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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7091 OF 2013

1. The Municipal Corporation of Greater Mumbai
2. The Municipal Commissioner of Greater Mumbai,
   respondent Nos.1 and 2 having office at Mahapalika Marg, Mumbai 400 001 ... Petitioners

Vs.

Sudha Ramesh Shelar,
503/Kaskeed-I, Kulup Wadi Road,
Next to Tata Consultancy,
Borivali (East), Mumbai 400 055 ... Respondent

WITH
WRIT PETITION NO.2540 OF 2014

Sudha Ramesh Shelar,
503/Kaskeed-I, Kulup Wadi Road,
Next to Tata Consultancy,
Borivali (East), Mumbai 400 055 ... Petitioner

Vs.

The Municipal Corporation of Greater Mumbai, a body Corporate through Municipal Commissioner constituted under the provisions of Mumbai Municipal Corporation Act, 1888 having its office at Mahapalika Marg, CST, Mumbai – 400 001 ... Respondent

Mr. P.M. Palshikar, with Mr. Santosh Parad for the petitioner-MCGM in WP/7091/2013.

Mr. Prakash Devdas with Ms. Vidula S. Patil for the petitioner in WP/2540/2014 and respondent in WP/7091/2013.

Mr. Santosh Parad for the respondent-MCGM in WP/2540/2014.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 23, 2026.

PRONOUNCED ON : APRIL 30, 2026

JUDGMENT:

1. By the present Writ Petition No.7091 of 2013 instituted under Articles 226 and 227 of the Constitution of India, the petitioners, namely the Municipal Corporation of Greater Mumbai, have called in question the legality and correctness of the judgment and order dated 1 July 2013 passed by the learned Industrial Court, Mumbai, whereby Complaint (ULP) No.265 of 2011 preferred by the respondent came to be partly allowed. By connected Writ Petition No.2540 of 2014, the employee concerned has assailed the very same judgment and order dated 1 July 2013, though to a limited extent, namely insofar as the Industrial Court restricted back wages to 25% and granted full back wages only for the period commencing from 1 September 2011 till 31 July 2013 together with consequential service benefits. Both petitions, thus, arise out of a common adjudication and involve common issues of fact and law requiring consideration together.

2. The circumstances giving rise to the present proceedings, stated in brief, are that the respondent employee was serving with the Corporation as Senior Audit and Accounts Assistant in the office of the Chief Accountant. It is the admitted position that she initially entered service as Junior Audit and Accounts Assistant with effect from 21 December 1981. Thereafter, upon consideration by the competent authority, she was promoted to the post of Senior Audit and Accounts Assistant on 9 April 2010 and thereafter continued under the administrative control of the Chief Accountant. According to the case set up by the employee, the duties attached to her post were predominantly clerical in nature, consisting mainly of maintenance of accounts, scrutiny of records, and audit related assistance. She was posted in the Provident Fund Section from 23 April 2010 to 5 September 2010 and thereafter transferred to the Pension Section from 6 September 2010. In the Pension Section, her work consisted of scrutiny of pension claims of employees whose services had come to an end on account of superannuation, retirement, or death under the Pension Rules, 1953. Her duty was to verify service particulars, examine whether the claims submitted were in conformity with the applicable rules, and process the same accordingly. On such basis, it is contended that the work discharged by her was essentially clerical and ministerial.

3. The employee states that her date of birth is 1 September 1956. Under Regulation 205(1) of the B.M.C. Service Regulations, 1989, every Corporation employee ordinarily retires from service on the afternoon of the last day of the month in which such

employee attains the age of 58 years. If so reckoned, the respondent would normally attain the age of superannuation on 1 September 2014. It is further the case of the employee that the Corporation had framed guidelines and internal norms for considering whether an employee, upon attaining the age of 55 years, should be directed to retire compulsorily in public interest, for which purpose a committee was constituted. According to her, her service performance throughout remained unblemished and this is reflected in the Annual Confidential Reports. Certain adverse remarks, if any, were duly represented against by her and such representations were accepted. The respondent further relies upon the fact of her recent promotion to the higher post of Senior Audit and Accounts Assistant, contending that promotion was granted on the basis of merit coupled with past service record. It is therefore urged that once the Corporation itself treated her as suitable and promoted her on 9 April 2010, it cannot thereafter turn around and contend that her performance for the preceding five years was unsatisfactory. The submission proceeds on the footing that an employee found fit for promotion scarcely fourteen months earlier could not reasonably be branded as dead wood or inefficient for continuation in service.

