

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/LETTERS PATENT APPEAL NO. 1218 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 13488 of 2017**

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STATE OF GUJARAT & ORS.

Versus

PATEL ASHABEN JASHUBHAI & ORS.

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Appearance:

MS SHRUTI R. DHRUVE, AGP for the Appellant(s) No. 1,2,3

MR MANISH J PATEL(2131) for the Respondent(s) No. 2

MR. R.D.KINARIWALA(6146) for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 3,4

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

HONOURABLE MR.JUSTICE R. T. VACHHANI

Date : 25/06/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present appeal filed under Clause 15 of the Letters Patent, 1865, is directed against the common oral order dated 30.08.2018 passed by the learned Single Judge in the captioned writ petition and allied petitions, wherein and whereby the learned Single Judge has allowed the writ petitions while relying upon the decision rendered by this Court dated 08.02.2017 passed in Special Civil Application No.21003 of 2016 in the case of Patel Dimpal Natubhai and Anr. vs. State of Gujarat.

BRIEF FACTS :

2. The respondent No.1 - original petitioner filed the captioned writ petition seeking to set aside the order dated

05.12.2024 as well as the earlier order dated 22.05.2015 passed by appellant No.3-District Education Officer, Himmatnagar. The original petitioner further prayed for a declaration that the No Objection Certificate (NOC) dated 24.04.2013, issued by the District Education Officer, Himmatnagar, is valid and was issued in accordance with law. It appears that respondent No.1 had participated in the recruitment process pursuant to the advertisement dated 27.04.2013 applied for the post of Social Science Teacher through an application dated 03.05.2013. Accordingly, she appeared for the interview conducted by the respondent No.4-School, on 03.06.2013. Rojkam (proceedings) dated 03.06.2013, produced on record by the respondent-School, reveals that respondent No.1 secured 36.55 marks. It was also mentioned that she held the qualifications of Master of Arts (M.A.) and Bachelor of Education (B.Ed.) in Gujarati. However, the Rojkam also recorded that she had not cleared the Teacher Eligibility Test ("TET"). Consequently, the NOC issued earlier by the District Education Officer, Himmatnagar, dated 24.04.2013, came to be cancelled by order dated 02.05.2015. This cancellation was challenged by the petitioner before the learned Single Judge by filing the captioned writ petition. By the common impugned order dated 30.08.2018, the learned Single Judge allowed the writ petition primarily placing reliance on the decision of this Court dated 08.02.2017 passed in Special Civil Application No.21003 of 2016 in the case of **Patel Dimpal Natubhai & Anr. (supra)**, who was also five applicants along with the present respondent No.1.

SUBMISSIONS OF THE LEARNED AGP :

3. Learned Assistant Government Pleader Ms.Dhruve, has submitted that the learned Single Judge has not considered the vital aspect that the respondent No.1 was not possessing the TET Examination Qualification, as prescribed under the Right of Children to Free Education and Compulsory Education Act, 2009 (in short, "the Act, 2009"). It is submitted that the facts of the writ petition being Special Civil Application No.21003 of 2016 in the case of ***Patel Dipal Natubhai & Anr. (supra)***, is concerned, which are different since in that case the petitioners had fulfilled the minimum eligibility criteria as prescribed in the Act, 2009. Thus, it is submitted that so far as the present respondent No.1 is concerned, the learned Single Judge fell in error while allowing the writ petitions.

4. Learned Assistant Government Pleader has, at the outset, submitted that the common oral order passed by the learned Single Judge warrants interference, inasmuch as the learned Single Judge has failed to consider that, at the time of initial recruitment, the original petitioner did not possess the minimum requisite qualification i.e. clearance of the Teacher Eligibility Test (TET), as mandated under the provisions of the Act, 2009. It is further submitted by the learned AGP that the reliance placed by the learned Single Judge upon the oral order dated 08.02.2017 passed in Special Civil Application No.21003 of 2016 is misconceived, as the facts involved in the said petition are materially distinguishable from those in the present case. In the earlier case, the petitioner therein had admittedly fulfilled the minimum eligibility criteria as contemplated under the Act, 2009, whereas in the present

case, the original petitioner failed to meet with such mandatory eligibility requirements.

5. Learned Assistant Government Pleader has further submitted that in absence of compliance with the minimum qualification criteria prescribed under the Act, 2009 for the appointment to the post of teacher, the impugned order passed by the learned Single Judge deserves to be quashed and set aside. Consequently, the order dated 22.05.2015 passed by the respondent No.3-DDO, may be upheld.

