



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14982 OF 2023

1. Smt. Sanobar Shaheen d/o Mohammed Ismail,
age 34 years, Occ. Service,
R/o 38, Near Jama Masjid, Koli Peth,
Jalgaon.
 2. Ashfaq Shah s/o Niyaz Ali Shah,
age 35 years, Occ. Service,
R/o Pimpalgaon (Bk), Dist. Jalgaon.
 3. Shaikh Abuzar s/o Mubeenuddin,
age 23 yrs, Occ. Service,
R/o 267, Near Pande Dairy
Shivaji Nagar, Jalgaon.
 4. Smt. Tasneem Jahan D/o Abdul Jabbar Mujawar,
age 41 years, Occ. Service,
R/o Near Taj Pan Center,
Shahu Nagar, Jalgaon.
- 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, Jalgaon.
 4. Anjuman-e-Taleemul Muslemeen,
Through its President,
Aejaz Ahmed s/o Abdul Gaffar Malik,
age 48 years, Occ. Business,
R/o 308, Shanipeth, Jalgaon.
- Respondents.

Advocate for the Petitioners : Mr. Moin Shaikh h/f Mr. S.S. Kazi
AGP for Respondents no.1 & 2 : Mr. S.K. Shirse
Advocate for Respondents no.3 : Mr. V. V. Gujar
Respondent no.4- Served

.....

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

DATED : April 19, 2024

...

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

1. Leave to correct the prayer clause.
2. The Petitioners have approached this Court under Article 226 of the Constitution of India, impugning the order dated 5.10.2023 passed by the Respondent-Education Officer (Primary), Zilla Parishad, Jalgaon, declining the claim of the petitioners for release of 20% grant-in-aid w.e.f. 1.1.2023.
3. The petitioner nos.2 to 4 contend that respondent no.4-is a minority Institution, which runs a primary school at Jalgaon. The petitioners have been appointed as Assistant Teachers by Respondent-Management by following the due process of law. The Education Officer has approved their appointments and continuation after completion of the period of service as 'Shikshan Sevak.' The State of Maharashtra sanctioned 20% grant-in-aid in favour of respondent no.4-School vide Government Resolution dated 6.2.2023. The posts held by the petitioners are entitled to receive 20% grants w.e.f. 1.1.2023. The Respondent School forwarded the proposals for inclusion of petitioners names in the 'Shalartha Pranali' and

release the 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 TET qualification in terms of the Government Resolution dated 13.2.2013.

4. 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.

5. He, further relies upon the order of this Court in case of **Mohini Mohan Bhandwale Vs. State of Maharashtra and others reported in 2021 SCC online Bom 5709** to contend that in similar circumstances conditional approvals have been granted by this Court with further directions to release salary to the teachers, who were not compliant with TET qualification.

6. Mr. Shirse, learned AGP appearing for respondent nos.1 and 2 supports 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 enter their names in 'Shalartha System' or release grant-in-aid.

7. 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, the School was not receiving any grant-in-aid, 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 are 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 System” for release of 20% grant-in-aid. However, under the impugned order, Education Officer declined to consider their claim for the reason that petitioners are not complaint of the 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 as regards to the said Government Resolution is decided by this Court. 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 is concerned, same 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, the 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 ?”

8. Considering aforesaid aspects, this Court formulated has modality protecting interest of the similarly situated teachers and directed release of 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.

9. 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 Teachers, except TET qualification as introduced under Government Resolution dated 13.2.2013. The Education Officer has already granted approval to their appointments and even granted approval for continuation of services. The issue whether petitioners were qualified to be appointed or not has been examined by the Education Officer while granting approval.

However, vide impugned order, the petitioners are refused benefit of grant-in-aid as admissible to the post held by them. Such an approach of 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 System' 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 the pending civil appeals 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 5.10.2023 passed by Respondent No.3 - Education Officer (Primary), Zilla Parishad, Jalgaon is hereby quashed and set aside.
- iii. Respondent No.3 - The Education Officer (Primary), Zilla Parishad, Jalgaon is directed to take necessary steps to release 20% grant-in-aid against the post held by the petitioners and grant them 'Shalartha ID' 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 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

aaa/- (f)