

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1335 OF 2019

Tulshiram Shankar Kamble & others

-- Petitioners

vs.

The State of Maharashtra and others

--Respondents

Mr. Nitin Choudhari, Advocate for Petitioner.

Ms. K. R. Deshpande, AGP for Respondent Nos.1 to 3.

CORAM : NITIN JAMDAR &
ANIL S. KILOR, JJ.

DATE : 04 MARCH 2021

P. C. :

This Petition is filed by 09 Petitioners, who were working on temporary / daily wage basis as Teachers in Government Secondary Ashram School under the Project Officer, Integrated Tribal Development Project.

2. Petitioner No.1 – Tulshiram Shankar Kamble joined the services of Respondent No.4 on 27 August 2004 as a Teacher Higher Secondary School. Petitioner No.2 – Rajesh Bhayyaji Durge joined the services of Respondent No.4 on 04 September 2003 as a Teacher Secondary School. Petitioner No.3 – Kirmani Ahmed Shaikh joined the services of Respondent No.4 on 24 November 2004 as a Teacher Secondary School. Petitioner No.4 – Kapila Shankar Challawar joined the services of Respondent No.4

on 05 August 2005 as a Teacher Secondary School. Petitioner No.5 – Kavita Jairam Barsagade joined the services of Respondent No.4 on 17 July 2007 as a Primary Teacher. Petitioner No.6 – Puneshwar Haridas Durge joined the services of Respondent No.4 on 07 July 2005 as a Teacher Secondary School. Petitioner No.7 – Vishweshwar Govinda Waghade joined the services of Respondent No.4 on 14 August 2007 as a Teacher Secondary School. Petitioner No.8 – Bhimrao Malayya Madavi joined the services of Respondent No.4 on 04 September 2003 as a Teacher Primary School. Petitioner No.9 – Gavrao Gangadhar Amalpuriwar joined the services of Respondent No.4 on 17 August 2009 as a Teacher Higher Secondary School.

3. It is the case of the Petitioners that they were appointed on vacant and sanctioned posts and continued to work for more than 11 years. The Petitioners have filed this Petition for a direction to the Respondent – State to regularize their services.

4. On 17 February 2021, after hearing the parties, following order was passed :-

“Heard the learned Counsel for the Parties.

2. The Petitioners who are working on temporary and daily wage basis in Ashram Schools have filed these Writ Petitions seeking regularization of their services. Petitioners rely on the decision of the Division Bench of

this Court (Aurangabad Bench) rendered in Writ Petition No. 5867/2015 and others dated 31 October 2018.

3. It is the contention of the Petitioners that the Division Bench after considering the law laid down by the Apex Court has held that since the Petitioners therein were working on sanctioned post where the work load was available and that Petitioners therein had agreed to officiate in remote – tribal areas and that no selection process has taken place, they were entitled for regularization. The learned Counsel for the Petitioners also points out that the State of Maharashtra has challenged the said decision and the Special Leave Petition was dismissed by order dated 20 August 2020 with certain modification and additional criteria.

4. The learned Assistant Government Pleader states that distinguishing features in the present petition is that the present Petitioners were not working on one post, as was in the case of the decision rendered by the Aurangabad Bench, but, they were working on different posts. The learned Assistant Government Pleader accepts that the different posts were vacant posts, however, nothing is placed on record whether there were sanctioned post, which is one of the main criteria stressed by the Division Bench. The learned Assistant Government Pleader seeks time to file an affidavit after examining the case of each of the Petitioner, as to whether they were appointed on different sanctioned post.

5. The affidavit to be filed within a period of two weeks. Stand over to 4 March 2021.”

5. An additional affidavit is tendered by the learned Assistant Government Pleader, wherein it is accepted that the Petitioners were appointed on a vacant and sanctioned posts. The Office of the Government Pleader will ensure that the reply affidavit is filed on the record of this Court. It is sought to be however contended that the Petitioners did not participate in the regular selection process and therefore, it would amount to a backdoor entry which should not be permitted.

6. It is not possible for us to accept these submissions of the State, for the decision of the Division Bench at Aurangabad in Writ Petition No. 5867 of 2015, wherein Respondents were directed to regularize the services of the Petitioners who has completed 10 years, has been upheld by the Apex Court by dismissing Special Leave Petition (Civil) by the following order :-

“Delay condoned.

After hearing the learned counsel for the petitioners and the respondents, we see no reason to interfere with the judgment(s) passed by the High Court. Learned counsel for the State requests three months’ time for implementation of the judgment of the High Court. The State is directed to regularize the service of the respondents within three months from today.

Learned counsel for the petitioners submits that the respondents do not have Teacher Eligibility Test (TET) qualification which is an essential eligibility criteria of appointment as primary teachers. Ms. Pradnya Talekar learned counsel for the respondents submits that the respondents were initially appointed prior to the Right of Children to Free and Compulsory Education Act, 2009 ('the Act') came into force and the educational qualifications as contemplated under the Act are not applicable to the respondents. We do not agree with the submissions made by the learned counsel for the respondents.

We direct the respondents who were appointed and regularized as Primary Teachers to complete the TET qualification within a period of five years in default of which the State Government shall terminate their services.

The special leave petitions stand disposed of.

Pending application(s), if any, shall also stand disposed of."

7. Though the State has placed on record by way of an affidavit that a Review Application is filed, there is no order as on date and the directions contained in order passed dated 20 August 2020 by the Apex Court operate.

8. The learned counsel for the Petitioners has also placed on record order dated 16 December 2020 passed by the Division

Bench of this Court (Principal Seat) in *Writ Petition No. 529 of 2019 and other connected Petitions in the case of Satappa Krushnath Powar vs. The State of Maharashtra and others*, wherein the decision of the Division Bench (Aurangabad Bench) dated 31 October 2018 is followed. Before the Division Bench at Principal Seat, the State had argued that the Petitioners therein did not participate in the regular process, the said contention was not accepted. The Division Bench has also taken note of the order passed by the Apex Court and has issued directions in consonance with the order passed by the Apex Court.

9. Since all factual aspects taken note in the decision of the Division Bench at Aurangabad and the Division Bench at Principal Seat are present the cases of the Petitioners herein, to maintain judicial consistency, the same order will have to be passed. We also note that the grounds taken in the reply, the appointments were temporary have been taken note by the Division Bench at Aurangabad.

10. Accordingly the Writ Petition is disposed of by the following order :-

(a) The Respondents shall regularize the services of the Petitioners who have completed 10 years of service with effect from their date they have

completed 10 years or the date of filing writ petition, whichever is later.

(b) Those Petitioners who have completed 10 years, for all practical purpose their service shall be considered regular from the date mentioned in clause (a) (above). However it is made clear that none of the Petitioners would be entitled to actual financial benefit for the period prior to the date of this order except the honorarium which was already paid all these years to the Petitioners. They will be however entitled for the regular pay scale from the date of this order.

(c) The respondents shall count the services of the Petitioners from the date of appointment continuously for counting 10 years of their service.

(d) It is made clear that the Petitioners who are appointed and are regularized as Primary Teachers as the case may be shall complete Teacher Eligibility Test (TET) qualification within a period of five years from today and in case of default in completing the said qualification within the time prescribed in this order, the State Government in that event shall be empowered to terminate their services on that ground.

(e) The respondents shall implement this order to regularize the services of the Petitioners within three months from today.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]