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

WRIT PETITION NO. 410 OF 2013

Mrs. Bapsy Francis D'Souza	..Petitioner
Vs.	
Municipal Corporation of Gr.Bombay & Ors.	..Respondents.

Ms. Aparna Deokar i/b M.P. Vashi & Associates for Petitioner.
Mr. M.M. Malvankar for Respondent Nos.1 & 2.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

DATE : 29th April 2015.

P.C.:

Rule. Rule is made returnable forthwith by consent of the parties.

2 Inspite of duly served, none appears for the Respondent Nos.3 and 4. However, since the order that we are proposing to pass will not be adverse to the interest of the Respondent Nos.3 and 4, the issuance of the notice or Rule is waived.

3 The Petitioner has passed S.S.C in 1977 from the competent board in Marathi medium. She passed H.S.C in 1980 in English medium. The Petitioner came to be appointed as Assistant Teacher with the Respondent No.4-School in the year 1982. The Petitioner's services vide order dated 28th February 2000 have been confirmed giving effect on 5th October 1982. It is also not in dispute that the School in which the Petitioner is appointed is classified as a minority institution. The Respondent-Management passed a resolution on 29.6.2010 thereby resolving to promote the Petitioner as Head Mistress with effect from 1.7.2010. Accordingly, a proposal was sent by the Respondent Nos.3 and 4 to the Respondent Nos.1 and 2 for grant of approval of the Petitioner's promotion.

4 It was informed to the Petitioner that the Petitioner's approval of appointment as Head Mistress cannot be granted in view of the Circular issued by the Government of Maharashtra dated 28.8.2001 and as such the Petitioner has approached this Court seeking various reliefs including approval to the appointment as Head Mistress.

5 In response to the notice issued by this Court, an affidavit-in-reply has been filed by Shri Govind Kulkarni on behalf of the Respondent. It is stated in the said affidavit that since it was noticed that the Petitioner has not taken education in English medium school, she is not entitled to be appointed as Head Mistress in the English medium school. It is further stated that for being appointed as Head Mistress in English medium primary school, it is necessary that a person concerned must have passed 10th as well as 12th standard examinations in the concerned medium.

6 We have perused the Circular which is placed on record at Exhibit-H. Perusal of the Circular would reveal that the Circular provides for being eligible to be appointed as Teacher in the primary school, the candidate must have passed either 10th standard or 12th standard examination or must have obtained D.Ed. qualification in medium which imparts the education in the school concerned. Undoubtedly, the words used in the said Circular is “or”. The plain reading of the Circular clearly shows that for being appointed as Assistant Teacher, the candidate concerned should either have passed the examination of 10th standard or 12th standard or D.Ed in a medium in which the education is imparted in school concerned.

7 The medium of education in the Respondent No.4's school is admittedly English medium. Out of the said, the Petitioner has admittedly passed 12th standard in the English medium. In that view of the matter, the Petitioner is very much entitled to be appointed as Assistant Teacher in English medium school. We find that the approach of the Respondent Nos.1 and 2 is of total misleading of the aforesaid Circular. Even as such the Petitioner is very much entitled to be appointed as Assistant Teacher and admittedly putting service of almost thirty years, would be eligible for promotion as Head Mistress. When the Respondent No.3 unanimously resolved to promote the Petitioner, we find that the approach of the Respondent Nos.1 and 2 denying approval is not permissible.

8 Rule is therefore made absolute. The Writ Petition is allowed in the following terms:

- (i) The Respondent Nos.1 and 2 are directed to grant approval to the promotion of the Petitioner from the date on which the Respondent No.3 has resolved to promote the Petitioner;
- (ii) Needless to say that from the said date the Petitioner would be entitled to pay scale of Head Mistress;

- (iii) The Respondents shall start paying salary to the Petitioner in the scale of Head Mistress from 1st May 2015;
- (iv) All arrears on the basis of the aforesaid order shall be paid to the Petitioner within a period of three months from today.
- (v) Rule made absolute in the aforesaid terms, with no order as to costs.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)