

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

WRIT PETITION NO. 747 OF 2020

1 Ganesh Krushana Sutar & Ors. ... Petitioners

Vs

1 State of Maharashtra & Ors. ... Respondents

***WITH
WRIT PETITION (ST) NO. 968 OF 2020***

1 Mahendra Namdev Vyavhare & Ors. ... Petitioners

Vs

1 State of Maharashtra & Ors. ... Respondents

***WITH
WRIT PETITION (ST) NO. 1089 OF 2020***

Amsidda Pundalik Honmore ... Petitioner

Vs

1 State of Maharashtra & Ors. ... Respondents

***WITH
WRIT PETITION (ST) NO. 1250 OF 2020***

1 Smt. Shraddha Deepakrao Patil & Ors ... Petitioners

Vs

1 State of Maharashtra & Ors. ... Respondents

Ms. Pronita P. Hingmire for the Petitioners in WP No.747 of 2020.

Mr. Sanjeev Kumar B. Deore i/b Suchita J. Pawar for the Petitioners in WP (ST) No. 968 of 2020.

Mr. Umesh H. Pawar for the Petitioners in WP (ST) No.1089 of 2020.

Mr. Umesh Pawar i/b Mr. Prashant Bhavke for the Petitioner in WP (ST) No.1250 of 2020.

Mr. B.V. Samant, AGP, for the Respondent – State in all matters.

**CORAM : S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

TUESDAY, 28TH JANUARY, 2020

P.C. :

1 On the earlier occasion, we had passed a specific order requesting Mr. Samant, learned AGP, to take instructions.

2 Our anxiety was expressed in our order of 23rd January, 2020.

3 Mr. Samant has taken instructions and has stated that the petitioners and other similarly placed teachers cannot invoke sympathy and claim such reliefs to which they are not entitled in law.

4 We have found from the record of Writ Petition No.747 of 2020 that the teachers-petitioners before us were appointed as Assistant Teachers in the respondent No.8-School on unaided divisions.

5 The petitioners appointment as unaided teachers have been approved by the 7th Respondent to the petition. The Respondent No.7 approved the appointment of the petitioners on 25th May, 2018. That would mean that these teachers are entitled to the salary grant admissible to their post. In other words, the public at large whose money is at stake would be utilised by the Government to pay the salaries to the teachers.

6 However, the petitioners are aggrieved and dissatisfied with the fact that the third respondent to this petition has directed the Managements to terminate the services of the petitioners due to non-compliance with the terms and conditions of appointment and not to disburse the salaries.

7 The Director of Primary Education, Government of

Maharashtra has issued the impugned communication on the premise that the petitioners have been employed by the Managements, although the Managements and the teachers are both aware that after the enactment of The Right of Children to Free and Compulsory Education Act, 2009, which came into force on 1st April, 2010, the Hon'ble Supreme Court declaring this to be valid, there has been an establishment of the Educational Tribunal. This was hitherto known as the National Council of Teachers Education ("NCTE" for short). Thereafter, there is a reference in the impugned order to the communications from the NCTE dated 23rd August, 2010 and 29th July, 2011. The primary teachers who are supposed to teach the children admitted in standards I to VIII ought to fulfill the minimal eligibility criteria. The minimal eligible criteria is clearing of an examination known as Teachers Eligibility Test ("TET" for short). That has been made compulsory. Now, this test has been made compulsory even by the Maharashtra Government after it issued the communications of 13th February, 2013, and the Corrigendum dated 6th March, 2013. The State Government's direction is that this qualification (clearance of TET) has to be obtained by 31st March, 2019. That is how on 24th November, 2017, by a

Government Resolution, this was communicated to all concerned. Now, the NCTE says that not only this TET has to be cleared, but these teachers must possess a D.Ed. and B.Ed. qualification also.

