



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15044 OF 2023

1. Maharashtra Urdu Education Society,
Parbhani, Tq. & Dist. Parbhani,
Through it's Secretary,
Shaikh Anwar s/o Shaikh Ahmed,
age 57 years, Occ. Business,
R/o Darga Road, Near Kazi Masjid,
Galib Nagar, Parbhani, Tq. & Dist Parbhani.
2. Shafi Mohammad Khan s/o Mansoor Khan
age 32 yrs, Occ. Service,
R/o Wangi Road, Yusuf Colony,
Parbhani, Tq. & Dist. Parbhani.
3. Syed Naushad s/o Syed Subhan,
age 29 yrs, Occ. Service,
R/o Railway Colony, Purna,
Tq. Purna, Dist. Parbhani.
4. Almas Abdul Sajid,
age 30 yrs, Occ. Service,
R/o Dargah Road, Near Kazi Masjid,
Turabul Hak Nagar, Parbhani,
Tq & Dist. Parbhani

Petitioners

Versus

1. The State Of Maharashtra
Through It's Secretary
School Education and Sports Department,
Mantralaya, Mumbai - 32
2. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
3. The Education Officer (Primary),
Zilla Parishad, Parbhani.

Respondents.

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Advocate for the Petitioners : Mr. Moin Shaikh h/f Mr. S.S. Kazi

AGP for Respondents no.1 & 2 : Mrs. Kalpalata Patil

Bharaswadkar

Advocate for Respondents no.3: Mr. B.A. Shinde

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

DATED : April 19, 2024

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FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The Petitioners have approached this Court under Article 226 of the Constitution of India impugning the order dated 10.10.2023 passed by Respondent No.2 - The Deputy Director of Education, Aurangabad Division, Aurangabad declining to include name of the petitioner nos.2 to 4 in Shalartha Pranali on the ground that they are non-compliant with TET qualification.

2. The petitioners no.2 to 4 contend that they came to be appointed in the Minority Institution by following due process of law as assistant teachers. Respondent No.3 - the Education Officer has granted approvals to their appointments and even granted continuation after completion of the period of service as Shikshan Sevak. The State of Maharashtra sanctioned 20% grant-in-aid in favour of Petitioner no.1-School vide Government Resolution dated 6.2.2023. The post held by the petitioners is entitled to receive 20% grants w.e.f. 1.1.2023. The Petitioner no.1-School forwarded proposal for inclusion of names in the "Shalartha Pranali" and release admissible salary

grants to them. However, the Education Officer rejected the proposal giving the reason that petitioners nos.2 to 4 were non compliant with the TET qualification.

3. Mr. Moin Shaikh h/f Mr. S.S. Kazi, learned advocate appearing for the petitioners invites our attention to the approvals granted by the Education Officer to the appointments of the petitioners and subsequent orders of continuation on non-grant basis. He would submit that the issue as regards to applicability of TET qualification to the appointments of the teachers in the Minority Institution is subjudiced before the Supreme Court of India.

4. He further relies upon the order of this Court in Writ Petition No.9587 of 2022 with connection petitions (Abdul Azim Abdul Alim and anr. Vs. The State of Maharashtra) dated 26.9.2022 to contend that in similar circumstances conditional approvals have been granted by this Court with further directions to release the salary to the teachers, who were not compliant with TET qualification.

5. Mrs Bharaswadkar, learned AGP appearing for respondent nos.1 and 2 supports the impugned order and submits that this Court has already held that TET qualification is mandatory for appointment of teachers. Since petitioners are non-compliant of such requirement, the Education Officer has refused to entertain proposal for inclusion in “Shalārtha System” or release grant-in-aid.

