

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 981 OF 2024

Mrs. Santana Henry D'Souza

...Petitioner

Versus

State of Maharashtra and Ors.

...Respondents

Mr. N.V. Bandiwadekar, Senior Advocate a/w L. D'Zouza, Ms.
Deepika Agarwal i/b V.M. Parkar for the Petitioner.
Ms. R.A. Salunkhe, AGP for Respondent Nos. 1 to 3/State.

**CORAM : NITIN JAMDAR AND
M.M.SATHAYE, JJ.**

DATE : 5 FEBRUARY 2024

P.C. :

. Heard learned counsel for the parties.

2. The Petitioner working as teacher with Respondent No.5 school run by Respondent No.4 Management, is challenging an order dated 30 January 2023 passed by Respondent No.2/Education Officer (Secondary) Zilla Parishad, Thane. By said impugned order the proposal submitted by Respondent No.5 school for upgradation of the Petitioner in the approved scale of B.A./B.Ed. seeking post facto approval for Petitioner's upgradation from IX and X standard in the vacancy caused on account of superannuation of earlier

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B.A./B.Ed teacher (Ms. Abreo) is rejected. It is submitted that the Respondent/Management is supporting the case of the Petitioner till today.

3. It is further submitted that the Petitioner was eligible to be appointed in the earlier vacancy in October 2020 created due to superannuation of earlier teacher (Ms. Prabhakar), however Respondent No.6 who is junior to the Petitioner, has been illegally transferred and appointed in the said vacancy. It is contended that the impugned order is passed without hearing the Petitioner and without informing the objections or reasons for which proposal is rejected.

4. Perused the impugned Order. It has resulted in a situation where inquiry about the grounds of rejection are required to be done first time in this Court.

5. In that view of the matter, we dispose of this petition by directing that the impugned order dated 30 January 2023 will be treated as notice to Respondent / Educational Institute of the proposed ground/s for rejection of Petitioner's proposal. The Petitioner's proposal stands restored. If there are any other grounds on which the Respondent Education Officer intends to reject the proposal, he is directed to communicate the same to the Respondent/ Educational Institute within a period of 3 weeks from today. The Respondent Educational Institute shall thereafter submit its

explanation to the proposed grounds, along with supporting material including government resolutions, case laws / orders of this Court etc. if relied upon.

6. The Respondent / Education Officer is directed to decide the Petitioner's proposal thereafter within a period of 8 weeks, after giving notice to Respondent No. 6 and by dealing with the explanation given by the Educational Institute as also dealing with case law/orders of this Court, by passing a reasoned order, subject to other time bound directions.

7. We have not expressed any opinion on the Petitioner's proposal and the same shall be decided on its own merits in accordance with law. Needless to mention that if the Respondent/Education Officer decides to grant proposal as prayed, the aforesaid procedure/directions will not apply.

8. The writ petition is disposed of in the aforesaid terms.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)