

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

WRIT PETITION NO. 4055 OF 2025

Jyoti Namdeorav Panpatil
@ Jyoti Amit Ahire,
Age: 42 yrs, Occ:- Service,
R/at- Shubh Darshan Row House,
House No.4, Purvanchal Colony,
Dhikale Mala Panchak, Jail Road,
Nashik – 422 101

... Petitioner

Versus

1. The State of Maharashtra
through the Secretary
Department of Education and Sports
Mantralaya, Mumbai – 400 001
2. The Education Officer (Secondary),
Nashik Zillah Parishad, Nashik
3. Dy. Director
Divisional Commissioner Office,
Zilla Parishad, Nashik

... Respondents

Mr.Sanjeev B. Deore with Ms.Suchita J. Pawar, Mr.Arman Ansari
and Mr.Aditya S. Deore for the Petitioner.

Ms.D.S.Deshmukh, AGP for the Respondent -State.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 16th September, 2025

ORAL JUDGMENT (*Per: Ravindra V. Ghuge, J.*)

1. Leave is granted to delete the name of Respondent
No.4. Deletion be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

3. The Petitioner has put forth prayer clauses (A) to (C), which read thus :

“A. This Hon'ble Court be pleased to exercise the jurisdiction vested in it under Art 226 of Constitution of India and issue a writ of certiorari or any other appropriate directions/writ/order whereby quashing and setting aside the order dated 12.07.2024 passed by the Respondent No-2 to the extent that Petitioner cannot be placed in 20% grant scale on the ground that she had not qualified the TET/CTET examination prior to 31.03.2019. AND/OR

B. This Hon'ble Court be pleased to exercise the jurisdiction vested in it under Art 226 of Constitution of India and issue a writ of mandamus or any other appropriate directions/writ/order whereby directing the Respondent No-2 to forward the proposal of the Petitioner to the Respondent No-3 for creation of shalarth id

C. This Hon'ble Court be pleased to exercise the the jurisdiction vested in it under Art 226 of Constitution of India and issue a writ of mandamus or any other appropriate directions/writ/order whereby directing the Respondent No- 3 to create the shalarth id of the Petitioner and issue her monthly wages.”

4. This is a peculiar case. The Petitioner was selected and appointed to teach students of the 9th and 10th standards, vide the order of appointment as an Assistant Teacher dated 12th January, 2017. She was granted approval on a no-grant basis as a Graduate Assistant Teacher by the order dated 18th January, 2019. Since the number of students of the 9th and 10th standards depleted, she was directed in 2023 to teach the students from the 6th to 8th standards. When the Respondent school started receiving grants in phases, more particularly when 20% grants were sanctioned by the Government Resolution (GR) dated 6th February 2023, the Petitioner's proposal was forwarded to Respondent No. 2 for approval of her transfer from the unaided establishment to the partially aided establishment.

5. By the impugned order dated 12th July 2024, the approval for the transfer of the Petitioner from the unaided establishment to the partially aided establishment, was rejected on the ground that she does not possess the Teacher Eligibility Test (TET)/Central Teacher Eligibility Test (CTET) qualification. It is confessed by the Petitioner that she does not have this qualification, especially, since she was originally selected and appointed to teach

students of the 9th and 10th standards, for which the TET qualification was admittedly not a requisite qualification.

6. The Hon'ble Supreme Court has delivered a judgment in ***Anjuman Ishaat-e-Taleem Trust Versus State of Maharashtra and Others***, vide judgment dated 1st September, 2025 in Civil Appeal No. 1385 of 2025 and connected Appeals. For ready reference, paragraphs 194 to 218 of the ***Anjuman Ishaat-e-Taleem Trust (supra)*** judgment are reproduced hereunder:

“194. In legal parlance, the term ‘appointment’ means not only initial appointment but also covers appointment by ‘promotion’, among others. In this context, a profitable reference may be made to the decision of this Court in M. Ramachandran v. Govind Ballabh. Relevant passage from such decision reads thus:

“6. ... There is no dispute that appointment/recruitment to any service can be made from different sources, i.e., by direct appointment, by promotion or by absorption/transfer. The source of recruitment can either be internal or external. Internal source would relate to cases where the appointments are made by promotion or by transfer and by absorption. External source would conceive the recruitment of eligible persons who are not already in service in the organisation to which the recruitment is to be made”

195. Furthermore, reference may be made to the decision of this Court in K. Narayanan v. State of Karnataka where this Court traced the meaning of the word ‘recruitment’ and held:

“6. ... ‘Recruitment’ according to the dictionary means ‘enlist’. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown.”

