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

WRIT PETITION NO. 65 of 2006

Dr.B.R.Kalke
residing at C-3/5,
Shahivali Municipal Colony,
Abdul Gaffar Khan Road,
Worli,
Mumbai 400 018.

...Petitioner

Versus

1. The State of Maharashtra,
through the Secretary,
Medical Education, Research
& Drugs Department,
Mantralaya,
Mumbai 400 032.

2. The Municipal Corporation of
Gr.Mumbai.
A municipal Corporation constituted
under the Mumbai Municipal
Corporation Act, 1988 through
the Commissioner, having office
at Mahapalika Marg,
Mumbai 400 001

...Respondents

Mr. S.C.Naidu i/b. M/s. C.R.Naidu & Co. for Petitioner.

Mr. Jasbir Saluja, AGP for the respondent no.1.

Mr.E.P.Bharucha, Senior Advocate with Mrs. Modale for the Respondent No.2

**CORAM :- A.M.KHANWILKAR &
R.Y.GANOO, JJ.**

JUDGMENT RESERVED ON :- 18th AUGUST, 2011.

JUDGMENT PRONOUNCED ON :- 21st FEBRUARY, 2012.

JUDGMENT (PER R.Y.GANOO, J.):

1. The petitioner has filed this petition against the State of Maharashtra i.e. the respondent no.1 and the Municipal Corporation of Gr. Mumbai i.e. the respondent no.2, in connection with his claim in regard to the pension for the services rendered by him with respondent no.1 and respondent no.2 respectively.
2. Respondent no.1 shall hereafter be referred to as State of Maharashtra and respondent no.2 shall be referred to as Corporation.
3. The petitioner passed out MBBS decree from the University of

Bombay in 1952 and joined the service of the Corporation. The petitioner worked with the Corporation on various posts as set out in the petition from 1st November, 1954 to 10th February, 1958. The petitioner has not claimed pension for this period in this petition. The petitioner worked with Bombay Hospital from 11th February, 1958 to 1st September, 1958 and pension is not claimed in this petition for this period. The petitioner was appointed as Tutor/Lecturer with the T.N. Medical College and Nair Hospital run by the Corporation from 2nd September, 1958 to 31st January, 1961.

4. Pursuant to the advertisement issued by the State of Maharashtra, the petitioner applied for the post of Assistant Professor of Surgery in the Grant Medical College, J.J. Hospital, Bombay. The petitioner was selected by the M.P.S.C. for the aforesaid post. The petitioner resigned from the service of the Corporation on 31st January, 1961 and the petitioner was appointed as Assistant Professor of Surgery in the Grant Medical College, J.J. Hospital, Bombay with effect from 1st February, 1961. The petitioner proceeded on study leave from 11th October, 1964 to 31st July, 1968 for specialized training, out of India. According to the petitioner, the State of Maharashtra had sanctioned

the aforesaid study leave and it was not to be treated as a break in service. The petitioner worked with State of Maharashtra till 1st June, 1973.

5. The Corporation had advertised the post of Professor of Surgery in Medical College. The petitioner applied for the said post through proper channel and he was selected to work as professor of surgery. The petitioner was appointed on the above post with effect from 2nd June, 1973 and he super-annuated on 30th November, 1985. According to the petitioner, the petitioner was relieved by the Dean, Grant Medical College after accepting the resignation from the date of the relief. The Dean of Grant Medical College had issued a certificate dated 30th June, 1973 (Exhibit K) stating that the petitioner had resigned from the services of the State Government to join the Corporation. According to the petitioner, during the time he was working with the Corporation from 2nd June, 1973 upto 30th November, 1985, he rendered services in various capacities. The petitioner was granted pension for the service rendered by him with the Corporation for the period 2nd June, 1973 to 30th November, 1985. The petitioner is getting the pension from the Corporation for the

aforesaid period. According to the petitioner, he has not been granted pension for the period 2nd September, 1958 to 31st January, 1961, spent on duty with the Corporation. The petitioner has also stated that he has not been granted pension for the service rendered by him with the State of Maharashtra from 1st February, 1961 to 1st June, 1973.

6. According to the petitioner, in view of Rule 15A(b) of Bombay Municipal Corporation Pension Rules, 1953 (hereinafter referred to as Corporation Pension Rules), he is entitled to be treated to have completed pensionable service from 1953 to 1985 with Corporation as he had resigned in 1961 to join service of State of Maharashtra from 1st February, 1961 to 1st June, 1973.
7. It is also the case of petitioner by way of alternate contention that in view of Rule 15(2) and Rule 5(F)(i) of Corporation Pension Rules, the period of service with Corporation from 2nd September, 1958 to 31st January, 1961 should be added to his period of service with the Corporation from 2nd June, 1973 to 30th November, 1985.

8. It is the claim of the petitioner that one Mr. Faruqui, Superintendent of Municipal School, was similarly situated to that of the petitioner and the benefit which he is seeking through this petition was extended to said Mr. Faruqui. He further claims that similar benefits were given to Mr. Behare, Mr. Rubin and Mrs. Tamhane.

9. The petitioner had, in connection with his claim for pension made various representations to the State of Maharashtra and Corporation. The petitioner had made a representation dated 12.12.1986 to the Corporation to consider his claim for pension for the period he was in the State of Maharashtra. The request was rejected by the Corporation by its letter dated 20th March, 1987. A representation dated 2nd May, 1992 was made to the Corporation. It was rejected by letter dated 30th June, 1992. The petitioner was aggrieved by the aforesaid letter dated 30th June, 1992 sent by the Corporation and that is how he filed Writ Petition No.106 of 1993. The said petition was rejected by an order dated 8th February, 1993. He therefore filed Appeal No.277 of 1993. The said appeal was decided on 28th June, 1993. This Court had directed the Corporation to forward its recommendation to the State of Maharashtra within a period of one

week and further directed the State of Maharashtra to consider the petitioner's claim within a period of eight weeks, independently on merits.

According to the petitioner, the Medical Education and Drugs Department of the State rejected the case of the petitioner on the ground that the petitioner retired from the service of the Corporation, and that the State of Maharashtra was not liable to give pension to the petitioner for the services rendered by him. The State of Maharashtra had sent letter dated 10th December, 1993 to the Deputy Municipal Commissioner (Personnel) informing him that pension cannot be granted to the petitioner for his tenure of service with the State of Maharashtra.

