



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10439 OF 2025

Mohmmadiya Education Society through its Secretary and Another
VERSUS
The State Of Maharashtra and Another

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- Mr. A. D. Sonkawade, Advocate h/f. Mr. K. B. Jadhav & Mr. Aniket Pawar, Advocates for the Petitioners
- Mr. S. D. Ghayal, Addl.GP for Respondent No. 1 - State
- Mr. A. D. Aghav, Advocate for Respondent No. 2 – Zilla Parishad (Primary)

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CORAM : SMT. VIBHA KANKANWADI
AND
HITEN S. VENEGAVKAR, JJ.

DATED : OCTOBER 06, 2025

PER COURT :

1. The present petition is filed for following reliefs :-

“B) Issue a writ of Certiorari or any other writ, order of direction in the nature of writ of Certiorari to quash and set aside the impugned order dt. 8.8.2025 passed by the respondent no. 2 Education Officer (Primary) Zilla Parishad, Ahilyanagar thereby rejecting the proposal submitted by the petitioner no. 1 for grant of approval to the appointment of petitioner no. 2 as Shikshan Sevak.

C) Issue a writ of mandamus or any other appropriate writ, order of direction in the nature of writ of mandamus thereby directing the respondent No. 2 Education Officer (Primary), Zilla Parishad, Ahilyanagar to grant approval to the appointment of petitioner No. 2 for the post of Shikshan Sevak in pursuance to the appointment order dated 1.8.2025 issued by the petitioner No. 1 and grant further consequential benefits.”

2. Heard the learned advocate for the petitioners, the learned Addl. GP for the State, and the learned Advocate for respondent No.

2 – *Zilla Parishad*.

3. The learned advocate for the petitioner submits that the petitioner No. 1 is the educational trust and a minority institution under Article 30 of the Constitution of India. The petitioner No. 2 is the employee appointed as '*Shikshan Sevak*' in the school run by the petitioner – trust, namely *Savitribai Phule Urdu Primary Girls School, Ahmednagar*. Petitioner No. 2 came to be appointed on 01.08.2025, after following due procedure. The post of '*Shikshan Sevak*' had fallen vacant on account of retirement of *Smt. Mumtaz Iqbal Kazi* on 31.05.2025, thereby the appointment of the petitioner No. 2 was against a clear vacancy.

4. The proposal was submitted by the petitioner No. 1 for the approval of the appointment of petitioner No. 2, however, it came to be rejected by impugned order dated 08.08.2025, issued by respondent No. 2, on the sole ground that the Central TET certificate dated 31.07.2024, showed that the petitioner No. 2 has secured only 86 marks, whereas the requisite number of marks from OPEN category is 90. It was then held that petitioner No. 2 has not qualified and therefore, approval cannot be granted.

5. The learned advocate for the petitioner relies on the recent decision of Hon'ble Apex Court in *Anjuman Ishaat-E-Taleem Trust V/s. The State of Maharashtra and Others, 2025 LiveLaw (SC) 861*, wherein for all other institutions, the qualification of the teacher would be successful completion of TET examination was upheld, however, as regards the minority institutions are concerned, the reference has been made to the larger Bench. In fact, it was on the basis of the doubt expressed as to whether the decision in *Pramati Educational and Cultural Trust V. Union of India; (2014) 8 SCC 1*, has been correctly decided in respect of the exemption of the application of The Right of Children to Free and Compulsory Education Act, 2009, (*in short, RTE Act*), to minority schools whether aided or un-aided, falling under Clause 1 of Article 30 of the Constitution.

6. When the reference is still pending, there ought not to have been rejection and further it was specifically observed in the said decision by the Hon'ble Supreme Court that till the reference is decided, there shall be exemption of the schools, which are by minority, whether religious or linguistic from the provisions of the RTE Act, has been clarified.

7. The learned advocate for the petitioner further relies on the decision in *Sadaf Immamoddin Masood V/s. The State of*

Maharashtra and Others; Writ Petition No. 6894 of 2023, decided on 02.11.2023, *Ekta Education Society and Others V/s. the State of Maharashtra and Another*; Writ Petition No. 3755 of 2023, decided on 12.03.2024, *Zakir Husain Marathi Primary School Mukund Nagar Through Rehman Shafi Kazi V/s. The State of Maharashtra and Others*; Writ Petition No. 8891 of 2018, decided on 29.08.2019, wherein the question of applicability of TET Examination to the minority institutions were considered.

8. The learned AGP contends that the factual situation is stated in the impugned order, which is in consonance with the Government Resolution. The learned advocate for respondent No. 2 relies on the replies of Mr. *Vilas Ashok Sathe*, the Deputy Education Officer (Primary), *Zilla Parishad, Ahilyanagar*, wherein the same facts as in the impugned order have been reiterated and the reliance is further on the Government Resolutions.

9. The fact, which cannot be ignored, is that the petitioner No. 1 is a registered society and as per the Government Resolution dated 20.06.2003. Mohmmadiya Education Society, Sarjepura, Ahmadnagar has been declared by the State Government as minority institution. The petitioner No. 1 – Trust is running a school under the name of *Savitribai Phule Urdu Primary Girls School, Mukundnagar, Ahmednagar*.

10. The advertisement for the post appears to have been issued and then after following the procedure, petitioner No. 2 came to be appointed. In the impugned order, there is reference about permission that was granted to advertise the post and the rejection is not on the ground that procedure was not adhered to by the petitioner No. 1 as is contemplated for seeking permission to appoint in the proposal that was submitted on 04.08.2025, for the approval of appointment of petitioner No. 2, it has been clearly stated that the appointment of petitioner No. 2 was in place of *Smt. Mumtaz Iqbal Kazi*, who stood retired on 31.05.2025, the only objection was in respect of TET examination, it was found that the petitioner who had cleared C-TET examination had secured only 86 marks, whereas the qualification is 90 marks. Now, there is a decision wherein there is a clarity given regarding applicability of RTE Act and the TET qualification in *Anjuman Ishaat-E-Taleem Trust V/s. The State of Maharashtra and Others, (supra)*. Paragraph No. 214 of the decision is very much clear which runs thus :-

“214. Per the detailed discussions above and resting on the same, we hold that the provisions of the RTE Act have to be complied with by all schools as defined in Section 2(n) of the RTE Act except the schools established and administered by the minority – whether religious or linguistic – till such time the reference is decided and subject to the answers to the questions formulated above under section VII. Logically, it would follow that in-service teachers (irrespective of the length of their service) would also be required to qualify the TET to continue in service.”

11. Therefore, till the reference is decided, the provisions of RTE Act are required to be complied with of the schools as defined in Section 2(n) of the RTE Act, except the schools established and administered by the minority. The said reason quoted in the impugned order cannot be said to be a justifiable ground for rejection.

12. In view of the above circumstances, the writ petition stands partly allowed, the communication dated 08.08.2025, is hereby quashed and set aside.

13. We direct respondent No. 2 to consider the proposal forwarded by petitioner No. 1 in respect of appointment of petitioner No. 2, without insisting on TET qualification, in view of *Anjuman Ishaat-E-Taleem Trust V/s. The State of Maharashtra and Others, (supra)*.

14. Such decision to be taken by respondent No. 2 within a period of one month from today.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)