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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 10747 OF 2014

Smt. Laxmi Kamlakar Mane ... Petitioner
Vs
Deputy Director of Education & Ors. ... Respondents

Mr. Mihir Desai sr. counsel i/b Mr. Chetan Mali and Mr. S.P. Sarnath for the Petitioner
Ms Kavita N. Solunke AGP for Respondent Nos.1 and 4/ state.
Mr. Arvind G. Kothari advocate for Respondent No.2 and 3.

**CORAM : R. D. DHANUKA &
ABHAY AHUJA, JJ.**
DATE : 9th SEPTEMBER, 2021

Oral Order :

Rule. Learned AGP waives service for respondent Nos.1 and 2 and Mr. Kothari advocate waives service for respondent Nos.2 and 3. By consent of parties, the petition is heard finally.

2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus or a writ, order or direction in the nature of mandamus directing respondent No.1 to grant her approval from her initial date of

appointment i.e. from 4th September, 2001 with all the consequential benefits of services including seniority. The petitioner was initially appointed on the post of full time teacher in Biology w.e.f. 4th September, 2001 by following the prescribed procedure. It is the case of the petitioner that at the time of her appointment she was full time teacher with initial work load of 46 periods out of which 10 periods on clock hour basis in the grant in aid section and other on unaided section. It is the case of the petitioner that she continued on the same work load for the academic year 2002-03. In academic year 2003-04 the divisions which the petitioner was allotted received 20 % grant in aid from the respondent/state.

3. On 11th March, 2013 this Court in Writ Petition No. 9565 of 2012 filed by the petitioner and others recorded a statement made by the learned counsel for the petitioner that the petitioner would be satisfied with an order directing respondent No.3 – Deputy Director of Education to consider the petitioner's case with liberty to adopt appropriate proceedings, including on the basis of what is stated in that petition, if necessary. This Court accordingly directed the Deputy Director of Education to consider the case of the petitioner by treating the Writ Petition itself as a representation and to pass an

order after granting all parties an opportunity of being heard.

4. Pursuant to the said order, the Deputy Director of Education passed an order 26th August, 2013 approving the petitioner's services from 1st December, 2003 despite finding on merit that her initial appointment was 4th September, 2001.

5. Learned sr. counsel Mr. Desai for the petitioner invited our attention to the judgment of this Court in Writ Petition No.2897 of 2012 and other writ petitions on 26th April, 2012 (**Ajay s/o Viraji Valvi & Ors. Vs. The State of Maharashtra & Ors.**) and submitted that the services rendered by an Assistant Teacher in a school for the period for which the school was not receiving grant-in-aid, has to be taken into consideration for computing the qualifying service.

6. The Division Bench of this Court in the said judgment accepted the same and directed that while considering the eligibility of the petitioner for the benefits under the said scheme, completion of 12 years service shall be reckoned from the individual date of joining in a particular cadre and the service should be reckoned from the date on which the school was brought on grant-in-aid basis.

Learned counsel for the petitioner, on instructions, states that the petitioner shall not claim benefits from 4th September, 2001 to 30th November, 2003 from any of the respondents. The statement is accepted.

7. Learned counsel for respondent Nos.2 and 3 and learned AGP for the respondent/state do not dispute this proposition. The statement is accepted.

8. In our view the proposition of law laid down by this Court in the said judgment (supra) is clearly applicable to the facts of this case and we are respectfully bound by the said judgment. Accordingly, the following order is passed.

ORDER

(a) Writ Petition is made absolute in terms of prayer clause (a) subject to the statement made by the learned senior counsel for the petitioner.

(b) Respondent Nos.2 and 3 shall send their proposal to

respondent Nos.1 and 4 for effectuating the directions given by this Court to respondent Nos.1 and 4, within a period of four weeks from today. Respondent Nos.1 and 4 on receiving such proposal, within a period of six weeks therefrom, take their decision. The decision/order that will be taken/passed by respondent Nos.1 and 4 shall be communicated to the petitioner as well as respondent Nos.2 and 3. A copy of the proposal, that would be sent by respondent Nos.2 and 3 to respondent Nos.1 and 4, shall be furnished to the petitioner within a period of one week from the date of submission of said proposal.

(c) Rule is made absolute accordingly with no order as to costs.

(*ABHAY AHUJA, J.*)

(*R. D. DHANUKA, J.*)