

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

WRIT PETITION NO. 8560 OF 2024

Smt. Gauri Sadanand Gaikwad.
Aged 34 Years, Occ. Service,
R/at Plot No. 87(East), MHADA
Colony, Kulgaon-Badlapur,
Dist. Thane.

... Petitioner

Versus

1. State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai 400 032.
 2. The Education Officer,
(Primary), Zilla Parishad,
Thane.
 3. Mahila Mandal, Kulgaon-
Badlapur, Tal. Ambarnath,
Dist. Thane 421 503,
through the President/Secretary.
 4. Late Dwarkabai Ganesh Naik Vidyalaya,
Primary Division, Dattawadi,
Kulgaon, Badlapur, Tal. Ambarnath,
Dist. Thane 421 503,
Through its Head Master.
- ... Respondents.

Mr. Narendra V. Bandiwadekar, Senior Advocate a/w. Mr. Vinayak Kumbhar, Mr. Rajendra Khaire, Aniket Phapale i/b. Mr. Sagar Mane, for the Petitioner.

Mr. A.K. Naik, AGP for Respondent/State.

Mr. Shrishail Sakhare, for Respondent No. 2.

Mr. Kishor Patil a/w. Mr. Abhishek Matkar, Mr. Tushar More i/b.
Mr. Vaishnavi Gujrathi, for Respondent No. 3.

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

DATE : 13th MARCH, 2025

ORDER JUDGMENT :(PER RAVINDRA V. GHUGE, J)

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. This is a peculiar case before us. The Petitioner is appointed on compassionate basis after she untimely lost her father due to a massive heart attack on 8.10.2012, when she was only 20 years of age. The Management decided to appoint her on compassionate basis keeping in view her qualifications which were requisites for appointing her as Shikshan Sevak initially of the Primary School. On 1.1.2013, she was appointed as a Shikshan Sevak. It is undisputed that on her date of appointment, she had the requisite qualifications.

3. On 3.9.2013, the Head Mistress forwarded a proposal for seeking approval to the appointment of the Petitioner, to the Respondent No.2 Education Officer, Primary, Zilla Parishad,

Thane. Since the approval was not granted and the Education Officer was sitting over the file, the In-charge Head Master terminated the services of the Petitioner on 5.10.2016, purportedly for accommodating a surplus teacher in her place, completely overlooking the fact that she was a compassionate appointee.

4. The Petitioner approached the learned School Tribunal by preferring an Appeal No. 17 of 2018. By Judgment dated 8.7.2019, the Appeal was allowed and the Management was directed to reinstate the Petitioner within one month. The Management preferred Writ Petition No. 2550 of 2020, on 11.10.2019. By the order dated 22.7.2022, the learned Single Judge confirmed the order of the learned School Tribunal. The Petitioner was permitted to resume service as an Assistant Teacher on 1.8.2022.

5. Now the Management has issued an order titled as “Appointment Order” on 1.8.2022. The Tribunal had granted continuity of service to the Petitioner. The learned Single Bench did not cause any interference. On 5.9.2022, the Management forwarded the proposal to Respondent No. 2, for seeking approval to her appointment as an Assistant Teacher. By a communication

dated 17.11.2022, the Management demanded the certificate of TET from the Petitioner. The Petitioner had lodged Contempt Petition (St) No. 16239 of 2023, before this Court. This Court, vide Order dated 13.9.2023, recorded that once the Petitioner's appointment as Shikshan Sevak is approved with effect from 1.1.2013, her case needs to be decided for grant of approval to the post of Assistant Teacher on completion of 3 years.

6. Further, the learned Single Judge passed an order on 15.9.2023, recording in paragraph 3, as under :

“3. The document at serial no.4 of the letter dated 17 November 2022 is the Certificate of passing of TET. It is the contention of the Respondent that, she does have to fulfill the qualification of TET as her appointment is of January, 2013 and accordingly the document at serial no.4 mentioned in the letter dated 17 November 2022 need not be submitted by the Respondent at this juncture. This is the reason why the document at serial no.4 was consciously excluded while dictating the order. However it appears that due to a typographical error, Number ‘4’ is added in second line of para-1 of the order.”

7. The issue is as to whether the Petitioner, who joined on 1.1.2013, is mandated by law to tender a TET Certificate. By

the reproduced paragraph 3 of the Order dated 15.9.2023, it is apparent that the learned Single Judge has recorded that the document pertaining to TET is not required to be filed. That apart, the TET qualification was made compulsory by the G.R. dated 13th February, 2013.

8. The G.R. makes an interesting reading in view of conflicting clauses. For the sake of clarity, we are reproducing the clause below the head '**Shashan Nirnay**' as under :

“*बालकांचा मोफत व सक्तीच्या शिक्षणाचा अधिकार अधिनियम, २००९ च्या तरतूदी लक्षात घेता, राज्यामध्ये इथून पुढे सर्व प्राथमिक शिक्षकांसाठी (इयत्ता १ ली ते ८ वी करिता) खालीलप्रमाणे किमान शैक्षणिक व व्यावसायिक अर्हता व शिक्षक पात्रता परीक्षा अनिवार्य करण्यात येत आहे :-”

In clause 7 of the said G.R., it is provided as under :

"७. तसेच सध्या कार्यरत असलेल्या सर्व प्राथमिक शिक्षकांनासुद्धा (इ. १ ली ते ८ वी पर्यंत) अधिनियम २००९ मधील तरतूदीप्रमाणे दिनांक ३१.३.२०१५ पर्यंत वरीलप्रमाणे शैक्षणिक व व्यावसायिक अर्हता प्राप्त करणे व शिक्षक पात्रता परीक्षा उत्तीर्ण होणे आवश्यक राहिल."

9. Apparently, the decision of the Government is to make TET compulsory in the entire State, prospectively and therefore, the words used "राज्यामध्ये इथून पुढे". Clause 7 is in contradiction which talks of 'in service teachers' to have the TET Certificate. Clause 7 was questioned before this Court [Coram:

Abhay S. Oka (as his Lordship then was) & G.S. Patel, JJ], in Writ Petition No. 5435 of 2013. By order dated 2.8.2013 this Court recorded in paragraph 1, as under :

“1 Heard the learned counsel for the petitioner and the learned A.G.P for the fourth respondent. Prima faice, we are of the view that applying clause (7) of the Government Resolution dated 13th February 2013 to the teachers who were already in the employment when the said G.R was issued, is unjust and illegal and therefore, this petition will have to be heard finally at the stage of admission.”

10. In the further hearing before the same Court on 21.8.2013, in the same matter (*Shri Ramnath Dada Mote V/s. State of Maharashtra, Through Secretary, School Education Dept.*), the learned AGP made a statement before the Court that a Corrigendum dated 20.8.2013 has been issued and clause 7 of the G.R. dated 13.2.2013 has been deleted. This Court recorded the Corrigendum and concluded that nothing remains to be decided in the Petition.

11. In the above fact situation, it is apparent that this Court has disapproved introducing the TET qualification with retrospective effect. It is common knowledge that those who were

appointed after 13.2.2013, have been mandated to produce TET certificates and extension of time to appear for the exams to acquire such certificate, was granted till 31st March, 2019.

12. In the above backdrop, we are required to deal with the conduct of the Education Officer since we noticed unfairness on his part. Despite the above factors, he has not only refused to grant approval to the appointment of the Petitioner on the ground that she does not have TET qualification, he has filed an affidavit in reply referring to various provisions of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and canvassed that clause 7 of the G.R. dated 13.2.2013 would be applicable to the Petitioner and she will have to produce a TET Certificate. He has placed reliance on a Judgment delivered by this Court in *Shailaja Ashokrao Walse v/s. State of Maharashtra & Ors. reported in 1999 (1) Mh. L. J 291*, wherein this Court has ruled that requisite qualifications at the time of the selection of a candidate would be the mandate of law. This issue is beyond debate as this is a crystalised position of law.

