

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2356 OF 2023

AMAN SOCIETY THROUGH ITS PRESIDENT MOHAMMAD KHAN AKBAR
KHAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

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Advocate for Petitioners : Mr. Sambhaji G. Munde
AGP for Respondent Nos.1 to 3 : Mr. P. S. Patil
Advocate for Respondent Nos.4 & 5 : Mr. V. M. Vibhute

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CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.

DATED : 01st MARCH, 2023

PER COURT :

1. The Petitioner No.1 is a minority institution and Petitioner No.2 is the employee, who has not been granted approval. Her proposal seeking approval is pending. The learned counsel for the Petitioners concedes that Petitioner No.2 has not passed the Teachers' Eligibility Test (TET).
2. This issue, as to whether the teaching employees, working in the minority institutions, are required to pass the TET, is referred to the Larger Bench. In similar circumstances, this Court had passed an order on 06.07.2021, in Writ Petition No. 545 of 2020, filed by *Sir Sayyad Education Society and another vs. The State of Maharashtra and another*, directing the

Education Officer to consider the proposal for continuing the employee and payment of salary and the same would not be withheld on the ground that Petitioner No.2 does not possess TET qualification.

3. The learned advocate Mr. Vibhute, representing respondent Nos.4 and 5, submits that if the proposal of Petitioner No.2 is pending, the same would be decided expeditiously.

4. In the order dated 06.07.2021, passed in Sir Sayyad Education Society (supra), this court held in para Nos. 2 to 5, as under:-

“2. Petitioner No.2 is not granted continuation and approval on the ground that he has not passed the TET (Teachers’ Eligibility Test) examination. The issue, whether such a condition would be applicable to teachers who are employed in Minority Community Institutions under the RTE Act, has been referred to a Larger Bench by this Court vide its order dated 01/03/2019 delivered in WP No.13770/2018 filed by Burhani National Education Society and others Vs. The State of Maharashtra and connected matters.

3. We have also perused further orders passed by this Court on 01/03/2019 in a group of petitions, WP No.13770/2018 filed by Burhani National Education Society and others, wherein the teachers at issue were allowed to appear for the TET examination without prejudice to the claims made by the Educational Institutions that the said condition is not applied to the Minority Institutions. In order dated 12/12/2019, this Court recorded that the teacher at

issue was appearing in the TET examination without prejudice to his rights.

4. In this backdrop, Mr.Kazi submits on instructions from petitioner No.2 that he would appear for the TET examination at the first available opportunity from today and he is confident that he would pass the examination.

5. In the above backdrop, we dispose off this petition with a direction to the Education Officer to consider the proposal of petitioner No.2 for continuation and payment of salary and the same would not be withheld on the ground that petitioner No.2 does not possess TET qualification. Needless to state, this order and the benefits that would be available to petitioner No.2, would be subject to the decision in the pending reference case before to the Larger Bench. In the event, petitioner No.2 is adversely affected by the decision arrived at by the Larger Bench, he would be at liberty to seek redressal of his grievance.”

5. Reliance is placed by the petitioners on the judgment delivered in ***Amol Baban Sangar vs. State of Maharashtra and others, (2022) 2 Bom.CR. 484***, wherein this court has concluded that once an employee has been granted approval and if such approval is to be reviewed, then it is to be done only in accordance with the law and by following the due procedure and parameters of law. The power to review is an administrative power. Such power has to be conferred upon the authority so as to be exercised.

6. As such, we direct respondent No.4, to decide the proposal of

Petitioner No.2, if not already decided, as expeditiously as possible and preferably on or before 06.04.2023. Considering the order passed on 6.7.2021 in *Sir Sayyad Education Society (supra)*, Petitioner No.2 would be entitled for payment of salary and which would not be withheld only on the ground that she has not passed the TET examination.

7. In so far as the other teaching employees are concerned, whose approval is already granted, the authorities would ensure that the payment of their salaries is made on regular basis.

8. Petitioner No.2 undertakes before this Court that she would be appearing for the first ensuing TET examination.

9. In view of the above and by consent of the parties, this Petition is disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)