4. It is further contended on behalf of the employee that for the purpose of promotion, the Corporation necessarily considered the service record including Annual Confidential Reports of the preceding years, and only after such scrutiny she was found eligible and promoted. However, to her surprise, she received memorandum dated 3 June 2011 stating that she was attaining the

age of 55 years on 31 August 2011 and that in exercise of powers under Regulation 205 of the B.M.C. Service Regulations, 1989, she would stand compulsorily retired with effect from 31 August 2011 after office hours. The employee submitted her reply and representation dated 7 June 2011 opposing the proposed action. She asserts that she was physically fit to continue in service, her record for the preceding years was clean, and no punishment for misconduct had ever been imposed upon her. According to her, the impugned memorandum was issued in breach of the guidelines and rules framed by the Corporation under Circular No. MPM/1985 dated 24 August 1996. It is also alleged that the action offended the Model Standing Orders applicable to her service conditions. It is further pointed out that the memorandum nowhere recorded that compulsory retirement was being ordered in public interest, which according to her is a jurisdictional requirement. On these premises, she alleges mala fides, breach of statutory service conditions, and commission of unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971, and sought appropriate reliefs before the Industrial Court.

5. The complaint was resisted by the Corporation by filing its written statement at Exhibit C-6. At the threshold, the Corporation contended that the complaint was misconceived and not maintainable either in law or on facts. It was specifically pleaded that the employee was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act and Section 3(3) of the MRTU and PULP Act, 1971, and consequently the Industrial Court lacked jurisdiction to entertain the complaint. It was further

asserted that as Senior Audit and Accounts Assistant, she was mainly employed in supervisory and administrative capacity. According to the Corporation, she supervised Junior Audit and Accounts Assistants, was in charge of the Pension Section, could recommend leave of subordinate staff, issue memos and warnings, prepare confidential reports of subordinates, and report negligence, carelessness or inefficiency of subordinate employees to superior officers such as the Accounts Officer or Deputy Chief Accountant. On this basis, the Corporation disputed her claim of being engaged merely in clerical functions.

6. The Corporation further pleaded that the complaint was not maintainable because the action impugned had been taken strictly within the framework of law and the service rules governing municipal employees. It was pointed out that under the Mumbai Municipal Corporation Act, 1888, the Corporation possesses authority to frame rules and issue administrative circulars relating to service conditions and disciplinary matters. In exercise of such powers, Municipal Service Rules were framed, and the employees are governed thereby. Insofar as compulsory retirement is concerned, Rule 205 expressly authorises the Corporation to retire an employee compulsorily where such action is considered necessary in public interest. It is therefore contended that the impugned action was one traceable to statutory power and not open to interference unless vitiated by illegality, arbitrariness, or mala fides.

7. The Corporation has also relied upon the Annual Confidential Reports submitted by the superior officer, namely the

Accounts Officer, for the years 2006-07, 2007-08, 2009-10 and 2010-11, which according to it reflected that the employee's record was not satisfactory. It is further pleaded that during the period 2006 to 2011, several memos were issued to her from time to time pointing out unsatisfactory work, failure to meet norms, lack of efficiency, and inadequate speed of work, with repeated cautions to improve performance. The Corporation also alleges that she was uncooperative with pensioners who visited the office for enquiries or pension related benefits and that she displayed an adamant attitude in dealing with members of the public. Such memos, according to the Corporation, were issued on the basis of complaints received from pensioners as well as on the observations of superior officers. It is further stated that even in departments where she was previously posted, her performance was unsatisfactory and several memoranda had been issued by concerned officers. On an overall assessment of her performance over several years preceding the decision, the Corporation formed the opinion that she should be retired compulsorily in accordance with applicable service rules. Hence, it is contended that the action is legal, proper and justified, and no case of unfair labour practice under Item 9 of Schedule IV is made out.