196. Appointment and recruitment are two distinct but not unrelated concepts. Recruitment is the broader process of which selection is a part that culminates in an appointment. Recruitment can be carried out from various sources, which are broadly classified into internal and external sources. Internal sources would comprise individuals who are already employed within the organization. This would include an appointment by promotion or transfer. External sources, on the other hand, consist of individuals who are not currently in the service of the recruiting organization. Direct recruitment is an appointment from external sources or from open market, so to say.

197. Having noticed what this Court has held in relation to recruitment/ appointment, we turn to Section 23 of the RTE Act.

198. Reading Section 23 of the RTE Act, we find that the first proviso to sub- section (2) of

Section 23 thereof assumes importance for dealing with the contention. For brevity, the proviso is reproduced below:

“Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.”

199. The proviso provides for a deadline for all teachers, who are in service, to acquire the prescribed minimum qualifications within a period of five years. Should they fail to do so, they render themselves ineligible to continue on their post. The objective behind introducing the proviso is to uphold the best interest of the children by ensuring quality education, not only through teachers who were to be appointed after the commencement of the RTE Act but also for in-service teachers.

200. If we are to accept the contention of the in-service teachers, the abovesaid proviso would be rendered nugatory. Obtaining the TET qualification under the RTE Act is mandatory and the consequence of not obtaining such qualification flowing from the scheme of the RTE Act is that the in-service teachers would cease to have any right to continue in service. Reference may also be made to letter dated 3rd August, 2017 (discussed in paragraph 69 above) issued by the MHRD which provided a deadline beyond which the in-service teachers, having not qualified the TET, would not be permitted to continue in service.

201. Having regard to the foregoing, we see no reason to hold that the minimum qualifications prescribed by the Council would apply only for initial appointment and not for promotion.

N. ON MINIMUM QUALIFICATIONS VERSUS ELIGIBILITY

202. Learned senior counsel opposing the TET have argued that the phrase ‘minimum qualifications’ used in Section 23 of the RTE Act will not cover the TET in its ambit. They contend that the TET is not a qualification at all but an eligibility criterion. Thus, prescribing the TET as a minimum qualification under Section 23 is incorrect. There is no statutory imprimatur to make the TET mandatory and the same must be done away with.

203. We are not persuaded to agree with this argument for reasons discussed in heading K above.

204. We reiterate and hold that the TET is indeed a qualification, necessary to be held by a person seeking appointment as a teacher in a school. Only upon a person obtaining such qualification can he become eligible for appointment as a teacher.

205. Obfuscating the true import of the synonymous expressions would not lend assistance. What must be looked into is the consequence of such qualification. The eligibility criteria, among other things, also prescribes the TET as a qualification. A person seeking appointment as a teacher must, as a qualification, pass the TET. Only by obtaining

such qualification, he would be considered eligible to be appointed as a teacher. In our view, there lies no difference as such between qualification and eligibility. In this context, we may refer to a decision of the Allahabad High Court in Arvind Kumar Shukla v. Union of India which held thus:

“Further, submission of learned counsel for the petitioners is that since the reserved category candidates have availed the benefit of reservation in TET Exam, they should not be given benefit of reservation in selection and recruitment of the Assistant Teacher. I find no force in this submission of the learned counsel for the petitioners. Qualifying the TET Exam as per Rules is not a guarantee for employment. It is eligibility qualification to participate in the selection process. There is a difference between eligibility qualification and selection for employment. Reservation in educational institution is provided under Article 15 of the Constitution, whereas reservation in employment is provided under Article 16 of the Constitution. Merely because a person has secured admission in a course, which makes him eligible to participate in the selection process, does not amount to secure employment for which he becomes eligible after completing the course. Therefore, the reservation in employment cannot be denied to a person who belongs to reserved

category and has secured admission in a course to become eligible for such an employment on the ground that he has already secured admission on the basis of reservation in getting admission in a course to acquire eligibility.”

