

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

952 WRIT PETITION NO.1267 OF 2021

AVINASH MADHAV HATRKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
AND

955 WRIT PETITION NO.4413 OF 2023

KUMUDINI DESHBHUSHAN KANDARKAR
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND

956 WRIT PETITION NO.4764 OF 2023

RANI ABASAHEB KSHIRSAGAR
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND

957 WRIT PETITION NO.6368 OF 2023

NARAYAN FAKIRA GORADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND

958 WRIT PETITION NO.6758 OF 2023

SUNIL ANANTRAO THORVE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND

960 WRIT PETITION NO.10367 OF 2023

KRUSHNA CHANDANRAO NANDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

THROUGH ITS PRINCIPAL SECRETARY AND OTHERS
AND
1051 WRIT PETITION NO.10033 OF 2023

RAMJAN MALLANGSHAH SHAIKH
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS SECRETARY AND OTHERS
AND
1064 WRIT PETITION NO.12888 OF 2021

CHANDRAKANT DEVIDAS BIRHADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. V. S. Panpatte, Mr. I. D. Maniyar, Advocates for the Petitioners in
respective Petitions.

Mr. S.G. Karlekar, Mr. P. K. Lakhotiya, Mr. V. M. Kagne, AGPs for the
Respondents-State

Mr. Kalyan V. Patil, Advocate for Respondent No.4 in WP/6368/2023

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

DATE : 14th September, 2023

ORDER:

1. In the above Petitions, some of the petitioners have not
passed the Teachers Eligibility Test (TET) at all, and some of them have
passed the Teachers Eligibility Test (TET), after the cutoff date
31.03.2019.

2. Two Petitioners in Writ petition No. 12888/2021 have been
appointed in the year 2011, prior to the GR dated 12.03.2013 due to
which the condition of passing TET was brought in to effect. Therefore,

Mr. Panpatte submits that the condition of passing TET would not be applicable to these petitioners.

3. The issue pending before the Hon'ble Supreme Court is as regards whether TET is compulsory for minority institutions, whether the Cut off date 31.03.2019 could be a mandate for disqualifying the teachers to continue in employment though having acquired TET qualification after 31.03.2019, whether passing of C-TET could give equivalence to the candidates who have not passed TET etc.

4. Not a single judicial pronouncement has been cited before us to indicate a ruling having binding effect that a teacher without the TET qualification can still be eligible to continue in employment.

5. Mr. Panpatte, relies upon a short order dated 27.07.2023 passed by this Court (Coram: Mangesh S. Patil and Shailesh P. Bramhe, JJ) in WP No. 9080/2023, **Jitendra Ganpati Adde Vs. The State of Maharashtra and others** to contend that even a teacher without passing TET can be considered to be a validly appointed teacher and can continue in employment.

6. Having gone through the said order, we find that the view taken by 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, was not cited before the court, wherein a final conclusion was drawn by the Bombay High Court that the candidate who does not pass TET prior to the cutoff date 31.03.2019, cannot be kept in employment. In all those matters the issue was about candidates who had passed TET after the cutoff date or did not have TET qualification. Nowhere do we find a ruling by the Court that a person can continue in employment without even passing TET. Since those Petitioners desired to approach the Hon'ble Supreme Court, this Court protected them by directing status-quo to be maintained. 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 the status-quo order has been continued.

7. The petitioners rely upon the interim order passed by this court, more specifically the order dated 16.07.2020 passed in **Writ Petition No. 4838/20 and Writ Petition (ST) No. 4646/2020** [Coram: Ujjal Bhuyan (as His Lordship then was) and N. R. Borkar, JJ]. In our view, much water has flowed under the bridge, thereafter. It is noticed that the inclusion of the name of the candidate in the Shalarth Pranali is actually based not on the approval granted, but in view of the

qualification of TET as non acquiring of that qualification is a ground for termination of the service of the teachers/petitioners, as is held in Sagar Gopichand Bahire (supra).

8. We are of the view that since the Hon'le Supreme court would now be considering all such issues and would be laying down the law, it would be appropriate to protect the services of the petitioner and similarly situated teachers only as an arrangement to await the verdict of the Supreme Court.

9. Paragraph Nos.1 to 4 of the order dated 10.08.2023, passed by this Court (Coram : Mangesh S. Patil and Shailesh P. Brahme, JJ.), in Writ Petition No.9944/2023 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.”

10. 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. Status-quo was ordered in that case and the Hon’ble Supreme Court has continued the said order.

11. Nevertheless, the predicament before us is, as to how far the Petitioners can survive with meager salaries or no salary at all, only on the ground that they are not TET qualified/cleared TET after the cutoff. 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.

12. 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.

13. We quite appreciate the difficulties of these Petitioners, who either have to survive without salary or on a stipend. No doubt, the fault lies with these Petitioners, since they did not pass the TET and have created a problem for themselves. The learned Advocates for the Petitioners submit that, the TET qualification is not mandatory, or 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.

14. The learned A.G.P. has strenuously opposed these petitions, contending that such petitions are likely to open a pandora's box. These teachers, who are not TET qualified, would be approaching this Court for seeking orders for entering their names in the 'Shalarth Pranali'. They would draw salary scales as are available through the salary grants extended by the Government, which are available only to those teachers, who have requisite qualification. He raises a dispute of salary

grants to the teachers, who do not have requisite qualification. 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 prior to 31/03/2019 .

15. 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 the requisite qualifications.

16. In the light of the peculiar circumstances as noted above, we find that, it would be appropriate to bind the Petitioners with an undertaking that, they would abide by the decision of the Hon'ble Supreme Court, and if it is concluded by the Hon'ble Supreme Court that, they cannot be continued in employment, they would suffer the consequences. By filing such undertaking the equities would be

balanced while passing an order granting them the salaries by allotment of 'Shalarth-ID'. Needless to state that, if the Hon'ble Supreme Court concludes that the TET is mandatory, such teachers will then have to be removed from employment.

17. In view of the above, **these Writ Petitions are partly allowed.** The impugned orders are quashed and set aside, with the following directions:-

- (a) The Petitioners would tender an affidavit undertaking that, they 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, they 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 proposals of the Petitioners would be considered for entering their names in the 'Shalarth-ID' on their own merits, save and except, the reason that they are not TET

qualified. Needless to state, the proposals would be decided within 30 days after the submissions of the undertakings.

- (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 them, since they have worked for those tenures and they have earned their salaries for performing their duties.
- (e) In the event, the candidates like the Petitioners 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.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan