshire County Council [1964] 2 Q.B. 303 something may turn upon the importance of the provision in relation to the statutory purpose which the provision is directed to achieving, and whether any opportunity exists of later putting right the failure. I have no doubt that in the present case the provision under consideration is intended to be mandatory and is of such a character that failure to comply with it renders the certificate invalid. Where Parliament, albeit through subordinate legislation, has enacted that a person is to be informed of the rights of appeal conferred upon him by statute in relation to a particular subject matter whereby his rights may be very materially affected, it will not do to say that failure to comply with the enactment has no legal result whatever. The matter is of great importance and has been shown to have been so regarded by Parliament. Failure to comply may deprive the person concerned of his rights of appeal with no opportunity of rectifying the situation. While it is indeed curious that no provision is made for acquainting an applicant for a certificate with his rights of appeal where no certificate is issued within the prescribed time, I regard that omission as inadvertent, and not serving in any way to indicate an intention that the provisions of article 3 (3) about notification of rights of appeal should be merely directory. I note that authority in favour of the view that a provision of this nature is mandatory in the sense that failure to comply renders the proceedings invalid is to be found in Agricultural, Horticultural and Forestry Industry Training Board v. Kent [1970] 2 Q.B. 19. That was a decision of the Court of Appeal upon article 4 (3) of the Industrial Training Levy (Agricultural, Horticultural and Forestry) Order 1967 (S.I. 1967 No. 1747), whereby any notice of assessment to a levy made under section 4 of the Industrial Training Act 1964 was required to state the appropriate address for service of notice of appeal against the levy. Failure to comply with this requirement was held to invalidate the notice of assessment.”

(emphasis supplied)

15. For such reason, henceforth, as a requirement of law, in all matters where the disciplinary authority has passed an order, specific reference to the remedy of

an appeal referring to the relevant provision under the Rules shall be incorporated by the disciplinary authority of the Municipal Corporation, so that the situation as in the present case does not occur, and such issues/disputes do not reach the Court, causing unwarranted prejudice and harassment to the employees.

16. Petition stands disposed of in the aforesaid terms. No costs.

(AARTI A. SATHE, J.)

(G. S. KULKARNI, J.)