



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

WRIT PETITION NO.3040/2024

<u>PETITIONER :</u>	Harshavardhan Dilip Adhagale, Aged about 35 years, Occ. : Service as Teacher, R/o Wasari, Tah. Malegaon, District Washim.
<u>...VERSUS...</u>	
<u>RESPONDENTS :</u>	1. The State of Maharashtra, Through its Secretary, Ministry of Education and Sports Department, Mantralaya, Mumbai – 32.
	2. The Deputy Director of Education, Amravati Division, Amravati.
	3. The Education Officer (Secondary) Zilla Parishad, Washim, District – Washim.
	4. Shikshan Prasarak Mandal, Malegaon, through its President, Tah. Malegaon, District – Washim.
	5. N.N. Mundada Secondary and Higher Secondary School, Malegaon, through its Head Master, Tah. Malegaon, District – Washim.
	Mr. R.D. Karode, Advocate for petitioner
	Mr. N.R. Patil, AGP for respondent Nos.1 to 3
	Mr. P.R. Agrawal, Advocate for respondent Nos.4 & 5

CORAM : ALOK ARADHE, C.J. AND
AVINASH G. GHAROTE, J.

DATE : 26/02/2025

ORAL JUDGMENT : (PER : AVINASH G. GHAROTE, J.)

1. Rule. Rule is made returnable forthwith. Heard learned counsel for the parties.
2. The petition questions the communication dated 07.03.2024, issued by the respondent No.3-Education Officer (Secondary), Zilla Parishad, Washim, whereby the proposal sent by the management - respondent nos.4 and 5 for approval of transfer of the petitioner, from non-grant to grant-in-aid section has been rejected on absence of the petitioner having passed the Teacher's Eligibility Test examination (page 83). Mr. Karode, learned counsel for the petitioner submits that the respondent no.4 is recognized as a minority institution and runs the respondent No.5-School and the fact that the petitioner was appointed on 02.08.2013 in the unaided section which appointment has been approved by the respondent no.3 on 20.08.2013, the transfer of the petitioner in place of Shri PR.Navhale, who unfortunately passed away on 01.05.2021 and who was working on 100% grant-in-aid section (standard 6th and 8th) on account of which a vacancy came to be created, the petitioner, being the senior most person working in unaided section, cannot be faulted with, merely on the ground that the petitioner had not passed TET as the petitioner being an employee prior to the amendment to the Maharashtra Employees of Private Schools (Conditions of Service)

Rules, 1981, by way of the Notification Dated 22.06.2017, the same would not be applicable to the petitioner.

3. The learned Assistant Government Pleader for the respondent Nos.1 to 3 opposes the contention, on the ground that the TET is compulsory.

4. In Writ Petition No.256/2020, **Hazrat Dada Hayat Qualandar Education Society and Others -Vs- State of Maharashtra, Through School Education and Sports Department, Mantralaya, Mumbai and others**, decided by the learned Division Bench, while considering a similar issue and the fact that the institution which employed the petitioner therein was minority institution, considering that the issue was pending before the Hon'ble Apex Court the following directions were issued:

“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.”

5. Since it is not disputed that the respondent No.4 is a minority institution and the fact that the issue is pending before the Hon’ble Apex Court, we choose to dispose of the petition by following the course, which has been taken in Writ Petition No. 256/2020 as quoted above.

6. The petition is, therefore, allowed in terms of what has been held in paragraph Nos. 7 and 8 in Writ Petition No.256/2020 as quoted above.

Rule is made absolute in above terms.

(AVINASH G. GHAROTE, J.)

(CHIEF JUSTICE)

MP Deshpande