9 Now, there is a reference to another Government Resolution of 24th August, 2018, stating that the cut-off date is 30th March, 2019 and if the qualifications are not obtained by this cut-off date, the appointments of the unqualified teachers would be terminated. The impugned order gives details of how the TETs were conducted from the time the stipulation has come into force. The TET qualifications could have been obtained by the present petitioners as well. It is not their case that they were not aware of these Government Resolutions and the policy itself. It is not the case of the petitioners that this policy is bad in law or that there is any challenge to it raised by either them or other teachers. Thus, the Managements and the teachers have all accepted this policy. The policy was widely published, in the sense each of the Government Resolutions are published in the Government Gazette. There is a presumption that all concerned and affected by the policy are aware of it, the moment it is published in this manner. Now, the State of Maharashtra has decided that even the

competent courts should be apprised of this policy and the Government Resolutions. Ultimately, such policies are framed so as to improve the quality of education. The quality of education can be improved only when totally eligible and duly qualified persons are appointed as teachers. Those who are familiar with the subjects and who cleared the necessary tests alone can be expected to impart quality education. All those who are aware that they were not qualified but have been given an opportunity to obtain the qualification are unable to do so, must give way to those who possess such qualifications. This is how even public employment is perceived and we do not think that the Director of Education (Primary) was in error in informing the teachers by the impugned communication that if these qualifications are not obtained, the cases of such ineligible and unqualified teachers would be taken up promptly for consideration and these teachers would be duly informed about the termination of their appointment. So long as the Managements do not comply with the direction of the Government, they will have to bear the financial burden of paying the salaries. Though the appointments are against aided posts or in aided divisions of a School, the Government has duly clarified that they will not bear the financial

burden with effect from 1st January, 2020.

10 We find that whenever such measures are taken by the State, unmindful of the fact that the policies are devised and framed in order to subserve larger public interest, petitions are filed in the High Court. The Benches and the Principal Seat are not fully apprised of the whole scheme and the underlying object and purpose. The petitioners invoke nothing, but sympathy of this Court and apprehending that thousands of teachers would be terminated or would lose employment, protective interim and ad-interim orders are passed. This has an adverse impact on education and does not subserve public interest, simply because there is an understanding prevailing and erroneously that none others than teachers, non-teaching staff, Management, children and their parents are the stakeholders in primary education. If primary education is funded by the State and from public exchequer and public funds, then, equally the tax payers can demand from the State, total complete transparency and fairness in implementation of the policies, including taking harsh and penal measures. This expectation is belied by uncalled for protective orders and which defeats the very purpose of The

Right of Children to Free and Compulsory Education Act, 2009. The object and purpose is to make primary education free and compulsory. However, this is not at the cost of quality. In fact, primary education shapes the mind and personality of a child. If the right values are not inculcated and imbibed at this early age and the child is not exposed to subjects like languages, basic mathematics, social studies, he would not be interested in education. The teachers have to inculcate the value and importance of education in them. The same cannot be left to parents and the society as a whole. If primary education is also value-based, then, all the more this expectation is not too much.

11 Since all the petitioners covered by all orders of this Court are apprehending termination of their employment, it is for the appropriate and competent authority to devise a measure so as to consider their version. We are not going to direct the Government to do so once we have noted, in the foregoing paragraphs, the purpose of the policy. If there is a direction from the National Council of Teachers Education and the Department of Human Resources Development, Government of India, then, all the more we are not going to allow the State Government to

deviate from the rigors of the same. If that includes termination of employment, then, it is entirely for the State Government to explain as to why it was and is reluctant to enforce the scheme of the Central Government. It is the State Government which must explain to the teachers why it relaxed the rigor of this condition which is otherwise fair, just and reasonable. It is then the State Government which must explain to them as to why it is no longer in a position to bear the financial burden. We do not think that the petitioners can call upon the High Court to explain all this to them and we are of the firm opinion that none of the petitioners have a vested or fundamental right to question such policy.

12 In the circumstances, in case of these teachers, who have appeared for a examination to obtain the qualification (TET), until the results of the same are declared, their appointments should not be terminated. The petitioners must realise that they have no right to continue if they fail to clear the test and they cannot dictate to the Government or to the Court that no such tests should be held or even after the cut-off date, their job should be protected if they do not attain this qualification. We are not inclined to grant such orders as we

neither frame policies nor implement them.

13 Each of these petitions are, accordingly, disposed of.

R.I. CHAGLA, J.

S.C. DHARMADHIKARI, J.