

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

WRIT PETITION NO. 14213 OF 2024

Smt. Bina Jagdish Dubey and Anr. ... Petitioners

Versus

The State of Maharashtra and Ors. ... Respondents

...

Mr. Narendra V. Bandiwadekar, Senior Advocate a/w Mr. Vinayak R. Kumbhar a/w Rajendra B. Khaire and Aniket S. Phapale i/b. Ms. Ashwini N. Bandiwadekar, Advocates for the Petitioners.

Ms. P.J. Gavhane, AGP for the Respondents.

...

CORAM : RAVINDRA V. GHUGE

&

M.M. SATHAYE, JJ.

DATE :- 17th OCTOBER, 2024

Per Court :-

1. The Petitioner No.1 is the Teacher and Petitioner No.2 is the Management.

2. The service of Petitioner No.1 has been approved initially by order dated 5th July, 2021 as Shikshan Sevak and by order dated 13th August, 2021 as a permanent Assistant Teacher. Petitioner No.1 has not passed Teachers Eligibility Test (TET.).

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[Note: This order is corrected vide speaking to minutes of order dated 16.01.2025.]

3. In similar set of facts, an order dated 7th September, 2023 has been passed by the Division Bench at Aurangabad in Writ Petition No.11121 of 2023 (***Dattatry D. Sonwale & Anr. Vs. The State of Maharashtra Thr. Its Principal Secretary & Ors.***).

4. For the sake of brevity, the following observations and conclusions in ***Dattatry D. Sonwale*** (supra), are reproduced :-

- “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 and 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.
6. We quite appreciate the difficulties of these Petitioners, who either have to survive without salary or have to survive on a stipend. No doubt, the fault lies with these Petitioners, since they did not pass the TET and have created a problem for

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themselves. Nevertheless, as has been rightly canvassed by Shri. Venjane, the learned Advocate for the Petitioners that, the TET qualification is not mandatory, or will be mandatory only for those teachers who have been appointed after the introduction of the 2009 Act, which came into operation on 01/04/2010. The orders of the Hon'ble Supreme Court would be binding upon all.

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 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.

9. *In the light of the peculiar circumstances as noted above, we find that, it would be appropriate to bind the Petitioners with an undertaking that, they would abide by the decision of the Hon'ble Supreme Court, and if it is concluded by the Hon'ble Supreme Court that, they cannot be continued in employment, they would suffer the consequences. By filing such undertaking the equities would be balanced while passing an order granting them the salaries by allotment of 'Shalarth-ID'. Needless to state that, if the Hon'ble Supreme Court concludes that the TET is mandatory, such teachers will then have to be removed from employment."*

5. Considering the above, the learned Advocate for Petitioner No.1 submits that she is willing to tender an affidavit-undertaking to bind herself to the final order of the Hon'ble Supreme Court on the issue of TET, notwithstanding the contention that the Petitioner is even otherwise not required to acquire the TET qualification.

6. In view of the above and in the light of the conditions imposed in ***Dattatry D. Sonwale*** (supra), reproduced above, the Petitioner's service would be protected and since she already has the approval, her name would be entered in the

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Shalarth ID. Needless to state, this relief would be subject to the order that would be passed by the Hon'ble Supreme Court in the pending matters.

7. Since the approval is granted, salary shall be paid through the Pavitra Portal, subject to the affidavit undertaking. Arrears of salary, would be subject to the decision of the Hon'ble Supreme Court. In terms of the directions in ***Dattatry Devidas Sonwale & Anr.*** (supra), the Petitioner No.1 shall tender an affidavit undertaking in this Court and with Petitioner No.2, stating therein that if the Hon'ble Supreme Court holds against such Teachers with regard to the non-acquisition of TET qualification, the Petitioner would abide by the same and would have no right to continue in employment.

8. Considering the above order, the **Writ Petition stands disposed off.**

9. This order shall apply prospectively.

(M.M. SATHAYE, J.) (RAVINDRA V. GHUGE, J.)

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