

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

WRIT PETITION NO. 11771 OF 2015

1. Sadik S/o Bashir Pathan,
Age : 28 Years, Occu. : Nil,
R/o At Mahartakali, Post Ardhpimpri,
Tq. Georai, Dist. Beed.
 2. Venudas S/o Dnyandeo Waghmode,
Age : 39 Years, Occu. : Nil,
R/o At Post Deulgaon Siddhi,
Tq. & Dist. Ahmednagar.
- .. Petitioners

Versus

1. The State of Maharashtra,
Through its : Principal Secretary,
School Education and Sports Department,
Mantralaya, Mumbai 400 032.
 2. The Maharashtra Shikshan Parishad
(Government of Maharashtra
Undertaking), Through its Project
Director, Jawahar Bal Bhavan,
Netaji Subhash Marg,
Churni Road, Mumbai 400 004.
 3. The Director of Education (Primary),
Directorate of Primary Education,
M. S. Pune
- .. Respondents

Miss P. S. Talekar, Advocate h/f Shri S. B. Talekar, Advocate for
Petitioners.
Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1 and 3.
Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

**WITH
WRIT PETITION NO. 3487 OF 2015**

1. Jyoti Mukundrao Ghuge
Age:- 37 years, Occu.: Nil,
R/o. Gajanan Colony, Tq. Kannad,
Dist. Aurangabad.
2. Dnyaneshwar Bhausahab Dakale
Age:- 32 years, Occu.: Nil,
R/o. Georai Mungi, Tq. Phulambri,
Dist. Aurangabad.
3. Shaikh Sikandar Shaikh Rahim
Age:- 27 years, Occu.: Nil,
R/o. Vasadi, Tq. Kannad,
Dist. Aurangabad.
4. Shaikh Chandpasha Shaikh Rahim
Age:- 36 years, Occu.: Nil,
R/o. Vasadi, Tq. Kannad,
Dist. Aurangabad.

.. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-400 032
2. The Maharashtra Prathamik
Shikshan Parishad
(Government of Maharashtra
Undertaking), Through its
Project Director, Jawahar Bal
Bhavan, Netaji Subhash Marg,
Charni Road, Mumbai-400 004.

3. The Director of Education (Primary),
Maharashtra State, Pune.
4. Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
5. The Education Officer (Primary),
Zilla Parishad, Aurangabad .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1 and 3.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.
Respondent Nos. 4 and 5 served.

**WITH
WRIT PETITION NO. 3490 OF 2015**

1. Dayanand Shidhaling Raut
Age:- 32 years, Occu.: Nil,
R/o. Shiradhon, Tq. Kalamb,
Dist. Osmanabad.
2. Rajkumar Dattatray Kumbhar
Age:- 24 years, Occu.: Nil,
R/o. Shiradhon, Tq. Kalamb,
Dist. Osmanabad.
3. Monika Bhaulal Chikse
Age:- 25 years, Occu.: Nil,
R/o. Vishnunagar, Kannad,
Tq. Kannad, Dist. Aurangabad. .. Petitioners

Versus

1. The State of Maharashtra

Through its Secretary,
School Education Department,
Mantralaya, Mumbai-400 032.

2. The Maharashtra Prathamik
Shikshan Parishad
(Government of Maharashtra
Undertaking), Through its
Project Director, Jawahar Bal
Bhawan, Netaji Subhash Marg,
Charni Road, Mumbai-400 004.
3. Zilla Parishad, Osmanabad
Through its Chief Executive Officer,
4. The Education Officer (Primary),
Zilla Parishad, Osmanabad
5. Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
6. The Education Officer (Primary),
Zilla Parishad, Aurangabad. .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1 and 3.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

Shri Suhas B. Ghute, Advocate for the Respondent No. 4.

Respondent Nos. 5 and 6 are served.

WITH
WRIT PETITION NO. 10541 OF 2015

1. Govind Mukund Rathod
Age:- 42 years, Occu.: Nil,
R/o Rawankhola, Tq. Jalkot,

Dist. Latur.

2. Savita Vishwasrao Mangate
Age:- 31 years, Occu.: Nil,
R/o Radhaswami Colony,
Jetwada Road, Tq.& Dist. Aurangabad.
3. Varsha Dnyaneshwar Patil
Age:- 24 years, Occu.: Nil,
R/o Bilwadi, Post. Vavadda,
Tq. & Dist. Jalgaon. .. Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
School Education Department
Mantralaya, Mumbai- 400 032.
2. The Maharashtra Prathamik
Shikshan Parishad
(Government of Maharashtra
Undertaking), through its
Project Director, Jawahar Bal
Bhawan, Netaji Subhash Marg,
Charni Road, Mumbai- 400 004.
3. Zilla Parishad, Latur
Through its Chief Executive Officer
4. Zilla Parishad, Aurangabad
Through its Chief Executive Officer
5. Zilla Parishad, Jalgaon
Through its Chief Executive Officer. .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1 and 3.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

**WITH
WRIT PETITION NO. 10869 OF 2015**

1. Mahesh S/o Dnyandeo Waditake,
Age : 30 Years, Occu. : Nil,
R/o Galnimb, Tq. Shrirampur,
Dist. Ahmednagar.

2. Pravin S/o Sudhakar Najan,
Age : 31 years, Occu. : Nil,
R/o Tajnapur, Tq. Shevgaon,
Dist. Ahmednagar.

.. Petitioners

Versus

1. The State of Maharashtra,
[Through its : Principal Secretary,
School Education and Sports Department,
Mantralaya, Mumbai 400 032]

2. The Maharashtra Shikshan Parishad,
(Government of Maharashtra Undertaking),
Through its Project Director,
Jawahar Bal Bhavan, Netaji Subhash Marg,
Churni Road, Mumbai 400 004.

3. The Director of Education (Primary),
Maharashtra State, Pune.

4. The Zilla Parishad, Ahmednagar,
Through: It's Chief Executive Officer,
(Primary), Zilla Parishad, Ahmednagar.

5. The Education Officer (Primary),

Zilla Parishad, Ahmednagar.

.. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1 and 3.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

Shri Shivaji T. Shelke, Advocate for Respondent Nos. 4 and 5.