10. The petitioner again approached this Court by way of Writ Petition No.777 of 1994. The said petition was decided on 26th March, 2004.

This Court, after considering the claim of the petitioner passed following order:

“(i) The Respondent No.2 and the Standing Committee of the Respondent No.2 Corporation are directed to consider the case of the petitioner under sub-Rule (2) of Rule 15 of the Pension Rules (1953) for making an addition of period between 2nd September, 1958 to 31st

January, 1961 to the amount of qualifying service of the petitioner in the light of the observations made in paragraph no.9 and 12 of this judgment. The case of the petitioner shall be considered within a period of four months from today.

(ii) The Respondent No.1 State Government is directed to consider the case of the petitioner for sanction of pension under Rule 23 of the Maharashtra Civil Services (Pension) Rules, 1982, within a period of four months from today in light of the findings recorded in paragraph no.14 of this judgment.”

11. The petitioner has stated that the State of Maharashtra by their letter bearing No.MES/2704/CR-13/MS-1 dated 30th September, 2004 (Exh. N) informed the petitioner's advocate that the petitioner cannot be granted pension under Rule 23 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as State Pension Rules). By the said letter the petitioner was informed that the case of the petitioner is not covered under exceptional services as per the provisions of the said rules.

12. According to the petitioner, the Corporation and Standing Committee had not taken action pursuant to the judgment dated 26th March, 2004 delivered in the aforesaid Writ Petition No.777 of 1994. The

petitioner, therefore, filed Contempt Petition No.74 of 2004 in this Court against the various authorities of the State of Maharashtra and the Corporation. In the said Contempt Petition, the Counsel for the Corporation made a statement that the petitioner's case was considered as per judgment and order dated 26th March, 2004 and has been rejected. The Advocate for State of Maharashtra also stated that the case of the petitioner was rejected by letter dated 30th September, 2004. On account of these developments, this court in the said contempt petition, on 15th July, 2005, passed an order and held that the directions by which the petitioner's case was to be considered have been complied with and no contempt is committed by the State of Maharashtra or the Corporation.

13. According to the petitioner, after the order dated 15th July, 2005 passed in the contempt petition, the petitioner came to know about certain events which had taken place in the office of the Corporation. The petitioner has narrated those circumstances in paragraph 4.40 onwards and they are as follows:

- a) The Commissioner for the Corporation sent a letter No.TCE/2715 dated 28.10.2004 thereby recommending to the Standing Committee of the Corporation that the

petitioner's case be considered for pension for the services rendered during the period 2.9.1958 to 31.1.1961. (Exh. T.)

b) On 7.12.2004 the Standing Committee passed a resolution No.681 disapproving the proposal contained in Commissioner's letter dated 28.10.2004. (Exh.T.)

c) The Standing Committee, again on 16.3.2005 by its resolution No.1145 approved the said proposal subject to sanction of the Corporation to the proposal contained in paragraph 1 of the said resolution dated 16.3.2005. The standing Committee had approved the proposal to treat the petitioner's case as a special case without treating the same as precedent and for grant of lump sum payment of pensionary benefits for the period 2.9.1958 to 31.1.1961. (Exh.T-1)

14.The aforesaid resolution dated 16th March, 2005 was thereafter forwarded to the Corporation for its approval under Section 157(1) (h) of the Mumbai Municipal Corporation Act, 1888 (Hereafter referred to as MMC Act).

15.On 20th April, 2005 the Councillor of the Corporation discussed the aforesaid resolution No.1145 and decided to refer the matter to the Commissioner for reconsideration and called for further report from the Commissioner as per Corporation Resolution No.151 dated 20th April, 2005. (Exh.T-2).

16. As per the Corporation resolution No.151 dated 20th April, 2005, the Commissioner submitted his report No.TCE/1707 dated 10th August, 2005 thereby giving his remarks and had declined to grant the benefit to the petitioner and disposed of Corporation Resolution No.151 dated 20th November, 2005. (Exhibit T-3).

17. According to the petitioner, on 15th July, 2005 the advocate for the Corporation had made a statement while arguing the contempt petition that the proposal in regard to the petitioner's case was already considered. The Advocate for State of Maharashtra also informed the Court about not giving benefit of Rule 23 of State Pension Rules. On account of said statements, this court rejected the contempt petition. The petitioner has contended that the statement made by the advocate for the Corporation on 15th July, 2005 was factually incorrect as the Municipal Commissioner had submitted his report No.TCE/1707 on 10th August, 2005 and declined to accept the proposal in favour of the petitioner. According to the petitioner, on account of the aforesaid wrong statement, the petitioner's case could not be considered in the proper perspective and that is how the

petitioner is aggrieved by the ultimate rejection of his case by the Corporation. The petitioner is also aggrieved by the decision taken by the State of Maharashtra.

18. The petitioner by his letters dated 13th September, 2005 and 13th October, 2005 pointed out the aforesaid factual position to the Municipal Commissioner and requested him to do justice in the matter. In response to the aforesaid letters, the Dean T.N. Medical College, informed the petitioner by letter dated 21st October, 2005 (Exh. W) about decision of the High Court rejecting the case of the petitioner.

19. The petitioner is aggrieved for not getting pension on the basis of Corporation Pension Rules and State Pension Rules for the period 2nd September, 1958 to 31st January, 1961 and 1st February, 1961 to 1st June, 1973 respectively.

20. The petitioner has sought writ of mandamus directing the Corporation to withdraw, rescind and/or cancel paragraph no.6 of the Commissioner's report dated 10th August, 2005 (Exh.T-3) and letter

dated 21st October, 2005 (Exh.W) rejecting the proposal for the grant of pension to the petitioner in view of order dated 15th July, 2005 passed in Contempt Petition No.74 of 2004. He has sought a writ of mandamus so as to seek a direction against the Corporation and Standing Committee to consider the service period from 2nd September, 1958 to 31st January, 1961 for the purpose of computation of pension and arrears. He has also prayed for writ of mandamus directing respondent no.1, State of Maharashtra to withdraw the letter dated MES-2704-CR-13/MS-1 dated 30th September, 2004 (Exh.N.) refusing to grant pension to the petitioner on the purported ground that the petitioner's case is not covered by Rule 23 of the State Pension Rules of 1984. He has further sought writ of mandamus directing the respondent no.1 to give pension to the petitioner for the service from 1st February, 1961 to 1st June, 1973 alongwith interest as per Rule 23 of State Pension Rules.