8. The Corporation has specifically denied the employee's assertion that she was discharging only clerical duties. According to it, she was performing supervisory functions as Senior Audit and Accounts Assistant and was in charge of the Pension Section. Reliance is placed on Regulation 205(1) of the Municipal Service Rules, 1989 under the head of Compulsory Retirement, which

provides that every Corporation employee shall retire on the afternoon of the last day of the month in which the age of 58 years is attained. The proviso further empowers the appropriate authority, if of the opinion that it is in public interest so to do, to require an employee to retire from service after attaining the age of 55 years by giving not less than three months written notice or salary and allowances in lieu thereof. The Corporation denies that the employee's performance was unblemished or that her Annual Confidential Reports supported such claim. It is stated that the last ACR submitted by the Deputy Chief Accountant, Pension and Provident Fund, showed that during the preceding three years her work was unsatisfactory and that her services ought not to be continued beyond 55 years. The plea of estoppel founded on promotion is also denied. According to the Corporation, promotions were governed by Circular No. MOM/1121 dated 26 April 1991 under which promotions were granted liberally even where some adverse material existed, and in the present case promotion was granted because the employee had passed the departmental examination. It is admitted that five years ACRs were considered by the Promotion Committee, but it is denied that promotion amounted to certification of an excellent service record. The Corporation has finally denied that the order of compulsory retirement was contrary to regulations, guidelines, Model Standing Orders, or that it constituted unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act, 1971.

9. Mr. Palshikar, learned Advocate appearing for the petitioners, namely the Municipal Corporation of Greater Mumbai, submits

that under the service rules framed by the Corporation no employee possesses any vested or enforceable right to continue in service beyond the age of 55 years. According to him, once the competent authority forms an opinion that in public interest an employee should be retired after attaining the age of 55 years, the Corporation is fully empowered to exercise such authority in accordance with the governing regulations. It is his submission that the learned Industrial Court failed to appreciate that the Review Committee had examined the service record of the respondent employee and found her performance to be only average, and on that basis recommended compulsory retirement. He contends that such recommendation was founded upon relevant material and could not have been lightly interfered with. He further submits that the Industrial Court overlooked the statutory rules and regulations which expressly confer power upon the appropriate authority to compulsorily retire an employee in public interest. Such power, according to him, is intended to preserve administrative efficiency, and the efficiency of an employee is a relevant and legitimate consideration. It is lastly urged that judicial review in matters of compulsory retirement is of a narrow and limited character, and the Industrial Court travelled beyond permissible limits while re-appreciating the merits of the administrative decision.

10. Learned counsel further submits that the Industrial Court fell in error in observing that since the respondent employee had earlier been promoted, and since no serious misconduct had been alleged against her nor any charge-sheet issued, the order of

compulsory retirement stood vitiated. According to him, compulsory retirement is not a punishment and does not depend upon proof of misconduct in the disciplinary sense. He submits that the Industrial Court also wrongly attached importance to the circumstance that the retirement memorandum did not expressly recite the words public interest and that the employee had satisfied requirements concerning integrity. It is urged that absence of such recital in the notice itself does not invalidate the decision when the record demonstrates that the competent authority acted within the statutory framework. On that basis, he contends that the finding of unfair labour practice recorded by the Industrial Court is legally unsustainable.

11. In support of the aforesaid submissions, Mr. Palshikar has placed reliance upon the judgments of the Supreme Court in *Posts and Telegraphs Board and Others vs. C.S.N. Murthy,* (1992) 2 SCC 317, *and Central Industrial Security Force vs. HC (GD) Om Prakash,* (2022) 5 SCC 100, to contend that compulsory retirement based on overall service assessment and in public interest is valid where the competent authority forms a bona fide opinion on relevant material.

