



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7871 OF 2022

1. Ganeshkumar s/o Abasaheb More,
Age: 34 years, Occu.: Service,
R/o. Khuntefal, Tq. Shevgaon,
Dist. Ahmednagar.
2. Shashikant s/o Prakash Suryawanshi
Age: 32 years, Occu.: Service,
R/o. Shekate Bk., Tq. Shevgaon,
Dist. Ahmednagar.
3. Akshay s/o Sunil Purnale,
Age: 30 years, Occu.: Service,
R/o. Bhagur, Tq. Shevgaon,
Dist. Ahmednagar.
4. Harshad s/o Balasaheb Kachare,
Age: 31 years, Occu.: Service,
R/o. Padali, Tq. Pathardi,
Dist. Ahmednagar.
5. Deepak s/o Jagannath Bodakhe,
Age: 33 years, Occu.: Service,
R/o. Khandobanagar, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar.
6. Swati Sukhadev Wahurwagh,
Age: 30 years, Occu.: Service,
R/o. At : Burhanpur, Post : Avhane Bk.,
Tq. Shevgaon, District Ahmednagar.

.. PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralaya, Fort, Mumbai-32.
2. The Commissioner of Education,
Educational Commissionerate Office,
Balbharti, Senapati Bapat Marg, Pune.

3. The Director of Education (Secondary),
Maharashtra State, Central Administrative
Building, Shivajinagar, Pune.
4. The Deputy Director of Education,
Pune Region, Pune,
17, Dr. Ambedkar Marg, Opp. Lal Deul,
Pune-411001.
5. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
Taluka and District Ahmednagar.

.. RESPONDENTS

...
Mr. S. B. Ghatol Patil, Advocate for the petitioners.
Mr. A. M. Phule, AGP for respondent Nos.1 to 5 – State.
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CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.

DATE : 12th MARCH, 2024.

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

1. Present petition has been filed to challenge the order dated 04.04.2022 passed by respondent No.4, thereby rejecting the proposal for inclusion of the name of the petitioners in *Shalarth Pranali*. Consequential prayer for inclusion of their names and release of arrears of salary has also been made.

2. Heard learned Advocate Mr. S. B. Ghatol Patil for the petitioner and learned AGP Mr. A. M. Phule for respondent Nos.1 to 5 – State. In order to cut short, it can be said that all of them have made submissions in support of their respective contentions.

3. It is not in dispute that the petitioners came to be appointed by respondent No.6 on the respondent Nos.7 to 9 Schools. Those schools are run by respondent No.6. The petitioners have been appointed on the post of assistant teachers by order dated 16.07.2013. Their services came to be approved by respondent No.5 vide order dated 09.10.2015.

4. The petitioners have come with the case that they were appointed as per the due procedure of law and after their approval, respondent No.6 Management by order dated 30.12.2016 transferred them from unaided to aided posts of assistant teachers in various schools run by respondent No.6. The proposal for approval of the said transfer/appointment from unaided to aided posts was given to respondent No.5 and accordingly, as per order dated 10.12.2019 and 30.03.2020, their appointment on aided posts on regular pay scale was also approved by respondent No.5. Thereafter, the proposal was sent for inclusion of their names to the *Shalarth Pranali*. It was recommended by respondent No.5 to respondent No.4, however, the said proposal came to be rejected by the impugned order. Hence, this petition.

5. Affidavit-in-reply has been filed by one Mr. Dhanaji Ananta Bute, the Deputy Education Inspector attached to Deputy Director of Education, Pune region, Pune on behalf of respondent No.2. He has

not disputed the orders of approval issued by respondent No.5, however, according to him as per the Government Resolution dated 13.02.2013, it is mandatory for the teachers to pass Teacher's Eligibility Test (for short "TET") exam before 30.03.2019. When the appointment of the petitioners was on 09.10.2015 and when it was mandatory for them to clear TET exam, they could not have been appointed and their proposal for inclusion of their names in *Shalarth Pranali* cannot be allowed and, therefore, impugned order is just and proper.