**WITH
WRIT PETITION NO. 11197 OF 2015**

1. Radhesham S/o Bhausahab Misal,
Age : 34 Years, Occu. : Nil,
R/o and Tq. Phulambri,
Dist. Aurangabad.

2. Savita d/o Vitthal Pawar,
Age : 27 years, Occu. : Nil,
R/o Chincholi, Tq. Kannad,
Dist. Aurangabad.

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032]
2. The Maharashtra Prathamik Shikshan
Parishad, (Government of Maharashtra
Undertaking), Through its Project Director,
Jawahar Bal Bhavan, Netaji Subhash Marg,
Churni Road, Mumbai 400 004.

3. Zilla Parishad, Aurangabad,
Through its Chief Executive Officer

.. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

**WITH
WRIT PETITION NO. 11203 OF 2015**

1. Bapurao s/o Shankarrao Chavan,
Age : 41 Years, Occu. : Nil,
R/o Panwadod Bu., Tq. Sillod,
Dist. Aurangabad.
2. Pradip S/o Ukhardu Chinchpure
Age : 35 years, Occu. : Nil,
R/o Rahimabad, Tq. Sillod,
Dist. Aurangabad
3. Ganesh s/o Pandurang Gavhane,
Age : 37 Years, Occu. : Nil,
R/o Golegaon Bk., Tq. & Dist. Aurangabad
4. Vivek s/o Prabhakar Suradkar
Age: 40 Years, Occu: Nil,
R/o Rahimabad, Tq. Sillod,
Dist. Aurangabad
5. Shivnath s/o Raosaheb Chindhe
Age: 27 years, Occu: Nil,
R/o Tupewadi Tanda, Tq. Paithan,
Dist. Aurangabad. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,

Mantralaya, Mumbai 400 032.

2. The Maharashtra Prathamik Shikshan Parishad, (Government of Maharashtra Undertaking), Through its Project Director, Jawahar Bal Bhavan, Netaji Subhash Marg, Churni Road, Mumbai 400 004.
3. Zilla Parishad, Aurangabad,
Through its Chief Executive Officer .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

**WITH
WRIT PETITION NO. 12113 OF 2015**

1. Govind s/o Baliram Kamble
Age : 44 Years, Occu. : Nil,
R/o Ujlamb, Tq. Chakur,
Dist. Latur.
2. Deepali d/o Khushalrao Bhanuse
Age : 29 years, Occu. : Nil,
R/o Asola Pr. Tq. Sindkhed,
Dist. Buldhana
3. Rashid s/o Daudkhan Pathan
Age : 35 years, Occu: Nil,
R/o Sugaon, Tq. & Dist. Beed.
4. Chandrakant s/o Dilip Wagh
Age: 24 years, Occu: Nil,
R/o Aurala, Tq. Kannad,
Dist. Aurangabad .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032
2. The Maharashtra Prathamik Shikshan
Parishad, (Government of Maharashtra
Undertaking), Through its Project Director,
Jawahar Bal Bhavan, Netaji Subhash Marg,
Churni Road, Mumbai 400 004.
3. Zilla Parishad, Latur
Through its Chief Executive Officer
4. Zilla Parishad, Jalna
Through its Chief Executive Officer
5. Zilla Parishad, Beed
Through its Chief Executive Officer
6. Zilla Parishad, Aurangabad,
Through its Chief Executive Officer .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

WITH
WRIT PETITION NO. 6559 OF 2016

Meenabahar Mohiddin Shaikh
Age : 35 Years, Occu. : Nil,
R/o Fattepur, Tq. Newasa,

Dist. Ahmednagar.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032.
2. The Maharashtra Prathamik Shikshan
Parishad, (Government of Maharashtra
Undertaking), Through its Project Director,
Jawahar Bal Bhavan, Netaji Subhash Marg,
Churni Road, Mumbai 400 004.
3. Zilla Parishad, Ahmednagar,
Through: It's Chief Executive Officer
4. The Education Officer (Primary),
Zilla Parishad, Ahmednagar. .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent No. 1.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

Shri Shivaji T. Shelke, Advocate for Respondent Nos. 3 and 4.

**WITH
WRIT PETITION NO. 7904 OF 2016**

1. Javed s/o Babulal Sayyed
Age : 37 Years, Occu. : Service,
R/o Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.
2. Ashok s/o Ramdas Popalghat
Age : 33 years, Occu. : Service,

R/o Gunfa, Tq. Shevgaon,
Dist. Ahmednagar.

3. Pandurang s/o Balasaheb, Tupe,
Age: Major, Occu. : Service,
R/o Gandewadi, Tq. Shevgaon,
Dist. Ahmednagar
4. Anita Kashinath Dhawale
Age: Major, Occu. : Service,
R/o Tajanapur, Tq. Shevgaon,
Dist. Ahmednagar
5. Afreen Mehtab Patel
Age: Major, Occu. : Service,
R/o Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar
6. Parveen Mehtab Patel,
Age: Major, Occu. : Service,
R/o Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar
7. Shivkumar s/o Amrutrao Solanke,
Age: Major, Occu. : Nil,
R/o Hatadi, Tq. Partur,
Dist. Jalna
8. Bhagwan s/o Govindrao Shere
Age : Major, Occu: Nil,
R/o & Tq. Partur, Dist. Jalna.
9. Saral Babanrao Lale,
Age : Major, Occu: Nil,
R/o & Tq. Partur, Dist. Jalna.
10. Amol S/o Devidasrao Neb
Age: Major, Occu. : Nil,

R/o Khandviwadi, Tq. Partur,
Dist. Jalna

11. Ramrao s/o Abasaheb Ambure
Age : Major, Occu: Nil,
R/o Shrishti, Tq. Partur,
Dist. Jalna
12. Mohan s/o Kisanrao Lalzare
Age : Major, Occu: Nil,
R/o Sathe Nagar, Tq. Partur,
Dist. Jalna
13. Gorakhnath s/o Kisanrao Rathod
Age : Major, Occu: Nil,
R/o Ashti, Tq. Partur,
Dist. Jalna
14. Faruk s/o Khudabisahab Kureshi
Age : Major, Occu: Nil,
R/o Ashti, Tq. Partur,
Dist. Jalna
15. Vashishta s/o Tulashiram Bavane
Age : Major, Occu: Nil,
R/o Ashti, Tq. Partur,
Dist. Jalna
16. Najiya Yasmin A. Sattar
Age : Major, Occu: Nil,
R/o Ashti, Tq. Partur,
Dist. Jalna
17. Shahadev s/o Sitaram More
Age : Major, Occu: Nil,
R/o & Tq. Partur, Dist. Jalna
18. Chandrakant s/o Ganpatrao Kapale

Age : Major, Occu: Nil,
R/o Rameshwar Galli (Gaon),
Tq. Partur, Dist. Jalna.

19. Kashibai Rambhau Jogdand
Age : Major, Occu: Nil,
R/o Yanora, Post Patoda (Mav),
Tq. Partur, Dist. Jalna.
20. Vandana Manohar Kharat
Age : Major, Occu: Nil,
R/o & Tq. Partur, Dist. Jalna
21. Bhimrao Sheshrao Yevale
Age : Major, Occu: Nil,
R/o Anandwadi, Tq. Partur,
Dist. Jalna
22. Gajanan Devidas Bhapkar
Age : Major, Occu: Nil,
R/o Anandwadi, Tq. Partur,
Dist. Jalna
23. Satish Banshilal Gujar
Age : Major, Occu: Nil,
R/o Gujar Chauk, Tq. Partur,
Dist. Jalna
24. Jayprakash Ankushrao Bidwe
Age : Major, Occu: Nil,
R/o Satona Bk., Tq. Partur,
Dist. Jalna
25. Sakharam Daulatrao Gaikwad
Age : Major, Occu: Nil,
R/o Lingasa, Tq. Partur,
Dist. Jalna

26. Pralhad Sopanrao Solanke
Age : Major, Occu: Nil,
R/o Bhramhanwadi, Tq. Partur,
Dist. Jalna
27. Dadarao Tulashiram Bonage
Age : Major, Occu: Nil,
R/o Amba, Tq. Partur,
Dist. Jalna
28. Yogita Madhukar Dhagare
Age : Major, Occu: Nil,
R/o Amba, Tq. Partur,
Dist. Jalna
29. Krushna Vitthalrao Solanke
Age : Major, Occu: Nil,
R/o Rameshwar Galli, Tq. Partur,
Dist. Jalna

.. Petitioners

Versus

1. The State of Maharashtra,
[Through its : Principal Secretary,
School Education and Sports Department,
Mantralaya, Mumbai 400 032]
2. The Maharashtra Shikshan Parishad,
(Government of Maharashtra Undertaking),
Through its Project Director,
Jawahar Bal Bhavan, Netaji Subhash Marg,
Churni Road, Mumbai 400 004.
3. The Director of Education (Primary),
Maharashtra State, Pune.
4. The Zilla Parishad, Ahmednagar,
Through: It's Chief Executive Officer,

(Primary), Zilla Parishad, Ahmednagar.

5. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.
6. The Zilla Parishad, Jalna
Through : Its Chief Executive Officer,
(Primary), Zilla Parishad, Jalna
7. The Education Officer (Primary),
Zilla Parishad, Jalna .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent Nos. 1 and 3.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

Shri Shivaji T. Shelke, Advocate for Respondent Nos. 4 and 5.

WITH
WRIT PETITION NO. 9424 OF 2016

1. Anil Navnath Devkate
Age : 28 Years, Occu. : Nil,
R/o Alsunde, Tq. Karjat,
Dist. Ahmednagar.
2. Vishnu S/o Kundalik Hiwale
Age : Major, Occu. : Nil,
R/o Shivkrupa Nagar, Georai
Tanda, Tq. & Dist. Aurangabad .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032.

2. The Maharashtra Prathamik Shikshan Parishad, (Government of Maharashtra Undertaking), Through its Project Director, Jawahar Bal Bhavan, Netaji Subhash Marg, Churni Road, Mumbai 400 004.
3. Zilla Parishad, Ahmednagar,
Through: It's Chief Executive Officer
4. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.
5. Zilla Parishad, Aurangabad,
Through: It's Chief Executive Officer
6. The Education Officer (Primary),
Zilla Parishad, Aurangabad. .. Respondents

Shri P. R. Katneshwarkar, Advocate h/f Shri A. G. Ambetkar,
Advocate for Petitioners.

Shri Ram Apte, Senior Advocate with Shri A. P. Basarkar, A.G.P.
for Respondent No. 1.

Shri Deelip Bankar Patil, Advocate for the Respondent No. 2.

WITH
WRIT PETITION NO. 2384 OF 2017

1. Kiran S/o Gangadhar Andure
Age : 25 Years, Occu. : Service,
R/o Kharwandi, Tq. Pathardi,
Dist. Ahmednagar.
2. Sangita Ramnand Kalpande
Age : 39, Occu. : Service,
R/o C/o. Z.P. C.P. School Pathardwad,
Tq. Hadgaon, Dist. Nanded

3. Prajakta Prakash Joshi
Age : 27 Years, Occu. : Service,
R/o House No. 37, Bhartiy Building,
Priyadarshani Nagar, Nageshwarwadi,
Tq. & Dist. Aurangabad
4. Kasim Khan Mehabub Khan
Age: 25 Years, Occu. Service,
R/o Udavad, Tq. Chopada,
Dist. Jalgaon .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032.
2. The Maharashtra Prathamik Shikshan
Parishad, (Government of Maharashtra
Undertaking), Through its Project Director,
Jawahar Bal Bhavan, Netaji Subhash Marg,
Churni Road, Mumbai 400 004.
3. Zilla Parishad, Ahmednagar,
Through: It's Chief Executive Officer
4. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.
5. Zilla Parishad, Nanded,
Through: It's Chief Executive Officer
6. The Education Officer (Primary),
Zilla Parishad, Nanded,
7. Zilla Parishad, Aurangabad,

Through: It's Chief Executive Officer

8. The Education Officer (Primary),
Zilla Parishad, Aurangabad.
9. Zilla Parishad, Jalgaon,
Through: It's Chief Executive Officer
8. The Education Officer (Primary),
Zilla Parishad, Jalgaon .. Respondents

Shri A. G. Ambetkar, Advocate for Petitioners.

Shri A. P. Basarkar, A.G.P. for Respondent No. 1.

Shri. S. T. Shelke, Advocate for Respondents No. 3 and 4.

Ms. Yogita Kshirsagar, Advocate for Respondents No. 5 and 6.

Shri. Vijay Sharma, Advocate for Respondents No. 9 and 10.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

Reserved for Judgment on : 05.04.2017

Judgment pronounced on : 06.06.2017

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

. All these Writ Petitions assail the Govt. Resolutions dated 07/05/2015 and 07/01/2017 issued by the Dy. Secretary to the Govt. of Maharashtra, School Education and Sports Department, Mantralaya, Mumbai on the ground that these Govt. Resolutions are contrary to the provisions of Right of Children to Free and Compulsory Education Act, 2009 [for short, 'RTE ACT, 2009'] and Rules framed thereunder, so also against the directions of this Court in its Judgment and Order dated 09/05/2014 in Writ

Petition No. 7106 of 2013 with connected Writ Petitions. As all these petitions are based on similar set of facts and involve common question of law, to avoid rigmarole they are decided by common Judgment.

