

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

WRIT PETITION NO. 184 OF 2024

Rajashree Dhondu Botle

...**Petitioner**

V/s.

The Educational Inspector and

3 Ors.

...**Respondents**

Mr. Sureshkumar J. Panicker *with Ms. Anita Chikne and Ms. Poonam Panicker, for the Petitioner.*

Mr. Himanshu B. Takke, *AGP with Mr. Manish Upadhye, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 5 February 2024.

P.C. :

1. The challenge in the present petition is to the Order dated 21 December 2022 passed by the Education Inspector, (West Zone) of Greater Mumbai. By that order, the Education Inspector has decided Petitioner's Representation dated 7 June 2021 directing the Management to grant seniority to the Petitioner from the date of absorption in the School in accordance with the provisions of Section 26(8) of the Maharashtra Employees of Private Schools (Civil Services) Rules, 1981 (**Rules of 1981**).

2. Petitioner is apparently not aggrieved by grant of seniority from the date of absorption. Her grievance however is that, she is entitled to be granted Selection Grade on completion of 24 years of service and for that purpose, her services from the date of initial appointment on 5 November 1990 must be reckoned. To the extent of non-grant of benefit of Selection Grade on completion of 24 years of service from 5 November 1990, the present petition is filed raising challenge to the Order dated 21 December 2022.

3. Perusal of the representation dated 7 June 2021 filed by the Petitioner would indicate that the grievance therein was restricted only to the grant of seniority. No grievance was apparently made about the non-grant of selection grade on account of 24 years of services from the date of initial appointment on 5 November 1990. To this extent, the order of the Education Inspector cannot be faulted. Something which is not even prayed for could not have been decided in the Order dated 21 December 2022.

4. The Petitioner needs to make a fresh representation to the Education Inspector for grant of Selection Grade on completion of 24 years of service from the date of initial recruitment on 5 November 1990. It is well settled law that seniority for promotion and eligibility for promotion are two different concepts. Under Rule 26(8) of the Rules of 1981, the Petitioner may lose her seniority under the provisions upon her absorption in the Respondent No.3-School. However, she will

not loose her eligibility service from the date of her initial appointment on 5 November 1990. If Selection Grade is to be awarded only on consideration of length of eligibility of service, the seniority determined under Rule 26(8) of the Rules of 1981 would be wholly irrelevant for that purpose.

5. Accordingly, the Writ Petition is **disposed of** granting liberty to the Petitioner to make a fresh representation to the Education Inspector for consideration of her case for grant of Selection Grade by computing the eligibility service of 24 years w.e.f. 5 November 1990. If such representation is made within a period of two weeks from today, the Education Inspector shall proceed to decide the same as expeditiously as possible, preferably within a period of three months from the date of receipt of representation.

6. Needless to say that in the event, the Education Inspector takes a decision for grant of Selection Grade to the Petitioner w.e.f. 5 November 2014, the arrears of pension, gratuity, shall be made available to the Petitioner within a period of four months from the date of passing of the Order.

SANDEEP V. MARNE, J.

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