in

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

WRIT PETITION NO. 1963 OF 2026

Pradip Pralhadrao Kashale … Petitioner
Vs
Municipal Corporation of Greater Mumbai & Anr. … Respondents

WRIT PETITION NO. 2233 OF 2026

Dr. Sanjay Dattatraya Funde … Petitioner
Vs
Municipal Corporation of Greater Mumbai & Anr. … Respondents

Dr. Uday Warunjikar a/w. Mr. Sumit Kate for the petitioner in both the petitions.
Ms. Pushpa Yadav for the BMC in WP/1963/2026.
Mr. Drupad Patil a/w. Ms. Pushpa Yadav for BMC in WP/2233/2026.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.
DATE: 21 OCTOBER 2026

P.C.

1. In both these petitions, we are confronted with a challenge mounted by the petitioners to the orders of suspension.

2. Dr. Warunjikar, learned counsel for the petitioners, has contended that, under the relevant Rules of the Municipal Corporation, namely, the **Brihan Mumbai Municipal Corporation Services (Discipline and Appeal) Rules, 2015** and more particularly Rule 4(A), suspension can be ordered only after a preliminary enquiry. "Preliminary Enquiry" is provided for under Rule 4(B), which contemplates an enquiry prior to the commencement of a full fledged departmental enquiry. Rule 4(A) and Rule 4(B) are required to be noted, which

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38

reads thus:

PART II(A) SUSPENSION

4(A) Suspension -

(1) **The Appointing Authority or any Authority to which the Appointing Authority is subordinate or the Disciplinary Authority or any other Authority empowered in that behalf by the Municipal Commissioner by General or Special order may place a Corporation Employee under Suspension**:-

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) **where in the opinion of the Authority aforesaid, he has engaged himself in activities prejudicial to the interest of the affairs of the Corporation**, or

(c) where a case against him in respect of any criminal offence is under investigation, enquiry or trial:

Provided that, where the order of suspension is made by an Authority lower than the Appointing Authority, such Authority shall forthwith report to the Appointing Authority, the circumstances in which the order was made and such suspension, shall come to an end if not confirmed by the Appointing Authority within a period of six months from the date of such suspension.

(2) A Corporation Employee shall be deemed to have been placed under suspension by an order of Appointing Authority:-

(a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding Forty-Eight hours;

(b) with effect from the date of his conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding Forty-Eight hours and is not forthwith Dismissed or Removed from service consequent to such conviction.

Explanation: the period of Forty-Eight hours referred to in clause (b) of this Sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment. if any, shall also be taken into account.

(3) Where a Penalty of Dismissal or Removal from service imposed upon a Corporation Employee under suspension is set aside in Appeal or on Review under these Rules, and the case is remitted for further Enquiry or action or with any other directions, the order of his suspension shall be deemed to have been continued in force on and from the date of the original order of Dismissal or Removal from service and shall remain in force until further orders.

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38

(4) Where a Penalty of Dismissal or Removal from service imposed upon a Corporation Employee is set aside or declared or rendered void in consequence of, or by, a decision of Court of Law, and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further Enquiry against him on the allegations on which the Penalty of Dismissal or Removal from service was originally imposed, the Corporation Employee shall be deemed to have been placed under suspension by the Appointing Authority from the date of original order of Dismissal or Removal from service and shall continue to remain under suspension, till further orders.

Provided that, no such further Enquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.

(5)(a)An order of suspension made or deemed to have been made under this Rule shall continue to remain in force until it is modified or revoked by the Authority competent to do so.

(b) Where a Corporation Employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuation of that suspension, the Authority competent to place him under suspension may, for the reasons to be recorded by it in writing, direct that the Corporation Employee shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this Rule may at any time be modified or revoked by the Authority which made or is deemed to have made the order or by any Authority to which that Authority is subordinate.

Provided that, where a criminal offence is registered against a Corporation Employee, the recommendation of the Suspension Review Committee constituted by the Corporation in this behalf, shall be obtained by the Authority which has made or is deemed to have made the suspension order or by any Authority to which that Authority is subordinate, before revoking or modifying the order of suspension of such Corporation Employee.

Explanation: The Municipal Commissioner or any Authority/Officer empowered by him can review the suspension of the Corporation Employee involved in a criminal or Anti-Corruption case. The meeting of the subject Review Committee will be convened every six months. Similarly, if in any specific case the Head of the Department puts forth any extraordinary reason, in accordance with that the Municipal Commissioner or any Authority/Officer empowered by him may review the suspension of such Corporation Employee and may revoke it.

Before according sanction for prosecution of Public Servant in the Competent Court of Law in Criminal Cases, if the Municipal Commissioner is of the opinion that on the basis of the documentary evidence furnished by the Investigating Officer/Authority, there is Dereliction of Duty/Gross Misconduct on the part of that Public Servant and there is sufficient prima-

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38

facie evidence for prosecution, he may accord sanction for prosecution. Even though, investigation by the Police Authorities is not over or chargesheet is not filed within specific limit according to the prevalent Acts or Rules. Suspension could be reviewed.