2. Miss. Talekar, Mr. P.R.Katneshwarkar, Mr. Ambetkar and the counsel appearing in respective Writ Petitions have canvassed their submissions at length. According to the learned counsel :

[a] The impugned Govt. Resolution dated 07/05/2015 and Corrigendum Govt. Resolution dated 07/01/2017 are in gross violation of the mandate of the RTE Act, 2009, so also the Central and State Rules framed thereunder. The qualifications prescribed for the Guest Instructor vide Govt. Resolution dated 07/01/2017, in stead of having certifications of the degree courses in the subject and the teaching and merely giving consideration to the invitation to village/town level programmes is in sheer violation of the Central Govt. Notification dated 12/11/2014 issued by the National Council for Teachers Education prescribing the minimum qualifications for persons to be recruited as physical education teachers in schools and colleges. The Govt. Resolution dated 07/01/2017 nowhere prescribes educational qualifications. It is in total derogation of the Central Govt. Notification dated 12/11/2014. The Govt.

Resolution dated 20/08/2010 has outlined the importance of Arts, Physical Education and Work Experience in the overall development of the students and as emphasized upon having proper guidance and training in that regard. However, the Govt. Resolution in question does not prescribe for any qualifications for part-time/Guest Instructor.

[b] The honorarium fixed for the part-time/Guest Instructor in the impugned Govt. Resolution is less than the basic minimum wages as prescribed by the Govt. of Maharashtra. The Court in its Judgment dated 09/05/2014 in Writ Petition No. 7106 of 2013 with connected Writ Petitions had expected the emoluments to the part-time/Guest Instructor to the extent of half of the salary of full time teacher. The said direction is completely ignored. The Govt. Resolution dated 29/04/2011 provides working hours of a teacher in a academic year. According to it, even if the petitioners work for two hours a day, the total working hours, including the preparatory hours, would amount to six hours a week. The petitioners are getting only Rs. 50/- per lecture up to the maximum of Rs. 5,000/- per month.

[c] The scheme of the RTE Act and Rules prescribe mandatory functions to be performed. If the entire structure of the RTE Act and the Rules framed thereunder is perused, the respondents are required to create a permanent and professional cadre of

teachers with service regulations and pay scales so as to provide quality education to the students. The statute, more particularly Section 7 (5) of the RTE Act bestows the entire responsibility on the State Govt. Section 8 (d) of the RTE Act states that it is the duty of the appropriate Govt. to provide the infrastructure including school building, teaching staff and learning equipments. The appropriate Govt. is the State Govt. No provision is made in respect of the same in the impugned Govt. Resolutions.

[d] According to the learned counsel, the Schedule to Section 19 of the RTE Act prescribes norms and standards for the school. Item No. 1 of the Schedule prescribes student – teacher ratio. It states that where the admission in 6th to 8th class is above 100, there shall be part-time instructors for the subjects, viz. Art Education, Physical Education and Work Experience. The powers to amend the Schedule vests with the Central Govt. as per Section 20 of the RTE Act. State Govt. does not have power to amend the Schedule. As such, the act of State Govt. of replacing the part-time instructors with that of Guest Instructors is *non-est*.

[e] Section 23 of the RTE Act enlists qualifications for appointment and terms and conditions of service of teachers, the minimum qualification is to be prescribed by the Central Govt.

and as per Clause 2 of Section 23 of the RTE Act, only Central Govt. has the powers to relax the minimum qualification required for appointment as a teacher. State Govt. does not have authority to prescribe qualification of the teachers. Section 25 (1) of the RTE Act imposes obligation upon the Appropriate Govt. and the Local Authority to ensure and maintain student – teacher ratio as specified in the Schedule. Thus, it is the responsibility of the State Govt. to make sure that prescribed number of teachers, as provided in the Schedule, are made available. Rule 17 of the Central Rules authorizes the Central Govt. to notify the Academic Authority for laying down the qualification for a person to be eligible for appointment as a teacher. Clause 3 thereof states that minimum qualification prescribed by the Academic Authority shall be applicable for every school. Though rule 18 of the Central Rules titled as 'relaxation of minimum qualification prescribes for relaxation of minimum qualification', however fixed procedure laid down has to be followed i.e. the State Govt. has to request the Central Govt. The respondents have not complied the said procedure. It could not have relaxed the eligibility and the minimum qualification for appointment of part-time instructors. According to the learned counsel, the State Govt. is attempting to harp on the impugned Govt. Resolutions of enriching the students through different teachers specialized in different aspects of Art, Physical Education and Work Experience that

would fall under specialized training, over and above the mandatory instructions in regular Art, Physical Education and Work Experience class as required by the statute in view of Section 24 read with Schedule of the RTE Act.

[f] The learned counsel further submit that the part-time instructors would come under the ambit and definition of a teacher. The respondents are committing gross error in not treating part-time instructors as teachers.

[g] The learned counsel further submit that the Judgment and Order dated 09/05/2014 in Writ Petition No. 7106 of 2013 with connected Writ Petitions has attained finality. Even the Review has been dismissed. The said Judgment is binding upon the respondents. The impugned Govt. Resolution dated 07/05/2015 and Corrigendum Govt. Resolution dated 07/01/2017 are against the directions issued in the said Judgment. The learned counsel have referred to the following aspects, as suggesting the directions of the Court in its Judgment dated 09/05/2014, not being adhered to :

