



This order is corrected as per orders for amendment and speaking to minutes dated 22nd March, 2024

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wp 12268.23.odt

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

WRIT PETITION NO. 12268 OF 2023

Vaishali Ashok Dhanpalwar
Age 34 years, Occ. Service,
R/o. Nalge Galli, Kandhar,
Tq. Kandhar, Dist. Jalna,
Tq. & Dist. Jalna

.. Petitioner

VERSUS

1. The State of Maharashtra
through its Secretary
School Education & Sports Department,
Mantralaya, Mumbai 32
2. The Director of Education,
Directorate of Primary Education,
Maharashtra State, Pune,
Dr. Annie Basant Road,
Central Building – Pune -01.
3. The Deputy Director of Education,
Aurangabad Region,
Aurangabad.
4. The Education Officer (Primary)
Zilla Parishad, Nanded.
5. Balaji Shikshan Prasarak Mandal
Kandhar, Tq. Kandhar, Dist. Nanded
through its Seretary namely,
Dnyaneshwar Bhagwan Mahajan,
R/o. Abhinav Nagar, Kandhar,
Tq. Kandhar, Dist. Nanded.

.. Respondents.

Mr. A.N. Nagargoje, Advocate for petitioner
Mr. S.B. Pulkundwar, AGP for respondent Nos. 1 to 3

Ms. Yogita Thorat, Advocate for respondent No.4

Mr. A.M. Jaju, Advocate for respondent No.5.

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

DATE : 11th MARCH, 2024.

P.C. :-

1. The petitioner approaches this Court under Article 226 of the Constitution of India, thereby impugning the order dated 11.8.2023 passed by the respondent No.4 – Education Officer (Primary) Zilla Parishad, Nanded, thereby rejecting the proposal for transferring petitioner's services from no grant basis to partially grant-in-aid basis, on the ground that the petitioner is not possessing TET (Teachers Eligibility Test) qualification.

2. Petitioner contends that she has been appointed vide order dated 15.8.2017 as Assistant Teacher on non-grant basis. Respondent No.4 Education Officer granted approval to her appointment initially on probation and then as permanent teacher. On 27.3.2023, the management of the school forwarded proposal for approval to the transfer of the petitioner on partially grant-in-aid post. However, vide order dated 11.8.2023, the respondent No.4 Education Officer declined to grant approval on the ground that the petitioner does not possess TET qualification.

3. Mr. A.N. Nagargoje, learned advocate for the petitioner submits that the applicability of TET qualification is under consideration before the Supreme Court of India. The petitioner has already cleared TET examination held in January, 2022. However, her performance has been cancelled. Therefore, the petitioner approached this Court by

preferring W.P. No. 9761 of 2022 in which interim protection has been granted. Therefore, the petitioner's proposal could not have been rejected.

4. It is not in dispute that the issue as regards the applicability of the TET is subject matter before the Supreme Court of India. The teachers who do not possess TET qualification are protected by interim orders granted by the Supreme Court of India as well as this Court on the condition that the approval shall be subject to the outcome of the pending writ petition and/or Special Leave Petition before the Supreme Court of India. In this background, we find that the respondent no.4 Education Officer is not justified in rejecting proposal giving the reason that the petitioner has not acquired TET qualification or it is subject matter of TET Scam. It is not disputed that this Court in W.P. No. 9761 of 2022 filed by the petitioner granted interim protection and directed that the services of the petitioner shall not be terminated. However, it is further made clear that no increments shall be granted without the leave of the Court and protection is limited to the extent of protection of services only.

5. In many other cases of similarly situated teachers this Court has taken a view that once petitioners are working and discharging duties as Teachers, they are entitle to get their salaries and for that purpose their 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 11th August, 2023, with following directions :-

[a] The petitioner shall tender an undertaking that, she

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, she 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 proposal of the Petitioner shall be considered for entering her name in the 'Shalarth-ID' on its own merits, save and except, the reason that she is 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 Petitioner are protected by the Hon'ble Supreme Court's conclusions and she is held to be qualified to continue in employment, then only she would be entitled for all service benefits like promotions, increments, etc.

5. Writ petition stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-