



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.256 OF 2020

Hazrat Dada Hayat Qualandar Education Society and ors.

-vs-

State of Maharashtra, Thr. School Education and Sports Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri R. L. Khapre, Senior Advocate with Shri G. K. Deshmukh, Advocate for petitioners.

Shri N. S. Rao, Assistant Government Pleader for respondents.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : June 13, 2024

P. C.

1. Heard. The petition can be disposed of with following order.

2. The contention of Shri R. L. Khapre, learned Senior Advocate for the petitioners is that petitioner Nos.1 and 2 are the minority institutions who have appointed petitioner No.3 as Assistant Teacher on 26/06/2019. The services of petitioner No.3 were not approved on the ground that he has failed to clear Teachers Eligibility Test (TET) which the respondents are claiming to be mandatory.

3. The issue about the requirement of clearing TET by the employee of minority institution is already subjudice before the Honourable Apex Court in Special Leave Petition (Civil) Diary No.17702/2021 and other similar matters as can be noticed from the observations made by Division Bench of this Court in Writ Petition No.1684/2023 (*Saify School Managing Committee, Khamgaon and*

ors. vs. State of Maharashtra, Thr. Secretary, Education and Sports Dept. Mantralaya, Mumbai and ors.) decided on 02/02/2024 and other orders passed in similar S.L.Ps. In the said judgment this Court has directed grant of approval to the appointment of employees like petitioner No.3 herein subject to final outcome of above referred S.L.P. A rider is created in the said order thereby stating that an undertaking be furnished by the petitioners/employees to the Education Officer that the petitioners/employees shall not be claiming any equity qua their appointment and approval.

4. We have perused the order dated 13/12/2023 in Writ Petition No.15228/2023 (*The Head Master Khawaja Nasiruddin Marathi Primary School and ors. vs. The State of Maharashtra, Thr. its Secretary and ors.*) delivered at Aurangabad Bench so also the order dated 02/02/2024 delivered in Writ Petition No.1684/2023 (supra).

5. In the wake of above, Shri N. S. Rao, learned Assistant Government Pleader opposed the contention raised by Shri R. L. Khapre, learned Senior Counsel that petitioner No.3 is entitled for approval as Shikshan Sevak subject to final outcome of aforesaid SLP, on the count that petitioner No.3 is not qualified i.e. has not cleared TET as contemplated under the provisions of Right of Children to Free and Compulsory Education Act (RTE) 2009. Being not qualified if so ordered to grant approval, in case of dismissal of S.L.P, the salary to be paid from public exchequer be directed to be redeposited.

6. We are bound by the aforesaid view so as to ensure that judicial discipline is followed.

7. That being so, we direct the respondents to grant approval to petitioner No.3 an employee of petitioner Nos.1 and 2 minority institution subject to final outcome of the above referred S.L.P and other similar matters.

8. The petitioner No.3 shall furnish an undertaking thereby stating that (a) his appointment and approval shall not create any absolute right in his favour; (b) he shall not claim any equity based on it; and (c) if so directed by the Education Officer, the petitioner No.3 shall reimburse the entire amount of salary on executing a bond to that effect to the Education Officer stating that amount paid to petitioner No.3 from public exchequer shall be redeposited with interest as shall be ordered by the Education Officer.

Above conditions are incorporated as it is the stand of the respondents that petitioner No.3 does not hold requisite qualification of passing TET.

9. Order accordingly.

10. The writ petition is partly allowed in aforesaid terms with no order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)