Sr. No.	Directions issued by this Hon'ble Court	Para No. of Judgment	Policy framed by the State Govt.
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1	The State Govt. while taking final policy decision in respect of appointments is bound to consider the length of services rendered by the respective petitioners working on the post of instructors in (a) Art Education, (b) Health Education and Physical Education and (c) Work Education.	118 (ii)	The length of service of the different part-time instructors has not been given due weightage in as much as any person who has served as part-time instructor is treated alike a differentiation was required to be made within the part-time instructors based on their length of service.
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2	The State Govt. while making fresh appointments is bound to give due weightage to the experience gained by the petitioners and their requisite qualifications.	118 (iii)	Rather than giving priority and weightage to the experience and qualifications of the petitioners, the G.R. now introduces a policy of guest instructors who are expected to work without pay, and need not have any formal qualifications in either Art, Physical Education or Work Experience. The persons without any qualification in these subjects would be in no position to impart any necessary skills and instruction to the students, much less of a quality and standard expected in the Statute. This is in sheer violation of the requirement of minimum qualification of the teaching staff under the RTE Act so also the disciplinary authority on such staff.
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3	Create permanent infrastructure and also appointments on permanent basis as long time measure.	118 (iv)	The Govt. has introduced a concept of a panel of instructors for each school, whose term shall extend for a period of 3 years. Such a policy measure is in gross violation of the direction of the Court as the Court had directed the Govt. to make appointments on permanent basis so as to meet the mandate and object of the RTE Act, 2009. Rather the respondents have made an eye-wash of 3 year panel, and within the panel there is no maximum number of persons to be included, so effectively each person in the panel still remains as an ad-hoc appointee, rather with much more uncertainty about his payment and work load.
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4	Creation of permanent cadre of part time instructors in (a) Art Education, (b) Health Education and Physical Education and (c) Work Education.	118 (v)	No permanent cadre of part-time instructors is sought to be created. Replacing the part-time instructor as required in the schedule and mandated by section 18 and 19 of the Act, the Govt. has introduced the concept of guest instructors who will work without pay and take one or two classes each. Such a policy decision is in total circumvention of the mandate of the RTE Act requiring 3 instructors in different subjects per 100 students. The concept of guest instructor can be used in addition to the part-time instructors not in its place, as the part-time instructors are mandated by the Statute.
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5	Appointments can not be sanctioned each year, State has to make appointments on sanctioned posts keeping in view long term plan.	118 (vii)	Instead of long term vision, a rather myopic vision is taken and the shortage of financial resources is the main reason in finding escape routes by the Govt. to appoint highly qualified and experienced instructors at humane service conditions.
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6	The State Govt. will consider the aspect of prescribing pay scales to part-time instructors in Art Education, Physical Education and Work Education as per their qualification, which is not less than half the pay scales prescribed for full-time teachers.	115	The 2015 Govt. Resolution has reduced honorarium paid to part-time instructors from 5,000 p.m. to a maximum of 2,500 p.m., depending on how many classes are taken by each person in the panel every month. The 2017 Govt. Resolution has made this maximum honorarium as 5,000 p.m. though this is an illusory figure as the number of classes in a month will be split amongst the number of persons in the panel and thus this 5,000 Rs. p.m. per instructor will be divided amongst the number of persons in the panel making this a much worse service condition than the one existing at the time of the Judgment and Order dated 09/05/2014 in W.P. No. 7106 of 2013.
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7	Direction to State Govt. to take immediate steps, however well in advance before commencement of academic year 2014-15.	119	Policy formulated in 2015 GR and thereafter in 2017 G R is grossly in violation to these directions and even though 3 years are lapsed since the contempt of this direction, the Govt. has not allowed the petitioners to join the duty as part-time instructors despite being duly qualified.
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[h] The learned counsel further submit that as per the earlier Govt. Resolution, Physical Education Instructors were required to possess certificate of Bachelor in Physical Education for the post of Physical Education Instructor in Zilla Parishad school. All these petitioners possess said qualification and the pay scale prescribed of the Drawing teacher and Physical Education Instructor as per Govt. Resolution dated 20/05/2009 is Rs. 9,300 – 34,800/- with grade pay of Rs. 4,300/-, Rs. 4,400/- [senior pay scale] and Rs. 4,800/- [20% selection grade] and for Music teacher Rs. 9,300 – 34,800/- [senior pay scale]. Further Circular of the Govt. dated 14/05/1987 states that qualification of Bachelor in Physical Education and Bachelor of Education shall

be considered equivalent for determination of pay scale of teachers. Despite such mandate of the Govt., the Instructors are being provided a meagre, per class honorarium even less than the minimum wage.

[i] The learned counsel further submit that the respondents are misleading the Court with regard to the number of posts available. They are considering the 'due dias data' as on 31/10/2013 instead of 30/09/2015. If the strength of students studying in 6th, 7th and 8th standard is considered as on 30/09/2015, there would be at-least 7000 schools which have strength of 100 or more students. However, the Govt. has stated that there are only 1835 posts of part-time instructors, in which strength of students in 6th to 8th standard is more than 100. The strength of students in 8th standard is required to be considered. The Govt. ought to have sanctioned more than 21,000 posts of part-time instructors rather than 1835 posts of part-time instructors. Earlier, at one point of time, State of Maharashtra has sanctioned 18,645 posts of part-time instructors.

[j] The students who are entitled to have the benefit of Craft, Art and Physical instructors are deprived of the special teaching from such teachers. The respondents have deprived thousands of part-time instructors, who were appointed on ad-hoc basis not only of their source of livelihood, but have deprived lakhs of

students from the facility of learning physical education also.

[k] The learned counsel further submit that thousands of part-time instructors are required to be protected by allowing them to join as physical education or work experience instructors and grant them pay scale as per Govt. Resolution dated 20/05/2009 issued by the Rural Development and Water Conservation Department revising pay scale of employees working in Zilla Parishad. The learned counsel further submit that the respondents have failed to frame the policy in consonance with the directions issued by this Court in its Judgment dated 09/05/2014 in Writ Petition No. 7106 of 2013 with connected Writ Petitions, so also is against the statutory provisions enshrined under RTE Act. As such, the Govt. Resolutions impugned in the present Writ Petitions are required to be quashed and set aside.

3. Mr. Ram Apte, learned Senior Counsel appeared for respondent No. 1 – State and put-forth following submissions.

4. The directions given by this Court in its judgment dated 09/05/2014 in Writ Petition No.7106 of 2013 have been complied with. The State Government placed the directions issued by this Hon'ble Court before the Cabinet and with the approval of the Cabinet, the State Government has formulated a policy under

Government Resolution dated 07/10/2015 and subsequent corrigendum dated 07/01/2017.

5. The directions with regard to giving due weightage to the experience gained by the petitioners has been complied under Clause (Kh) of Government Resolution dated 07/10/2015. Part-time Instructors are included in the Guest Instructors panel. Permanent infrastructure is already created. All the schools have permanent infrastructure. The directions with regard to creation of permanent cadre of part-time Instructors is also complied with. The same is writ large. Under Clause (kh) sub-Clause 4 of the impugned Government Resolution, opportunity has been given to the Guest Instructors to work in more than one school.