6. We have considered the submissions advanced by learned advocates appearing for the respective parties. We have perused the documents annexed alongwith the petition. Apparently, the petitioners have been appointed as teachers in the minority institution. At the time of their appointments, School was run on non-grant basis, however, subsequently held to be eligible for grant-in-aid in phased manner. First installment of 20% grant-in-aid is approved to the school. The petitioners are working since the date of their appointment. The Education Officer has also approved continuation of their services. As per Government Resolution dated 6.2.2023 additional divisions for 1st to 4th standard in the school is held eligible for 20% grant-in-aid, for which nine posts are sanctioned. In pursuance of the aforesaid decision of the Government, a proposal was forwarded to include name of the teachers in 'Shalarth Pranali' for release of 20% grant-in-aid. However, under the impugned order, the Education Officer declined to consider their claim for the reason that petitioners are not complaint with TET qualification in terms of the Government Resolution dated 13.2.2013. It cannot be disputed that under the Government Resolution dated 13.2.2013 the Teachers Eligibility Test (TET) is made compulsory for appointment of the teachers. The issue in that regards is decided by this Court upholding condition of TET qualification. Special Leave Petition filed against such decision is pending before the Supreme Court of India. So far as applicability of the TET qualification for appointments of the teachers in Minority Institution, it is subjudiced before the Supreme Court of India in the matter of **Director of School**

Education, Chennai and another Vs. B. Annie Packiarani Bai and another in Special Leave Petition (Civil) Diary No.17702 of 2021 wherein, while granting special leave, specific issue has been framed in the order dated 14.2.2022, which states as under :-

Important question of law which is raised in the present SLP is as under :-

“whether the Department can insist for TET examination passed in case of a teacher of a Minority Institution and whether providing such a qualification would effect any or rights of minority institution guaranteed under the Constitution of India ?”

7. In that view of the matter, this Court framed modality to be applied pending decision of supreme court. Several orders protecting interest of the similarly situated teachers have been passed with direction to release salary subject to condition that the teachers shall be bound by final outcome of the decision rendered by the Supreme Court as regards to applicability of the TET qualification.

8. In the present case, there is no dispute that the petitioners were appointed in the minority school and they hold requisite qualification prescribed for Assistant Teacher except TET as introduced under the Government Resolution dated 13.2.2013. The Education Officer has already granted approval to their appointments and even granted continuation to services. The issue whether petitioners were qualified to be appointed or not has been examined by the Education Officer

while granting approval. However, vide the impugned order, proposal for inclusion of their names in Shalartha Pranali is declined. Such an approach of the Respondent-Education Officer cannot be countenanced. However, pending the issue as regards to the applicability of TET qualification for appointments made prior to 30.3.2019, it would be appropriate to direct respondent no.3 to take further steps to include petitioners name in the 'Shalarth Pranali' and release grant-in-aid as admissible to their post subject to condition that the petitioners would abide by the decision rendered by the Supreme Court in pending Civil Appeal in case of **Director of School Education, Chennai and another Vs. B. Annie Packiarani Bai and another** (supra). Hence, we proceed to pass the following order.

ORDER

- i. The Writ Petition is partly allowed.
- ii. The impugned order dated 10.10.2023 passed by Respondent No.2-the Deputy Director of Education, Aurangabad Division, Aurangabad is hereby quashed and set aside.
- iii. Respondent No.3 - The Education Officer (Primary), Zilla Parishad, Parbhani is directed to take necessary steps to release 20% grant-in-aid against the post held by the petitioners and grant 'Shalartha ID' to them subject to following conditions :-

- a] The petitioners shall tender an undertaking that they would abide by the conclusions that would be drawn by the Supreme Court of India, and, if the verdict of the Supreme Court upholds applicability of TET qualifications, they would abide by the same without raising any objections or they shall not claim any equity.
- b] Petitioners shall file an affidavit in the form of undertaking in this Court within a period of three (3) weeks from today and tender a copy of such an affidavit or undertaking to the concerned Education Officer within the same time.
- c] If the adverse order is passed by the Supreme Court of India, the State Government would not recover the salaries already paid/released to the petitioners.
- d] The petitioners would be entitled for service benefits like increments, promotion, etc only if the Supreme Court concludes that TET qualification is not compulsory for the Teachers in the minority institution.
- e] Respondent no.3 shall take necessary steps within a period of three (3) months and forward the proposals to the office of Respondent no.2, who shall not reject 'Shalartha ID' to the

petitioners on the ground that they are non compliant with TET qualification.

- iv. Writ Petition is accordingly disposed off in above terms. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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