206. Thus, we hold that the TET is one of the minimum qualifications that may be prescribed under Section 23 of the RTE Act.

VII. ORDER OF REFERENCE FOR CONSIDERATION BY A LARGER BENCH

207. Sitting in a combination of two Judges, we are not oblivious to the bounds of judicial discipline and the enduring authority of ‘precedents’. Though a Constitution Bench decision of seven Judges of recent origin in Aligarh Muslim University v. Naresh Agarwal has upheld a reference made by a Bench of two-Judges directly to a larger Bench of seven-Judges while doubting a Constitution Bench decision of five-Judges and, relying on such observations, it seems to be a permissible course of action for us to refer the issues that we propose to formulate hereafter to the Hon’ble the Chief Justice for a reference to a Bench of seven-Judges, we refrain from doing so consciously. We tread this path of making a reference with deference to all previous decisions of Constitution Benches on the manner of making a reference, and not in defiance of what the majority view is in Aligarh Muslim University (supra). We are mindful that we can merely doubt the view expressed by a larger Bench; not differ and depart from such view of a larger Bench. Pramati Educational and Cultural Trust (supra)

being a Constitution Bench decision, we cannot render findings different to what has been expressed therein and direct them to be treated as final. This would only create chaos by making the same binding on all in terms of Article 141 of the Constitution.

208. In view of the foregoing discussions, we respectfully express our doubt as to whether Pramati Educational and Cultural Trust (supra) [insofar as it exempts the application of the RTE Act to minority schools, whether aided or unaided, falling under clause (1) of Article 30 of the Constitution] has been correctly decided.

209. We may also place on record that a coordinate Bench of this Court in Ashwini Thanappan v. Director of Education after recording the submission of counsel for the petitioner of Pramati Educational and Cultural Trust (supra) being inconsistent with the decision in P.A. Inamdar (supra) and requires further examination, directed the Registry to place the matter before the Hon'ble the Chief Justice of India. The reference, we find, is yet to be answered.

210. We, therefore, consider it expedient to follow the decision of this Court in Lala Shri Bhagwan v. Shri Ram Chand as well as long-standing subsequent precedents set by decisions of Constitution Benches prior to Aligarh Muslim University (supra) and urge the Hon'ble the Chief Justice of India to consider the desirability as to whether the issues formulated hereunder, or such other issues as may be deemed relevant, do warrant reference to a larger Bench:

a. Whether the judgment in Pramati Educational and Cultural Trust (supra) exempting minority educational institutions, whether aided or unaided, falling under clause (1) of Article 30 of the Constitution, from the purview of the entirety of the RTE Act does require reconsideration for the reasons assigned by us?

b. Whether the RTE Act infringes the rights of minorities, religious or linguistic, guaranteed under Article 30(1) of the Constitution? And, assuming that Section 12(1)(c) of the RTE Act suffers from the vice of encroaching upon minority rights protected by Article 30 of the Constitution, whether Section 12(1)(c) should have been read down to include children of the particular minority community who also belong to weaker section and disadvantaged group in the neighbourhood, to save it from being declared ultra vires such minority rights?

c. What is the effect of non-consideration of Article 29(2) of the Constitution in the context of the declaration made in Pramati Educational and Cultural Trust (supra) that the RTE Act would not be applicable to aided minority educational institutions?

and

d. Whether, in the absence of any discussion in Pramati Educational and Cultural Trust (supra) regarding unconstitutionality of the other provisions of the RTE Act, except Section 12(1)(c), the entirety of the enactment should have been declared ultra vires minority rights protected by Article 30 of the Constitution?

211. Registry is directed to place Civil Appeal Nos. 1364 - 1367, 1385 -1386 and 6364 of 2025 before the Hon'ble Chief Justice of India for appropriate directions.

212. As regards Civil Appeal Nos. 6365-6367 of 2025, we have already noted that the State of Tamil Nadu raised the argument regarding the TET for the first time before this Court. The appointment proposals of the concerned teachers were rejected on grounds other than the TET, and the TET issue was not raised before the High Court. We are mindful of the settled legal principles that prohibit the introduction of new grounds for the first time before this Court. Therefore, it would have been appropriate to dismiss the civil appeals at the outset on this basis alone. That said, we are conscious of the fact that the institution in which the teacher/respondent seeks appointment is a minority institution. As such, it falls within the scope of the order of reference mentioned above.

213. In light of this, we direct that Civil Appeal Nos. 6365-6367 of 2025 too shall be governed by the direction in paragraph 211 above.

VIII. ORDER ON APPLICABILITY OF THE TET TO IN-SERVICE TEACHERS

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.

215. However, we are mindful of the ground realities as well as the practical challenges. There are in-service teachers who were recruited much prior to the advent of the RTE Act and who might have put in more than two or even three decades of service. They have been imparting education to their students to the best of their ability without any serious complaint. It is not that the students who have been imparted education by the non-TET qualified teachers have not shone in life. To dislodge such teachers from service on the ground that they have not qualified the TET would seem to be a bit harsh although we are alive to the settled legal position that operation of a statute can never be seen as an evil.

216. Bearing in mind their predicament, we invoke our powers under Article 142 of the Constitution of India and direct that those teachers who have less than five years' service left, as on date, may continue in service till they attain the age of superannuation without qualifying the TET. However, we make it clear that if any such teacher (having less than five years' service left) aspires for promotion, he will not be considered eligible without he/she having qualified the TET.

217. Insofar as in-service teachers recruited prior to enactment of the RTE Act and having more than 5 years to retire on superannuation are concerned, they shall be under an

obligation to qualify the TET within 2 years from date in order to continue in service. If any of such teachers fail to qualify the TET within the time that we have allowed, they shall have to quit service. They may be compulsorily retired; and paid whatever terminal benefits they are entitled to. We add a rider that to qualify for the terminal benefits, such teachers must have put in the qualifying period of service, in accordance with the rules. If any teacher has not put in the qualifying service and there is some deficiency, his/her case may be considered by the appropriate department in the Government upon a representation being made by him/her.

218. Subject to what we have said above, it is reiterated that those aspiring for appointment and those in-service teachers aspiring for appointment by promotion must, however, qualify the TET; or else, they would have no right of consideration of their candidature.”

7. It is, thus, settled by the Hon’ble Supreme Court that even teachers who were inducted into employment prior to the advent of the TET qualification (13.02.2013) will have to acquire the TET qualification within two years, if they have more than five years of service remaining before retirement. If a candidate has less than five years to go for superannuation, he need not have the TET qualification, subject to the condition that he would be entitled for promotion. If he desires promotion, even such a candidate would acquire the TET qualification within 2 years.

8. In view of the above judicial pronouncement, the Petitioner, who at the time of her appointment was not required to possess the TET qualification, is now required to acquire the said qualification since she has been called upon to teach students from the secondary section. In the light of the peculiar facts recorded above, we find that the Petitioner needs to be placed under the same mandate of the Hon'ble Supreme Court, i.e. to acquire the TET or CTET qualification within two years.

9. In these peculiar facts and circumstances of the case, **this Petition is partly allowed.**

10. The impugned order dated 12th July, 2024 is quashed and set aside. Respondent No. 2 shall grant conditional approval to the Petitioner's transfer to the 20% grant-in-aid establishment, subject to the Petitioner acquiring the TET or CTET qualification within two years from the date of the Hon'ble Supreme Court's judgment, i.e., on or before 1st September 2027. Until then, she shall not be entitled to any further service benefits/promotions, salary grants of 40% or more, etc..

11. Needless to say, if she does not acquire the qualification by 1st September 2027, she shall stand demoted to her original no-grant position with effect from that date. So also, if she acquires the qualification before the expiry of the two-year period, she shall be entitled to further service benefits.

12. To the extent of the 20% grant-in-aid benefits being extended to the Petitioner, the Shalarth ID shall be granted accordingly.

13. Rule is made partly absolute in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)