



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3520 OF 2023

Rekha Gokul Chaudhari
Age. 32 years, Occ. Service,
R/o. V.H. Patel Primary Vidyalaya, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon. ... Petitioner

Versus

1. The State of Maharashtra,
Through it's Principal Secretary,
Sports and Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Division Nashik,
Nashik Road, Nashik.
3. The Education Officer (Primary)
Zilla Parishad, Jalgaon
4. Chalisgaon Education Society,
Tal. Chalisgaon, Dist. Jalgaon
Through it's Secretary
5. V.H. Patel Primary Vidyalaya, Chalisgaon,
Tal. Chalisgaon, Dist. Jalgaon
Through its Head Master. ... Respondents

AND

WRIT PETITION NO. 4410 OF 2023

Neetabai Ravindra Chaudhari
Age. 33 years, Occ. Service,
R/o. Behind R.K. Steel Corporation,
Bhagvati Krushi Kendra Kharjai Naka,
Takali Pr. Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon. ... Petitioner

Versus

1. The State of Maharashtra,
Through it's Principal Secretary,
Education and Sports Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Division Nashik,
Nashik Road, Nashik.
3. The Education Officer (Primary)
Zilla Parishad, Jalgaon
4. Chalisgaon Education Society,
Tal. Chalisgaon, Dist. Jalgaon
Through it's Secretary
5. Hirubhai Himabhai Patel,
Primary School, Chalisgaon,
Tal. Chalisgaon, Dist. Jalgaon
Through its Head Master. ... Respondents

...

Advocate for Petitioners : Mr. Ramesh I. Wakade
 AGP for Respondent Nos. 1 & 2 : Mrs. V.N. Patil-Jadhav
 Advocate for Respondent No. 3 : Mr. V.V. Gujar
 Advocate for Respondent Nos. 4 & 5 : Mr. Vasant Patil

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 11 OCTOBER 2024
PRONOUNCED ON : 18 OCTOBER 2024**

JUDGMENT [*Shailesh P. Brahme, J.*]:

Rule. Rule is made returnable forthwith with the consent of the parties. Heard both sides finally at the admission stage.

2. Both the petitioners are the teachers of the respondent no. 5 – School run by the respondent no. 4 – Educational

Institution. They are aggrieved by rejection of the proposal seeking correction in their approvals communicated by the respondent no. 3 – Education Officer vide letters dated 29.09.2022 and 01.02.2023. They are seeking directions for approving their services as an ‘Assistant Teacher’ on 100% aided post from the date they resumed charge on a transferred post.

3. Both the petitioners were appointed by following due procedure of law on unaided post as ‘Assistant Teacher’. Petitioner Rekha Gokul Chaudhari was granted approval by the Education Officer on 17.06.2024. She was transferred from unaided post to aided post on 01.07.2016. After transfer the proposal was submitted and it was approved by the respondent no. 3 – Education Officer on 06.12.2017 treating her as ‘Shikshan Sewak’ with effect from 01.07.2016 on aided post.

4. In case of another petitioner, Neeta Chaudhari, her services were approved by Education Officer on 30.06.2018 as ‘Assistant Teacher’ on unaided post. After rendering services for about one year and ten months she was transferred to aided post on 20.04.2020. The proposal was submitted which was turned down by the Education Officer on 08.03.2022.

5. Both the petitioners had preferred separate writ petitions before High Court due to defective approval in case of Rekha Chaudhari and rejection of proposal in case of Neeta Chaudhari. By the intervention of the High Court, directions were issued to the Education Officer to consider the previous services rendered by them in unaided section and matters were relegated to him.

6. The Education Officer rejected both the proposals by the impugned orders on the novel ground that they were involved in the scam of mal practices at TET examination and the offence was registered against them. Their performance was cancelled and they were banned from appearing in TET examination.

7. Learned counsel for the petitioners submits that both the petitioners have preferred separate writ petitions, challenging the punishment imposed against them for mal practices in TET examination. Those writ petitions are pending and interim protection has been granted to not only to the petitioners but similarly situated teachers also. It is further contended that it is settled position that consistently right from judgment rendered in *Suryakant S/o. Janardhan Muge Versus The State of Maharashtra and others*, **AIR OnLine 2019 Bom 2191**, a view has been taken that the previously rendered services on unaided section would be counted for granting approval after transfer to the aided post.

