

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.16423 OF 2023

Stephie Sushant Ransing Alias

Stephie Sebastian John

...Petitioner

vs.

The State of Maharashtra and Ors.

....Respondents

**WITH
WRIT PETITION NO.5439 OF 2017**

Priyanka Sureshkumar Rai and Anr.

...Petitioners

vs.

The State of Maharashtra and Ors.

..Respondents

**WITH
WRIT PETITION NO.4321 OF 2023**

Samina Amin Shaikh

...Petitioner

vs.

The State of Maharashtra and Ors.

...Respondents

**WITH
WRIT PETITION NO.236 OF 2020**

Lalita Harishchandra Khutade

...Petitioner

vs.

The State of Maharashtra and Ors.

..Respondents

**WITH
WRIT PETITION NO.5452 OF 2017**

Ankita Pankajkumar Pandey (Miss Pramila
Vikaschandra Mishra) and Anr. ...Petitioners

vs.

The State of Maharashtra and Ors. ...Respondents

**WITH
WRIT PETITION NO.235 OF 2020**

Ajay Rammurti Jaiswar and Anr. ...Petitioners

vs.

The State of Maharashtra and Anr. ...Respondents

**WITH
(ORDINARY ORIGINAL CIVIL JURISDICTION)
(Sr. No.902)WRIT PETITION NO.3866 OF 2024**

Dhanshri Suryakant Khamkar and Ors. ...Petitioners

vs.

The State of Maharashtra and Ors. ...Respondents

Mr Sanjeev B Deore a/w Ms Suchita J Pawar a/w Jitendra K Pagare
for the Petitioners in WP/3866/2024.

Mr Narendra V Bandiwadekar, Senior Advocate a/w Mr Vinayak R
Kumbhar a/w Mr Rajendra B Khaire a/w Mr Aniket S Phapale i/b
Mr Mandar Bagkar for the Petitioner in WP/235/2020 and
WP/236/2020.

Dr Birendra Saraf (AG) a/w Smt Neha Bhide GP, a/w Ms Nisha
Mehra, AGP, a/w Mr S B Kalel, AGP for the State.

Mr Suresh M Kamble for the Respondent in WP/5439/2017 and WP/5452/2017.

Mr A G Kothari for Respondent No.1 and 2 in WP/4321/2023.

Mr Vishal Thadani Addl. G. P. for Respondent No.1-State in WP/3866/2024.

Mr Shivprasad Borade for Respondent No. 2 to 4 in WP/3866/2024.

**CORAM : RAVINDRA V. GHUGE
AND**

ASHWIN D. BHOBE, JJ.

DATE : 12th NOVEMBER, 2024

P.C. :-

1. In all these matters, solemn statements have been made by the learned Advocates representing the Petitioners, that though not prior to the cut of date 31st March 2019, these Petitioners have acquired their TET qualification, subsequently.

2. The issue as to whether TET would be a mandatory requirement for granting approval and a Shalarth I.D. for facilitating payment of salary through the Shalarth portal, came up before this Court at the Aurangabad Bench in Writ Petition No.4904 of 2020 (*Sagar Gopichand Bahire Vs. State of Maharashtra and Ors.*). By judgment dated 11th June, 2021, this Court ruled that candidates who

do not have the TET qualification or have not acquired the same, prior to 31st March 2019, cannot be retained in service and the government will not be obliged to pay their salaries through the salary grants. This judgment has been carried to the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.8300 of 2021 ***(Priti Ravindra Warghante and Ors. Vs State of Maharashtra and Ors.)***. The Hon'ble Supreme Court has directed status-quo to be maintained.

3. A Coordinate Bench at Aurangabad dealt with Writ Petition No.9944 of 2023 and passed an order on 10th August, 2023 recording as under:

“ 1. The Petitioner is challenging the order passed by the respondent no.4/Education Officer (Secondary), Aurangabad, refusing to grant permission for including his name in the online portal for disbursement of salary on the ground that he had not passed teacher Eligibility Test examination (T.E.T.) as per the Government decision dated 13.02.2013.

2. It is common knowledge that the subject pertaining to the T.E.T. qualification is already sub-judice before the Supreme court which has directed status-quo to be maintained.

3. In the light of above, we quash and set aside the impugned order, direct the respondent no.4 to pass order afresh, which shall not be by resorting to the ground which has been mentioned in the impugned communication.

