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

985 WRIT PETITION NO. 407 OF 2024

**JANARDHAN KUNDLIK KAPATE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

....

Mr A. N. Nagargoje, Advocate h/f Mr U. B. Deshmukh, Advocate
for Petitioner;
Mr S. K. Tambe, A.G.P. for Respondent Nos.1 & 2
Mr S. B. Pulkundwar, Advocate for Respondent Nos.3 & 4

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

DATE : 10th January, 2024

PER COURT:

1. The Petitioner came to be appointed as an 'Assistant Teacher' on 30/08/2014 in the Respondent No.6/School i.e. after the Government Resolution dated 13/02/2013 is passed, by which the condition of passing Teachers Eligibility Test before the cut-off date 30/03/2019, is made mandatory. He has not passed the Teachers Eligibility Test (TET). He is aggrieved by the impugned order dated 31/07/2023, passed by Respondent No.2/Deputy Director of Education, Chhatrapati Sambhajnagar, refusing

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inclusion of his name in the Shalarth I.D. on the ground that he has not passed the TET.

2. The issue pending before the Hon'ble Supreme Court is as regards, whether TET is compulsory for minority institutions; whether the cut-off date 30.03.2019 could be a mandate for disqualifying the teachers to continue in employment, though having acquired TET qualification after 30.03.2019, and whether passing of CTET could give equivalence to the candidates who have not passed TET etc.

3. Not a single judicial pronouncement has been cited before us to indicate that a teacher without the TET qualification could still be eligible to continue in employment.

4. The learned Advocate for the Petitioner relies upon a short order dated 27.07.2023 passed by this Court (Coram: Mangesh S. Patil and Shailesh P. Bramhe, JJ) in Writ Petition 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.

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5. 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 co-ordinate bench), wherein a final conclusion was drawn by the Bombay High Court that the candidate who does not pass TET prior to the cut-off date 30.03.2019, cannot be kept in employment. In all those matters the issue was about candidates who had passed TET after the cut-off 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.

6. The petitioner relies upon the interim order passed by this Court, more specifically, the order dated 16.07.2020, passed

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in Writ Petition No. 4838/2020 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).

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

8. Paragraph Nos.1 to 4 of the order dated 10.08.2023, passed by a Co-ordinate Bench of this Court, 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

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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."

9. 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 Sagar Gopichand Bahire (supra) and the Hon'ble Supreme Court has continued the said order.

10. Nevertheless, the predicament before us is, as to how far the candidates/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 cut-off. This Court concluded that TET under the Right of Children to Free and Compulsory

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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.

11. 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.

12. 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 Advocate for the Petitioner 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.

13. The learned A.G.P. has strenuously opposed these petitions, contending that such Petitions are likely to open a

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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 30/03/2019.

14. 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

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of salaries to those teachers, who do not have the requisite qualifications.

15. In the light of the peculiar circumstances as noted above, we had directed similarly situated Petitioners to file 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. After filing such undertaking, we have passed 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.

16. The Petitioner has already tendered the affidavit undertaking dated 31/12/2023 at page 90 of the Petition paper book, declaring that, if the Hon'ble Supreme Court holds against such teachers, he would abide by the directions of the Hon'ble Supreme Court.

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

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(a) 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 not TET qualified. Needless to state, the proposal would be decided within 30 days.

(b) If an adverse order is passed by the Hon'ble Supreme Court, the State Government would not recover the salary already paid to the Petitioner, since he has worked for those tenure and he has earned his salary for performing his duties.

(c) 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 present Petitioner would be entitled for all service benefits like promotions, increments, etc.

(d) The affidavit undertaking of the Petitioner is treated as a statement made to the Court.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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