21. It is noted that Mr. M.D. Goregaonkar, Administrative Officer, of Nair Hospital has filed affidavit dated 27th January, 2006 opposing the admission of the petition and Mr. G.N.Rankhambe, Deputy Secretary working with the State of Maharashtra has filed affidavit

dated 13th February, 2006 opposing the petition. No further affidavits are filed by State of Maharashtra / Corporation.

22. Learned Advocate for the petitioner Mr. Naidu had advanced his submissions in support of the petition. The submissions of learned Advocate Mr. Naidu are divided into two parts namely submissions in respect of grievance against State of Maharashtra- Respondent No. 1 and the Corporation- respondent no.2. Learned Advocate Mr. Naidu had submitted that this Court in Writ Petition No.777 of 1994 had directed both the respondents to consider the case of the petitioner in light of discussion mentioned in the said judgment as the court had come to the conclusion that the petitioner was entitled to pension as per State Pension Rules and Corporation Pension Rules.

23. So far as the case of the petitioner as against the State of Maharashtra- respondent no.1, learned Advocate for the petitioner had drawn our attention to the facts of his case and had submitted that the petitioner's case fell under Rule 46 (2) of the State Pension Rules. According to the petitioner, by G.R.No.GMC/2573/15713-Q dated 1st June, 1993, (Exh. J.) the State of Maharashtra was pleased

to accept the resignation from the date of the relief and that the petitioner had joined the service of Corporation after taking permission of the State of Maharashtra. Learned Advocate Mr. Naidu pointed out that certificate dated 30th June, 1973 (Exh.K.) was issued in favour of the petitioner and in the said certificate it was mentioned that the petitioner has resigned from the the State of Maharashtra to join T.N.Medical College & B.Y.L.Charitable Hospital, Bombay 8, as Professor and Head of the Department of Surgery for the betterment of his prospects. According to Mr. Naidu, by this certificate, the Dean, Grant Medical College, Bombay, with whom the petitioner was working had permitted the petitioner to join the Corporation. Learned Advocate Mr. Naidu further submitted that in the said letter dated 30th June, 1973 a specific mention was made about the leave from 11th October, 1964 to 27th July, 1968 as one which was availed by the petitioner for specialized training. Learned Advocate Mr. Naidu had therefore submitted that on proper interpretation of Rule 46(2) of State Pension Rules, the petitioner had left the services of State of Maharashtra on 1st June, 1973 with permission to join the Corporation and therefore the period spent by the petitioner with the State of Maharashtra from 1st February, 1961

to 1st June, 1973 should be treated as service rendered by him for the purposes of computation of pension payable by the Corporation. Learned Advocate Mr. Naidu had further submitted that the amount of pension should be calculated as per Rule 110(2)(b) of the State Pension rules.

24. Learned Advocate Mr. Naidu had alternatively submitted that the petitioner was entitled to minimum pension as per Rule 23 of the State Pension Rules to be calculated as per Rule 8 of Maharashtra Civil (Commutation of Pension) Rules, 1984 for the period 1st February, 1961 to 1st June, 1973. Learned Advocate Mr. Naidu had submitted that the State of Maharashtra had failed to appreciate the provisions of Rule 23 of the State Pension Rules for the purpose of applying the same to the case of the petitioner. Learned Advocate Mr. Naidu pointed out that by Order dated 26th March, 2004 passed by this Court in Writ Petition No.777 of 1994, the Court had directed the State of Maharashtra to consider the case of the petitioner for sanction of pension under Rule 23 of the State Pension Rules. Learned Advocate Mr. Naidu drew our attention to letter dated 30th September, 2004 (Exh. M) and submitted that the State of

Maharashtra has not reconsidered the case of the petitioner properly. According to him, the State of Maharashtra was required to apply its mind in the light of discussion contained in the judgment and order dated 26th March, 2004 and then decide the matter. Mr. Naidu had submitted that the State of Maharashtra has not complied with the directions contained in the judgment dated 26th March, 2004 and has merely communicated to the petitioner that his case is not covered under exceptional circumstances as per the provisions of Rule 23 of State Pension Rules. Learned Advocate Mr. Naidu submitted that cogent reasons have not been given while arriving at the decision contained in letter dated 30th September, 2004 and that is how the petitioner's case has not been considered in the proper perspective, and to that extent the decision of the State of Maharashtra is arbitrary. Learned Advocate Mr. Naidu had submitted that study leave which was enjoyed by the petitioner was on account of sanction given by the State of Maharashtra as per letter dated 30th January, 1971 (Exh. H) and that should not have come in the way of the petitioner to get favourable order as per Rule 23 of State Pension Rules. Learned Advocate Mr. Naidu had therefore submitted that the decision contained in letter dated 30th September, 2004 is required to

be quashed and that the State of Maharashtra should be directed to grant pension to the petitioner as per Rule 23 of the State Pension Rules.

25. Learned Advocate Mr. Naidu had then advanced submissions as regards petitioner's case qua Corporation. Learned Advocate Mr. Naidu had submitted that the petitioner was entitled to have pension for entire service from 1953 to 1985 as per Rule 15A(b) of the Corporation Pension Rules. In support of this submission, learned Advocate Mr. Naidu had submitted that after serving with the Corporation from 2nd September, 1958 to 31st January, 1961 the petitioner had resigned from the service of the Corporation with a permission to join the service of the State of Maharashtra. Learned Advocate Mr. Naidu had further submitted that after working with the State of Maharashtra from 1st February, 1961 to 1st June, 1973, the petitioner joined the service of the Corporation w.e.f. 2nd June, 1973 and that he was permitted to resign from the State of Maharashtra and join the service of the Corporation. According to learned Advocate Mr. Naidu, on account of the aforesaid developments, the Corporation is liable to pay pension to the

petitioner for the period 2nd September, 1958 to 30th November, 1985.

26. Learned Advocate Mr. Naidu had thereafter alternatively submitted that as per Rule 15(2) r/w. Rule 5(1)(f)(i) of Corporation Pension Rules, the petitioner is entitled to have his pension fixed by taking into consideration the period spent by the petitioner with the Corporation from 2nd September, 1958 to 31st January, 1961 as qualifying service and the length of the service for the period 2nd September, 1958 to 31st January, 1961 should be added to the service with the Corporation from 2nd June, 1973 to 30th November, 1985. Learned Advocate Mr. Naidu had submitted that provisions of Rule 15(2) of Corporation Pension Rules authorize the Standing Committee of the Corporation to take a decision to add to the amount qualifying the service of a retiring municipal servant, which under the provisions of these rules may be treated as qualifying service for pension. Mr. Naidu had submitted that the petitioner had served with the Corporation from 2nd June, 1973 to 30th November, 1985 and for this period the Corporation has granted pension to the petitioner. He, therefore, submitted that the standing committee by special reasons to be recorded in writing can add the service rendered by the

petitioner from 2nd September, 1958 to 31st January, 1961 to the service from 2nd June, 1973 to 30th January, 1985 and calculate the pension.

