

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD'**

45 WRIT PETITION NO.7809 OF 2015

SIR SAYYED AHMED KHAN EDUCATIONAL SOCIAL WELFARE SOCIETY  
THROUGH ITS SECRETARY AN  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Kazi S.S.  
Mr. SK Tambe, AGP for Respondents: 1 & 3;  
Mr. Aghav Avinash D, Adv. For R/2

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**CORAM : S.S.SHINDE &  
P.R.BORA,JJ.**

**DATE : 24<sup>th</sup> February, 2016.**

**PER COURT :**

1) Heard. Rule. Rule made returnable forthwith with the consent of the learned counsel appearing for respective parties.

2) This petition takes exception to impugned communication dated 30.12.2014 issued by Education Officer(Primary) Zilla Parishad, Jalna. It is the case of the petitioner that the petitioner No.1 is a minority institution and petitioner No.2 came to be appointed as Shikshan Sevak, pursuant to the advertisement and after following due process of law. However, approval to the appointment of petitioner No.2 came to be rejected on the ground that petitioner No.2 has not passed Teacher's Eligibility Test (for short, T.E.T.)

3) The learned Counsel appearing for the petitioners submits that the petitioner-institution is a 'minority institution'. He further submits that the impugned communication issued by the Education Officer is on the basis of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (for short the Act of 2009), and in particular Section 23 thereof and notification dated 23.8.2010 prescribing passing of T.E.T. Examination for appointment/approval to the appointment as Assistant Teacher. It is submitted that the Hon'ble Supreme court in the matter of Pramati Educlational and Cultural Trust (R) and Ors. Vs. Union of India and Ors. - 2014 AIR SCW 2859, after considering the provisions of Article 30(1) of the Constitution of India vis-a-vis provisions under the Act of 2009, has taken a view that that, Act of 2009, in so far as it applies to 'minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution of India is, ultra vires the Constitution. The learned Counsel appearing for the petitioner, therefore, submits that the impugned communication deserves to be quashed and set aside and directions may be issued to Respondent No.2, to consider the case of the said employee, referred herein above, for grant of approval afresh.

4) Learned Counsel appearing for Respondent No.2 submits that the approval to the appointment of petitioner No.2 is not refused only on the ground of not passing TET examination by petitioner No.2, but there are other grounds, which are mentioned in the

impugned communication for refusing the approval to the appointment of petitioner No.2.

5) We have give careful consideration to the submissions of the learned Counsel for the parties. With their able assistance, perused the grounds taken in the petition, the contents of the impugned communication and all other material placed on record. In the light of the Judgment of the Supreme Court in Pramati's case (cited supra), it is not necessary for us to elaborate any further on facts, suffice it to say, the impugned communication issued by Respondent No.2 is not legally sustainable in view of the authoritative pronouncement of the Supreme Court in the case of Pramati Educational and Cultural Trust (cited supra). In the said Judgment, in concluding paragraph, the Supreme Court held that, "the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the constitution is ultra vires the Constitution." In that view of the matter, on this ground alone, the petition succeeds. Accordingly, the impugned communication dated 24.11.2014 issued by respondent No.2 is quashed and set aside. Respondent No.2 is directed to re-consider the case of the petitioner No.2, who is working as Assistant Teacher with petitioner No.1-institution for approval to his appointment,

as expeditiously as possible and preferably within six weeks from today.

6) We make it clear that the Respondent No.2 - Education Officer(Primary) shall not raise again an objection that the concerned Teacher has not passed T.E.T. Examination and petitioner No.1 has declined to absorb the surplus teacher.

7) Rule is made absolute in the aforesaid terms with no order as to costs.

**(P.R.BORA)**  
**JUDGE**

**(S.S.SHINDE)**  
**JUDGE**

bdv/