

Reserved on:-20.03.2026

Delivered on:-23.04.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 2156 of 2024

Manoj Singh Bisht Petitioner

Versus

State of Uttarakhand and Others Respondents

Present:-

Mr. M.C. Pant (through video conferencing) and Ms. Anupriya Kukreti,
Advocates for the petitioner.
Mr. S.N. Babulkar, learned Advocate General, assisted by Mr. Pradeep
Hariya, Standing Counsel for the State.
Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra
Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand
Subordinate Service Selection Commission.

Writ Petition (S/S) No. 404 of 2024

Prayas Kumar and Others Petitioners

Versus

Uttarakhand Subordinate Service Selection
Commission Respondent

Present:-

Mr. Vinay Kumar, Advocate for the petitioners.
Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra
Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand
Subordinate Service Selection Commission.

Writ Petition (S/S) No. 409 of 2024

Ajay Pokhriyal and Others Petitioners

Versus

State of Uttarakhand and Others Respondents

Present:-

Mr. M.C. Pant (through video conferencing) and Ms. Anupriya Kukreti,
Advocates for the petitioners.
Mr. S.N. Babulkar, learned Advocate General, assisted by Mr. Pradeep
Hariya, Standing Counsel for the State.
Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra
Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand
Subordinate Service Selection Commission.

Writ Petition (S/S) No. 775 of 2024

Deepak Bahuguna and Others Petitioners

Versus

State of Uttarakhand and Others Respondents

Present:-

Mr. M.C. Pant (through video conferencing) and Ms. Anupriya Kukreti, Advocates for the petitioners.

Mr. S.N. Babulkar, learned Advocate General, assisted by Mr. Pradeep Hariya, Standing Counsel for the State.

Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand Subordinate Service Selection Commission.

Writ Petition (S/S) No. 940 of 2024

Lalit Singh Danu and Others Petitioners

Versus

State of Uttarakhand and Others Respondents

Present:-

Mr. Dushyant Mainali, Advocate for the petitioners.

Mr. S.N. Babulkar, learned Advocate General, assisted by Mr. Pradeep Hariya, Standing Counsel for the State.

Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand Subordinate Service Selection Commission.

Writ Petition (S/S) No. 947 of 2024

Manoj Fulara and Others Petitioners

Versus

State of Uttarakhand and Others Respondents

Present:-

Mr. Dushyant Mainali, Advocate for the petitioners.

Mr. S.N. Babulkar, learned Advocate General, assisted by Mr. Pradeep Hariya, Standing Counsel for the State.

Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand Subordinate Service Selection Commission.

Writ Petition (S/S) No. 1550 of 2024

Vinod Kumar and Others Petitioners

Versus

State of Uttarakhand and Others Respondents

Present:-

Mr. Vinay Kumar, Advocate for the petitioners.
Mr. S.N. Babulkar, learned Advocate General, assisted by Mr. Pradeep Hariya, Standing Counsel for the State.
Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand Subordinate Service Selection Commission.

Writ Petition (S/S) No. 2077 of 2024

Joni Kumar and Others

.....Petitioners

Versus

State of Uttarakhand and Others

.....Respondents

Present:-

Mr. Vinay Kumar, Advocate for the petitioners.
Mr. S.N. Babulkar, learned Advocate General, assisted by Mr. Pradeep Hariya, Standing Counsel for the State.
Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand Subordinate Service Selection Commission.

Writ Petition (S/S) No. 2157 of 2024

Randheer and Another

.....Petitioners

Versus

State of Uttarakhand and Others

.....Respondents

Present:-

Mr. M.C. Pant (through video conferencing) and Ms. Anupriya Kukreti, Advocates for the petitioners.
Mr. S.N. Babulkar, learned Advocate General, assisted by Mr. Pradeep Hariya, Standing Counsel for the State.
Ms. Devika Tiwari, Ms. Priyanka Agarwal, Mr. V.S. Rawat, Mr. Shailendra Nauriyal and Mr. Harshvardhan Dhanik, Advocates for the Uttarakhand Subordinate Service Selection Commission.

JUDGMENT

Per: Hon'ble Ravindra Maithani, J.

Since common questions of law and facts are involved in this bunch of writ petitions, they are heard together and being decided by this common judgment. However, for the sake of convenience, the facts of WPSS No.1550 of 2024, Vinod Kumar and Others v. State of Uttarakhand and Others, are referred to, unless otherwise specifically mentioned in this judgment.