27. Learned Advocate Mr. Naidu had thereafter pointed out that by the judgment dated 26th March, 2004 the Corporation was directed to consider the case of the petitioner in the light of the provisions of Rule 15(2) of the Corporation Pension Rules for making an addition of period between 2nd September, 1958 to 31st January, 1961 in the light of observations made in paragraph 9 and 12 of the judgment. Learned Advocate Mr. Naidu had thereafter taken us through the various developments which took place in the office of the Corporation, starting from the Commissioner for the Corporation recommending to the Standing Committee to consider the case of the petitioner under Rule 15(2) of Corporation Pension Rules by his recommendation dated 28th October, 2004 till the report submitted by the Commissioner bearing No.TCE/1707 dated 10th August, 2005 by which resolution No.151 dated 20th April, 2005 passed by the Corporation came to be disposed of.

28. Learned Advocate Mr. Naidu submitted that though the Standing Committee had passed a resolution on 16th March, 2005 to give the benefit of Rule 15(2) of the Corporation Pension Rules, part II of the said resolution was incorrectly passed. He submitted that action of Standing Committee to take sanction of Corporation to resolution of Standing Committee as per Section 517 (1) (h) of MMC Act was wrong. Learned Advocate Mr. Naidu submitted that as the Standing Committee alone was empowered to decide the case of the petitioner under Rule 15(2) of Corporation Pension Rules, there was no need to obtain approval of Corporation at all. Learned Advocate Mr. Naidu further submitted that the action of the Corporation viz. Corporation Resolution No.151 of 20th April, 2005 in seeking report from Commissioner for Corporation was also wrong.

29. Apart from the aforesaid submission he submitted that the Standing Committee in its resolution No.1145 dated 16th March, 2005 had referred to provisions of Section 517(1)(h) of MMC Act. Mr. Naidu had submitted that Section 517(1)(h) of the MMC Act had no application as Commissioner was not taking any action to admit or compromise any claim, suit or legal proceedings brought against the

Corporation or its officers as mentioned in Section 517(1)(h) of MMC Act.

30. Learned Advocate Mr. Naidu had further submitted that when the Contempt Petition No. 74 of 2004 was before this Court, a submission was made on behalf of the Advocate for the Corporation that the case of the petitioner has been rejected by the Corporation. According to Mr. Naidu, this statement was factually incorrect because on 15th July, 2005 when such a statement was made, the Commissioner to whom the matter was referred as per Resolution No.151 dated 20th April, 2005, had not submitted his report as Commissioner's report is of 10th August, 2005. According to Mr. Naidu because the Advocate for the Corporation made a statement that the case has been rejected, the Court dismissed the petition and on account of said dismissal, the Commissioner disposed of Corporation Resolution No.151 of 20th April, 2005. Learned Advocate Mr. Naidu took us through the text of the Commissioner's report dated 10th August, 2005 at Exhibit T-3 to the petition and in particular paragraph 6. He submitted that the contents of paragraph 6 clearly indicate that the Commissioner disposed of Corporation

Resolution No.151 of 20th April, 2005 because the High Court had dismissed the Contempt Petition No.74 of 2004. He further submitted that the High Court, while rejecting the Contempt Petition No.74 of 2004 had noted that State of Maharashtra had also declined to grant benefit to the petitioner as per Rule 23 of the State Pension Rules. Learned Advocate Mr. Naidu submitted that on account of developments which took place in the office of the Corporation/Standing Committee/Commissioner the directions contained in Order dated 26th March, 2004 have not been complied with and therefore the petitioner's case for grant of benefit as per Rule 15(2) of the Corporation Pension Rules should be accepted by the Court and the appropriate order should be passed.

31. Learned Advocate Mr. Naidu had thereafter taken us through letter dated 21st October, 2005 sent by Dean, T.N. Medical College to the petitioner at Exhibit W and submitted that the Corporation failed to deal with petitioner's letter dated 13th September, 2005 and 13th October, 2005. Learned Advocate Mr. Naidu had also submitted that the Corporation has unjustifiably denied the pension to the petitioner for the period 1958 to 1985 and in any case, his case for grant of

benefit under Rule 15(2) of the Corporation Pension Rules for the period 1958 to 1961 should have been favourably considered. Learned Advocate Mr. Naidu had relied upon the scope and ambit of Rule 15(2) of the Corporation Pension Rules. He had also submitted that the Corporation ought to have noted the yeomen service rendered by the petitioner to the society at large and ought to have noted the judgment dated 26th March, 2004 where this court had specifically directed the Corporation to consider the case of the petitioner as per Rule 15(2) of the Corporation Pension Rules for making the addition of period between 2nd September, 1958 to 31st January, 1961 to the amount of qualifying service of the petitioner.

32. Learned Advocate Mr. Naidu had placed before the Court list of various Acts where the term “not ordinarily exceeding” was used . According to learned Advocate Mr. Naidu this Court should accept the stand of the petitioner that petitioner should be given benefit of Rule 15(2) of Corporation Pension Rules by interpreting the term ‘not ordinarily exceeding’ to mean in cases like the petitioner, Standing Committee can add certain period service to the qualifying service rendered by the petitioner.

33. Learned Advocate Mr. Naidu had submitted that the exercise carried out by the Corporation in the matter of deciding whether the petitioner is entitled to the benefit of Rule 15(2) of Corporation Pension Rules was improperly carried out and the ultimate decision arrived at by the Commissioner in terms of report dated 10th August, 2005 was wrong. Mr. Naidu had therefore submitted that the petitioner's petition should be granted.