4. The decision shall be taken as expeditiously as possible and in any case within six weeks. This order shall be subject to the final outcome of the matter before the Supreme Court.”

4. By an order passed at Aurangabad on 7th September, 2023, to which one of us is a party (Coram : Ravindra Ghuge J.), in Writ Petition No.11121 of 2023 (***Dattatry Devidas Sonwale and Anr. Vs. State of Maharashtra and Ors.***), this Court has recorded in paragraphs Nos. 3, 4, 5 , 7 and 8, as under:

“3. It is apparent that the judgment of this Court, dated 11.06.2021 in Sagar Gopichand Bahire (supra), was not brought to the notice of the Co-ordinate Bench of this Court. Status-quo was ordered and the Hon’ble Supreme Court has continued the said order.

4. Nevertheless, the predicament before us is, as to how far these Petitioners can survive with meager salaries or no salary at all, only on the ground that they are not TET qualified. This Court concluded that TET under the Right of Children to Free and Compulsory Education Act, 2009 (for short ‘the 2009 Act’) is mandatory. The Hon’ble Supreme Court would now decide the issue. Until then, all the teachers are protected and the status-quo in their employment is maintained.

5. There are cases, wherein the teachers before us contend that the Management did not pay them at all any they are working without salaries. Unless their names are included in the ‘Shalarth Pranali’, they are not entitled for salary through the grants may be available.

7. The learned A.G.P. has strenuously opposed this petition, contending that such petitions are likely to open a pandora’s box. These teachers, who are not TET qualified, would be approaching this Court for seeking orders for entering their names in the ‘Shalarth Pranali’. They would draw salaries scales as are available through the salary grants extended by the Government, which are available through the salary grants extended by the Government, which are available only to those teachers, who have requisite qualification. He raises a dispute of salary grants to the teachers, who do not have requisite qualification. He reminds us of the judgment

delivered by this Court in Sagar Gopichand Bahire (supra), wherein this Court has finally concluded that, the teachers without TET need to be terminated. He further submits that, since the Hon'ble Supreme Court had directed status-quo to be maintained, it would not mean that, further service benefits can be granted to the teachers, who do not have the TET qualification.

8. This is a Court of equity and while passing orders, this Court has to balance the equities. If the interest of the teachers are to be protected by passing a conditional or a qualified order, the interest of the State Government, which extends the salary grants also has to take into account, as the State Government insists that their salary grants should not be utilized for payment of salaries to those teachers, who do not have requisite qualification”

5. In conclusion, this Court imposed certain conditions on the Petitioners as are set out in paragraph No.10, which read thus:-

“(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 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 proposals of the Petitioners would be considered for entering their names in the ‘Shalarth-ID’ on their own merits, save and except, the reason that they are not TET qualified. Needless to state, the proposals would be decided within 30 days after the submissions of the undertakings.

(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, they would be entitled for all service benefits like promotions, increments, etc."

6. Since it has been stated before us in these petitions, that these Petitioners have acquired the TET/ CTET certificates after the cut-off date 31st March, 2019, a prayer for grant of approval has been put forth since the Shalarth I. D., which is a portal meant for processing the payment of salaries to these Petitioners, would not be allocated to any of them unless they are granted approvals.

7. It is undisputed that the approvals were not granted or have been refused by the impugned orders on the ground that these Petitioners had not acquired TET requisites prior to the cut-off date. The learned Advocate General has canvassed that though the matters are pending before the Hon'ble Supreme Court with regard to whether acquiring of TET qualification would be mandatory coupled with whether this condition would apply even to institutions which are granted status of 'minority', it is a matter of educating the students and teachers who are qualified in the light of the Right of Children to Free and Compulsory Education Act, 2009. The very

purpose and object of introducing such qualifying conditions to enhance the quality of the teachers, would be defeated.

8. He has further contended that eventually the Hon'ble Supreme Court is to issue directives and each of these Petitioners, as well as the managements, would be bound by such directives. Until then, recruitment of teachers without TET qualifications, would not only be hazardous, but would also be detrimental to the interest of students and the quality of education, in general.

9. He, therefore, vehemently contends that as the Hon'ble Supreme Court has directed status-quo to be maintained, those teachers who do not fall within the mandate of this Court propounded in ***Sagar Bahire*** (supra), will have to be disentitled for grant of the Shalarth I.D. and payment of salaries through the salary grants extended by the State Government.

