

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

WRIT PETITION NO. 15495 OF 2024

Anil Ramdas Ahire

...Petitioner

Versus

The State Of Maharashtra & Ors.

...Respondents

Mr. Nilesh Desai a/w S.S. Pakale i/by Ms. Padmaja Malgaonkar,
Advocate for the Petitioner.

Mr. S.H. Kankal, AGP for the Respondent / State.

CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

DATE : 11th NOVEMBER, 2024

P.C. :-

1. Considering the order that we are passing, we are not issuing notice to the Employer.

2. The Petitioner's transfer from the Unaided to the Aided Establishment, has been refused approval by the Competent Authority vide the impugned order dated 2nd June, 2022. Two reasons are assigned. Firstly, that the Petitioner did not acquire the Teacher Eligibility Certificate (for short 'TET') qualification.

Secondly, unless surplus teachers are absorbed on the aided posts in view of Rule 41(A) of the Maharashtra Employees Of Private Schools (Conditions Of Service) Rules, 1981 (the said 'Rules'), the Petitioner's case cannot be considered.

3. It is undisputed that the Petitioner is in Employment. It is also undisputed that the Petitioner seeks approval to the decision taken by the Management of transferring him from the Unaided Establishment to the Aided Establishment. It is beyond debate that such candidates can be considered for approval, subject to the scrupulous compliance of the provisions set out under Rule 41(A) of the said Rules, whose validity has been sustained by this Court vide Judgment dated 21st July, 2023, delivered in *Friends Social Circle, Akola through Secretary, Mohd. Farooque Gulam Gaus and others vs. The State of Maharashtra and others, Writ Petition No.8215/2022*.

4. The learned Advocate for the Petitioner submits that the Petitioner has secured the TET certificate after the passing of the impugned order.

5. In view of the above, this **Writ Petition is partly allowed**, only to the extent of granting an opportunity to the Education Officer (Secondary), to consider the case of the Petitioner having acquired the TET Certificate after the date of the impugned order. This would be subject to the conditions set out by this Court in its order dated 7th September, 2023, delivered at Aurangabad in Writ Petition No. 11121 of 2023 (*Dattatry Devidas Sonwale And Another V/s. The State of Maharashtra Through Its Principal Secretary And Others*).

6. For clarity, we are reproducing the conditions imposed on similarly situated Petitioners in Paragraph No.10 of the *Dattatry Devidas Sonwale And Another (Supra)*, hereunder :

*“10. In view of the above, **this Writ Petition is partly allowed**. The impugned order dated 11/08/2023 is quashed and set aside, with the following directions:-*

(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."

7. As such, the Petitioner would tender an affidavit-in-reply undertaking has set out in the above reproduced directions, within a period of 15 days to the Education Officer (Secondary) as well as to the Employer. Based on such affidavit undertaking, Respondent No.6 / Education Officer (Secondary) would ignore the acquiring of TET Certificate after the cut-off date 31st March, 2019.

8. Insofar as, availability of surplus teachers is concerned, the Education Officer (Secondary), shall verify from its record and if required even direct the Management to produce the relevant records to assess, whether there are any surplus teachers who can be

absorbed in the light of Rule 41(A) of the MEPS Rules. After such list of eligible surplus teachers is exhausted, the claim of the Petitioner for transfer from the Unaided Establishment to the Partially Aided Establishment would be considered.

9. In view of the above directions, this **Writ Petition is disposed off**. The Petitioner shall serve a copy of this order on Respondent No.7 / Management.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)