34. Learned Advocate Mr. Saluja appearing on behalf of the State of Maharashtra had submitted that the petitioner joined the service of State of Maharashtra on 1st February, 1961 and had tendered resignation by giving letter dated 1st March, 1973 being 3 months notice. Mr. Saluja had pointed out that the State of Maharashtra accepted the resignation of the petitioner with effect from date of relief by office resolution dated 1st June, 1973 at Exhibit J. Learned Advocate Mr. Saluja had submitted that the petitioner had applied for getting appointment with the Corporation in or about 1973 and the said appointment of the petitioner in the Corporation had nothing to do with the service rendered by the petitioner with the State of

Maharashtra. Mr. Saluja had submitted that the petitioner had left the service of State of Maharashtra for better prospects and there was no question of State of Maharashtra granting permission to the petitioner to join Corporation. Mr. Saluja had submitted that petitioner's service with the Corporation from 2nd June, 1973 had no connection with the service of the petitioner with the State of Maharashtra for the period 1st February, 1961 to 1st June, 1973. According to Mr. Saluja, the reliance placed on letter dated 30th June, 1973 (Exh.K.) is misconceived. Learned Advocate Mr. Saluja had therefore submitted that the petitioner's case would not fall under Rule 46(2) of the State Pension Rules.

35. Learned Advocate Mr. Saluja had further submitted that this Court by order dated 26th March, 2004 had directed the State of Maharashtra to consider the case of the petitioner as per Rule 23 of the State Pension Rules and therefore there was no question of considering the case of the petitioner as per Rule 46(2) of the State Pension Rules. Learned Advocate Mr. Saluja supported the decision of the State of Maharashtra contained in letter dated 30th September, 2004 at Exhibit N and had submitted that the State of Maharashtra had considered

whether the case of the petitioner falls within the ambit of Rule 23 of State Pension Rules and had arrived at a decision that the petitioner cannot be granted the benefit. Said decision was accordingly communicated to petitioner by letter dated 30th September, 2004. Learned Advocate Mr. Saluja had placed reliance on the affidavit filed by Mr. Rankhambe, Deputy Secretary, Medical Education and Research Department, Government of Maharashtra and had submitted that the State of Maharashtra had declined to consider the absence of the petitioner for a period of three years and 9 months as study leave. Learned Advocate Mr. Saluja had drawn our attention to paragraph 5 of the said affidavit and had submitted that the State of Maharashtra had given the benefit under Rule 23 of State Pension Rules only to Government Employees from Weaker Section i.e. those employees who are from low income group having long service in Government. According to learned Advocate Mr. Saluja, the Government took decision as the petitioner had resigned from the State of Maharashtra without proper permission for prospective gains and he did not belong to weaker section, as also he did not come from lower income government employees. Mr. Saluja had therefore submitted that on aforesaid counts, the Government came to the

conclusion that the case of the petitioner does not fall under exceptional service and he could not be given benefit of Rule 23 of State Pension Rules. Mr. Saluja had therefore submitted that the decision contained in letter dated 30th September, 2004 was correctly arrived at and no interference is required in that behalf. He, therefore, submitted that the petition be dismissed so far as State of Maharashtra.

36. Learned Senior Advocate Mr. Bharucha, appearing on behalf of the Corporation, had taken us through the record and had submitted that the petitioner had worked with the Corporation from 1st November, 1954 to 10th February, 1958 and that service was on the posts which are called as Short Training Duration Post and they are not to be taken as pensionable post. Learned Senior Advocate Mr. Bharucha further submitted that the petitioner had worked with Bombay Hospital from 11th February, 1958 to 1st September, 1958 as and by way of private service and that for that period the Corporation is not answerable.

37. Learned Senior Advocate Mr. Bharucha had further submitted that it

is true that the petitioner worked with the Corporation from 2nd September, 1958 to 31st January, 1961. He pointed out that the Petitioner tendered resignation from service of the Corporation and joined the State of Maharashtra and hence the petitioner would not be able to claim pension for the period 2nd September, 1958 to 31st January, 1961. Learned Senior Advocate Mr. Bharucha had further submitted that the service rendered by the petitioner with the State of Maharashtra for the period 1st February, 1961 to 1st June, 1973 would be treated as break in service for the purpose of calculating the pension receivable from the Corporation.

38. Learned Senior Advocate Mr. Bharucha had further submitted that on account of the judgment dated 26th March, 2004, the Corporation was directed to consider the case of the petitioner as per Rule 15(2) of the Corporation Pension Rules. Learned Senior Advocate Mr. Bharucha had then taken us through the various resolutions passed by the Standing Committee as well as the Corporation, as also the report submitted by the Commissioner and had submitted that the power to grant benefit of Rules 15(2) of Corporation Pension Rules could be exercised by the Standing Committee. He further submitted that

`recording reasons' in writing by Standing Committee was a sufficient safeguard against its misuse. Learned Senior Advocate Mr. Bharucha had ultimately submitted that the standing Committee had reconsidered its earlier decision by resolution dated 16th March, 2005 and referred the matter to the Corporation. Learned Senior Advocate Mr. Bharucha had submitted that the matter be referred to the Corporation together with recommendation dated 20th October, 2004 of the Commissioner, the resolution dated 7th December, 2004 of the Standing Committee disapproving the increase in the pension, the revised resolution dated 16th March, 2005 of the Standing Committee approving the increased pension, and the revised decision of the Commissioner rejecting the same to take the final decision in the matter. Learned Senior Advocate Mr. Bharucha had therefore submitted that the appropriate orders be passed keeping in view his submissions.

39. Learned Advocate Mr. Naidu appearing on behalf of the petitioner had submitted by way of rejoinder that the stand taken by the State of Maharashtra that benefit of Rule 23 of State Pension Rules was given to the Weaker Section of the Society is not correct as the

language of Rule 23 of State Pension Rules does not permit the State of Maharashtra to distinguish between an employee belonging to the weaker Section of the society and the employee belonging to financially sound section of the society. He submitted that the distinction sought to be made by the State of Maharashtra is violative of the provisions of Article 14 of the Constitution of India. He submitted that it was necessary for the State of Maharashtra to apply Rule 23 of State Pension Rules to all Government Servants equally. He had therefore submitted that the decision of the State of Maharashtra contained in letter dated 30th September, 2004 is illegal. Mr. Naidu reiterated his submission for grant of relief asked in the petition.

40. We have considered the arguments advanced by learned Advocate Mr. Naidu for the petitioner, Mr. Saluja for the State and Mr. E.P. Bharucha, Senior Advocate for the Corporation. The State of Maharashtra has declined to grant benefit of Rule 23 of the State Pension Rules and the said order is under challenge. The Corporation has declined to extend the benefit of Rule 15(2) of the Corporation Rules, and consequently the petitioner is unable to get

any pensionary benefit for the service rendered by the petitioner with Corporation from 2nd September, 1958 to 31st January, 1961 and with State of Maharashtra from 1st February, 1961 to 1st June, 1973 respectively.

