



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.15416 OF 2025

Pathan Inayat Rabbani,
Age-29 years, Occu:Service,
R/o-Ranjni, Taluka-Kallamb,
District-Dharashiv (Osmanabad).

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Education Department, Mantralaya,
Mumbai,
- 2) The Education Officer,
Secondary Education, Zilla Parishad,
Dharashiv (Osmanabad),
- 3) Dnyansagar Education Society, Latur,
Through its Secretary,
Shaikh Mujahid Hamid, Age-Major,
Occu: Secretary of Respondent No.3 Society,
R/o-Ausa, District-Latur,
- 4) Hanuman Vidyalaya, Ghargaon,
Taluka-Kallamb, District-Osmanabad,
Through Principal,
Jadhavar Arun Baburao,
Age-56 years, Occu:Service,
R/o-Tadgaon, Taluka-Kallamb,
District-Osmanabad.

...RESPONDENTS

...
Mr. Shaikh Tarek Mobin H. Advocate for Petitioner.
Mr. V.M. Kagne, A.G.P. for Respondent Nos. 1 and 2.
Mr. Mudassir Shaikh Advocate for Respondent Nos. 3 and 4.
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**CORAM: SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.**

DATE : 18th DECEMBER, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

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

"A) Hold and declare that, the impugned communication dated 20.05.2025 bearing outward No. जा.कं.जिपघा/शिक्षण/मावि-8991/2025 rejecting the approval to the post of Shikshan Sevak of Petitioner is illegal arbitrary and bad in law and quash and set aside the same by issuing Writ of mandamus and/or any other appropriate Writ in like nature and for that purpose issue necessary orders.

B) Issue Writ of mandamus and/or any other appropriate Writ in like nature thereby direct the respondent No.2 to grant approval to the post of petitioner as Shikshan Sevak by quashing and setting aside the impugned communication dated 20.05.2025 issued by respondent No. 2 bearing Ourward No.जा.कं.जिपघा/शिक्षण/मावि-8991/2025 and for that purpose issue necessary orders."

2. Heard learned Advocate for the petitioner, learned AGP for the State, learned Advocate appearing for respondent Nos.3 and 4.

3. Learned Advocate for the petitioner submits that vide appointment order dated 10th August 2024, the petitioner came

to be appointed as *Shikshan Sevak* in respondent No.4 school, which is run by respondent No.4 society. Respondent No.3 is the minority institution under Article 30 of the Constitution of India and accordingly it has right to appoint the employees of its choice. The petitioner came to be appointed by respondent Nos.3 and 4, by following due procedure of law.

4. Respondent No.3 society moved proposal before respondent No.2 – the Education Officer and thereby sought approval to the appointment of the petitioner, however, it came to be rejected by impugned order dated 20th May 2025, issued by respondent No.2, on the sole ground that the petitioner is not possessing TET qualification. Upon aforesaid rejection, the fresh proposal was submitted on 26th May 2025, before the office of Deputy Director of Education, Latur Region by respondent No.4 praying for grant of approval to the post of petitioner. The said proposal is pending till date without adjudication. Though Grievance Committee is constituted for deciding the grievances regarding approval, as per Government Resolution dated 27th March 2024 and the same is headed by the Deputy Director of Education, Latur for Latur region, the said constitution of Grievance Committee was challenged and the same is referred to Larger Bench by the Hon'ble Division Bench at Nagpur vide order

dated 19th December 2024, passed in ***Shri Agrasen Shikshan Sanstha, Gondia and others vs. State of Maharashtra and others***, Writ Petition No.8322 of 2023.

5. Learned Advocate for the petitioner relies on the recent decision of Hon'ble Apex Court in ***Anjuman Ishaat-E-Taleem Trust vs. 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 vs. 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 of India.

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.

7. The learned Advocate for the petitioner further relies on the decision in *Sadaf Immamoddin Masood vs. the State of Maharashtra and Others*; Writ Petition No.6894 of 2023, decided on 02.11.2023, *Ekta Education Society and Others vs. 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 vs. 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 was considered.

8. The learned AGP contends that the factual situation is stated in the impugned orders, which are in consonance with the Government Resolutions.

9. The fact, which cannot be ignored, is that respondent No.3 is a minority society in view of the certificate issued by the State Government in its Minorities Development Department, dated 1st December 2008. Respondent No.4 school is run by respondent No.3 society.

10. The advertisement for the post appears to have been issued and then after following the procedure, petitioner came to be appointed. In the impugned order, the only objection was in respect of TET examination, as it was found that the petitioner had not passed TET examination. 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 vs. 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 by all 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 communications/orders cannot be said to be a justifiable ground for rejection.

12. In view of the above circumstances, the Writ Petition stands partly allowed. The impugned communication dated 20th May 2025, is hereby quashed and set aside.

13. We direct respondent No.2 to consider the proposal dated 22nd August 2024, forwarded by respondent No.3 in respect of approval to the appointment of petitioner, without insisting on TET qualification, in view of *Anjuman Ishaat-E-Taleem Trust vs. 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]
JUDGE
asb/NOV25

[SMT. VIBHA KANKANWADI]
JUDGE