10. We have dealt with such a situation in ***Dattatry Sonwale*** (supra). In the reproduced paragraph No. 4 and 8 hereinabove, we had to balance equities in order to ensure that the teachers who can be granted approval and the Shalarth I. D., could be subjected to the

condition of tendering affidavit undertakings setting forth that, if the Hon'ble Supreme Court holds against them and sustains the cut-off date 31st March, 2019, these Petitioners would be out of employment. It is undisputed that unless an approval is granted, a Shalarth I. d. cannot be granted and, consequentially, salaries cannot be paid.

11. In view of the above, in so far as the teachers who have acquired the TET/CTET certificates after the cut-off date, the conditions set out in ***Dattatry Sonwale*** (supra), will have to be made applicable and these Petitioners would be under the mandate of tendering their affidavit undertakings in this Court, as well as, to the Education Officer, within 15 days. Such undertakings shall contain a statement that, if the verdict of the Hon'ble Supreme Court is adverse to the teachers who have acquired the TET certificate after 31st March, 2019, they would suffer the consequences of losing their employment. Needless to state, if the Hon'ble Supreme Court concludes that the cut-off date can be extended to cover a particular period and if these Petitioners have acquired their TET certificates within such period, naturally, they would be entitled to the service benefits.

12. Considering the continuous filing of Petitions by Petitioners who are similarly situated, we deem it appropriate to record that the managements would not appoint teachers who do not have the TET/CTET qualifications until the decision of the Hon'ble Supreme Court, in Special Leave to Appeal (Civil) No.8300 of 2021 (*Priti Ravindra Warghante and Ors. Vs State of Maharashtra and Ors.*). The relief being granted vide this order, would be made applicable prospectively.

13. In view of the above, we direct Education Authorities to grant approval to the teachers who have acquired their TET qualifications after the cut-off date and such conditional approvals would be subject to the verdict of the Hon'ble Supreme Court.

14. In so far as the candidates who do not have TET certificates as on date, keeping in view the law laid down by the Full Bench of this Court in *St.Ulai High School vs. Devendraprasad Jagannath Singh*, 2007 (1) Mh.L.J. 597, lack of approval would not be a ground for their managements to terminate their services and such candidates will have to be continued in employment in the

light of the order of the Hon'ble Supreme Court (of maintaining status quo). Naturally, their employers/Managements would be obliged to make salary payments to the candidates. In the event these candidates subsequently acquire their TET/CTET certificates, they are at liberty to approach the Education Officer for seeking approvals to their appointments. Such conditional approvals would be subject to the conditions imposed on such candidates in *Dattatry Sonwale* (supra).

15. In view of the above, in matters where Education Officers have refused approvals on account of obtaining TET certificates after the cut-off date, or have not acquired the TET on the date the proposal for approval was rejected, such impugned order shall stand quashed and set aside, since all these Petitioners have now acquired the said Certificates. Such conditional approvals would be followed by grant of conditional Shalarth I. D.

16. For the sake of clarity, we record that this order would not create any equities in favour of the candidates and since they are bound by the affidavit undertakings to be tendered, this order will not be cited for gaining further benefits.

17. The managements, in cases where candidates have acquired the TET/CTET certificate after the cut-off date or the date of this order, would tender their proposals for seeking conditional approval within a period of 30 days,, after the Petitioners tender their affidavit undertakings. Pursuant to such proposals, the Education Officer, would grant the approval within a period of 30 days. After the approvals are granted, the management would submit a further proposal for allotment of Shalarth I. D. as per the procedure, and the Competent Authority shall grant the Shalarth I. D. within 15 days.

18. **Writ Petition Nos. 16423 of 2023, 235 of 2020, 236 of 2020 and Writ Petition No.3866 of 2024, in light of the above directions, stand disposed off.**

19. The matters in which the Petitioners have not cleared their TET/CTET even today, bearing Writ Petition Nos. 5439 of 2017, Writ Petition No.5452 of 2017, would be adjourned *sine die* until the Hon'ble Supreme Court decides the pending issue. However, we grant liberty to the Petitioners to circulate these petitions only if the

Petitioners have acquired TET/CTET qualifications in the meanwhile.

20. In Writ Petition No.4321 of 2023, despite repeated calls and flashing of the Advocate's name, Mr. Anwar F. Shaikh, on the display board, the matter was not conducted. Hence, adjourned.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)