SUBMISSIONS ON BEHALF OF RESPONDENT-TEACHERS :

6. Learned advocate Mr.R.D.Kinariwala, appearing for respondent No.1, has fairly accepted that respondent No.1 did not have required TET qualification as per Notification dated 18.02.2012 issued by the Education Department under the Right to Education Act, 2009. It is submitted that as per the Notification dated 18.02.2012 issued by the Education Department under the Right to Education Act, 2009, the teachers who were in service prior to the issuance of the Government Resolution dated 27.04.2011 were granted period of five years to clear the TET examination, in accordance with Section 23 of the Act, 2009. However, for fresh recruitment made pursuant to Government Resolution dated 27.04.2011, it is mandatory for candidates to have cleared the TET examination prior to appointment. It is submitted that in the present case, respondent No.1-original petitioner, cleared the TET examination in July, 2014. In view of the vacancy that arose in the school due to the superannuation of a teacher in May 2025, it was urged that this Court may consider the case of respondent No.1 for appointment to the said vacant post.

7. We have heard the learned advocates appearing for the respective parties.

8. Learned Single Judge, while allowing the writ petition filed by respondent No.1, placed reliance on the decision in the case of **Patel Dimpal Natubhai & Anr. (supra)**. However, respondent No.1 is unable to dispute that, in the said case, the candidate had already passed the TET examination prior to the cut-off date. In contrast, respondent No.1, in the present case, cleared the TET examination only in July 2014, i.e., after the cut-off date prescribed by the Government Resolution dated 27.04.2011. It is not in dispute and even it is very fairly admitted by learned advocate Mr. Kinariwala that pursuant to the Government Resolution dated 27.04.2011, any teacher appointed thereafter is mandatorily required to have cleared the TET examination. In the present case, at the time of the recruitment process initiated by the school through the advertisement dated 27.04.2013, respondent No.1 did not possess the requisite TET qualification. Therefore, the appellants cannot be directed to consider the case of respondent No.1 for the post that fell vacant in May 2025, especially after a lapse of 12 (twelve) years from the date of the Government Resolution.

9. At this stage, it is also pertinent to note that the recruitment process initiated by the school was required to adhere strictly to the eligibility criteria laid down under the Act, 2009, and the Government Resolution dated 27.04.2011. As per Section 23(1) of the Act, 2009, a person shall be eligible for appointment as a teacher only if he or she possesses the

minimum qualifications as prescribed by the academic authority. Clause 2(II)(1) of the Resolution mandates that clearing the Teacher Eligibility Test (TET) is a pre-condition for fresh appointment. The concession under Section 23(2) of the Act, 2009 allowing five years to clear TET, applies only to teachers already in service prior to the enforcement of the norms.

10. The respondent No.1 was an aspirant under a fresh recruitment process and not a continuing appointee. Therefore, she / he cannot claim the benefit of the relaxation period extended to in-service teachers. Reliance placed by the learned Single Judge on the case of ***Patel Dimpal Natubhai & Anr. (supra)*** is misplaced. The learned Single Judge in the case of ***Patel Dimpal Natubhai (supra)*** had not entered into the issue of educational qualification raised in the present case. The respondent No.1 is unable to dispute that at the time of recruitment respondent No.1 did not have required educational qualification of TET examination), as the facts in that case are clearly distinguishable that the candidate therein had cleared the TET prior to the date of application, unlike in the present case.

11. The Supreme Court in the case of State of Rajasthan Vs. Lata Arun, (2002) 6 S.C.C. 252, held that appointment made *de hors* the rules and eligibility criteria is null and void, and equity cannot be invoked in favour of a person who does not meet the mandatory requirements of law. Similarly, in the case of Ashok Kumar Sharma Vs. Chander Shekhar, (1997) 4 S.C.C. 18, it was reiterated that mandating minimum qualifications serves a

larger public interest and any dilution thereof would have cascading consequences on the education system. Therefore, in the considered opinion of this Court, the respondent No.1, who admittedly did not possess the requisite TET qualification as on the date of application, cannot claim any right of consideration for appointment. Any subsequent qualification attained after the cut-off date does not relate back. The right to be considered for appointment arises only when the candidate meets all statutory requirements on the date of application, and not thereafter.

12. In view of the above, the present appeal succeeds and is hereby **allowed**. The common judgment and order passed by the learned Single Judge are quashed and set aside.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(R. T. VACHHANI, J)

MAHESH/31

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MAHESH OMPRAKASH BHATI(HC01086), PRIVATE SECRETARY, at High Court of Gujarat on 05/07/2025 12:05:08