



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

972 WRIT PETITION NO.10052 OF 2023

- 1 Kalyani Babanrao Kandharkar,
Age 36 yrs., Occ. Assistant Teacher,
R/o Flat No.E-4-6, Nashik Road,
Kasliwal Tarangan, Mitmita,
Sharnapur, Aurangabad,
Tq. & Dist. Aurangabad.
- 2 Ganesh Parshuram Rathod,
Age 35 yrs., Occ. Assistant Teacher,
R/o Near Vitthal mandir, Samta Colony,
Shivaji Nagar, Waluj, Aurangabad,
Dist. Aurangabad.
- 3 Ram Ginyandev Mane,
Age 34 yrs., Occ. Assistant Teacher,
C/o Rajashree Primary School,
Waluj, Tq. Gangapur, Dist. Aurangabad.
- 4 Mahadev Balu Magar,
Age 33 yrs., Occ. Assistant Teacher,
Rajashree Primary School, Waluj,
Tq. Gangapur, Dist. Aurangabad.

... Petitioners

... **Versus** ...

- 1 The State of Maharashtra,
Through it's Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2 The Education Officer (Primary),
Zilla Parishad, Aurangabad.
- 3 The Superintendent of Pay Unit (Primary),
Zilla Parishad, Aurangabad.

- 4 The Deputy Director of Education,
Divisional Deputy Director Education
Office, Near Bhadkal Gate,
Miepa Building, Aurangabad.
- 5 Swami Vivekanand Bahuuddeshiya
Sevabhavi Shikshan Sanstha, Ramrai,
Through it's Secretary,
Mrs. Bhagyashree Suresh Waghchaure,
Age 32 yrs., Occ. Secretary,
C/o Plot No.8, Ramrai, At Post Waluj,
Tq. Gangapur, Dist. Aurangabad.
- 6 Rajashree Primary Vidyalaya, Waluj,
Through it's Head Master,
Suresh Ramrao Waghchaure,
Age 40 yrs., Occ. Service,
R/o At Post Ramrai, Waluj,
Tq. Gangapur, Dist. Aurangabad.

... **Respondents**

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Mr. S.R. Sapkal, Advocate for petitioners

Mrs. Manasi N. Ghanekar, AGP for respondent Nos.1 and 4

Mr. S.M. Ganachari, Advocate for respondent No.2

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

DATE : 02nd MAY, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Heard.

2 The petitioners have challenged the communication dated 12.07.2023 issued by respondent No.4 to respondent No.2 and communication dated 15.08.2023 issued by respondent No.5 to petitioners, thereby indicating objections in respect of the proposal to include the name of the petitioners in the Online Portal for disbursement of salary i.e. **Shalarth Pranali**, on the ground that certificate of passing Teachers Eligibility Test examination (TET) is not annexed.

3 The learned Advocate for the petitioners has relied on the decision in **Writ Petition No.11121 of 2021** (*Dattatray Devidas Sonwale and another vs. The State of Maharashtra through its Principal Secretary and others*) and **Writ Petition No.9944 of 2023** (*Ankush Kautik Gonge vs. The State of Maharashtra through its Principal Secretary and another*) in which reference has been made to the decision of this Bench in **Writ Petition No.4904 of 2020** (*Sagar Gopichand Bahire vs. State of Maharashtra and others*) dated 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.

4 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 communications dated 12.07.2023 and 15.08.2023, 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 affidavits/undertakings 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 proposal of the petitioners would be considered for entering their names in the 'Shalarth-ID' on its own merits, save and except, the reason that they are not TET qualified. Needless to state, the proposal would be decided within 30 days after the submissions of the undertaking.

[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, the petitioners would be entitled for all service benefits like promotions, increments, etc.

5 Writ Petition, therefore, stands disposed of.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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