



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2294 OF 2023
WITH
CIVIL APPLICATION NO.9249 OF 2023
IN
WRIT PETITION NO.2294 OF 2023**

1. Tuba Tahjin Mohammad Idris,
Age: 24 years, Occ.: Service,
R/o. Imayati Nagar, Aurangabad,
2. Pathan Tahsin Ibrahim Pathan,
Age: 23 years, Occ.: Service,
R/o. National Colony, Delhi Gate Road, Aurangabad,
3. Shaikh Neha Shaikh Naeem,
Age: 34 years, Occ.: Service,
R/o. Ganesh Colony, Aurangabad
4. Vishal Shikshan Prasarak Mandal's
Dr. Patangrao Kadam Urdu Primary School,
Jatwada Road, Harsul, Aurangabad
Through the President. ..Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Aurangabad Region, Aurangabad,
Bhadkal Gate Circle, Narali Baug,
Misa Compound, Aurangabad.
3. The Education Officer (Primary),
Zilla Parishad, Aurangabad.
4. The Superintendent,
Pay and P.F. Unit (Primary),
Zilla Parishad, Aurangabad. ..Respondents

...

Mr. A. S. Kulkarni, Advocate for the Petitioners.

Mr. A. M. Phule, AGP for Respondent Nos.1 and 2.

Mr. U. B. Bondar, Advocate for Respondent Nos.3 and 4.

...

**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

RESERVED ON : 18th MARCH 2024.

PRONOUNCED ON : 23rd APRIL 2024.

ORDER (Per: S. G. Chapalgaonkar, J.):

1. The petitioners have approached this court under Article 226 of constitution of India impugning order dated 01.02.2023 passed by the Education Officer (Primary), Zilla Parishad, Aurangabad-respondent no.3, thereby declining the approval to appointments of the petitioners as an Assistant Teachers / Shikshan Sevak, on the ground that they are non-compliant of TET qualification.

2. Mr. Kulkarni, learned Advocate appearing for the petitioners submits that respondent no.3-Education Officer had rejected the proposals for grant of approval to the appointments of the petitioners referring to the Government Resolution dated 13.02.2013 on the ground that the petitioners are not holding requisite qualification of TET. The management had resubmitted the proposals with the documents and copies of orders passed by the Supreme Court of India as well as this Court, by which similarly situated teachers were granted protection. However, the Education Officer by his subsequent order dated 22.06.2023 again rejected the proposal.

3. Mr. Kulkarni, learned Advocate would further point out that on 30.06.2023 respondent no.3 granted approval in favour of petitioner no.3 and rejected the proposals of petitioner nos.1 and 2. Mr. Kulkarni, would further point out that on 05/03/2024, respondent no.3 granted conditional approval to the appointment of petitioner no.2 w.e.f. 15.02.2021 subject to outcome of this petition. He would submit that petitioner no.4 is minority institution. The issue as to whether the TET qualification is mandatory for appointment of teachers in minority institutions is subject matter

pending before the Supreme Court of India. In similar circumstances, this Court has passed orders directing grant of conditional approval to the appointments of the teachers, who does not possess TET qualification. He would, therefore, urge that the impugned orders needs to be quashed and set aside and directions are required to be given to the Education Officer to grant approval to the petitioners' appointments.

4. Mr. Phule, learned A.G.P. appearing for respondent nos.1 and 2 and Mr. Bondar, learned Advocate appearing for respondent nos.3 and 4 supports impugned order.

5. We have considered the submissions advanced on behalf of the learned Advocates appearing for the respective parties. We have perused the record tendered into service before us. Apparently, the petitioners are holding requisite qualifications to be appointed as Shikshan Sevak / Assistant Teachers, except TET qualification, which is brought in vogue under Government Resolution dated 13.02.2013. The issue as regards to the applicability of the TET qualification to appointments of teachers in minority institutions is sub-judice before the Supreme Court of India in the matter of ***Director of School Education, Chennai and another Vs. B. Annie Packiarani Bai and another*** in ***Special Leave Petition (Civil) Diary No.17702/2021***, wherein on ***14.02.2022*** the Supreme Court has framed a specific issue as under:

“The important question of law which is raised in the present SLP is whether the Department can insist for TET examination passed in case of a Teacher of a minority institution and whether providing such a qualification would effect any of the rights of the minority institution guaranteed under the Constitution of India.”

6. Perusal of the impugned order would show that the only ground for rejection of the approval to the petitioners' appointments is that they are not compliant with the TET qualification. In similar circumstances this court directed grant of conditional approval. We are inclined to adopt same course in this case. Further, petitioners would be entitled for salary against services rendered by them subject to certain conditions.

7. Resultantly, we are inclined to partly allow the Writ Petition and direct Education officer grant of conditional approval in favour of petitioner no.1 and 2 in terms of operative part of this order. Since, appointment of petitioner no.3 is already approved by Education officer and her grievance is redressed, Mr. Kulkarni, on instruction, seeks withdrawal of writ petition to the extent of petitioner No.3. Hence, we proceed to pass following order:

ORDER

a. Writ Petition to the extent of petitioner No. 1 and 2 is partly allowed.

b. The respondent no.3- Education Officer (Primary), Zilla Parishad, Aurangabad shall grant approval to the appointments of petitioner no. 1 and 2 from the date of their appointment, by appropriately modifying approval issued in favour of petitioner no.2, subject to following conditions:

[a] The petitioner nos.1 and 2 would tender an undertaking that, they 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, they 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] The proposals of petitioner nos.1 and 2 would be considered for entering their names in the 'Shalarth-ID' on their own merits, save and except, the reason that they are not TET qualified. Needless to state, the proposals would be decided within 30 days after the submissions of the undertakings.
- [d] If an adverse order is passed by the Hon'ble Supreme Court, the State Government would not recover the salaries already paid to them, since they have worked for those tenures and they have earned their salaries for performing their duties.
- [e] In the event, the candidates like petitioner nos.1 and 2 are protected by the Hon'ble Supreme Court's conclusions and they are held to be qualified to continue in employment, they would be entitled for all service benefits like promotions, increments, etc.
- c. Writ Petition to the extent of petitioner No. 3 is disposed as withdrawn.
- d. In view of disposal of Writ Petition, the pending Civil Application stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE