



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

953 WRIT PETITION NO.14157 OF 2023

Smt. Harshala d/o Hareshwar Patil,
Age 30 yrs., Occ. Service as Assistant Teacher,
Aadhar No.974992732751
R/o Plot No.38/A, Milind Nagar,
Shahada Road, Shirpur,
Tq. Shirpur, Dist. Dhule.

... Petitioner

... Versus ...

- 1 The State of Maharashtra,
Through it's Secretary,
Education Department,
Mantralaya, Mumbai – 32.
- 2 The Director of Education,
Dr. Babasaheb Ambedkar Road,
Maharashtra State, Pune.
- 3 The Deputy Director of Education,
Government Colony,
Nashik Division, Nashik.
- 4 The Education Officer (Primary),
Zilla Parishad, Jalgaon.
- 5 Shri. Swami Samarth Shaikshanik va
Sanskrutik Mandal, Bhadli (Kh),
Tq. & Dist. Jalgaon.
Through it's President/Secretary.
- 6 Shri. Ramnath Baba Primary Vidya Mandir,
Karanj, Tq. & Dist. Jalgaon.
Through it's Head Master.

... Respondents

...

Mr. V.S. Panpatte, Advocate for petitioner

Mr. N.S. Tekale, AGP for respondent Nos.1 to 3

Mr. K.V. Sharma, Advocate for respondent No.4

Mr. R.C. Bramhankar, Advocate for respondent Nos.5 and 6

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

DATE : 28th MARCH, 2024

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

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 This petition challenges the order dated 03.02.2021 passed by respondent No.3 by which the salary of the petitioner has been withheld on account of not complying with the educational qualification of Teacher Eligibility Test (TET).

3 The facts giving rise to the present petition are that – respondent No.6 school is run by respondent No.5 educational institution. Petitioner is having requisite qualification as H.S.C. D.Ed. with MS-CIT. In pursuant to the advertisement dated 08.04.2015 the petitioner had made application and she

was selected. She came to be appointed by order dated 05.09.2015. Her appointment came to be approved for probation as well as on permanent basis by order dated 21.10.2015. Thereafter, respondent No.1 had taken a policy decision and decided to grant-in-aid. In view of Government Resolution dated 15.02.2021 respondent No.6 school was granted 20% grants since 01.04.2018. By order dated 17.10.2022 the petitioner was held to be entitled to get 20% grant-in-aid. Her name has been entered in the Shalarth Pranali by order dated 17.08.2022 passed by respondent No.4. Thereafter, again in view of policy decision of the Government, additional 20% grant was given to respondent No.6 school and since 01.01.2023 till today 60% grant is given to petitioner. However, respondent No.3 abruptly by communication dated 03.02.2021 stopped the salary to the extent of 40% and 60% of the petitioner since 01.11.2020. It was the general order that was issued by respondent No.3 which stated that those persons who have not acquired TET qualification on the date of their appointment and in view of resolution dated 13.02.2013 the acquisition of TET qualification was compulsory till 30.03.2019; whoever has failed, their salary should be stopped. The petitioner says that the issue in respect of acquiring TET qualification is subjudiced before Hon'ble Supreme Court in Special Leave to Appeal (C) No.8300 of 2021, wherein *status quo* order has been passed and, therefore, the petitioner challenges the said general directions in

communication dated 03.02.2021.

4 Heard Mr. V.S. Panpatte for the petitioner, learned AGP Mr. N.S. Tekale for respondent Nos.1 to 3, learned Advocate Mr. K.V. Sharma for respondent No.4 and learned Advocate Mr. R.C. Bramhankar for respondent Nos.5 and 6.

5 The first and the foremost fact to be noted is that the petitioner has received the approval to her appointment on 21.10.2015, which was the initial appointment as Assistant Teacher. Thereafter 20% grant-in-aid was given to her by order dated 17.10.2022. Her name came to be entered in the Shalarth Pranali by order dated 17.08.2022. Each time there was opportunity to respondent authority to consider whether she has acquired the basic qualification or not, however, that was not considered and now by a general order dated 03.02.2021 respondent No.3 has directed that the salary should not be paid. It will have to be noted that though the impugned general order was given on 03.02.2021; yet, subsequently the orders dated 17.08.2022 and 17.10.2022 have been passed. Now, there cannot be insistence on execution of letter dated 03.02.2021 by respondent authorities.

6 The issue in respect of acquiring TET qualification is subjudiced before Hon'ble Supreme Court in Special Leave to Appeal (C) No.8300 of

2021, wherein *status quo* order has been passed. Further, it appears that in the meantime the petitioner was allowed by the Commissioner of Examination Council to appear for CTET Examination held on 20.08.2023 and eligibility certificate of CTET has been issued to the petitioner on 25.09.2023. Therefore, it is necessary to protect the petitioner and also to make arrangement for release of her salary till the issue is subjudiced before Hon'ble Apex Court. Therefore, we **partly allow the petition**, thereby quashing the communication dated 03.02.2021, with following directions :

[a] The petitioner would 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, 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 proposal of the petitioner would be considered for entering her name in the 'Shalarth-ID' and releasing her salary 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 submission 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 they are held to be qualified to continue in employment, the petitioner would be entitled for all service benefits like promotions, increments, etc.

7 Writ Petition, therefore, stands disposed of.

8 Rules is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)