2. The respondent no.3, The Uttarakhand Subordinate Service Selection Commission ("the Commission"), issued an advertisement on 16.02.2024 for appointment of Instructors for

various trades in the Government Industrial Training Institute of Uttarakhand. One of the essential conditions in the advertisement is that the candidates must possess National Craft Instructor Certificate (“the NCIC”). At the time of filing of the petitions, the petitioners did not possess the NCIC. The NCIC is done under the Craft Instructor Training Scheme (“CITS”). In all these petitions, the petitioners seek permission of the Court that they may be permitted to participate in the recruitment process pursuant to the advertisement dated 16.02.2024 issued by the Commission, and it may be declared that the petitioners are eligible for the post advertised. The reliefs in the petitions also include extension of time for submission of application forms; challenge to the Service Rules by which the NCIC is made mandatory for recruitment to the posts of Instructor in the Industrial Training Institutes (“ITIs”) on the ground that the Rule which requires the NCIC is arbitrary, unjust, irrational and contrary to the guidelines issued by the Director General of Training, Government of India (“DGT”). In some of the petitions, the petitioners have sought relief that their candidature may be accepted subject to their obtaining the NCIC.

3. In order to appreciate the controversy, some of the relevant facts are as below:-

- (i) The appointment on the posts of Instructor in different trades in Government Industrial Training Institute is governed by the Uttarakhand Government Industrial Training Institute (Instructor) Service Rules, 2003 (“the 2003 Rules”).
- (ii) Initially, for the appointment to the posts of Instructor in the ITIs, NCIC was not necessary.
- (iii) On 09.01.2020, the DGT, issued directions to all the State Governments recommending changes regarding the educational qualification, age limit

of trainees and Instructors, by which the NCIC in relevant trades was made essential qualification.

- (iv) Pursuant to the communication dated 09.01.2020 of the DGT, the 2003 Rules were changed with effect from 04.08.2022, and in Rule 8 of the 2003 Rules, it was provided that the eligibility criteria for Instructors shall be such, as given in the Appendix-B of the 2003 Rules. According to the Appendix-B of the 2003 Rules, the NCIC is essential qualification for appointment to the posts of Instructor. Rule 8 of the 2003 Rules, as amended and enforced with effect from 04.08.2022, further provided that if in any trade, NCIC is not available, for such trade, the NCIC shall not be a mandatory requirement. It further provided that for instructors, the qualification shall be determined by the DGT from time to time and it shall be made applicable subject to order of the State Government.
- (v) On 30.06.2023, the DGT relaxed the mandatory requirement of NCIC for appointment to the posts of Instructor in ITIs. It was made a preferential qualification. It reads as follows:-

“Madam/Sir,

This is to revisit the instructions pertaining to mandating CITS as an essential qualification for the vocational instructors in Industrial Training Institutes (Government & Private).

2. The DGT vide its order no.MSDE(DGT)-19/01(01)/2019-CD dated 09.01.2020, had interalia communicated consolidation of changes in qualifications for recruitment of instructors of CTS and CITS scheme. According to this, CITS was mandated as an essential qualification for both Degree/Diploma as well as NTC/NAC categories of instructors.
3. Since then, a number of representations have been received from State Government/UTs and other stakeholders regarding non-availability of CITS courses and CITS trained candidates in several trades, especially for the New Age and Industry 4.0 related trades.

- 4. Subsequently, a working group was formed to deliberate on this matter and come up with actionable suggestions to implement the mandatory CITS qualification for the Vocational Instructors while ensuring availability of trainers across all trades.
- 5. The recommendations of the working group was examined in DGT and it was noted that most of the issues raised were due to non-availability of CITS courses/CITS qualified trainers in many trades. It was noted that as on date there are 152 CTS trades. Out of these 152 CTS trades, there exist only 55 approved CITS courses. These CITS courses have been mapped to 82 CTS trade (Annexure 1). Therefore, the availability of CITS trained candidates for all the CTS trades is not there.
- 6. Accordingly, after thorough examination of all aspects, the following guidelines are being issued to States/UTs for recruitment of Vocational Instructors along with the stipulations given below:

S.No.	Category of Instructor	Qualifications For Instructor
A	Trade Instructor	** B.Voc/Degree in appropriate branch of Engineering from AICTE/UGC recognized Engineering College/university or equivalent with one-year experience in the relevant filed. OR ** 03 years Diploma in appropriate branch of Engineering from AICTE/recognized board of technical education with two years' experience in the relevant filed. OR * NTC/NAC and CITS/NCIC passed in the relevant trade with three years' experience in the relevant field. Note: Out of two instructors required for the units of 2(1+1), one must have Degree/Diploma and other must have NTC/NAC qualifications.
(i) * In case where CITS qualified candidates are not available either due to the non-existence of CITS course or non-receipt of application from any CITS qualified candidates or for any other reason, candidates with relevant Technical Qualification may be recruited. ** If any candidate is having CITS qualification in addition to the Degree/Diploma in relevant stream, preference will be given to such candidates over the Degree/Diploma candidates not having CITS qualification. (ii) Any selected candidate who has not done CITS or any other form of pedagogy training shall undergo Pedagogy training within one year from the date of appointment. (iii) If a candidate (both Degree/Diploma and NTC/NAC) has been selected without possessing CITS qualification for the trades which are having CITS course, such candidates will have to undergo CITS training (Regular or RPL) within three years from the date of appointment. (iv) For Candidates (both Degree/Diploma and NTC/NAC) selected in the trade in which CITS qualification does not currently exist, the selected candidates (both Degree/Diploma and NTC/NAC) will have to undergo CITS training under RPL, whenever such CITS qualifications are developed by DGT.		

4. Pursuant to Office Memorandum Dated 30.06.2023 of the DGT, the 2003 Rules were not amended and the advertisement dated 16.02.2024 was issued for the appointment to the posts of Instructor in the ITIs making NCIC under CITS as one of the essential qualifications. It is challenged.

5. Heard learned counsel for the parties and perused the record.

6. It is the case of the petitioners that the State Government was under obligation to change the 2003 Rules in view of the Office Memorandum dated 30.06.2023 of the DGT; the Office Memorandum dated 30.06.2023, of the DGT shall have an overriding effect over the 2003 Rules; the petitioners are qualified, as per Office Memorandum dated 30.06.2023, for appointment to the posts of Instructor. It is also the case of the petitioners that the Office Memorandum dated 30.06.2023 of the DGT provides that in case of non-availability of CITS qualified candidates, candidates with relevant technical qualification may be recruited; as per the Seventh Schedule under the Union List, the Union of India is entitled to make law in respect of Union agencies and Institutions. The State Government is also competent to make law on the subject, but it shall be subject to the provisions of entry 65 of the List I in the Seventh Schedule; as per Article 254 of the Constitution of India, any law made by the State Government, if it is inconsistent with the law of Parliament, to that extent, it is void.

7. The factual narration does not end here. Some more developments took place, which are as follows:-

- (i) After the advertisement dated 16.02.2024, on 25.07.2024, the respondent no.2, the Director, Directorate of Training and Employment, Haldwani, Uttarakhand ("the Director"), wrote a letter to the Secretary, the Government of Uttarakhand, bringing it to the notice that the

Office Memorandum dated 30.06.2023 has been issued by the DGT. Thereby, instructions were sought that the necessity of NCIC may be relaxed. (This communication is Annexure No.5 to the rejoinder affidavit filed by the petitioners in WPSS No.404 of 2024.)

(ii) After this communication dated 25.07.2024 of the respondent no.2, the Director, the State Government made a communication to the Secretary of the Commission on 30.07.2024, bringing it to their notice the Office Memorandum dated 30.06.2023 of the DGT for necessary action. (This communication is Annexure No.6 to the rejoinder affidavit filed by the petitioners in WPSS No.404 of 2024.)

(iii) It appears that, thereafter, the Commission, through its Letter No.1399, dated 14.10.2024, requested an immediate response regarding the matter and suggested that if there is any change in the educational qualification criteria at that stage, then candidates, who had not applied earlier due to absence of NCIC, should also be given an opportunity. (This is mentioned in the counter affidavit filed by the respondent no.2, the Director, in WPSS No.2077 of 2024.)

(iv) The Directorate, Training and Employment, on 08.11.2024, wrote to the Commission that since the requisition had been sent to the Commission on 15.06.2023, which was much before 30.06.2023, when the Office Memorandum was issued by the DGT, relaxation to the NCIC

was not possible to be recorded in the requisition. The State Government in its communication dated 08.11.2024 further recorded that in the State of Uttarakhand, the total sanctioned vacancies of Instructors is 1386, against which only 373 regular Instructors are working. Therefore, the process for recruitment may be carried out as per the requisition dated 15.06.2023, and if eligible candidates are not available, in future, the mandatory requirement of NCIC shall be relaxed, and fresh requisition will be sent. (This communication dated 08.11.2024 of the State of Uttarakhand is Annexure No.7 to the rejoinder affidavit that has been filed by the petitioners in WPSS No.404 of 2024.)

8. The State of Uttarakhand, as such, has not filed any counter affidavit. The respondent no.2, the Director, in its counter affidavit has stated that the DGT had made the NCIC under CITS mandatory for ITI Instructors on 09.01.2020, pursuant to which the Service Rules were amended on 04.08.2022, and NCIC was made essential qualification for the posts of Instructor in the ITIs. After Office Memorandum dated 30.06.2023 of the DGT, the respondent no.2, the Director, made a communication to the State Government on 25.07.2024, seeking relaxation in the mandatory condition of the NCIC for the appointment to the posts of Instructor in ITIs, the Government had communicated to the Commission on 30.07.2024 in the matter to do the needful.

