

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

WRIT PETITION NO.6894 OF 2023

Sadaf Imamoddin Masood .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO.6895 OF 2023**

Ansari Yasmin Nasim Ahmed .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

Mr.Rahul S. Kadam for Petitioners.
Mr.S.B. Kalel, AGP for State in WP/6894/23.
Ms.P.N. Diwan, AGP for State in WP/6895/23.

**CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.**
DATE : 2nd November 2023

P.C.:-

. We have heard learned counsel for the petitioners and Mr.Kalel & Ms.Diwan, learned AGP for the State. In both these petitions, the petitioners are working as Assistant Teachers -Shikshan Sevak in respondent nos.4 and 5 institutions which are stated to be minority institutions having fundamental rights under Article 30 of the Constitution of India.

2. The grievance of the petitioners is in regard to communication dated 5th July 2021 issued by the Deputy Director of Education, Pune Region, Pune which is issued in the context of Teacher Eligibility Test (T.E.T.) required to be undertaken by the petitioners for the petitioners to become eligible to be included in the “Shalarth Pranali.” The relevant extract of the impugned communication as addressed in the context of the petitioners by the Deputy Director, Pune Region to the Education Officer (Secondary), Zilla Parishad, Pune as translated reads thus :-

“In view thereof, you are hereby informed that Smt. Ansari and Smt. Sadaf have passed Teachers Eligibility Test (T.E.T.) after the date 30th March, 2019. The proposals in respect of the Teachers who have passed the Teachers Eligibility Test (T.E.T.) after the date 30th March, 2019, together with the Government Resolution should be submitted to this Office. However, you have not given explanation to the query raised under this office letter refer red to at Sr.No.2 as to why the proposal was submitted late despite Smt. Ansari and Smt. Sadaf having been appointed already in the year 2014-15. Therefore, your proposal referred to at Sr.No.1 to include the names of Smt. Ansari and Smt. Sadaf in Shalaarth System, is rejected.

(Signature Illegible)
(Audumbar Ukirde)
Deputy Director of Education,
Pune Division, Pune.”

3. The petitioners contend that the petitioners’ appointment was validly made by the institutions. The orders of appointment issued to the petitioners are not in dispute. The petitioners have also drawn the attention of the Court to the approval granted by the Education Officer (Secondary) to the petitioners which is dated 29th September 2020

(Exhibit ‘D’) and final approval dated 21st October 2020 (Exhibit ‘E’). Thus, the Education officer granting final approval to the petitioners’ appointment is also not in dispute. However, the issue has arisen in the context of the impugned communication, a copy of which was forwarded to the Head Master of the respondents school on which the petitioners have now agreed to the effect that the petitioners having not passed T.E.T. prior to 30th March 2019 is being held against them, so as not to include the names of the petitioners in the “Shalarth Pranali” (electronic portal of the approved teachers).

4. Mr.Kadam, learned counsel for the petitioners has contended that such communication insofar as it foists a condition in regard to the T.E.T. examination on the petitioners is per se illegal in view of the position of law and as recognised in several orders passed by this Court that the Right to Children to Free and Compulsory Education Act, 2009 (for short “the 2009 Act”) which is held to be not applicable to the minority institutions in view of the law as laid down by the Supreme Court in case of ***Pramati Educational and Cultural Trust and Ors. Vs. Union of India & Ors.***¹

1 2014 AIR SCW 2859.

5. It is the petitioners contention that the condition of the teachers qualifying the T.E.T. would emanate from the provisions of the 2009 Act and once the Supreme Court in the case of ***Pramati (supra)*** has laid down that the said Act is not applicable to the minority institutions then in that case, it was not open to the Education Officer to foist any condition of T.E.T. on the teachers like the petitioners who were employees of the minority institutions, more particularly when the appointments of the petitioners have already been approved by the Education Officer after examining the proposal in accordance with law.

