

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

942 CIVIL APPLICATION NO. 1253 OF 2023
IN WP/1358/2023

NISHA W/O SHAKTIKUMAR RAUT
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS

...

Mr. Sambhaji S. Tope, Advocate for Applicant.
Mr. P. S. Patil, AGP for the Respondents / State Authorities.
Mr. A. R. Nikam, Advocate for Respondent No.3.

...

AND
CIVIL APPLICATION NO. 1254 OF 2023
IN WP/1358/2023

NITIN S/O MADHAORAO DHAWALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS

...

Mr. Sambhaji S. Tope, Advocate for Applicants.
Mr. P. S. Patil, AGP for the Respondents / State Authorities.
Mr. A. R. Nikam, Advocate for Respondent No.3.

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CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 17th February, 2023.

Per Court:

1. By Civil Application No.1253 of 2023, the applicant /
petitioner has put forth prayer clauses 'B' and 'C' as under:-

“B) This Hon’ble Court, may kindly, recall the order dated 29/09/2022 passed in this Writ Petition No. 6096 of 2022 at the Hon’ble High Court bench at Nagpur (Exh-A).

C) This Hon’ble Court, may kindly grant interim relief in favour of the Applicant thereby may kindly be direct not to take any adverse action in view of impugned communications/order 03/08/2022 issued by Res. No. 3, and may kindly further direct to pay the monthly salaries to the Applicant.”

2. By Civil Application No.1254 of 2023, the applicants/petitioners have put forth prayer clauses ‘B’ and ‘C’ as under:-

“B) This Hon’ble Court, may kindly, recall the order dated 29/09/2022 passed in this Writ Petition No. 6096 of 2022 at the Hon’ble High Court bench at Nagpur (Exh-A-2).

C) This Hon’ble Court, may kindly grant interim relief in favour of the applicants thereby may kindly be direct not to take any adverse action in view of impugned communications/order 03/08/2022 issued by Res. No. 3, and may kindly further direct to pay the monthly salaries to the Applicants.”

3. We have considered the extensive submissions of the learned advocates for the respective sides.

4. All these matters lodged at the Principal Seat and the Nagpur Bench, have been transferred to the Aurangabad Bench under the orders of the Honourable The Chief Justice of the Bombay High Court. All these matters pertaining to the TET scam, are now to be dealt with by the Court at Aurangabad.

5. The issue raised by the applicants/petitioners is as regards a direction that adverse action pursuant to the communication dated 3rd August, 2022, may not be initiated. The other prayer put forth is, that as the applicants/petitioners are working and the work cannot be extracted without payment of remuneration / salary, the order passed by this Court at Nagpur Bench dated 29th September, 2022 in Writ Petition No.6096 of 2022, refusing salary, be modified / recalled and a direction to pay salaries may be issued.

6. The learned advocate for the applicants / petitioners submits that before all these matters were clubbed and transferred to the Aurangabad Bench, the Aurangabad Bench, the Principal Seat at Bombay, have been consistently granting minimum protection to the petitioners. As they were working, this Court has directed that their services should not be terminated. In some cases, before the Principal Seat, some of the teachers were terminated. The Principal Seat has ordered that if the services of the petitioners are terminated, those

petitioners are at liberty to take appropriate steps as against their termination. He, therefore, submits that in such TET scam matters, when this Court has been granting minimum protection to the petitioners and has also permitted the enquiries to proceed, if initiated, it was only in the present solitary case at Nagpur, that interim relief was not granted.

7. The learned advocate representing the Maharashtra State Examination Council has strenuously supported the order dated 3rd August, 2022 and he submits that the order, which is sought to be modified, is a well reasoned order. He submits that no inquiry was conducted in view of the law laid down by the Honourable Supreme Court in *Nidhi Kaim Vs. State of Madhya Pradesh and others, 2016 (7) SCC 615*.