12. Per contra, Mr. Devdas, learned Advocate appearing for the respondent employee, submits that she entered service on 21 December 1981 as Junior Audit and Accounts Assistant in the Chief Accountant Department of the petitioner Corporation at its Head Office. He submits that she completed the L.S.G.D. examination in the year 1985 and was granted one increment on passing the same. Thereafter, she passed the departmental

examination in 1997, which qualified her for consideration to the promotional post of Senior Audit and Accounts Assistant. Ultimately, by order dated 9 April 2010, she was promoted with effect from 7 April 2010. It is further submitted that she passed the L.G.S. examination in February 2012, though the consequential benefit of two increments was not granted. Learned counsel points out that upon promotion she was posted to the Provident Fund Section on 23 April 2010, where she worked till 5 September 2010, and thereafter was transferred to the Pension Section from 6 September 2010, where she continued till 31 August 2011, namely the date on which the impugned compulsory retirement was brought into effect.

13. Learned counsel submits that during her posting in the Pension Section, certain memoranda were issued by the Corporation on 13 October 2010, 3 December 2010, 7 January 2011, and 1 April 2011, to which the respondent submitted replies. According to him, those memoranda relate only to a limited period between October 2010 and April 2011 and cannot outweigh an otherwise satisfactory service career. He further submits that the Corporation is governed by Regulation 205(1) of the BMC Service Regulations, 1989, under which the normal age of retirement is fixed at 58 years. He contends that the Corporation had framed internal guidelines in respect of continuation of service after the age of 55 years, requiring consideration by a duly constituted Committee. As per those guidelines, the employee must satisfy what is described as the triple test, namely physical fitness, unquestioned integrity, and

confidential record not below the grading of good. In addition thereto, the confidential reports of the preceding five years are required to be scrutinized, and any decision of compulsory retirement must rest on genuine public interest. It is thus submitted that the decision-making process was regulated by definite norms which the Corporation was bound to observe.

14. It is further submitted that the case of the respondent was placed before the Committee on 21 May 2011 for consideration of extension beyond the age of 55 years, but the Committee failed to correctly apply the prescribed norms. Learned counsel submits that the service record for the preceding five years did not contain any grading below good. According to him, the relevant gradings were as follows: for 2005-2006, A Excellent; for 2006-2007, B Good; for 2007-2008, B Good; for 2008-2009, B Good; and for 2009-2010, B Good. It is further contended that the report for 2010-2011 had not been communicated to the respondent at the relevant time. On such basis, it is argued that the Corporation's assertion regarding unsatisfactory record is contrary to the material on record.

15. Learned counsel further submits that Regulation 205 contemplates three months' notice prior to compulsory retirement, and even that requirement has not been properly complied with. The notice was issued on 3 June 2011, whereas the effective date of retirement was 31 August 2011. It is his submission that compulsory retirement could have been ordered only in public interest, yet the impugned notice discloses no reasons demonstrating such public interest. He submits that when the matter was placed before the Committee constituted for

considering continuation beyond 55 years, the respondent had an unblemished record, the last five years' confidential reports were not below good, and the triple test stood satisfied. Therefore, according to him, the compulsory retirement is contrary to rules and guidelines. It is further urged that the Corporation has improperly relied upon the report for 2010-2011, although the Committee's recommendation dated 21 May 2011 preceded the finalisation of that report, wherein a C grade is said to have been shown. Such grading, according to him, was never communicated to the respondent. He submits that the Committee did not properly consider the reports from 2005-2006 to 2009-2010 and reached its conclusion without due application of mind. Learned counsel therefore contends that the action is arbitrary, contrary to the confidential history sheets, violative of the applicable rules, and amounts to breach of service obligations constituting unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act.

