

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

WRIT PETITION NO.10022 OF 2023

**ARCHANA PANDITRAO KALE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

....

Mr. I. D. Maniyar, Advocate for Petitioner
Mr. P. K. Lakhotiya, AGP for Respondent - State
Mr. S. B. Ghute, Advocate for Respondent Nos. 3 and 4

....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 25.08.2023

PER COURT :-

1. The Petitioner has already appeared for the TET exam and is awaiting her result. She claims to be eligible for 20% grant-in-aid salary.

2. This Court [Coram: S. V. Gangapurwala (as His Lordship then was) and Shrikant D. Kulkarni, JJ], vide final order dated 11.06.2021 in Writ Petition No.4904 of 2020, concluded that TET under the Right of Children to Free and Compulsory

Education Act, 2009, is mandatory and any teacher without the TET qualification cannot be kept in employment. The effect of the said judgment was stayed for some time and the matter reached the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.8300 of 2021. The Hon'ble Supreme Court vide order dated 05.07.2021, directed status-quo to be maintained and those teachers who are in employment, are continued in employment and by the status-quo order, their salaries as on date are protected.

3. In similar circumstances, we have delivered an order dated 10.03.2023 in Writ Petition No.14939 of 2019 filed by Sumedhbodhi Dadarao Kayapak Vs. The State of Maharashtra and others and connected matters. Paragraph Nos.7 and 8 are as under:-

“7. It is beyond debate that identically placed teachers are before the Hon'ble Supreme Court in the batch of SLP bearing No. 8300 of 2021 and connected matters. Those Petitioners comprise of such teachers who have either failed the T.E.T. or have passed the same after the cut off date. There are also Petitions pending before the Hon'ble Supreme Court pertaining to the applicability of the provisions of the RTE Act to minority institutions, thereby giving rise to a question as to whether the T.E.T. could be made compulsory to the teachers who are discharging duties in minority institutions. As such, the class of litigants before the Hon'ble Supreme Court, is at par with the class of litigants before us. All of them are identically placed. There is no dispute before us that once the Hon'ble Supreme Court takes a view in the pending SLPs, the said law would be applicable even to these cases. As such, the protection granted by the Hon'ble

Supreme Court to those teachers who are before it in the pending SLPs, could be treated as being an order passed in rem.

8. *In view of the above, we deem it appropriate to direct, by way of an interim measure, as under : -*

- A] All those teachers who are presently in employment and are protected against termination, shall be paid their monthly salaries as per the scale payable to them, beginning from the month of February 2023 payable in March 2023 and the regular salary for the succeeding months, until further orders.*
- B] The above direction would not apply to teachers who have been terminated from the service.*
- C] To balance the equities, each of these Petitioners and/or teachers who would be benefited by this order, would tender an affidavit/ undertaking to the concerned Education Officer of the concerned Zilla Parishad, declaring that if the Hon'ble Supreme Court concludes that teachers who have failed in the T.E.T. or have not passed the T.E.T. before the cut off date or that the provisions of the T.E.T. are applicable even to minority institutions, they would abide by the directions as may be set out by the Hon'ble Supreme Court.*
- D] Monthly salaries would be paid depending upon the duties performed by such teachers and only if the services of such teachers are already approved.*
- E] Arrears of unpaid salaries would not be released at this stage and this would depend upon the law that would be laid down by the Hon'ble Supreme Court in the pending SLP."*

4. In view of the above, **this petition is disposed off** with a direction to the Petitioner to tender an affidavit/undertaking before the Deputy Director of Education as well as the Education Officer (Primary), within fifteen [15] days from today, that if the Hon'ble

Supreme Court concludes that teachers without TET cannot continue in employment, the Petitioner would accept the said order as binding and give up his benefits.

5. Until then, the petitioner would be paid the monthly salary as has been paid to her today and subject to the above conditions, the Respondent No.2 authority shall include the name of the Petitioner in the 'Shalarth Pranali' for the purposes of payment of salary as directed above.

6. Needless to state, this would be subject to the result of the matter pending in the Hon'ble Supreme Court. Consequentially, the impugned order stands modified to the extent of the Petitioner.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS