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

WRIT PETITION NO. 441 OF 2012

Rachel Kurian ...Petitioner
VS
Municipal Corporation of Gr.Mumbai & Ors. ...Respondents

.....
Mr Vinamra Kopariha a/w Ms Devyani Kulkarni for the
Petitioner
Mr Sagar Patil for Respondent Nos.1 and 2/ M.C.G.M.

.....
CORAM : **B.R.GAVAI &
B.P.COLABAWALLA, JJ.
DECEMBER 11, 2017.**

P.C.:

The Petitioner has approached this Court being aggrieved by the order dated 21st October, 2011, by which the Respondent Municipal Corporation has informed that the Petitioner is not entitled to the pensionary benefits.

2 However, in response to the notice issued by this Court, Respondent Nos.1 and 2 have filed its reply. Para 5(d) to 5(f) reads thus:

“5(d) I say that as per the said scheme, the staff of the private primary aided school who had been appointed on or before 1.4.1979 should submitted her option for opting the pension scheme within stipulated time. I say that though, the petitioner exercised the option for the said scheme beyond the time, these respondents considered the petitioners claim for the pension scheme. I say that after receipt of the necessary papers from the petitioner and the deposits of management shares of contributory provident fund. These respondents started the pension to the Petitioner as per the said scheme.

(e) I say that as these respondents have already started paying the pension to the petitioner and as far as payment of arrears are concerned, the same will be paid to the Petitioner in accordance with law.

(f) I say that in the facts and circumstances as mentioned herein above, these respondents have already considered the claim of the Petitioner for pension and it is started paying the pension to the Petitioner. I say that the amount of arrears due and payable to the Petitioner will be considered and paid the same to the Petitioner in accordance with law.”

3 It can thus be seen that the Municipal Corporation itself had admitted in its reply that the Petitioner is entitled to the pension and the pension is being paid to the Petitioner. Not only this but a specific statement is made that the arrears of the

Petitioner would be worked out and paid to the Petitioner accordingly.

4 However, it is grievance of the Petitioner that the pension is not being paid in accordance to the last drawn salary. We, therefore, dispose of the Writ Petition with a direction to the Municipal Corporation to pay the pension to the Petitioner to be worked out on the basis of last drawn salary of the Petitioner. The pension is to be paid to the Petitioner from the month of January 2018. All arrears to be worked out on the basis of the last drawn salary of the Petitioner within a period of six months from today. The Writ Petition is disposed of accordingly. No costs.

(B. P. COLABAWALLA, J.)

(B.R.GAVAI, J.)