16. Learned counsel also points out that the Corporation had raised an objection before the Industrial Court regarding the status of the respondent as a workman. However, the Industrial Court held that the post of Senior Audit and Accounts Assistant falls within the expression workman under Section 2(s) of the Industrial Disputes Act and employee under Section 3(5) of the MRTU and PULP Act, 1971, while relying upon an earlier decision of this Court in Writ Petition No.9767 of 2012. He further submits that in paragraph 21 of the evidence, the witness examined on behalf of the Corporation admitted that the respondent had fulfilled all the three criteria prescribed for continuation after the

age of 55 years.

17. It is next submitted that the action of compulsory retirement was not genuinely founded upon public interest. According to learned counsel, the Corporation failed to keep in view that such power can be exercised only when public interest so demands. It is therefore urged that the judgment and order passed by the Industrial Court, Mumbai calls for affirmation, there being no infirmity therein. Learned counsel submits that the writ petition filed by the Corporation deserves dismissal with costs. He further prays that the notice of compulsory retirement dated 3 June 2011 be quashed and set aside, and that the period from 1 September 2011 till 31 August 2014 be treated as period spent on duty for all purposes with continuity of service and consequential monetary and retiral benefits up to the normal age of superannuation, namely 58 years.

18. Learned counsel lastly emphasizes that the respondent was promoted to the post of Senior Audit and Accounts Assistant in April 2010 only after scrutiny of her service record for the preceding five years. The promotion order dated 9 April 2010 granted effect from 7 April 2010, which according to him necessarily implies that her service record was found satisfactory by the competent authority. It is argued that having found her suitable for promotion, the Corporation cannot within a short span of less than one year declare her work unsatisfactory without cogent intervening material. Such abrupt reversal, according to him, itself demonstrates lack of proper application of mind by the Committee. He therefore prays that the writ petition of the

Corporation be dismissed, and the Corporation be directed to treat the period from 1 September 2011 to 31 August 2014 as duty period with full back wages, continuity of service, and all consequential benefits.

19. In support of the aforesaid contentions, learned counsel for the respondent employee has relied upon the decisions in *Swaram Singh Chand vs. Punjab State Electricity Board,* 2009 LawSuit (SC) 945*; State of Sikkim vs. Soman Lam,* 1990 LawSuit (SC) 480*; Baldev Raj Ex. Constable vs. State of Punjab,* 1984 LawSuit (SC) 71*; Mulchand Dasumal Pardasani vs. Union of India, Ministry of Finance,* 1969 LawSuit (Guj) 93*; Chhotalal Vashjibhai vs. Vivekanand Mills Co. Ltd.,* 1969 LawSuit (Guj) 29*; Brij Mohan Singh vs. State of Punjab,* 1979 LawSuit (P&H) 23*; Gurdial Singh vs. State of Punjab and Others,* 2005 LawSuit (P&H) 2778*; and Amarkant Choudhary vs. State of Bihar,* 1984 LawSuit (SC) 2.

REASONS AND ANALYSIS:

20. I have considered the rival submissions with care, and also the material which was placed before the Industrial Court. The controversy concerns the true nature of the respondent employee's work, the manner in which her case for continuation after 55 years was examined, and the extent of the power of the Corporation under its own service regulations to retire an employee compulsorily in public interest.

21. At the outset, the preliminary objection touching maintainability does not merit acceptance. The Corporation has argued that the respondent was not a workman and therefore the

complaint itself before the Industrial Court was not competent. Such submission cannot be accepted merely on nomenclature of post. The respondent was admittedly serving on the designation of Senior Audit and Accounts Assistant. Mere use of the expression Senior, or placement in an office section, does not determine the true character of employment. The Court is required to see the actual and dominant nature of duties performed and not only the title attached to the post.

22. The Corporation has attempted to show that the respondent was discharging supervisory and administrative functions of a substantial kind. However, the material placed on record does not support such claim. What appears from the evidence is that her principal work was connected with audit scrutiny, maintenance of accounts, provident fund matters, pension papers, verification of service particulars, checking eligibility under rules, and processing claims. These are functions largely clerical, though requiring experience and care. It is true that at times she may have been in charge of a section or may have guided subordinate clerical staff in day to day functioning. But occasional checking of subordinate work cannot transform a clerical employee into one exercising supervisory role.