13. However, despite the Government withdrawing Clause 7 of the G.R. dated 13.2.2013 and this Court clearly

indicating that the TET qualification as introduced by the said G.R. would be in prospectivity, yet the Education Officer declines to grant approval. Even before the Court, the learned Advocate representing the Education Officer is instructed to canvass Clause 7 of the said G.R. To say the least, our judicial conscious is shocked by such conduct.

14. In view of the above, **this Petition is allowed**. The impugned order dated 1.11.2023, is quashed and set aside. Respondent No. 2 shall issue an order of approval as a Shikshan Sevak within 15 days from today, to be made effective from 1.1.2016 and the second order to be issued within the same time line or a mention be made in a single order, granting approval to the Petitioner with effect from 1.1.2016 in the pay-scale of an Assistant Teacher.

IMPOSITION OF COST

15 The learned Senior Advocate for the Petitioner is right in highlighting the adversities faced by the Petitioner. Initially, the Education Officer sat over the proposal for grant of approval from 2013 to 2016. The Management could not bear the burden of paying her salary, as is the contention before us, and therefore, the

Petitioner/compassionate appointee was terminated on 5.10.2016. She had to rush to the School Tribunal. She succeeded. She had to face further litigation before the learned Single Judge and she again succeeded. She then had to file Contempt Proceedings and directions were issued to the Management not to insist on the TET certificate. Yet the Education Officer rejects the approval claiming that TET Certificate ought to be produced.

16. The above narration of the fact situation is to justify as to why we are imposing cost on the Education Officer. Taking into account the rigours of tardy litigation being suffered by the Petitioner who had to make 3 rounds to this Court, we quantify the cost at Rs. 25,000/- to be paid by the Education Officer Shri Balasaheb Kashinath Rakshe, which shall be deposited in this Court from his salary account within 30 days from today. The said amount shall be withdrawn by the Petitioner since it would soften her sufferings to some extent. We direct the CEO of Zilla Parishad to record this Order in the service book of Shri Balasaheb Kashinath Rakshe.

16. In so far as the contention of the learned Advocate Shri Patil on behalf of the Management that the State Government

has introduced a G.R. dated 2.9.2024 making the condition of TET Certificate applicable even to compassionate appointments, we have no issue with the same in the facts and circumstances of this case since, the issue as regards its validity is not addressed to the Court. Taking cue from the removal of Clause 7 from the G.R. dated 13.2.2013 in view of the Order of this Court [Coram: Abhay S. Oka(as his Lordship then was) & G.S. Patel, JJ] dated 2.8.2013, the same analogy will have to be applied in the light of the G.R. dated 13.2.2024, to avoid its retrospective application. Since the present Petitioner was appointed on 1.1.2013, she has steered clear of the G.R. dated 2.9.2024.

17. Needless to state, the Management would forward the proposal for grant of Shalarth I.D. to the Deputy Director, Education within a period of 30 days from today and the said authority shall grant Shalarth I.D. within 7 days of the receipt of the said proposal.

ARREARS OF WAGES

18. It is undisputed position that after the Petitioner was terminated and until her reinstatement, no other teacher was appointed in her place. This statement is confirmed by the parties

before us. As such, the Management which has 100% grant in aid, shall forward the salary bills of the Petitioner with retrospective effect since she has been granted continuity in service by the School Tribunal and this Court, within a period of 30 days from today. The Education Officer shall clear the said bills within 15 days and appropriate provision of payment of the arrears of the salary shall be made within a period of 45 days, failing which, interest @ 6% would be leviable on the said amount and the interest component would be recovered from that officer of the Government on account of whom the delay occurs in making the payment. Needless to state, as soon as the Shalarth I.D. is granted, regular payment of salary for the Petitioner would commence.

19. **Rule is made absolute** in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)