6. The learned Senior Counsel further submits that though, initially, the Government Resolution dated 07/10/2015 had provided payment at the rate of Rs.50/- per period upto a maximum of Rs.2,500/- per month, the same has been reconsidered and a corrigendum is issued dated 07.01.2017 increasing payment upto a maximum of Rs.5,000/- per month. The said amount is fixed considering the Sarva Shiksha Abhiyan under Central Government budget for the said purpose. A part-time Instructor has to work for a short period in the school and is free to work for gain or to do other business or

profession, in addition to his duty as a Guest Instructor. The Government Resolution dated 07/01/2017 is not in supersession of the Government Resolution dated 07/10/2015, but the Government Resolution dated 07/01/2017 only further clarifies and modifies a part of the Government Resolution dated 07/10/2015.

7. The learned Senior Counsel further submits that annual work plan and budget of Sarva Shiksha Abhiyan is being sanctioned and provided by the Ministry of Human Resource, Department of School Education and Literacy, New Delhi for the project which is being implemented within the State of Maharashtra. Under Sarva Shiksha Abhiyan, for the State of Maharashtra, the Ministry of Human Resource, Department of School Education and Literacy has sanctioned Rs.50,000/- for ten months for a part-time Instructor of Arts Education, Health and Physical Education and Work Education. Hence, the slab of honorarium is increased upto Rs.5,000/- per month. The part-time Instructors are paid on clock-hour basis and not on daily wages.

8. The learned Senior Counsel further submits that the challenge to the Government Resolution on the ground of violation of Article 21-A of the Constitution of India, does not survive in view of the policy framed by the State Government.

The State Government is providing free and compulsory education to all children of the age group between 6 years to 14 years as per the RTE Act, 2009.

9. The learned Senior Counsel states that there is a clear distinction between Teacher and Instructor. An Instructor can, by no stretch of imagination, be equated with a Teacher under the RTE Act. Reliance of the petitioner, therefore, on the provisions regarding Teacher, is totally misplaced in view of the distinct nature between Teacher and Instructor. The learned Senior Counsel categorically states that those part-time Instructors, who have earlier worked, will be accommodated first in the respective schools, before making any additional appointments. The State Government has created a permanent cadre of part-time Instructors. This Court never directed granting permanency to the petitioners, but had directed creation of permanent cadre and the same has been done.

10. The learned Senior Counsel further contends that the State Government, while framing policy as per the impugned Government Resolution dated 07/10/2015, has made some out-of-box thinking. The preamble in the said Government Resolution gives justification for such thinking. The Government has decided to create a panel of Instructors in each school for overall development of the students. The Annexures to the impugned

Government Resolution, which are illustrative in nature, would clearly show that, what is required to be seen is experience, expertise and knowledge of a person who will have to be appointed as a Guest Instructor, as contemplated by the provisions of the RTE Act. The provisions of the Government Resolution would clearly show that the endeavor of State Government is to get best available talent for imparting education to the students which will be useful to them for their overall development. The provisions of the Government Resolution are in full conformity with the RTE Act and the Rules framed thereunder.

11. The learned Senior Counsel further submits that considering the vast variety of subjects involved, it will not be possible to restrict part-time/Guest Instructors to limited academic qualification. The students should be focal point of every education system and in view of that, the State Government is relying more on experience, expertise and knowledge of a person in the particular subject for best possible development of the students. The persons possessing exceptional skill in Sports, Arts etc. can be invited as Guest Instructors, though they may not be possessing a particular qualification. The learned Senior Counsel, to illustrate, states that a person who has acquired excellence in a particular sports and if he is ready to instruct the students free of cost, he would be welcome.

As such, insisting for qualification should not be necessary and that is why, it is not necessary to have a particular qualification for Instructors.

12. The learned Senior Counsel further submits that there are various skilled and multi-talented personalities who are ready to come forward to distribute their talent/skill free of cost. They are also ready to disburse their talent to the students by way of education. In the present mechanical system of education, there is misconception that only if the honorarium or payments are made, such persons are eligible to impart education and those personalities who are eager to distribute their talent by way of education free of charge, are not eligible to impart such education. Because of such misconception, many multi-talented personalities are not getting opportunity to impart talent to the students in the schools. If the highly talented personalities in the field of Arts, Sports, Work education etc. are ready to carry out the object free of charge, they can be rewarded by way of public felicitation at the end of the academic year.

13. The challenge in the Writ Petition is to the policy of the State Government and that involves financial implications. The learned Senior Counsel, therefore, submits that the Writ Petitions, in such circumstances, ought not be entertained and

deserve to be dismissed.

14. We have considered the submissions canvassed by the learned Counsel for the respective parties, the directions issued by this Court in Writ Petition No.7106 of 2013 under its judgment and order dated 09/05/2014, so also the provisions of the RTE Act.

15. This Court, under its judgment and order dated 09/05/2014 in Writ Petition No.7106 of 2013 with connected Writ Petition, had directed the State Government to formulate a policy in respect of part-time Instructors. The directions issued by this Court in its judgment and order dated 09/05/2014 in Writ Petition No.7106 of 2013 with connected Writ Petition, read as under :-

"....

118. In the light of elaborate/ detailed discussion in foregoing paragraphs, this Court has reached to following final conclusions:-

i) It is the failure of the State Government and in particular concerned Education Department, not to formulate final policy document within three years from 1.4.2010 i.e. the date when the RTE Act 2009 came into force.

ii) Since the State Government did not formulate final policy document within three years, as contemplated under RTE Act, and in particular keeping in view provisions of Sections 19 and 23 thereof, funds were not released for the academic year 2013-14 by the Central Government. Therefore, the petitioners have to file hundreds of petitions for redressal of their grievances. No slightest fault can be attributed to the petitioners.

iii) The State Government while taking final policy decision in respect of appointments is bound to consider the length of services rendered by the respective petitioners working on the post of Instructors in (a) Art Education, (b) Health and Physical Education and (c) Work Education, mental agony faced by them in not appointing them for the academic year 2013-14 because of failure of State Government in not performing its obligation. The State Government while making fresh appointments is bound to give due weightage to the experience gained by the petitioners and their requisite qualifications and mental agony faced by them by not continuing them for the academic year 2013-14, for the failure of the State Government in not formulating permanent policy document.

iv) The State Government keeping in view the provisions of Article 21-A of the Constitution of India and the provisions of RTE Act, Rules thereunder and the Schedule prescribed, will have to take decision to create permanent infrastructure and also appointments on permanent basis as a long time measures so as to perform its Constitutional and statutory obligations under the provisions of Constitution of India and RTE Act.

v) The State Government can certainly keep in view and consider to create permanent cadre of part time Instructors in (a) Art Education, (b) Health and Physical Education and (c) Work Education as specified in Section 9 of RTE Act and Rule 20 of Rules 2010, in all Zilla Parishad Schools having 5th to 7th standards and minimum strength of 100 students in the State of Maharashtra. Since the State Government has not formulated final policy document, we leave it to the State Government to perform its obligation in view of the provisions of RTE Act.

vi) As already observed, it would be open for the State Government while appointing the candidates on the posts of part time Instructors in (a) Art Education, (b) Health and Physical Education and (c) Work

Education, or on any other post under RTE Act, the State Government has to inform them that due to inadequate work load in particular schools, they will have to attend other school so as to complete the work hours/work load. The State Government can very well keep in view the policy formulated by the State of Karala or any other welfare State, as a guiding factor.

