

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17040 OF 2024

Selvina Adwin Pinto

.....Petitioner

Vs.

State of Maharashtra and Ors.

....Respondents

Mr. Nikhil Waje for the Petitioner.

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

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 28th NOVEMBER, 2024

P.C. :-

1. The Petitioner has cleared the TET test, which is evident from the statement of marks dated 28th August 2020, at page 23 in the petition paper book.

2. Candidates who have passed the TET/CTET after the cut off date 31st March, 2019, have been granted certain benefits by our order dated 12th November, 2024 passed in Writ Petition No.16423 of 2023 (**Stephie Sushant Ransing Alias Stephie Sebastian John Vs. The State of Maharashtra and Ors.**). Paragraph nos. 4 and 5 are reproduced hereunder :-

*“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."

3. We have dealt with such a situation in Writ Petition No.11121 of 2023 (***Dattatry Devidas Sonwale and Anr. Vs. State of Maharashtra and Ors.***). In the reproduced paragraphs hereinabove, It is apparent that we had to balance the 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.

4. 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.

5. Considering the continuous in-flow 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.

6. In view of the above, we direct the 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.

7. The Writ Petition is partly allowed, in view of the above.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)