

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

26 WRIT PETITION NO.12615 OF 2023

SARITA NARAYAN KOLHE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

...

Mr. G. K. Kshirsagar, Advocate for Petitioner
Mr. P. K. Lakhotiya, AGP for the Respondents-State

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRADE, JJ.
DATE : 16th October, 2023

ORDER:

1. The Petitioner admittedly has not passed the Teachers Eligibility Test (TET). 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/Teachers desired to approach the Hon'ble Supreme Court, this Court protected the status of the teachers as on date 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.

2. 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.”

3. 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 and the Hon’ble Supreme Court has continued the said order.

4. Nevertheless, the predicament before us is, as to how far a Teacher can survive with meager salaries or no salary at all, only on the ground that he is not TET qualified/cleared TET after the 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.

5. 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 through the grants may be available.

6. We quite appreciate the difficulties of the Petitioner, who either has to survive without salary or has to survive on a stipend. No

doubt, the fault lies with the Petitioner, since he did not pass the TET and has created a problem for himself. Nevertheless, as has been rightly canvassed by the learned Advocate for the Petitioner 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.

7. The learned A.G.P. has strenuously opposed the Petition, contending that such petition is likely to open a pandora's box. The 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 salaries 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.

8. This is a Court of equity and while passing orders, this Court has to balance the equities. If the interest of the teacher is 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 qualifications.

9. In the light of the peculiar circumstances as noted above, we find that, it would be appropriate to bind the Petitioner with an undertaking that, he would abide by the decision of the Hon'ble Supreme Court, and if it is concluded by the Hon'ble Supreme Court that, he cannot be continued in employment, he would suffer the consequences. By filing such undertaking, the equities would be balanced while passing an order granting him 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.

10. In view of the above, **this Writ Petition is partly allowed.** The impugned order dated 08.07.2023 is quashed and set aside, with the following directions:-

- (a) The Petitioner would tender an undertaking that, he 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, he 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 his name in the 'Shalarth-ID' on it's own merits, save and except, the reason that he is TET qualified. 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 he has worked for that tenure and he has earned salaries for performing his 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, the Petitioner would be entitled for all service benefits like promotion, increments, etc.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan