



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 36 OF 2025 IN WP/5354/2024

Jyoti Gorakhnath Gaikwad

.. Applicant

Versus

The State of Maharashtra
through Secretary and others

.. Respondents

AND

REVIEW APPLICATION NO. 37 OF 2025 IN WP/3916/2024

Nilesh Shivaji Patil and others

.. Applicants

Versus

The State of Maharashtra
through Secretary and others

.. Respondents

...
Advocate for the applicants / petitioners : Mr. S.B. Deore along with
Mr. R.A. Shinde and Ms. Suchita J. Pawar
GP for the respondent – State : Mr. A.B. Girase
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 07 APRIL 2025

ORDER (MANGESH S. PATIL, J.) :

Heard the learned advocate for the applicants.

2. The applicants had preferred writ petition nos. 5354 of 2024 and 3916 of 2024, claiming identical reliefs are seeking review of common judgment and order dated 14.02.2025 passed in a group of writ petitions bearing writ petition no. 8610 of 2024 with connected

matters, including the present review applicants' petitions, whereby we had dismissed the writ petitions.

3. A common issue that was raised in all the writ petitions which we had answered in the negative, was to the effect as to whether candidates from the reserved category who had availed the concession to become eligible to participate in the examination to select the candidates for a post, can migrate to an open / unreserved category on the basis of their scores in the selection examination.

4. The issue had cropped up in the wake of the fact that in view of section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (**RTE Act**), the qualification for appointment and terms and conditions of service of the teachers have to be provided for ensuring quality of education imparted to children. The National Council for Teacher Education (**NCTE**) laid down the qualification for a person to be appointed to teach class I to VIII by issuing notification on 23.08.2010, laying down that Teachers Eligibility Test (**TET**) as an essential qualification. By issuing notification dated 11.02.2011 it further prescribed that a candidate would be qualified for being appointed if he has secured 60% or more marks at the TET. By notification dated 29.07.2011, NCTE further notified that this qualification criterion shall stand reduced by 5% of the qualifying marks, for the reserved category candidates. Meaning thereby, that the

reserved category candidates having scored 55% or more marks at the TET, shall stand qualified.

5. In the light of such notification, the state issued a government resolution on 13.02.2013 and prescribed TET as a mandatory qualification for appointment of teachers. It subsequently issued few more circulars *inter alia* extending the time for acquiring the qualification, number of attempts available for a candidate to appear at the TET.

6. Pursuant to the directions of this High Court in PIL no. 8 of 2015, the government of Maharashtra passed government resolution dated 23.06.2017, prescribing the modalities for undertaking recruitment of teachers in the schools being run by the local bodies, government, unaided and aided institutions and even private managements. It prescribed Teachers Aptitude and Intelligence Test (**TAIT**) as a competitive examination providing that the marks obtained in that test as a parameter for preparation of the merit list. It was also declared that TET or Central Eligibility Test (**CET**) would be the essential qualification with the afore-mentioned parameters laid down by CTE to become eligible to appear at the TAIT.

7. The respondent - Maharashtra State Council of Examination, Pune (**MSCE**) conducted examination for selecting the

candidates for being appointed in different schools being run by Zilla Parishads, Municipal Corporations, Nagar Panchayats and private managements, in the year 2023 pursuant to the government resolution dated 07.02.2019.

8. The petitioners in all the writ petitions became eligible and had appeared at the TAIT claiming concession of 5% of marks in the eligibility examination, TET/CTET. On that basis, after the first merit list was published, they had sought to migrate to the unreserved category and were aggrieved by the notification which was impugned in the writ petitions whereby it was expressly informed by MSCE in clause 18 that pursuant to the order passed by the Supreme Court in Special Leave Petition no. 11254 of 2019 dated 24.10.2019 (**Govt. Of NCT Delhi and others V. Pradeep Kumar and others; AIR Online 2019 SC 2024**), it was being informed that the candidates who had received concession for being eligible to appear at TAIT from reserved category, would be considered only from the reserved category on the basis of their score at the TAIT and would be considered in unreserved category only if he was eligible to appear at TAIT without having obtained any such concession.

9. By the order under review, *inter alia* holding that the fact situation in all these matters was clearly covered by the decision of the

Supreme Court in the matter of **Pradip Kumar** (supra) and the petitions were dismissed.

10. Learned advocate for the review applicants submits that in spite of the specific stand of the petitioners that '*the rules of game could not have been changed after it was played*' being the principle enunciated in the matter of **Tej Prakash Pathak and others Vs. Rajasthan High Court and others (2025) 2 SCC 1**, the Court had ignored the trite principle while passing the order under review, as the only ground for the petitioners to seek review. He would submit that the issue was not considered from that angle which is an error apparent on the face of the record and the order be reviewed.

11. We have considered the submissions of the learned advocates and perused the papers.

12. Though it is evident that while passing the order under review, we had not expressly referred to the decision in the matter of **Tej Prakash** (supra), it is quite evident, as we would now point out that the principle therein was deeply considered, to demonstrate as to how the submission on this line on behalf of the petitioners was not factually and legally coming to their rescue. Paragraph no. 27 of the judgment under review reads as under :-

"27. As regards the stand of the petitioners that they were not made known that they would not be entitled to migration and it is

only after publication of the merit list that the notification in question dated 26.02.2024 was uploaded, as has been rightly submitted by the learned Advocate General, this was the extant policy as per the D.O.P.T. memoranda dated 01.07.1998 and 04.04.2018. Again, no such prior intimation in the form of a condition in the advertisement or notification would be necessary inasmuch as this is the law of the land which has been declared by the Supreme Court. Since it is a matter of following policy of reservation, as has been rightly put by the learned Advocate General, notification dated 26.02.2024 is nothing but reiteration of the policy. It is not a case of changing the rules of the game. Having derived concession to reach the benchmark, for appearing at TAIT, the petitioners can be said to have knowledge about the consequences. Even without such notification dated 26.02.2024, the same principle would apply, preventing them from migrating to the unreserved category. Therefore, even this submission of the learned advocates for the petitioners is not legally tenable."

13. When admittedly, TAIT was conducted, as is mentioned herein-above, in the light of the notifications and guidelines issued by the apex body - NCTE and when TAIT was expressly declared to be the competitive examination for appointment as teachers and when such migration is not legally possible, it cannot be said that the order under review contains any formal defect or error apparent on the face of the record to enable us to invoke the extra-ordinary and limited powers of review.

14. There is no merit in both the applications and those are rejected.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/