6. In support of his contention, Mr.Kadam has drawn our attention to a decision of the Division Bench of this Court in case of ***Anjuman Ishaat E Taleem Trust, Aurangabad and Anr. Vs. The State of Maharashtra & Ors.***² in which in similar circumstances, the petitioners therein who were aggrieved by refusal of proposal of appointment of Assistant Teachers working in the minority institutions on the ground that the said teachers have not passed T.E.T. examination, were granted a relief by this Court. The petitioners have relied on the following observations as made by the Court :-

“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.3 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.3 is quashed and set aside. Respondent No.3 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.

(emphasis supplied)

7. Similar view was taken by the Division Bench of this Court in case of **Nivruti s/o. Ramkrushna Sahane Vs. The State of Maharashtra and Ors.**³ wherein following the authoritative pronouncement of the Supreme Court in case of **Pramati Educational and Cultural Trust (supra)** the Court allowed the writ petition. Relevant observations are read as under :-

"4. The learned Counsel appearing for the respondents fairly accepts the position, that in view of the authoritative pronouncement of the Supreme Court in the case of Pramati Educational and Cultural Trust (cited supra), the provisions of the Act of 2009 are not applicable to the case of the petitioner.

5. We have given 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. The issue raised in this Petition is no longer res integra. The Division Bench of this Court (CORAM: S.S. SHINDE & P.R. BORA, JJ.) in Writ Petition No.1164 of 2015 (Anjuman Ishaat E Taleem Trust, Aurangabad and another vs. The State of Maharashtra and others), in

3 Writ Petition No.11251 of 2016 dated 17th January 2018

the similar fact situation where the Petitioner No.2 therein has not passed TET examination, by the Judgment and order dated 8th May, 2015, has directed Respondent No.3 to reconsider the case of the Petitioner No.2 therein, working as Assistant Teacher for approval to his appointment. 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.3 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."

8. Our attention is also drawn to an order passed by the Division Bench of this Court in case of ***Azad Education Society, Miraj through its President Vs. The State of Maharashtra & Ors.***⁴ wherein the Division Bench of this Court has taken a view in the context of an issue which had arisen before us of the State Government providing for Teachers Eligibility Test as pre-condition for the appointment of teachers in the school. The Court observed that the Government Resolution in question providing for the applicability of the T.E.T. did not impose any embargo on the rights of the minority institutions to appoint the staff of their own choice, but the teachers applying would have to be found eligible in the Teachers Eligibility Test. It is submitted by Mr.Kadam, learned counsel for the petitioners that in passing such order, Division Bench had not noticed the decision of the Supreme Court in case of ***Pramati Educational and Cultural Trust (supra)*** when it held that the

4 Writ Petition No.4640 of 2016 dated 12th December 2017

condition of T.E.T. cannot be imposed insofar as the Assistant Teachers working in minority institutions are concerned.

9. It is informed across the bar that the order dated 12th December 2017 passed by the Division Bench of this Court in case of ***Azad Education Society, Miraj through its President (supra)*** is challenged before the Supreme Court and hence such issue is pending before the Supreme Court.

10. This apart, there also appears to be a consistent view of the Court that the requirement of the T.E.T. ought not to be imposed in respect of the teachers appointed in the minority institutions. Moreover in the present case, it clearly appears that both the petitioners have passed T.E.T. and they accordingly have the requisite eligibility, however, what is in issue is that the cut off date of 30th March 2019 is being imposed on the petitioners. Considering the decision of the Supreme Court in case of ***Pramati Educational and Cultural Trust (supra)*** as also the consistent view taken in the decisions rendered by the Division Bench as referred above, we are of the clear opinion that the condition as noted above by us hereinabove in the impugned communication issued by the Deputy Direction, Education ought not to have been imposed on the petitioners

and the petitioners were required to be included in the Shalarth Pranali.

11. We are also informed across the bar that even otherwise, it is consistent view taken by this Court that once the final approval has been granted to the appointment of the Assistant Teachers as in the present case, in that event, the names of the petitioners ought to have been included in the Shalarth Pranali. For such reason also, the petition needs to be succeed.

12. We are therefore, of the considered view that the impugned communication as far as the same is applicable to the petitioners deserves to be quashed and set aside. We accordingly allowed the petition in terms of prayer clause (a). Ordered accordingly.

13. No costs.

JITENDRA JAIN, J.

G. S. KULKARNI, J.