

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

WRIT PETITION NO. 6584 OF 2019

1. Navnath S/o Gangadhar Fartade,
Age 29 years, Occ. Service,
R/o Sushiwadgaon, Tal. Georai,
District Beed.
2. Ashish S/o Shambhajirao Deshmukh,
Age 35 years, Occ. Service,
R/o Lasurgaon, Tal. Vaijapur,
District Aurangabad.
3. Kishor S/o Prabhakar Pawar,
Age 26 years, Occ. Education,
R/o Koradgaon, Post. Sanephal,
Tal. Vaijapur, Dist. Aurangabad.
4. Pandurang S/o Baburao Bangar,
Age 28 years, Occ. Education,
R/o Nalewadi, Tal. Ambad,
District Jalna.
5. Smita Kashinath Gadhekar,
Age 30 years, Occ. Education,
R/o Bhimnagar, Bhavsinghpura,
Near Rinki General Store, Aurangabad
Tal. & District Aurangabad.
6. Gajanan S/o Sakharam Bahiwal.
Age 34 years, Occ. Student
7. Aba S/o Shankar Mali,
Age 30 years, Occ. Student
Both R/o Mathpimpalgaon,
Post Golapangri, Tal. Ambad,
Dist. Jalna.

.. **Petitioners**

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
School Education and Sports Dept.
Mantralaya, Mumbai-32.
2. The Commissioner of Education,
Maharashtra State, Pune.
3. The Director of Education (Primary),
Maharashtra State, Pune.
4. National Council for Teacher Education,
Wing-II, Hans Bhavan-I,
Shah Zafar Marg, New Delhi.

.. Respondents

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Mr. S.S. Thombre, Advocate for the Petitioners.

Mr. A.R. Kale, AGP for the respondent-State.

Mr. Nikhil Tekale, Advocate for the respondent no.4.

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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.**

DATE : 10th October, 2022

JUDGMENT:- (Per: Y.G. Khobragade, J.)

Rule. Rule made returnable forthwith. With the consent of the parties taken up for final disposal at admission stage.

2. Heard Shri S.S. Thombre learned counsel for the petitioners, Shri A.R. Kale learned AGP for the respondent nos.1 to 3 and Shri Tekale learned counsel for the respondent no.4 at length.

3. In the present petition under Article 226 of the Constitution of India, the petitioners who have acquired qualification of B.A. D.Ed, Teacher Eligibility Test-II (TET) certificate, Central Teacher Eligibility Test-II (CTET) certificate and D.T.Ed and who have cleared State TET / Central TET in Mathematics and Science subjects as per government resolution dated 13.02.2013 which was issued as per the the regulations of NCTE (National Council for Teacher Education), but as per government resolution dated 01.01.2019 they were found to be ineligible for appointment as Teacher in Mathematics and Science subjects. Hence, the petitioners have prayed for quashing and setting aside the government resolution dated 01.01.2019.

4. Factual matrix of the present petition is that the petitioners 1 to 7 did B.A. D.Ed and have also cleared TET-II certificate, CTET-II certificate and D.T.Ed. After enactment of Right of Children to Free and Compulsory Education Act, 2009 (for short the 'RTE Act') government issued a resolution dated 13.02.2013 by which TET was made compulsory for appointment of the Primary Teacher (1st to 8th Standard). Therefore, the candidates who are to be recruited as Teacher must pass essential aptitude and eligibility test to meet the challenges of teaching at the primary and upper-primary level for which they are required to pass Teacher Eligibility Test (TET). In order to

streamline the policy, the State Government issued another government resolution dated 23.08.2013.

5. According to the petitioners, as per government resolution dated 13.02.2013 and regulations of NCTE, Paper-I is made compulsory for upcoming appointment being Teachers for 1st to 5th standard and paper-II is made compulsory for appointment as a Teacher for 6th to 8th standard and if the candidates are seeking appointment for the post of Teacher for 1st to 8th standard in that case, the candidates are required to pass paper I and II. However, as per government resolution dated 13.02.2013, the State Government had not clarified that in which subjects the candidates are required to pass TET and no such provision provided under the NCTE Regulations. The petitioners further advert that they have cleared State TET/ Central TET from the Mathematics and Science subjects and therefore they are eligible for appointment to the post of Teacher in Mathematics and Science. However, on 01.01.2019 the State Government issued resolution and provided that the candidates who are seeking appointment for the post of Teacher for 6th to 8th standard, their candidature would only be considered as per their passing of the degree irrespective of whether, they pass TET in Mathematics and Science. As per this resolution the petitioners are held ineligible for appointment as a Teacher. However, candidates who are having Mathematics

and Science subject and who have not passed TET in Mathematics and Science are being considered for the post of Teacher. Therefore, the action on part of the State Government is illegal and bad in law.

6. Learned counsel Shri Thombre appearing for the petitioners vehemently canvassed that all the petitioners did B.A. D.Ed and they also possess TET- I & II certificates and are eligible for being appointed as Teacher for Mathematics and Science subjects as per government resolutions dated 13.02.2013 and 23.08.2013. However, as per resolutions dated 01.01.2019 and 25.02.2019, it is prescribed that candidates who are seeking appointments to the post of Teacher for 6th to 8th standard are required to pass paper-II and their eligibility would be considered as per their graduation and not their passing of TET. However, the candidates who have completed graduation in the subject of Mathematics and Science and if they have passed TET in other subjects other than Mathematics and Science they are held to be eligible for appointment but simultaneously no specific provisions are made in respect of the candidates who have passed TET. The petitioners have already passed TET from the Mathematics and Science, therefore, the candidature of the petitioners is required to be considered for appointment as Teacher in Mathematics and Science subjects, as they have passed TET examination. However, by the impugned resolution candidatures are being considered as

per the subjects of degree course of the candidates and not as per the subjects of TET and the petitioners possess degree in B.A. and have passed TET in Mathematics and Science. Therefore, the impugned Government Resolution dated 01.01.2019 is illegal, bad in law and is liable to be quashed and set aside.

7. Per contra, learned AGP Shri Kale appearing for the respondents 1 to 3 canvassed that in order to achieve the aim and object of R.T.E. Act 2009, State Government issued Resolution dated 13.02.2013 and prescribed procedure that, a candidate must clear TET for being appointed as a Teacher for 1st to 8th standard. As per government resolution dated 23.08.2013, the candidates who desire to submit their candidature for the post of Teacher are required to pass TET-I for 1st to 5th standard and TET-II for 6th to 8th standard and the candidates who have passed TET-II can be appointed for 1st to 8th standard and said candidate is not required to appear for TET-I. So also, the candidates who have cleared TET will not get any right or entitlement for seeking appointment and it is made clear that it is just a qualifying test. The learned AGP further canvassed that, on 25.02.2019, the State Government issued Resolution and prescribed qualification for appointment as a Teacher. As per the said government resolution, Schedule-A prescribes qualification for the candidate who seeks appointment as a Teacher for 1st to 5th standard and

Schedule-B prescribes qualification for the candidate who seeks appointment as a Teacher for 6th to 8th standard. Schedule-B provides that the candidate must possess degree or graduation in the subject with 50% and said candidate must have B.Ed qualification. The candidate who seeks appointment to the post of Teacher for higher secondary i.e. 11th and 12th standard must have graduation in the concerned subject for which appointment as a Teacher is sought. However, on 01.01.2019 the State Government issued another government resolution clarifying that though the candidate might have passed TET by appearing in Mathematics and Science or Social Science paper but while seeking appointment said candidate must possess graduation degree from the concerned subjects and as such the petitioners who are graduates in B.A., were not having Mathematics and Science subjects in the degree course and merely they have only passed eligibility test i.e. TET, CTET in Mathematics and Science. Therefore, the petitioners are not entitled and eligible for appointment to the post of Teacher in Mathematics and Science subject and no propriety lie in favour of the petitioners while fixation of criteria under government resolution dated 01.01.2019, hence, he prayed for dismissal of the petition.

8. In support of these submissions, the learned AGP relied on the judgment dated 07.10.2022 passed by the Division Bench of this Court in **Writ**

Petition No.7790/2019 (*Abhijit Madhavrao Patil & Ors. V/s. The State of Maharashtra & Ors.*) wherein, it has been held that the State Government is entitled to prescribe higher qualification than the minimum qualification prescribed by the NCTE and also to prescribe qualification suited to teach particular subjects. The qualifications necessary for appointment of Teachers to teach combined subjects of Mathematics - Science is something which can be decided by the State Government alone by acting on opinion of experts in the field and this Court will not be in a position to interfere in the same.

9. Learned counsel Shri Tekale for respondent no.4 has not disputed the fact of issuance of government resolution dated 01.01.2019 by the State Government, wherein the candidates who are seeking appointment to the post of Teacher for 6 to 8th standard require to pass degree course in Mathematics and Science and merely the candidates who have passed Mathematics and Science paper in TET / CTET does not confirm a right to the candidates who desire to be appointed as Teacher for 6th to 8th standard and prayed for dismissal of the present petition.

10. It is submitted that in the present petition the petitioners have questioned the wisdom of the State Government while prescribing qualification for appointment to the post of Teacher on the ground that they

have passed TET, CTET in Mathematics and Science subjects, though, they having degree in B.A. No doubt as per guidelines framed by the NCTE vide circular dated 11.02.2011 the candidates who desire to be recruited as Teacher must pass TET with minimum qualification. For appointment to the post of Teacher for 1st to 5th standard, Paper-I of TET contain following subjects:

- i) Child Development and Pedagogy
- ii) Language I
- iii) Language II
- iv) Mathematics
- IV) Environmental Studies.

For appointment to the post of Teacher for 6th to 8th standard, Paper-II of TET contain following subjects:

- i) Child Development and Pedagogy (compulsory)
- ii) Language I (compulsory)
- iii) Language II (compulsory)
- iv) (a) For Mathematics and Science teacher : Mathematics and Science-60 MCQs of 1 mark each
(b) For Social studies teacher : Social Studies – 60 MCQs
(c) for any other teacher – either 4(a) or 4 (b)

10. It is further submitted that on 13.02.2013 and 23.08.2013, the State Government issued government resolutions and prescribed higher

qualification and procedure for conducting TET for appointment to the post of Teacher. As per government resolution dated 13.02.2013, the candidates who desire to get appointed as a Teacher for 6th to 8th standard are required to pass paper-II in any subject in TET but the concerned candidate shall also possess degree with essential qualification of B.A. B.Ed etc. However, on 01.01.2019 the State Government issued impugned government resolution in modification of earlier government resolution and prescribed qualification that even if a candidate passed the eligibility test i.e. TET in any subject including Mathematics, Science or Social Science the candidature of said candidate would only be considered for appointment of Teacher as per subject of degree course. Therefore, it appears that, the State Government issued impugned government resolution and prescribed higher qualifications for appointment of Teacher for 6th to 8th standard i.e. a candidate should have completed graduation in Mathematics and Science subject while pursuing degree course which is mandatory and in adherence of qualification prescribed by the NCTE. In judgment dated 07.10.2022 in **W.P. No.7790/2019** cited (supra), the Division Bench of this Court already held that, the object of the State Government is not to create employment but to enhance the standard of education and to maintain the same, the qualifications for such subject are prescribed keeping in mind that object and the State counsel opined that it is

necessary for Teachers to possess education in Mathematics and Science at a higher level than the one at which he / she would teach the students. Therefore, in our conscious view, merely the petitioners who have cleared Mathematics and Science subject in TET without having said subjects in their degree course, have no right in their favour and there is no bar under the provisions of Right to Education Act for prescribing qualification higher than the qualification prescribed by the NCTE. Therefore, in our judicious conscience, qualification for appointment to the post of Teacher is under the domain of experts and this Court cannot interfere in the same while prescribing required qualification. In view of the above, the present petition is liable to be dismissed. Hence, we proceed to pass the following order:

ORDER:

- I) Writ Petition is dismissed. No costs.
- II) Rule is discharged.

[Y.G. KHOBRAGADE, J.]

[SMT. VIBHA KANKANWADI, J.]