Where the investigation by the Police Authorities is over or the chargesheet is filed, barring the grave criminal cases, the suspension could be reviewed, considering the direct or otherwise relation of the matter with the Corporation, gravity of the charge, the involvement of the Public Servant, therein is purely individual or otherwise, on the basis of the evidence in the matter.

PART II(B) PRELIMINARY ENQUIRY

4(B) Preliminary Enquiry-

(1) **Before a Full Fledged Departmental Enquiry/ Enquiry under Summary Procedure is held or ordered to be held it shall be considered by the Disciplinary Authority, whether a Preliminary Enquiry is necessary or desirable.**

(2) If in the opinion of the Disciplinary Authority, in cases where allegation made against the Corporation Employee are grave or are such as are likely to entitle a Major Penalty, a Preliminary Enquiry should be considered as desirable.

(3) Where there has been an Investigation or Enquiry by the Police, such Investigation or Enquiry by the Police may be considered as equivalent to a Preliminary Enquiry and no fresh or further Preliminary Enquiry may be held.

(4) The Preliminary Enquiry should be held by the Enquiry Officer duly authorised by the Municipal Commissioner or Disciplinary Authority.

(5) **On receipt of the report of the Preliminary Enquiry or on perusal and consideration of other material available in the case, the Competent Authority should decide:** -

(a) whether a prima-facie case exists for a Departmental Enquiry;

(b) **whether the Corporation Employee/s concerned should be suspended pending a Departmental Enquiry and;**

(c) whether the services of Corporation Employee/s could be and should be terminated without a Departmental Enquiry."

(emphasis supplied)

3. In the context of the aforesaid Rules, Dr. Warunjikar has drawn our attention to a decision of a co-ordinate Bench of this Court in **Dr. Shailendra**

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38

Dattatray Gujar vs. The State of Maharashtra & Anr.[1] and submitted that the Division Bench interpreted the Rules to hold that Rule 4(A) is not a stand-alone provision and that a preliminary enquiry under Rule 4(B) is necessarily required to be conducted before an employee is suspended. The observations in that regard are in paragraphs 9, 10, 11 and 14 of the said decision, which reads thus:

> 9. **In view of the above, we are of the opinion that the Corporation is misplaced in contending that Rule 4(A) is a stand-alone provision which gives unfettered powers to an authorized Disciplinary Authority or Appointing Authority to suspend an employee, without the compliance of Rule 4(B)(5). The language used in Rule 4(A) is clearly indicative of the empowerment of an authority to exercise the power of suspension. In the absence of Rule 4(A), Rule 4(B) could not have been implemented, since Rule 4(B) prescribes a procedure to be followed when an employee can be suspended pending a departmental enquiry**.
>
> 10. The golden rule of interpretation of Statutes or provisions is that a meaning drawn from one provision should not render another provision, nugatory or otiose. In short, the interpretation of Rule 4(A) should not do violence to Rule 4(B). We find from Rule 4(A) that the suspension is always pending disciplinary proceedings or is on the arrest of an employee who is behind bars for more than forty-eight hours or his conviction renders him to suffer a sentence exceeding forty-eight hours in imprisonment. As such, the powers of the Competent Authority to suspend an employee under Rule 4(A), has two dimensions. One being the source of power of an Authority to suspend an employee and, the other being that he can suspend the employee without the disciplinary enquiry only in particular circumstances.
>
> 11. The above aspect is relevant to the case before us. Rule 4(B) pre-supposes that if the above compelling circumstances to suspend an employee without a preliminary enquiry do not exist u/Rule 4(A), Rule 4(B) would then come into play. Rule 4(B) then mandates the manner in which a preliminary enquiry should be first initiated, material should be collected and the Preliminary Enquiry Officer should submit his report along with such material which needs to be considered, by the Municipal Commissioner or the Disciplinary Authority. Then sub-clause (5) comes into play at this stage. After the Competent Authority receives the report of the preliminary enquiry and peruses and analyses the material before him, he is expected to arrive at a specific decision under sub-clauses 5(a) and (b). The first decision that the Competent Authority has to take is (I) whether a prima facie case exists for a departmental enquiry? and; (ii) whether the Corporation Employee concerned should be suspended pending a departmental enquiry?
>
> 14. The Corporation has canvassed before us that they found it appropriate to suspend the employee/Petitioner under Rule 4(A). Rule 4(A),

1 Writ Petition (L) No. 17231 of 2026 decided on 14 July, 2026

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38

> as discussed above, is a Rule which defines the Authority who can exercise jurisdiction and power to suspend. Rule 4(A) is to be read conjointly with Rule 4(B), since Rule 4(A) empowers an Authority to suspend an employee. If that was a stand-alone Rule sufficient to suspend an employee without any further steps or action, Rules 4(B) (4 and 5) would not have been introduced by the Corporation. If we are to accept the contention of the Corporation that Rule 4(A) empowers the Corporation to suspend an employee pending disciplinary proceedings as a stand-alone Rule, it would render Rule 4(B)(5) otiose. Both these Rules are to co-exist as they operate in different fields. It cannot be lost sight of that these Rules are admittedly binding on the Corporation. Rule 4(B) is aimed at defining the steps to be initiated before suspending an employee. In our view, this Rule and especially sub-rule 5(b) is a safeguard against unnecessary suspension of an employee pending disciplinary proceedings."
>
> (emphasis supplied)

