

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4766 OF 2023

TAHOORA NASREEN SAYYED MUZAFFAR ALI
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS

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Advocate for the Petitioner : Shri V.S. Panpatte
AGP for Respondents 1, 2 and 4/State : Shri S.K. Tambe
Advocate for Respondent 3 : Shri V.P. Deshmukh
Advocate for Respondents 5 and 6 : Shri R.C.Bramhankar

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CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 21st September, 2023

Per Court :-

1. The Petitioner did not possess TET qualification at the time of her appointment on 15.06.2020. She passed her CTET on 03.03.2023.

2. Admittedly, the Division Bench of this Court [Coram : S. V. Gangapurwala (as His Lordship then was) and Shrikant D. Kulkarni, JJ.], vide judgment dated 11/06/2021 delivered in Writ Petition No.4904/2020 (*Sagar Gopichand Bahire Vs. State of Maharashtra and others*) and a group of

petitions, concluded that, if a candidate does not have the TET qualification prior to 31/03/2019, such candidates cannot be retained in service and the Government will not be liable to pay their salaries. Since the Petitioners desired to approach the Hon'ble Supreme Court, this Court protected the teachers by directing status-quo. The matter has travelled to the Hon'ble Supreme Court in Special Leave to Appeal (Civ.) No.8300/2021 (*Priti Ravindra Warghante and others Vs. the State of Maharashtra and others*) and a group of petitions, and status-quo order has been continued.

3. The learned Advocate for the Petitioner points out the order passed by this Court (Coram : Mangesh S. Patil and Shailesh P. Brahme, JJ.), dated 10/08/2023 in Writ Petition No.9944/2023. Paragraph Nos.1 to 4 of the said order read as under :-

“1. The petitioner is challenging the order passed by the respondent no.4/Education Officer (Secondary), Aurangabad, refusing to grant permission for including his name in the online portal for disbursement of salary on the ground that he had not passed Teacher Eligibility Test examination (T.E.T.) as per the Government decision dated 13.02.2013.

2. It is common knowledge that the subject pertaining

to the T.E.T. qualification is already sub-judice before the Supreme Court which has directed status-quo to be maintained.

3. In the light of above, we quash and set aside the impugned order, direct the respondent no.4 to pass order afresh, which shall not be by resorting to the ground which has been mentioned in the impugned communication.

4. The decision shall be taken as expeditiously as possible and in any case within six weeks. This order shall be subject to the final outcome of the matter before the Supreme Court.”

4. It is apparent that the judgment of this Court, dated 11/06/2021 in ***Sagar Gopichand Bahire (supra)***, was not brought to the notice of the Co-ordinate Bench of this Court.

5. Nevertheless, the predicament before us is, as to how far these teachers can survive with meager salaries or no salary at all, only on the ground that they are not TET qualified or did not possess TET qualification at the time of their appointment. They are not involved in the TET scam. This Court concluded that TET under the Right of Children to Free and Compulsory Education Act, 2009 (for short ‘the 2009 Act’) is mandatory. The Hon’ble Supreme Court would now decide the issue. Until then, all the teachers are protected and the status-quo in their employment is maintained.

6. There are cases, wherein the teachers before us contend that the Management did not pay them at all and they are working without salaries. Unless their names are included in the 'Shalarth Pranali', they are not entitled for salary though the grants may be available.

7. We do foresee the difficulties of these teachers, who either have to survive without salary or have to survive on a stipend. No doubt, the fault lies with these teachers, since they did not pass the TET at the time of their appointment and have created a problem for themselves. The learned Advocate for the Petitioner contends that, the TET qualification will be mandatory only for those teachers who have been appointed after the introduction of the 2009 Act, which came into operation on 01/04/2010. The orders of the Hon'ble Supreme Court would be binding upon all.

8. The learned AGP has strenuously opposed this petition, contending that such petitions are likely to open a pandora's box. These teachers, who were not TET qualified at the time of their appointment, would be approaching this Court for seeking orders for entering their names in the 'Shalarth Pranali'. They would draw salaries/ scales as are available

through the salary grants extended by the Government, which are available only to those teachers, who have requisite qualifications. He raises a dispute of salary grants to the teachers, who do not have requisite qualification.

9. He reminds us of the judgment delivered by this Court in *Sagar Gopichand Bahire (supra)*, wherein this Court has finally concluded that, the teachers without TET need to be terminated. He further submits that, since the Hon'ble Supreme Court had directed status-quo to be maintained, it would not mean that, further service benefits can be granted to the teachers, who do not have the TET qualification.

10. This is a Court of equity and while passing orders, this Court has to balance the equities. If the interest of the teachers are to be protected by passing a conditional or a qualified order, the interest of the State Government, which extends the salary grants, also has to be taken into account, as the State Government insists that their salary grants should not be utilized for payment of salaries to those teachers, who do not have requisite qualification.

11. In the light of the peculiar aforesaid circumstances, we find that, it would be appropriate to bind the Petitioner to an

undertaking that, she would abide by the decision of the Hon'ble Supreme Court, and if it is concluded by the Hon'ble Supreme Court that, she cannot be continued in employment, she would suffer the consequences. By filing such undertaking, the equities would be balanced while passing an order granting her salary by allotment of 'Shalarth-ID'. Needless to state that, if the Hon'ble Supreme Court concludes that the TET is mandatory at the time of appointment, such teachers will then have to be removed from employment.

12. In view of the above, **this Writ Petition is partly allowed.** The impugned order dated 17.04.2023 is quashed and set aside, with the following directions :-

(a) The Petitioner would tender an affidavit undertaking that, she would abide by the conclusions that would be drawn by the Hon'ble Supreme Court, and if the verdict is adverse to those teachers who do not have the TET qualification or have cleared the TET after 31/03/2019, or as the case may be, she would abide by the same without raising any cause of action.

(b) Let such affidavit undertaking be filed in this Court within 15 days from today and a copy be tendered to the concerned Education Officer within the same timeline.

(c) Considering the above, the proposal of the Petitioner would be considered for entering her name in the 'Shalarth-ID' on it's own merits, save and except the reason that she is not TET qualified at the time of her appointment. Needless to state, the proposal would be decided within 30 days after the submissions of the undertaking.

(d) If an adverse order is passed by the Hon'ble Supreme Court by which the teachers are covered by clause (a), the State Government would not recover the salaries already paid to the Petitioner, since she has worked for those tenures and she has earned her salaries for performing her duties.

(e) In the event, the candidates like the Petitioner are protected by the Hon'ble Supreme Court's conclusions and they are held to be qualified to continue in employment, they would be entitled for all service benefits like promotions, increments, etc..

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(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)