

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14221 OF 2023

Ishwar Amarsing Shere & Ors.

... Petitioners

Versus

The State of Maharashtra, through the Secretary,
Tribal Development Dept. & Ors.

... Respondents

Mr. Vinayak Kumbhar a/w. Mr. Rajendra B. Khaire, Mr. Aniket S.
Phapale i/b. Ms. Ashwini Bandiwadekar for the petitioners.

Ms. S.S. Bhende, AGP for the State/respondent no. 1.

Ms. Kanchan Phatak i/b. Mr. Nitin Deshpande for respondent no.
2/MSCE.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATED: 10 November, 2023

P.C.

1. We have heard learned counsel for the petitioners.
2. This petition under Article 226 of the Constitution of India has been filed by the teachers, who are employed by respondent no. 5 and respondent no. 6-Schools. The school in question is an Ashram Shala.
3. Learned counsel for the petitioners has drawn our attention to a recent order passed in the proceedings of Writ Petition No. 13499 of 2023 (Smt. Savita Vyankatrao Deshmukh vs. The Maharashtra State Council of Examination & Ors.) and other petitions to submit that the reliefs as prayed

for in the present petition would stand covered by the observations and orders of this Court in the said order.

4. Ms. Bhende, learned AGP who had also appeared in Smt. Savita Vyankatrao Deshmukh's case would also not dispute that the reliefs in the present petition are similar. For convenience, we note our order passed in Writ Petition No. 13499 of 2023, which reads thus:

"1. This petition is filed praying for the following reliefs:

"a) Rule be issued. Record and proceeding be called for and after examining the legality, validity and propriety thereof, the impugned order dt.14.10.2022 passed by the commissioner, Maharashtra State Council of Examination Pune-01 be quashed and set aside.

b) Pending the hearing and final disposal of the present Writ Petition the operation, implementation, execution and effect of the order dt.14.10.2022 passed by the commissioner, Maharashtra State Council of Examination Pune-01 qua the petitioner be stayed.

c) Interim and ad-interim relief in terms of prayer clause b) above be granted.

d) Any other just and equitable orders be passed in the interest of Justice."

2. The immediate apprehension of the petitioner is that on the basis of the impugned order dated 14 October 2022, the petitioner is likely to face a coercive action. It may be observed that the Teachers Eligibility Test (TET) conducted in the year 2018 by Respondent No.1 / Maharashtra State Council of Examination, was the subject matter of controversy in several proceedings, inasmuch as it is the contention of Respondent No.1 that there were large malpractices. Respondent No.1 had accordingly notified to debar of 7880 candidates who according to Respondent No.1 were likely to be benefited of the malpractices. However, till date there is no finality in regard to such investigation. The case of the petitioners is that the petitioners in no manner whatsoever were concerned with any alleged

malpractices, as also there is no material whatsoever against them.

3. We find much substance in the contentions as urged on behalf of the petitioners. It cannot be that a blanket action is taken merely on the basis of the impugned order dated 14 October 2022, as also, so far no action has been resorted against the petitioners, when malpractices as alleged pertain to the examination held about 4-5 years back after the order having been passed. Respondent No.1 has even not informed to the employers of the petitioner, Respondent Nos. 6 & 7 nor to the other respondents. If this be the case, there cannot be a coercive action against the petitioners unless due procedure in law is followed.

4. We are accordingly of the opinion that the present proceedings can be conveniently disposed of by observing that in the event any material is available against the petitioners, Respondent No.1 shall communicate such material through Respondent Nos.3 & 4 to Respondent No.6 and in such event if any action against the petitioner is being taken, the same be taken by following the due procedure in law.

5. All contentions of the parties on such issues are expressly kept open. However, till such material is available and communicated, as observed by us above, no coercive action merely on the basis of the order dated 14 October 2022 be taken against the petitioners as also no service benefits including the payment of regular salaries and allowances or any other attributes in the routine of their employment be disturbed.

6. Disposed of in the above terms. No costs."

5. We accordingly dispose of this petition in terms of our order and the observations as made in paragraphs 4 and 5 of the order passed in Smt. Savita's case (supra). We also clarify that although in paragraph 5 of the said order, we have categorically observed that no coercive action merely on the basis of the order dated 14 October, 2022 be taken against the petitioners as also no service benefits including salaries and allowances or any other attributes in the

routine of their employment be disturbed, it is contended before us, that the Education authorities are nonetheless withholding and/or not releasing the salary grant in respect of the teachers. We clarify that our observations as made in paragraph 5 of the order dated 1 November, 2023 in Smt. Savita's case would also cover that no coercive action may be taken to withhold the salary of the petitioners.

6. We, accordingly, dispose of the petition in the above terms. No costs.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)