4. We are of the prima facie opinion that Rules 4(A) and 4(B) are distinct and operate independent of each other or in other words, they are strictly not inter-dependent. Rule 4A does not in any manner indicate that it is dependent on the effect and operation of Rule 4B. This more particularly considering the fact that if there is sufficient material to suspend an employee, there is no requirement under the said Rule to first have a preliminary enquiry to suspend an employee. In other words, it is not necessary that Rule 4A makes it mandatory for a preliminary enquiry to be held before an employee is suspended. It is difficult to conceive that the Rule making authority is not conscious of the effect which is sought to be brought about by application of Rule 4B. Also, in no manner Rule 4B has been made applicable for a suspension order to be issued against an employee under Rule 4A. Any other construction of the said Rules, in our opinion, would amount to reading something in the Rule which has not been either expressly provided or implictly inferred, from the plain language of the said Rules, even on a conjoint reading thereof. Thus, in our prima facie opinion, the consequence brought about by both these Rules is wholly compartmentalized.

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38

Considering the clear provision of Clause 4(A)(1)(b), which provides that where, in the opinion of the Authority, an employee has engaged himself in activities prejudicial to the interests of the affairs of the Corporation, clauses (a), (b) and (c), which also are independent, being separated by the use of word "or", each of these clauses would be required to be given a separate and/or independent effect. Consequently, the operation of Rule 4(A)(1)(b) would not depend upon the holding of a preliminary enquiry. As contended by Mr. Patil, learned counsel for the Municipal Corporation, Rule 4(A), which provides for "Suspension", is very clear. The Rule-making Authority could have very well made Rule 4(A) subject to the provisions of Rule 4(B), however, it has been kept independent. His contention is that, in judicial interpretation, Rules cannot be rewritten, when their provisions are plain, clear and unambiguous. He submits that the powers of the Municipal Corporation to suspend its employees is required to be exercised in accordance with the Rules, when sufficient material is available, when on any of the independent circumstances as prescribed in clauses (a), (b) and (c) of Rule 4(A)(1), suspension order can be issued. We find substance in the contentions advanced on behalf of the Municipal Corporation.

5. For the aforesaid reasons, respectfully we are not in agreement with the view taken by the co-ordinate Bench in **Dr. Shailendra Dattatray Gujar** (supra) when it interprets the Rules to hold that a preliminary enquiry is mandatory before ordering suspension.

6. In the aforesaid circumstances, we are of the opinion that the issue would be required to be resolved by a Larger Bench to determine the correct

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38

interpretation of Rule 4(A) and Rule 4(B) of the Brihan Mumbai Municipal Corporation Services (Discipline and Appeal) Rules, 2015. The following questions would arise for determination of the Larger Bench:

(i) Whether Rule 4(A), which provides for "Suspension", is a stand-alone provision, or whether its operation is dependent upon Rule 4(B), which pertains to "Preliminary Enquiry", being a requirement for initiating departmental enquiry in accordance with the prescribed procedure?

(ii) Whether suspension contemplated under Rule 4(A), and more particularly Rule 4(A)(1)(b), would fall within the ambit of Rule 4(B)(5)(b)?

7. The papers and proceedings in the present matter be accordingly placed before the Hon'ble the Chief Justice for the constitution of the Larger Bench in accordance with law.

8. Insofar as the facts of the present case are concerned, Dr. Warunjikar points out that the petitioner-Pradip Kashale in Writ Petition No., 1963 of 2026, has not been paid subsistence allowance since May. We direct the Corporation to pay the subsistence allowance to the petitioner by tomorrow, i.e., by 22 October, 2026. The compliance report be placed on record. For compliance, list this petition on **22 October, 2026 at 3 p.m.**

9. However, considering the facts of the case, we are not inclined to grant

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38

interim protection, particularly as charge sheets have now been issued in both the petitions and the same are required to be taken into consideration.

10. In the facts and circumstances of the case, Dr. Warunjikar has fairly accepted that now as the charge-sheet has been issued, the enquiry can be expedited and completed at an early date. We are inclined to accept the fair stand as taken by Dr. Warunjikar. It is hence agreed that no reasons be recorded on the interim reliefs being not granted , as the Court is ordering expeditious completion of the enquiry. Let the enquiry be completed expeditiously and in any event before 31 January, 2027. Ordered accordingly. All contentions of the petitioners in the pending departmental enquiries shall be expressly kept open.

11. In this view of the matter, except for the questions referred for determination by the Larger Bench, further adjudication of the petitions is not called for.

(DR. NEELA GOKHALE, J.) (G. S. KULKARNI, J.)

Uploaded on - 22/10/2026 Downloaded on - 25/10/2026 21:58:38