8. Learned counsel for the respondent no. 3 – Education Officer (Primary), opposed submissions of the petitioners. It is submitted that both the petitioners are involved in a serious offence and the prosecution is sub judice, therefore, they are not entitled to receive any approval. The Education Officer has rightly rejected the proposals.

9. Learned counsel for the petitioners has tendered on record the orders passed in similarly circumstanced teachers in the matter of *Jyoti Uttamrao Shinde and Others Versus The State of Maharashtra*, in Writ Petition No. 9430/2022, *Digambar Kisan Pawar Versus The State of Maharashtra and Others*, in Writ Petition

No. 12207/2022 *and Anand Padmakar Mahajan Versus The State of Maharashtra and Others*, in Writ Petition No. 9369/2023. The teachers whose performance was cancelled and who were debarred as a punishment, have filed various petitions before the benches as well as Principal Seat.

10. A group of petitions led by *Jyoti Uttamrao Shinde and Others* (supra), was heard by a coordinate bench and interim order was passed on 20.09.2022. Thereafter, various such orders were passed in different matters. All these petitions are pending and they are clubbed together and placed before Aurangabad bench for further consideration. Following protection has been granted to the petitioners in the matter of *Jyoti Uttamrao Shinde and Others* (supra) and connected matters :

“7. In view of the above, issue notice to the respondents, returnable on 14.11.2022. The learned AGPs' waive service of notice on behalf of State. Until further orders, by way of an ad-interim protection, we direct that the services of these petitioners shall not be terminated, if not yet terminated, only on the basis of the impugned order. Their salaries shall be paid to them in view of they being on duty and on the condition of attending duties and performing their jobs. Increments, if any, shall not be granted to these petitioners without the leave of the Court. This protection is limited to the impugned order, meaning thereby that if any petitioner is liable for any action unconnected with the impugned order, the Management would be at liberty to follow the due procedure for initiating appropriate action.

8. Needless to state, in so far as the investigation in the FIR that has been lodged and in the event any employer desires to initiate disciplinary action against any of these petitioners in connection with their conduct in the TET examination, the same shall proceed unhindered and the pendency of these petitions would not be an impediment.”

11. Present petitioner Rekha has preferred Writ Petition No. 12234/2022 and following interim relief was granted on 05.12.2022 :

“7. Until further orders, by way of an ad-interim protection, we direct that the services of these petitioners shall not be terminated, if

not yet terminated, only on the basis of the impugned order. Their salaries shall be paid to them in view of they being on duty and on the condition of attending duties and performing their jobs. Increments, if any, shall not be granted to these petitioners without the leave of the Court. This protection is limited to the impugned order, meaning thereby that, if any petitioner is liable for any action unconnected with the impugned order, the Management would be at liberty to follow the due procedure for initiating appropriate action.

8. Needless to state, insofar as the investigation in the FIR that has been lodged and in the event any employer desires to initiate disciplinary action against any of these petitioners in connection with their conduct in the TET examination, the same shall proceed unhindered and the pendency of these petitions would not be an impediment.”

12. Petitioner Neeta has preferred Writ Petition No. 4422/2023 and similar type of interim relief was granted on 24.04.2023. The services and salary are protected by the interim orders which are still in operation. Therefore, impugned orders rejecting the proposals of the petitioners is patently illegal. The petitioners are rendering services and they are entitled to receive salary.

13. The issue that earlier services rendered by teacher on unaided post would be counted for granting approval after the transfer to the aided post is no more *res integra*. The law laid down in the matter of *Suryakant Janardhan Muge* (supra) has been consistently followed. Learned counsel for the petitioners has rightly made submissions in this regard. We find that impugned orders are liable to be quashed. Earlier services of the petitioner Rekha of three years and that of Neeta of one year and ten months need to be considered while granting approval. We, therefore, pass following order :

ORDER

- i. Both the Writ Petitions are allowed partly.
- ii. The order / communication dated 29.09.2022 in Writ Petition No. 3520/2023 and order/communication dated 01.02.2023 in Writ Petition No. 4410/2023 are quashed and set aside.
- iii. The respondent no. 3 – Education Officer in both the matters shall reconsider the proposals and decide it afresh within a period of six weeks on its own merits but those shall not be rejected on the self same ground mentioned in the impugned communication.
- iv. The respondent no. 3 – Education Officer shall take into consideration ratio laid down by High Court in the matter of *Suryakant Janardhan Muge* (supra) while deciding the proposals.
- v. The parties shall be at liberty to place relevant documents before respondent no. 3.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]