41. The petitioner has by this petition challenged the decision taken by State of Maharashtra as well as Corporation. Consequently, we will be required to examine decision taken by the State of Maharashtra as well as the Corporation towards compliance of the Order dated 26th March, 2004 passed in Writ Petition No.777 of 1994 and related matters as petitioner has not challenged order dated 26th March, 2004. In view of above observations, the argument advanced by petitioner by placing reliance on Rule 46 of State Pension Rules, need not be considered. Similarly, the argument advanced by the petitioner by placing reliance on Rules 15A(b) of Corporation Pension Rules need not be considered.

42. By order dated 26th April, 2004 the State of Maharashtra was directed to consider the case of the petitioner for sanction of pension under Rule 23 of the State Pension Rules. The State of Maharashtra had

not challenged the said Order dated 26th March, 2004. The State of Maharashtra was therefore obliged to take decision as to whether petitioner should be given benefit of Rule 23 of State Pension Rules. The petitioner had worked with the State of Maharashtra for the period 1st February, 1961 to 1st June, 1973 and therefore the State of Maharashtra was required to decide whether the case of petitioner would fall within the parameters of Rule 23 of the State Pension Rules. It would be convenient to reproduce the provisions of Rule 23 of the State Pension Rules.

“23. Sanction of pension in special circumstances.

In any case in which a pension is not admissible under any specific provision of these rules, Government may sanction the grant of a pension, which shall not, save in the most exceptional circumstances, exceed the monthly minimum pension as fixed by Government from time to time, or of a gratuity not exceeding the equivalent, calculated in accordance with the table prescribed under rule 8 of Maharashtra Civil Services (Commutation of Pension) Rules, +[1984] of the value of such a pension, if the grant is not inconsistent with the general spirit of the rules.”

43. In view of the above, this Court will have to see whether the decision taken by the State of Maharashtra in rejecting the case of the petitioner is correct or otherwise.

44. The State of Maharashtra has by its letter dated 30th September, 2004 communicated to the petitioner that case of the petitioner is not covered under exceptional circumstances as Rule 23 of State Pension Rules. In our view, merely to say that the case of the petitioner does not fall in exceptional circumstances was not sufficient. A perusal of the letter dated 30th September, 2004 indicates that the State of Maharashtra has not applied its mind in proper perspective in the light of the judgment dated 26th March, 2004 and the claim made by the petitioner for getting benefit of Rule 23 of the Maharashtra Pension Rules has been rejected in an arbitrary manner.

45. The affidavit filed by Govind Rankhambe dated 13th February, 2008 indicates that the State of Maharashtra has not given the benefit of Rule 23 of the State Pension Rules to the petitioner on the ground that the petitioner had resigned from the Government Service without proper permission for prospective gains. In our view, the State of Maharashtra erred in treating the act of the petitioner resigning from the services of the State of Maharashtra without proper permission for prospective gains as a point to disqualify him for getting benefit of Rule 23 of State Pension Rules. The record shows that the

petitioner tendered the resignation from service of State of Maharashtra. The said resignation was accepted by the State of Maharashtra and while accepting the resignation of the petitioner, no conditions were attached by the State of Maharashtra. This is evident from the note dated 1st June, 1973 issued by the State of Maharashtra at Exhibit J. We are, therefore, of the view that the resignation of the petitioner from the service of State of Maharashtra should not have come in the way of the petitioner to have been considered for grant of pension under Rule 23 of State Pension Rules. It was not open for the State of Maharashtra to look into the reasons as to why the petitioner left the service of the State of Maharashtra which issue was settled on acceptance of resignation unconditionally.

46. We have gone through the affidavit of Mr. Rankhambe. The State of Maharashtra came to the conclusion that as the petitioner did not belong to the weaker section as also he did not come from the lower income government employees, his case cannot be treated under exceptional circumstances. In our view, this stand of the State of Maharashtra is not backed by any law. Rule 23 does not serve out cases of weaker section or lower income government employees as

such. It applies to all category of employees but for most exceptional circumstances to whom pension is not admissible under and specific provision of the said rules. Thus, it was not open for the State of Maharashtra to distinguish between a person as low income government employee or a person belonging to weaker section while deciding as to whether benefit of Rule 23 of the State Pension Rules should be extended.

47. Suffice it to observe that the State of Maharashtra was wrong in declining to grant the benefit merely because the petitioner did not belong to the weaker section /lower income government employee. The State of Maharashtra misdirected itself in appreciating and applying the provisions of Rule 23 of the State Pension Rules to the facts pertaining to the petitioner. In substance, we are inclined to observe that the decision arrived at by the State of Maharashtra as contained in letter dated 30.9.2004 cannot be sustained. We hold that the said decision is arrived at on irrelevant consideration. We are, therefore, inclined to set aside the decision of the State of Maharashtra contained in letter dated 30th September, 2004 and direct the State of Maharashtra to reconsider the case of the petitioner in the

light of provisions of Rule 23 of State Pension Rules and in the light of observation of this court in Order dated 26th March, 2004 in Writ Petition No.777 of 1994 and the observations in this judgment. While arriving at the decision as to whether the petitioner could be given benefit of Rule 23 of the State Pension Rules, the State of Maharashtra has to inter alia, consider the case of the petitioner on the basis of facts and circumstances available on the record justifying exercise of discretion in favour of the petitioner being most exceptional circumstances keeping in mind the petitioner's qualification, experience and service rendered by him as Thoracic & Cardio Vascular Surgeon.

48. Now we turn to the case of the petitioner as regards the Corporation.

This Court, had in Writ Petition No.777 of 1994 by order dated 26th March, 2004 directed the Corporation and the Standing Committee of the Corporation to consider the case of the petitioner under the sub rule (2) of Rule 15 of Corporation Pension Rules for making an addition of period from 2nd September, 1958 to 31st January, 1961 to the amount of qualifying service of the petitioner in the light of observations made by this Court in paragraph 9 and 12 of the said

judgment dated 26th March, 2004. The Corporation has not challenged the said order dated 26th March, 2004.