23. Coming now to the power under Regulation 205, there can be no dispute that such provision confers authority upon the Corporation to retire an employee compulsorily after attainment of 55 years if public interest so requires.

24. The expression public interest cannot be reduced into an empty formula. It is not enough that the file records some endorsement. There must exist material having nexus with efficiency, integrity or similar considerations. The authority must examine the employee's total record, confidential reports, reputation for honesty, and overall usefulness to the institution. The decision must emerge from objective satisfaction. While this Court does not sit in appeal over such satisfaction, it is true that where non application of mind or breach of prescribed procedure is shown, judicial review is not excluded.

25. The Corporation has strongly relied upon the service record of the respondent during the period 2006 to 2011 and also upon various memo issued between October 2010 and April 2011. I have considered this aspect. It is correct that certain memos were issued. It is also correct that some dissatisfaction appears in portions of the confidential material. Service record must be read as a whole. A few memo, unless of grave nature, do not automatically establish that continuation in service is against public interest.

26. On the other side stands an important circumstance. The respondent had passed the departmental examination. She had become eligible for advancement. Thereafter, she was promoted to the post of Senior Audit and Accounts Assistant by order dated 9 April 2010. Such promotion required consideration by the competent authority. Promotion is granted after examining eligibility and suitability. Thus, the Corporation, at least in April 2010, considered the respondent fit to shoulder higher

responsibility. This fact cannot be ignored when evaluating later decision.

27. Therefore, when within short period thereafter the same employer forms opinion that the employee should not even continue after 55 years, the Court is entitled to expect stronger material. The material produced by the Corporation does not establish such change in a short time.

28. The promotion aspect is relevant, though not conclusive. I make it clear that promotion does not create immunity from compulsory retirement. Law does not recognise any such absolute shield. Even a promoted employee may later become inefficient or unsuitable. If later record justifies action, the authority may act. But where promotion is recent and based on scrutiny of record, it becomes a circumstance against a allegation that the employee had become deadwood. Courts must weigh probabilities. In the present case, promotion was granted in April 2010, while the impugned retirement notice followed in June 2011. Within this short interval, the Corporation was required to show basis that retention had become contrary to public interest. That burden has not been discharged.

29. The service gradings relied upon by the respondent also deserve notice. Material has been shown indicating A Excellent for 2005 to 2006 and B Good for subsequent years till 2009 to 2010. The Corporation disputes reliance upon such gradings and refers to adverse material for 2010 to 2011. Even assuming some decline existed, one aspect remains unanswered. There is no explanation

why the Committee recommendation moved ahead before the material for the year in question had been processed. If an adverse report becomes the basis of compulsory retirement, fairness requires that the record be complete.

30. Confidential reports affect civil consequences. If the material relied upon was incomplete, then the credibility of the decision-making process is affected.

31. The respondent has relied upon the guidelines framed by the Corporation, referring to a triple test, namely physical fitness, integrity, and confidential record not below good for the relevant period. The Corporation has attempted to say that they were not fully satisfied. I am unable to accept that submission in the facts of this case. Once an employer frames norms to guide exercise of discretion, fairness demand that such norms be respected.

32. More importantly, the respondent has pointed out that the Corporation's witness admitted compliance of the three criteria. Such admission unless explained, it binds the factual position to an extent. If physical fitness was not in issue, if integrity was not doubtful, and if confidential record broadly met the minimum standard, then the decision to compulsorily retire the respondent required some compelling reason.

33. The Corporation argued that the notice need not mention the words public interest and that substance should prevail over form. As a proposition of law, that submission is correct. If the record shows satisfaction, absence of recital in the notice may not be fatal. But this principle cannot assist the Corporation where the

material itself is uncertain. In the present case, the memo is silent. The record contains both favourable and unfavourable elements. A recent promotion exists. The Committee process appears insufficiently strict. In such background, silence of the notice assumes significance. The Court is not obliged to presume public interest merely because the employer invokes the regulation. Public interest must be inferable from circumstances. The burden remained on the Corporation to demonstrate that the decision was reached upon due assessment. That burden remains undischarged.

