

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (St.) NO. 21683 OF 2023

Shagufta Saleem Ahmed

...Petitioner

Versus

Commissioner, Maharashtra State Council Of
Examination And Ors.

...Respondents

WITH

WRIT PETITION NO. 4735 OF 2023

Talat Nasreen Abdul Quddoos

...Petitioner

Versus

The Commissioner Maharashtra State Council Of
Examination And Ors.

...Respondents

Mr. Narayan Bubna, for Petitioner in WP (St.) No.21683 of 2023 & in
WP No.4735 of 2023.

Mrs. S. S. Bhende, AGP for State.

Mr. Nitin P. Deshpande, for Respondent / Maharashtra State Council of
Examination (MSCE).

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : NOVEMBER 1, 2023.

P.C.:

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

“a For a writ of certiorari, for a writ in the nature of certiorari and/
or for any other appropriate writ, direction or order calling for records
and processings of impugned order dated 03/08/2022 passed by
respondent no.1 annexed to present petition at Exh. B and after
examining legality, validity and propriety thereof impugned order dated
03/08/2022 passed by respondent no.1 annexed to present petition at
Exh. B, be quashed and set aside as against petitioners.

b. For a writ of mandamus, for a writ in the nature of mandamus
and/or for any other appropriate writ, direction or order directing the

respondents to regularly pay petitioners' salary and be further directed not to take any adverse action against her on the basis of impugned order dated 03/08/2022 passed by respondent no.1 annexed to present petition at Exh. B.

- c. Pending hearing and final decision of present petition,
 - i. Execution, implementation and operation of impugned order dated 03/08/2022 passed by respondent no.1 annexed to present petition at Exh. B be stayed as against petitioner.
 - ii. the respondents be directed to regularly pay petitioners' salary and be further directed not to take any adverse action against her on the basis of impugned order dated 03/08/2022 passed by respondent no.1 annexed to present petition at Exh. B.
- d. for ad-interim relief in terms of prayer clause (c i) and (c ii) hereinabove.
- e. for costs.
- f. for such and other reliefs as in the nature and circumstances of this case, this Hon'ble Court may deem fit."

2. The immediate apprehension of the petitioner is that on the basis of the impugned order dated 3 August 2022, the petitioner is likely to face a coercive action. It may be observed that the Teachers Eligibility Test (TET) was conducted in the year 2019-20 by Respondent No.1 / Maharashtra State Council of Examination, is the subject matter of controversy in several proceedings, inasmuch as it is the contention of Respondent No.1 that there were large malpractices. The Respondent No.1 had accordingly notified to debar 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. A case of the petitioners is that the petitioners in no manner whatsoever were

concerned with any alleged malpractices, as also there is no material against them.

3. *Prima facie* 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 3 August 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 an 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 3 August 2022 be taken against the petitioners.

6. It is informed by Mr. Bubna, learned counsel for the petitioner that on the basis of the order dated 3 August 2022, the salary of the petitioner has been withheld. As we have already observed, in the event there is any material against the petitioner, the appropriate procedure will be required to be followed. The salary of the petitioner cannot be withheld merely on the basis of the impugned communication dated 3 August 2022. Respondent Nos.4 & 5 are accordingly directed to release the outstanding salary of the Respondent Nos.4 & 5.

7. In the event, a proposal is received from Respondent Nos. 6 & 7 in pursuance of any proposal which is forwarded by Respondent Nos.6 & 7, an appropriate action in this regard be taken within a period of six weeks from today.

8. Disposed of in the above terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]