8. We have gone through the first order passed in this matter dated 29th September, 2022 at Nagpur. From paragraph Nos.5 and 6, we can gather that the Nagpur Bench was informed by the learned Incharge Government Pleader that an enquiry was initiated against the present petitioners and in the cases before the Aurangabad Bench, no enquiry was conducted against those petitioners. On this count, the learned advocate for the applicants draws our attention to the notice dated 13th October, 2022, vide which, the Deputy Director of Education

has initiated an enquiry as against the present petitioners and the first date of hearing was posted on 20th October, 2022 at 11:00 am. In the light of this notice and there being no such notice issued to the petitioners there before, the learned advocate submits, on instructions, that the fact of no notice of hearing having been issued before the order was passed at Nagpur Bench on 29th September, 2022, would establish that the learned Incharge Government Pleader had not made a factually correct statement.

9. With the assistance of the learned advocates, we have once again perused the common notification dated 3rd August, 2022 issued by the Commissioner, Maharashtra State Examination Council. It is a single order passed on the said date and cyclostyled copies have been forwarded to the Regional Deputy Directors of Education, Education Officers, Primary and Secondary, all over the State. List of names are annexed to the said order and punishment has been awarded to those whose names are enlisted. Punishment awarded to them, is mentioned in front of their names.

10. We have also perused the order dated 8th September, 2022 passed at the Principal Seat in Writ Petition No.10404 of 2022 and connected matters (*Mahendra Hilal Bhamare and another Vs. State of Maharashtra and others*), wherein the Principal Seat has

granted interim protection to the said teachers. Their salaries have been protected. This was followed by an extensive order passed at Aurangabad Bench on 20th September, 2022 in Writ Petition No.9430 of 2022 and connected matters (*Jyoti Uttamrao Shinde and others Vs. The State of Maharashtra and others*). The order dated 1st December, 2022 passed at the Principal Seat in Writ Petition No.14599 of 2022 and connected matters, the order dated 6th December, 2022 passed at the Nagpur Bench in Writ Petition No.7618 of 2022 etc. indicate that this Court has consistently granted protection to services and the last drawn salary.

11. It is undisputed that the issue as to whether the TET is mandatory for the teachers and also to the minority institutions, is pending before the Full Bench at Aurangabad and also before the Honourable Supreme Court. Since the matter is pending before the Honourable Supreme Court, the Full Bench at Aurangabad has adjourned the proceedings.

12. As all the petitioners are working and the termination orders have not yet been served upon them, it would be ironical that few teachers, as like the petitioners before us, are without any interim protection and when most of the teachers involved in the same TET scam, have been protected and are drawing their salaries. It appears

that these petitioners were refused interim relief in the light of the mistaken statement made by the learned Incharge Government Pleader at Nagpur, which appears to be factually incorrect after perusing the impugned order dated 3rd August, 2022.

13. In view of the above and in order to draw parity amongst these identically situated teachers, Civil Application No.1254 of 2023, is partly allowed as under:-

- A) If any specific enquiry is initiated against any of these petitioners/applicants or even a common inquiry is initiated, the same shall continue unhindered and there shall be no embargo on such inquiry.
- B) As long as all the employees / petitioners, who are in employment on account of the interlocutory orders passed by this Court at Mumbai, Aurangabad and Nagpur, the present petitioners deserve to be treated at par and equities have to be balanced by directing that they should not be terminated and their salaries be paid for the days on which they discharge their duties.
- C) Needless to state, such direction would continue only as an interim measure and until further orders in this petition. If the disciplinary proceedings are concluded, the authorities would be at liberty to initiate appropriate steps as may be permissible in law.

D) In so far as the arrears are concerned, as the petitioners/applicants have worked and discharged their duties, the unpaid salaries from September 2022 onwards, would be calculated by the appropriate authority and the same would be paid to the petitioners / applicants within a period of 60 days.

14. Civil Application No.1253 of 2023, in respect of minority institution, stands disposed off in the above terms.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

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