34. The Industrial Court, therefore, was justified in reaching the conclusion that the impugned action constituted unfair labour practice under Item 9 of Schedule IV. The concept in such context applies where an employer acts contrary to rules, disregards norms, or deprives an employee of rights by arbitrary procedure. Here, compulsory retirement was not shown to have been preceded by adherence to the Corporation's own circular. The decision appears to rest on a general dissatisfaction.

35. The Corporation relied upon judgments laying down that judicial interference in compulsory retirement matters is limited. That principle is accepted. Courts do not substitute their subjective satisfaction for that of the authority. Compulsory retirement is not punitive. It may be based on overall assessment. There is no dispute on these principles. In the present case, the Committee appears to have incorrectly considered the impact of the recent promotion, given importance to a certain memos, and not demonstrated how retention of the respondent would damage public interest.

36. The authorities cited on behalf of the respondent support the settled proposition that compulsory retirement must rest on objective assessment and cannot be arbitrary. Where relevant service record is ignored, where favourable material is brushed aside, or where the decision appears hurried, the Court may intervene. The respondent had long service since 1981. She earned promotion in 2010. No charge-sheet or disciplinary finding has been shown. The adverse material consists mainly of memos and certain remarks. Such matters may justify caution. They do not justify compulsory retirement.

37. So far as the claim for back wages is concerned, because reinstatement does not automatically result into grant of full wages. For claiming wages for the entire period during which she remained out of employment, the employee is required to make a statement that despite reasonable efforts she remained unemployed, or that she was not gainfully employed elsewhere.

38. The Supreme Court in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324 has explained that the initial burden in matters of back wages lies upon the employee to assert on oath that she was not gainfully employed after termination or removal. Once such statement is made, the burden may shift upon the employer to establish otherwise by placing material that the employee was employed elsewhere or earning sufficient income. Examining the record of the present case, it is seen that the employee has not stated on oath that after cessation of service she remained unemployed or that she had no gainful source of livelihood elsewhere. There is no

pleading in the complaint, nor any affidavit evidence. In absence of such sworn statement, the employee would not be entitled to back wages for the relevant period.

39. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) Writ Petition No.7091 of 2013 filed by the Municipal Corporation of Greater Mumbai stands dismissed;

(ii) Writ Petition No.2540 of 2014 filed by the employee is partly allowed;

(iii) The judgment and order dated 1 July 2013 passed by the Industrial Court, Mumbai in Complaint (ULP) No.265 of 2011 is confirmed insofar as it sets aside the action of compulsory retirement of the employee and grants continuity of service with consequential benefits;

(iv) The said judgment and order is modified only to the extent of monetary relief;

(v) It is declared that the notice/order dated 3 June 2011 compulsorily retiring the employee with effect from 31 August 2011 is illegal and is quashed and set aside;

(vi) The respondent employee shall be deemed to have continued in service till the date of normal superannuation, namely 31 August 2014;

(vii) The period from 1 September 2011 till 31 August 2014 shall be treated as period spent on duty for the limited purpose of continuity of service, computation of pensionary

benefits, retiral dues, increments, and all other consequential service benefits admissible in law;

(viii) The claim for back wages for the period from 1 September 2011 to 31 August 2014 stands rejected;

(ix) The Corporation shall recalculate and release all retiral and consequential monetary benefits, excluding back wages, within a period of twelve weeks from the date of receipt of this order;

(x) In case any amount has already been paid towards back wages under interim orders or otherwise, the same shall be adjusted while making final computation;

(xi) Rule is discharged in Writ Petition No.7091 of 2013;

(xii) Rule is made partly absolute in Writ Petition No.2540 of 2014 in the above terms;

(xiii) There shall be no order as to costs.

40. At this stage, learned Advocate for the Corporation seeks stay of this judgment. However, for the reasons recorded in this judgment, the request for stay stands rejected.

(AMIT BORKAR, J.)