49. The petitioner has annexed the resolutions passed by the Corporation/ Standing Committee and decisions of Commissioner and events which unfolded after judgment dated 26th March, 2004. The said resolutions are at Exhibit T, T-1, T-2 and T-3 respectively. If one considers the events which took place from 28th October, 2004 till 10th August, 2005 it is noticed that the Commissioner for the Corporation had by letter dated 28th October, 2004, being letter at Exhibit T, placed the case before the Standing Committee for its sanction. The relevant portion of the letter is contained in paragraph 10, which reads as follows:

“ . As per the direction of the Hon. Court M.M.C. Pension Rules, 1953 No.15(2) the Standing Committee/Corporation is requested to consider the services of Dr. (Shri) B.R.Kalke, the then Dean of B.Y.L.Nair Ch. Hospital and T.N.Medical College for the period from 2.9.1958 to 31.1.1961 i.e. 2 years, 4 months and 29 days as a qualifying service for the purpose of pensionary benefits etc. Due to extension of such benefit, if consider to Dr.(Shri) B.R.Kalke, the Corporation will have to pay approximately Rs.3 to 4 lacs for which the sanction of the Standing Committee/Corporation is requested to make a lumpsum payment as required as per the M.M.C.Act of 1888 Section 517(1)(h).”

50. On the basis of these recommendations, the Standing Committee considered the aforesaid proposal and on 7th December, 2004, passed a resolution No.681 and disapproved the said proposal. By this resolution dated 7th December, 2004, the Standing Committee declined to grant benefit of Rule 15(2) of the Corporation Pension Rules to the petitioner. It is further noted that the Standing Committee, on 16th March, 2005 again considered the issue of grant of benefit of Rule 15(2) of Corporation Pension Rules. It is noticed that, the Standing Committee came to the conclusion that the petitioner be given benefit of Rule 15(2) of the Corporation Pension Rules. The Standing Committee, however, in the later part of the said resolution No.1145 indicated that the sanction of the Corporation be obtained to proposal mentioned in paragraph 1 under Section 517(1)(h) of MMC Act. The text of Standing Committee Resolution No.1145 dated 16th March, 2005 is as follows:

“Resolution of the Standing Committee, No.1145, dated the 16th March, 2005:-

Ref: (i) M.C’s letter No. TCE/2715, dated 28.10.2004 and
(ii) S.C.R.No.681, dated 7.12.2004.

“That the standing Committee have reconsidered the decision arrive at by them under the Resolution No.681 dated the 7th

December, 2004, regarding consideration of the service rendered by Dr.B.R.Kalke, the then Dean of T.N.Medical College and B.Y.L.Nair Charitable Hospital during the certain period as qualifying service and pay arrears of pension etc. and in supersession of their previous orders passed by them under their aforesaid Resolution, accordingly resolved that it be recommended to the Corporation that, sanction be given to the services of Dr.B.R.Kalke, the then Dean of T.N.Medical College and B.Y.L.Nair Charitable Hospital for the period from 2nd September 1958 to 31st January, 1961 i.e. 2 years, 4 months and 20 days, being treated as a qualifying service by relaxing the Rule No.15(2) of the Pension Rules (1953), as per the direction of the Hon'ble High Court for the purpose of pensionary benefits etc. as proposed.

2. That subject to the sanction of the Corporation to the proposal contained in para 1 above, approval be given under Section 517(1)(h) of the Mumbai Municipal Corporation Act, 1888, as amended upto date, to a lumpsum payment of aforesaid pensionary benefits, etc. being paid to Dr.B.R.Kalke, for the period from 2nd September, 1958 to 31st January, 1961, as proposed.

3. That this resolution be brought as Urgent Business before any current Meeting of the Corporation.”

Thereafter the matter went before the Corporation for consideration as urgent business and the Corporation i.e. the House passed Resolution No.151 of 20th April, 2005 on following terms:

“ That the Standing Committee Resolution No.1145 dated 16th March, 2005 and the communications underlying it regarding relaxing the Rule No.15(2) of the Pension Rules (1953) of qualifying service of

Dr.B.R.Kalke, Ex-Dean, T.N.Medical College and B.Y.L. Nair Charitable Hospital for a period of 2nd September, 1958 to 31st January, 1961 be referred back to the Municipal Commissioner for reconsideration and further report in the light of the discussion that took place at the meeting.”

51. On account of this resolution passed by the Corporation, the matter was placed before the Commissioner for his report. The Commissioner submitted his report bearing No.TCE/1707 of 10th August, 2005 being report at Exhibit T and by specific observations contained in paragraph 5, 6 and 7 of the said report the Corporation Resolution No.151 dated 20th April, 2005 was disposed of. The relevant portions of the Commissioner's report are as follows:

“ (5) As per the provisions made in M.M.C. Pension Rule 15(2), if Corporation feels that the period mentioned by the employee, Corporation may consider the period as a special case for the employee possessing expertise rendered meritorious service, condoning/waive the period and treat the period as qualifying service.

(6) In the meanwhile contempt petition heard by the Hon'ble Justice S.K.Shah on 15.7.2005 and Hon'ble High Court was pleased to dismiss on the ground that the case of the petitioner was considered and the same has been rejected. Similarly, the Government of Maharashtra has also mentioned that the petitioner is not entitled to the benefit, in view of the same, the contempt is dismissed.

(7) In view of this disposes the Corporation Resolution No.151 dated 20.4.2005.”

52. A perusal of the above quoted portions clearly indicate that the

Commissioner declined to accept the resolution passed by the Corporation and disposed of the Corporation Resolution No.151 on the ground that the High Court had on 15th July, 2005 dismissed the contempt petition as the case of the petitioner was considered and the same has been rejected.

53. The petitioner has relied upon the provisions of Rule 15(2) of the Corporation Pension Rules and had rightly submitted that the Standing Committee of the Corporation could consider whether the benefit of Rule 15(2) of the Corporation Rules should be given to the petitioner. On account of the directions contained in order dated 26th March, 2004, the Commissioner for Corporation placed his letter before the Standing Committee in terms of letter dated 28th October, 2004 at Exhibit T. The said letter was considered by the Standing Committee and by resolution No.681 dated 7th December, 2004, the Commissioner's proposal in para 10 of letter dated 28th October, 2004 was disapproved. This would mean that at one point of time, the Standing Committee declined to give benefit to the petitioner. Despite this, the Standing Committee again considered the question and by resolution No.1145 of 16th March, 2005 granted the benefit.