Vii) The posts sanctioned by the State Government, as reflected in affidavit in reply filed by the State authorities and in the light of the Government Resolution placed on record cannot be considered for the particular academic year. Therefore, the State has to make appointments on these sanctioned posts keeping in view long term plan.

119. In the light of discussion herein before, and the conclusion reached, we direct the State Government to take immediate steps/decision, as expeditiously as possible, however well in advance before commencement of next academic year 2014-15, in all respects, in the light of para 118 of this Judgment, keeping in view the provisions of the RTE Act, Rules and Schedule thereunder. "

16. The impugned Government Resolutions dated 07/10/2015 and 07/01/2017 will have to comply with the aforesaid directions and so also with the provisions with regard to part-time Instructors, in the RTE Act.

17. The directive principles of the State policy enumerated in the Constitution of India lay down that the State shall provide free and compulsory education to all children upto the age of 14 years. Article 21-A of the Constitution of India, as inserted by the Constitution (86th amendment) Act, 2002, provides for free and compulsory education to all children in the age group between 6 years and 14 years, as a fundamental right in such a manner as the State may, by law, determine. Consequently, the RTE Act 2009 is enacted.

18. Neither the expression “Instructor” is defined in the RTE Act nor the expression “Teacher” is defined. The provisions of R. T. E. Act are comprehensive. Section 19 of the RTE Act lays down that no school shall be established, or recognised, unless it fulfills the norms and standards specified in the Schedule. If the norms, as laid down under Schedule, are not fulfilled, the authority prescribed thereunder shall withdraw recognition granted to such school. Section 23 of the RTE Act deals with the appointment, terms and conditions of service of Teachers and also specifies that any person possessing such minimum

qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a Teacher. Section 24 deals with the duties of the Teachers and redressal of grievances. Section 25 of the RTE Act mandates maintenance of Pupil-Teacher ratio as specified in the Schedule.

19. The provisions of the RTE Act, as discussed supra, mandate about the norms and standards to be maintained as specified in the Schedule so also, Pupil-Teacher ratio to be maintained as per the Schedule. The Schedule is an integral part of the RTE Act of 2009. The said Schedule prescribes norms and standards for schools.

20. The Schedule specifically lays down that for 6th to 8th classes, where admissions of students is above 100, there shall be a full-time Head Teacher and Part-time Instructor for (a) Arts Education, (b) Health and Physical Education, and (c) Work Education. The schools are under obligation to maintain the norms and standards as prescribed in the Schedule. The said Schedule has to be scrupulously adhered to. Any deviation therefrom is not permissible. In the impugned Government Resolution, the State Government has termed the part-time Instructor as Guest Instructor. Though nomenclature may not be much relevant, still the respondent though has termed them as Guest Instructors, they are, in fact, part-time Instructors as

laid down in the Schedule of the RTE Act. They will have to be treated as part-time Instructors.

21. The purpose of school is all-round development of a student. Along with academic excellence, a student should get training in extra curricular activities such as Arts, Health and Physical education, Work education etc. It is to achieve the said object and for all-round development of students. The legislation has provided for appointment of Instructors in Arts Education, Health and Physical Education and Work Education and has referred them as part-time Instructor. They have not clubbed these part-time Instructors with a full-fledged Teachers to be appointed for academics.

22. This Court in its judgment and order dated 09/05/2014 in Writ Petition No.7106 of 2013 with connected Writ Petitions, had certainly not granted permanency to the petitioners therein, but had only directed to create permanent cadre. Even as per Rule 4 of the Right of Children to Free and Compulsory Education Rules, 2010, the school development plan has to be prepared. The said plan shall be a three year plan comprising three annual sub-plans. The said school development plan is required to contain details of (a) class wise enrollment for each year, (b) requirement of the number of additional teachers including head teachers, special teachers and part time instructors separately with reference to the norms specified in the schedule. It shall

also contain the physical requirement of additional infrastructure and equipments calculated with reference to norms and standards specified in the schedule. The said plan shall also contain details about financial requirements in respect of additional teachers, part time instructors, so also physical requirement of additional infrastructure and equipments. The school development plan has to be for three years. Under the Government Resolution, the panel of physical instructors is for a period of three years and subject to the evaluation of their performance to be continued further for three years. In fact, these part time instructors are required to be continued as long as their work is found to be satisfactory. The permanent cadre is being created.

23. As far as permanent infrastructure is concerned, the schools are bound to maintain the required infrastructure. If, they fail to maintain the required infrastructure and do not adhere to the norms and standards prescribed under the provisions of the Act and the schedule, then the authority under the statute has got powers to withdraw the recognition of that school. The authority has to see that the permanent infrastructure is created as is laid down under the provisions of the statute and the schedule.

24. The strength of the students, no doubt, would be fluctuating and the part-time Instructors, as per the Schedule to

the RTE Act, are required to be appointed only if the strength of the students from 6th to 8th classes is at least 100 students. The post of part time instructor would be fluctuating according to the number of students. Under the impugned Government Resolution, the permanent cadre is created. It is also stated that the part-time Instructors who have worked earlier would be given first preference. They are required to give weightage to the part-time Instructors who have worked earlier. Clause (iii) of Para 118 of the judgment and order dated 09.05.2014 in Writ Petition No. 7106 of 2013 mandates the State to give weightage to the earlier service rendered by part time instructors. The respondents are duty bound to give weightage to those part-time Instructors who have worked earlier. Clause (Kh)(1) of the Government Resolution dated 07/10/2015 lays down that those part-time Instructors, who have worked earlier, will be given preference for inclusion in the panel. Weightage will have to be given to them in appointing them as part-time Instructors. In fact, those who have worked are required to be continued if their work was found satisfactory on evaluation of their work.

