

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

WRIT PETITION NO.538 OF 2013

Ms.Tissy Joseph

... Petitioner

Vs.

SIO & Ors.

... Respondents

Mr.Sariput Sarnath i/b Mihir Desai for the Petitioner
Mr.A.G. Kothari for Respondent Nos.1 & 2

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 4th FEBRUARY, 2015

P.C.:

By this petition, the petitioner challenges the order, dated 15.12.2012 denying trained graduate scale to the petitioner w.e.f. 1.12.1995 and the senior scale, by computing her services as trained teacher from 1.12.1995.

The petitioner had acquired the B.Sc., B.Ed. qualification and was appointed as an assistant teacher on a post earmarked for the SSC, D.Ed. candidate, on 1.6.1995. The petitioner was not appointed in the 75% under-graduate quota to teach the 5th to 7th standard as the petitioner did not possess the D.Ed. qualification. The petitioner was also not appointed in the 25% quota in the graduate scale to teach the 5th to 7th standard as

there was no vacancy in the 25% graduate quota. The petitioner gave an undertaking that she would not make any claim in respect of the scale and post and hence, the services of the petitioner were continued in the respondent No.2 school. In the year 2005, one post of assistant teacher in the trained graduate scale fell vacant and the petitioner was absorbed in that post. The petitioner started receiving the payscale of a trained graduate teacher after her absorption in that post in the year 2005. By this petition, the petitioner has claimed trained graduate scale w.e.f. 1.12.1995 and senior scale on completion of 12 years of service, w.e.f. 1.12.2007 in view of the Government Resolution dated 5.1.1999.

On hearing the learned Counsel for the parties, it appears that the relief sought by the petitioner cannot be granted. As already stated hereinabove, the petitioner was not appointed in 75% quota in the undergraduate scale as the petitioner possessed B.Sc., B.Ed. degrees at the relevant time in the year 1995. The petitioner was also not appointed in the 25% quota of teachers in the graduate scale to teach 5th to 7th standards as there was no vacancy in that quota. In this background, the petitioner could not have claimed the trained graduate scale w.e.f. 1.12.1995, especially when the petitioner had given an undertaking that she would not claim the scale and post of a trained graduate teacher in the circumstances in which she was appointed.

Also, the petitioner would not be entitled to senior scale w.e.f. 1.12.2007 as the petitioner does not fulfill the conditions mentioned in the resolution for grant of senior scale. The first condition in the Government Resolution clearly states that a teacher should have rendered 12 years of qualified service with the necessary qualifications. The petitioner was not appointed either in the 75% quota or in the 25% quota at the relevant time on 1.6.1995. The petitioner worked as an untrained graduate on the post on which she was appointed on 1.6.1995 till 2005. In 2005, the petitioner started receiving the trained graduate scale. The petitioner started receiving the trained graduate payscale before the petitioner completed 12 years of continuous and qualifying service on the post on which she was appointed. The petitioner was absorbed as a trained teacher in the year 2005 and, therefore, the petitioner did not fulfill the first condition mentioned in the Government Resolution dated 5.1.1999. Merely because the petitioner was shown in category C, the petitioner cannot claim senior scale by relying on the Government Resolution dated 5.1.1999. It is pointed out by the learned Counsel for the respondents that category C in Schedule B is referable to the qualifications possessed by a teacher and the scales are determined by Schedule C. Though the petitioner would not be entitled to senior scale in 2007, in the circumstances of the case, the

petitioner would be entitled to senior scale in the year 2017, as observed in the impugned order.

Since the impugned order cannot be faulted with, the writ petition is dismissed with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)