However, that was done subject to the sanction of the Corporation and approval was sought under Section 517(1)(h) of the MMC Act, 1888. Learned Advocate Mr. Naidu was right in arguing that it was not necessary to obtain sanction of the Corporation by applying the provisions of Section 517(1)(h) of the MMC Act. The provisions of Section 517(1)(h) are as follows:

“(1) The Commissioner may

“(a).....

to

(g).....

(h) with the approval of the Standing Committee, admit or compromise any claim, suit or legal proceeding brought against the Corporation or officer or servant, in respect of anything done or omitted to be done as aforesaid;”

54. A reading of the aforesaid provisions would clearly go to show that it was not necessary to use the said provisions as the Standing Committee alone was to take the decision as to whether benefit under Rule 15(2) of Corporation Pension Rules be given. For, Rule 15 postulates that the Standing Committee for special reasons to be recorded in writing, inter alia, make addition nor ordinarily

exceeding one year, to the amount of qualifying service of a retiring municipal servant which under the provisions of the said Rules may be treated as qualifying service for pension. It is noticed that the resolution No.1145 came to be placed before the Corporation and the Corporation passed the resolution No.151 of 20th April, 2005 and directed that the matter be referred to the Municipal Commissioner for reconsideration. The Commissioner disposed of the said resolution by his report dated 10th August, 2005. We are inclined to observe that the action taken, namely placing resolution No.1145 of 16th March, 2005 before the Corporation and further placing it before the Commissioner for reconsideration and Commissioner disposing of the said matter by coming to the conclusion that the case of the petitioner was considered and has been rejected was not correct. In our view, the Standing Committee itself should have taken the decision and passed an appropriate resolution as per the provisions of Rule 15(2) of the Corporation Pension Rules.

55. At this juncture it will be necessary to mention that before this Court when the contempt petition was being heard, the Counsel for the Corporation made a statement on 15th July, 2005 that the case of the

petitioner was considered and has been rejected. Mr.Naidu was right in pointing out that if one goes by the record, the case of the petitioner was not rejected on or prior to 15th July, 2005. According to Mr.Naidu, and rightly so, on 15th July, 2005 the matter was pending in the House of the Corporation. This is evident from the fact that Corporation resolution No.151 referring back the matter to the Municipal Commissioner for reconsideration was passed on 17th August, 2005 i.e. after 15th July, 2005. Noting the relevant dates and the relevant resolution passed by the House of the Corporation, and the Commissioner's report dated 10th August, 2005, the matter was pending consideration and request of the petitioner to consider his case under Rule 15(2) of Corporation Pension Rules was not finally decided.

56. Once it is held that the Standing Committee of the Corporation alone could have taken decision, the later portion of the Standing Committee resolution No.1145 dated 16th March, 2005 which is quoted above was incorrectly passed. By passing the said resolution, the Standing Committee erred in complying with the provisions of Rule 15(2) of the Corporation Pension Rules. In our view, on

perusing all the events which have taken place from 28th October, 2004 i.e. letter from Commissioner at Exhibit T, upto Commissioner's report dated 10th August, 2005 did take place not in conformity with the provisions of law. In our view, the Commissioner, the Standing Committee, and the Corporation ought to have appreciated the provisions of Rule 15(2) of the Corporation Pension Rules and considered the case of the petitioner in the light of order dated 26th March, 2004. We are convinced that the order dated 26th March, 2004 has not been complied with in its letter and spirit.

57. For the reasons mentioned aforesaid, we are inclined to set aside

- (1) letter from Commissioner No.TCE/2715 dated 28th October, 2004 (Exh.T),
- (2) Standing Committee Resolution No.681 dated 7th December, 2004,
- (3) Standing Committee Resolution No.1145 dated 16th March, 2005 (Exh.T-1),
- (4) Corporation Resolution No.151 dated 20th April, 2005 (Exh.T-2),
- (5) Commissioner's Report NO TCE/1707 dated 10th August, 2005 (Exh.T-3) .

We have noted the observations of this Court in Order dated 26th

March, 2004 and we are of the view that the Standing Committee should consider the case of the petitioner afresh on merits and decide whether the petitioner can be granted benefit as per Rule 15(2) of the Corporation Pension Rules. Since we propose to direct the Standing Committee to take a fresh decision it is not necessary for us to interpret the term “not ordinarily exceeding one year” appearing in Rule 15(2) of the Corporation Pension Rules. We leave that question open.

58. For the reasons, mentioned aforesaid, we are inclined to direct the Standing Committee of the Mumbai Municipal Corporation to reconsider the case of the petitioner afresh as per Rule 15(2) of the Corporation Pension Rules for making an addition of the period between 2nd September, 1958 to 3rd January, 1961 to the amount of qualifying service of the petitioner, in the light of the observations made in paragraph 9 and 12 of the judgment dated 26th March, 2004 in Writ Petition No.777 of 1994, as also the observations contained in this judgment.

59. For the reasons mentioned aforesaid, following order is passed to

dispose of this petition.

ORDER

- i. The decision taken by State of Maharashtra contained in letter dated 30th September, 2004 at Exh.N is quashed and set aside.
- ii. The respondent no.1 State of Maharashtra is directed to consider the case of the petitioner for sanction of pension under Rule 23 of Maharashtra Civil Services Pension Rules, 1982 within a period of four months from today, in the light of findings recorded in paragraph 14 of the judgment dated 26th March, 2004 as also this judgment.
- iii. The letter from Commissioner No.TCE/2715 dated 28th October, 2004 (Exh.T), the Standing Committee Resolution No.681 dated 7th December, 2004, the Standing Committee Resolution No.1145 dated 16th March, 2005 (Exh.T-1), the Corporation Resolution No.151 dated 20th April, 2005 (Exh.T-2), and the Commissioner's Report No TCE/1707 dated 10th August, 2005 (Exh.T-3) are quashed and set aside.

iv. The Standing Committee of the respondent no.2 is directed to consider the case of the petitioner under Rule 15(2) of Municipal Corporation of Greater Bombay Pension Rules (1953), for making an addition of period between 2nd September, 1958 to 31st January, 1961 to the amount of qualifying service of the petitioner in the light of the observations made in paragraph 9 and 12 of the judgment dated 26th March, 2004 as also this judgment. The case of the petitioner shall be considered within a period of four months from today.

v. There shall be no order as to costs.

(R.Y.GANOO, J.)

(A.M.KHANWILKAR, J.)