25. In fact, the Government ought to have come forward with definite policy about weightage depending upon length of service rendered by part time instructors. The Government shall lay down guidelines in that regard.

26. The Government had not framed any policy regarding

appointment of part time instructors. The part time instructors had to approach this Court as they were not continued. This Court eventually under the judgment and order dated 09.05.2014 in Writ Petition No. 7106 of 2013 with connected writ petitions gave directions to the State to formulate policy governing part time instructors. Pursuant to the judgment and order in Writ Petition No. 7106 of 2013 and other matters, the Government framed the policy vide Government Resolution dated 21.08.2014. The said Government Resolution was withdrawn and fresh guidelines are laid down under impugned G. R. dated 07.10.2015 and 07.01.2017. These Govt. Resolutions have to be in consonance with the judgment and order dated 09.05.2014 in Writ Petition No. 7106 of 2013, as the judgment dated 09.05.2014 in W. P. No. 7106 of 2013 and order in civil application for modification bearing C. A. No. 9191 of 2014 has become final.

27. In Writ Petition No. 7106 of 2013 and other connected matters, this Court gave directions as reproduced supra. The Court directed State to formulate policy with regard to appointment of part time instructors, keeping in mind the length of service rendered by them and the mental agony faced by them, because of failure of State Government is not performing its obligation under R. T. E. Act.

28. The State Government under the impugned Government

Resolution has decided to even appoint guest instructors in place of part time instructors. According to respondent No. 1/State guest instructor may be any person who has acquired necessary skill in arts, sport, etc. and a person who wants to give voluntary service is welcomed. No qualification is prescribed for him. If guest instructors are allowed on regular basis without any qualification, it would result in anomalous situation and may pave path for arbitrariness.

29. The education in arts, physical education, work education is integral part of curriculum. The same has to be taught by the part time instructors. The part time instructor has to be qualified person. We are not entering into a debate as to whether a part time instructor has a status of a teacher, as the same is not necessary for deciding present matters. However, when education is to be provided in arts, health and physical education, work education, the person imparting said courses has to be qualified and has to possess the necessary knowledge. An illiterate person who has achieved reputation in a particular field can be welcomed as a guest instructor by way of an exception, in addition to part time instructor. However, cannot partake the status of part time instructor. It would be necessary for the State to provide minimum qualification for appointment of part time instructors so as to rule out appointment of an incompetent person as part time instructor.

30. The schedule being an integral part of the statute i. e. R. T. E. Act and imparting education for the students where the strength is above 100 and more in arts, health and physical education, work education being mandatory, it is expected that the said courses are taught by the persons holding necessary qualification. Teaching would be different art and skill and we do not approve the act of the State Government in laying down policy of guest instructors even without qualification in the place of part time instructors. However, we observe that the respondent can appoint guest instructors of exceptional skill and expertise, who are ready to render service voluntarily without consideration, but the same shall be in addition to the part time instructors to be appointed as laid down in the schedule and not by way of substitution to part time instructors. The respondent/State shall specify the qualification for the part time instructors. The same is necessary considering the prelude to the impugned Government Resolutions i. e. the order of this Court in Writ Petition No. 7106 of 2013 with other connected writ petition dated 09.05.2014. If guest instructors are allowed to be appointed in the place of part time instructors, the same shall not be in consonance with the spirit of the R. T. E. Act and the judgment of this Court in Writ Petition No. 7106 of 2013 dated 09.05.2014. These guest instructors would not be under the disciplinary control of the management and if they are not under disciplinary control and a guest instructor is not

rendering his service properly, the same would affect the welfare of the students. The appointment of part time instructors is for imparting knowledge to the students in arts, health and physical education and work education. Those who would be rendering voluntary service would not be under the control of the management, as such would not be liable for disciplinary action.

The powers to amend the schedule to the R. T. E. Act vest with the Central Government. If appointment of guest instructors as is sought to be made by the respondent is allowed to be sustained, the same would be contrary to the schedule, which prescribes appointments of part time instructors. The State Government would not have any authority to do so. The same would result in amending the schedule by the State Government, which is not permitted. Sec. 20 of the R. T. E. Act bestows that power only upon the Central Government.

31. The next issue would be about emoluments to be paid to the part time instructors. We have observed that, the schools can invite persons who have achieved name and fame and experts ready to render voluntary service as guest instructors in addition to the part time instructors. The post of part time instructors for classes 6th to 8th and where-ever strength is above 100 students cannot be done away with. Of course, it is said that the part time instructors will be concerned with some lectures in a week and will also be entitled to do their other

personal avocation and there would not be any restriction upon it. The respondent under the impugned G. R. have decided to pay Rs. 50/- per lecture subject to maximum Rs. 5,000/- per month. The respondent/State will have to keep in view that, these part time instructors would be imparting education to the students. They are skilled in their work. They have acquired necessary knowledge. Paying Rs. 50/- per lecture would not be in tune with the status that would be attached to the part time instructors. Even that would be less than daily wages to be paid to the part time skilled daily wager. The emoluments to be paid is the policy decision of the State, wherein the State has to consider all the relevant aspects. The respondent has decided to pay Rs. 50/- per lecture subject to maximum Rs. 5,000/- per month. Considering the lectures to be allotted none of them would be getting even Rs. 5,000/- per month. The same would be too meager. We expect the State Government to fix a better, lucrative and honourable remuneration to the part time instructors. In the judgment dated 09.05.2014 in Writ Petition No. 7106 of 2014, which is also maintained in Review Petition No. 9191 of 2014, the Court though had not directed State, but expected that the part time instructor to be paid half of the salary of the teachers. The State may not calculate the same with mathematical precision, still payment of Rs. 50/- per lecture would be too meager, the same requires to be reconsidered. In the result we pass following order.

ORDER

- A. Respondent No. 1/State shall prescribe qualification for the appointment of part time instructors.
- B. Respondent No. 1/State shall give weightage to the part time instructors considering the length of service rendered by them earlier.
- C. The guest instructors may be appointed in addition to the part time instructors and not as substitutes to the part time instructors and respondent No. 1/State shall reconsider emoluments to be paid to the part time instructors.
- D. The decision in respect of Clauses "A" to "C" above shall be taken expeditiously and preferably within three months from today.
- E. Rule accordingly made absolute in above terms.
- F. No costs.

Sd/-**[SANGITRAO S. PATIL, J.]****Sd/-****[S. V. GANGAPURWALA, J.]**