6. The rejoinder has been filed by one Ganeshkumar Abasaheb More on behalf of the petitioners stating that in the impugned order dated 04.04.2022, the said ground regarding TET exam was not communicated and, therefore, reason to reject cannot be added by way of affidavit. It was then pointed out that by the decision of the Hon'ble Supreme Court, *status quo* has been maintained and, therefore, the teachers are protected. One more affidavit on behalf of petitioners has been produced and along with the same, evidence about they being in service has been produced.

7. The first and the foremost fact to be noted from the impugned order dated 04.04.2022 is that the proposal for inclusion of the name of the petitioners in *Shalarth Pranali* came to be rejected on five counts, which are as follows :-

- "i) Evidence of vacancy of post on account of retirement, promotion, transfer, etc. is not submitted with proposal.
- ii) No objection certificate for filling the post obtained from Education Officer (Secondary), Zilla Parishad, Ahmednagar is not produced.
- iii) The advertisement is in respect of 13 vacant posts on non-grant basis. However, how many posts are vacant is not reflected.
- iv) The order of Hon'ble High Court is submitted however, the candidate in the file and the name of petitioner in the order is not tallied.
- v) The documents from the file of appointment on non-grant basis are not submitted."

8. There is absolutely no mention of objection in respect of non passing of TET exam. Respondent No.2 cannot add any reason at a later point of time. As regards the five reasons those are quoted in the impugned order, it can be said that respondent No.4 was exercising his powers to the limited extent. When the initial approval as well as on transfer approval was granted by the competent authority i.e. respondent No.5; respondent No.4 could not have gone into the merits on which the petitioners came to be appointed. Only in very exceptional circumstances, he can be allowed, but those powers to be used in exceptional circumstances, will have to be used sparingly. All those five points were already considered by respondent No.5 while considering the proposal at the initial stage i.e. for the

appointment and secondly, at the time of grant of approval to the transfer of petitioners from unaided to aided. Respondent No.4 cannot sit as an appellate Court in respect of the subject matter over respondent No.5. Another fact to be noted is that from the contents of the petition and the documents attached thereto, it can be certainly gathered that there are documents to show that the appointment of the petitioners was as per the procedure and, therefore, they should get the Shalarth ID. The next question would be in respect of qualification of clearance in TET exam. This Court after taking note of the said proceedings before Hon'ble Supreme Court which have stayed the impugned orders before it would be dealing with the point as to whether the said test is compulsory for the appointment of teachers. As the matter is subjudiced before the Hon'ble Supreme Court, respondent No.4 cannot justify his action to keep the proposal on behalf of petitioners for years together.

9. Reliance can be placed on the decision in **Dattatray Devidas Sonwale and another Vs. The State of Maharashtra Through its Principal Secretary and others**, [Writ Petition No.11121 of 2021] and **Ankush Kautik Gonge Vs. The State of Maharashtra Through its Principal Secretary and another**, [Writ Petition No.9944 of 2023] in which reference has been made to the decision of this Bench in **Sagar Gopichand Bahire Vs. State of Maharashtra dna others**, [Writ Petition

No.4904 of 2020 decided on 11.06.2021], wherein it has been held that *if a candidate has not acquired TET qualification prior to 31.03.2019, then such candidate cannot be retained in service and the Government will not be liable to pay the salaries.* The said matter is now pending before the Hon'ble **Supreme Court in SLP (Civil) No.8300 of 2021** and the Hon'ble Supreme Court has directed *status quo* to be maintained.

10. In the case of similarly situated person, this Court has taken a stand in view of the aforesaid situation that when the petitioner is working, then he should get his salary and for that purpose his name should be included in the *Shalarth Pranali*. We adopt the same view and, therefore, we **partly allow the petition**, thereby quashing the impugned order dated 04.04.2022, with following directions :-

[a] The petitioners 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] Considering the above, the proposals of the Petitioners 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 by which the teachers are covered by clause (a), 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 the Petitioners 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.

11. Writ Petition stands disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm