

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

WRIT PETITION NO.1669 OF 2015

Aliamma Pappachen

..... Petitioner.

V/s

Municipal Corporation of
Greater Mumbai and Others

..... Respondents.

Mr. Swaraj Sanjay Jadhav for the Petitioner.

Mr. Sagar Patil for the Respondent Nos. 1 and 2 – MCGM.

**CORAM : B. R. GAVAI &
SANDEEP K. SHINDE, JJ.
DATE : 30th NOVEMBER, 2017**

PC.

1] Rule. Rule made returnable forthwith. Heard by consent.

2] The Petitioner has approached this Court being aggrieved by the communication dated 14th March 2014 addressed by the Respondent No.2 to Respondent No.3, thereby intimating the Respondent No.3 that from 1st April 1994 the Petitioner has been paid excess salary and therefore the fresh proposal be submitted for revising the pay scale and recovery from the salary and the pension paid to the Petitioner.

3] The Petitioner was appointed in the Respondent No.3 school on 1st June 1974. At the relevant time, the Petitioner was having a Teachers Training Certificate ("TTC" for short) which was a requisite

qualification as to the relevant provision. Accordingly, the Petitioner's services were also approved by the Respondent Nos.1 and 2 with effect from 17th April 1993. In the meantime, the Petitioner also obtained the degree of Diploma in Education ("D.Ed." for short) in 1980 and also the graduation in Arts in the year 1987. The Petitioner on attaining the age of superannuation stood retired in the year 2009. She started receiving the pension. However, the impugned communication dated 14th March 2014 came to be issued. It is pertinent to note that the Respondent Nos.3 and 4 i.e. Principal of the School as well as the Management specifically informed Respondent No.2 vide communication dated 13th March 2013 that when the Petitioner was appointed, TTC was requisite qualification and as such, she was appointed as Assistant Teacher with effect from 1st June 1974. It has further been informed that the Petitioner has subsequently also got a necessary qualification i.e. D.Ed. which is necessary qualification for the post of Assistant Teacher in a primary school. However, it appears that inspite of the said communication addressed by Respondent Nos.3 and 4, the Respondent Nos.1 and 2 reduced the pension payable to the Petitioner and also started recovery from the pension payable to the Petitioner.

4] In response to the notice issued by this Court, an affidavit in reply is filed by the Respondent Nos.1 and 2. It is stated that when the

Petitioner was appointed, TTC was not a qualification prescribed by the Municipal Corporation of Greater Bombay. A reliance is placed on the circular of the State of Maharashtra dated 25th October 2000.

5] We have no hesitation to say that not only the impugned order but also the affidavit filed by the Corporation depicts total non application of mind. What has been stated in the government circular is that in view of the judgment of the Full Bench of this Court requisite qualification for the post of Assistant Teacher in primary school is D.Ed. and not B.Ed. There is not even reference to the TTC certificate.

6] In that view of the matter, we find that the Respondent Nos.1 and 2 have grossly erred in reducing pay payable to the Petitioner and also making recovery from the pension of the Petitioner. In any case, it is to be noted that the Apex Court in the case of Sayed Abdul Qadir and others Vs. State of Bihar and others reported in (2009) 3 SCC 475 has categorically held that if any erroneous fixation of salary of employee is done on account of reason not attributable to such an employee, recovery of excess payment is not permissible in law. In the present case, pay fixation of the Petitioner was done by the Respondent No.2 in the year 1985 considering the qualification of the Petitioner. The said pay fixation statement would clearly show that the Petitioner has passed TTC in the

year 1970, BA in 1987 and D.Ed. in 1980. In view of this pay fixation by the Respondent No.2 itself, the act of the Respondent Nos.1 and 2 in revising the pay scale of the Petitioner to her detriment, is totally unsustainable in law.

7] In the result, the Petition is allowed.

- I) The impugned communication dated 14th March 2014 is quashed and set aside.
- II) It is held and declared that the Petitioner be treated as a trained teacher from the date of her appointment for the purpose of salary and pensionable benefits etc.
- III) Pension payable to the Petitioner to be worked out in accordance with aforesaid direction shall be paid to her from the month of January 2018.
- IV) All arrears to be worked out on the basis of aforesaid, shall be paid within a period of three months from today.

[SANDEEP K. SHINDE, J.]

[B. R. GAVAI, J.]