9. The respondent no.3, the Commission, has filed a separate counter affidavit and has stated that NCIC is one of the essential qualifications under the 2003 Rules, and the Commission cannot issue advertisement in violation of the 2003 Rules.

10. After 30.07.2024, according to the respondent no.2, the Director, the Commission, on 14.10.2024, sought directions from the State Government. (Counter affidavit of the respondent no.2, the Director, in WPSS No.2077 of 2024), and it was replied by the State Government on 08.11.2024, directing the Commission to continue with the recruitment process without relaxation of mandatory nature of the NCIC. (Annexure No.7 to the rejoinder affidavit filed by the petitioners in WPSS No.404 of 2024.)

11. Mr. Vinay Kumar, learned counsel for the petitioners submits that the DGT prescribes qualification for Instructors in ITIs. It is the apex body. Therefore, the qualification that has been prescribed by the DGT shall be the qualification for the appointment of Instructors in the ITIs. The following arguments have also been made on behalf of the petitioners:-

- (i) After the communication dated 09.01.2020 of the DGT, the Service Rules were amended on 04.08.2022, whereby, NCIC conducted under CITS was made a mandatory qualification for the appointment to the posts of Instructor in the ITIs, but post Office Memorandum dated 30.06.2023 of the DGT, the 2003 Rules have not been changed.
- (ii) On 30.07.2024, the State Government made a communication to the Commission, which means the requisition stood changed, and the NCIC does not remain any necessary qualification for the appointment to the posts of Instructor in the ITIs. It is argued that, thereafter, either the Commission should have returned the requisition or issued a corrigendum, which was not done by the Commission.

- (iii) By way of Office Memorandum dated 30.06.2023, the DGT has made amendment in the essential qualification for recruitment of the Instructors in the ITIs, and it is admitted to the State Government.
- (iv) Even after the date of advertisement, the educational qualification can be changed. He would refer to the principles of law, as laid down by the Hon'ble Supreme Court in the case of Tej Prakash Pathak and Others v. Rajasthan High Court and Others, (2025) 2 SCC 1.
- (v) In the case of Tej Prakash Pathak (*supra*), the Hon'ble Supreme Court recorded the conclusion in Para No.65 as below:-

“65. We, therefore, answer the reference in the following terms:

65.1. Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

65.2. Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

65.3. The decision in K. Manjusree v. State of A.P., (2008) 3 SCC 512, lays down good law and is not in conflict with the decision in State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220. Subash Chander Marwaha (*supra*) deals with the right to be appointed from the select list whereas K. Manjusree (*supra*) deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;

65.3. The decision in K. Manjusree (*supra*) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (*supra*). Subash Chander Marwaha (*supra*) deals with the right to be appointed from the select list whereas K. Manjusree (*supra*) deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;

65.4. Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;

65.5. Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;

65.6. Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the

vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.”

- (vi) The State Government has accepted the Office Memorandum dated 30.06.2023 of the DGT. Hence, it is not a case of repugnancy or supremacy of Service Rules or Office Memorandum issued by the Central Government. He would refer to the principles of law, as laid down by the Rajasthan High Court in the case of Komal Kumawat v. Union of India, Civil Writ Petition No.16312 of 2024.

12. In the case of Komal Kumawat (supra), in fact, after Office Memorandum dated 30.06.2023 of the DGT, the State of Rajasthan, in exercise of its Rule making power under Article 309 of the Constitution of India, laid down essential qualification for recruitment to the posts of Junior Instructor in different trades, and apart from academic and technical qualifications, the requirement of possessing relevant NCIC (CITS certificate) has been inserted. However, while making such insertion, it was clarified that such requirement of possessing NCIC/CITS certificate is only for those trades where courses under CITS was available. Under these facts, the Hon’ble Rajasthan High Court has held that there is no repugnancy or inconsistency between the Office Memorandum dated 30.06.2023, and notification dated 01.09.2023 of the State Government. In Para Nos. 59, 60 and 61, the Court observed as hereunder:-

“59. Now, if we compare the O.M. dated 30.06.2023 with Notification dated 01.09.2023, no apparent and manifest repugnance comes out between the provisions of aforesaid documents. As stated hereinabove, both the Central as well as State provisions make it incumbent and mandatory for a candidate applying against the post of ITC Instructor, to possess the NCIC/CITS certificate. Both the aforesaid O.M. dated 30.06.2023 also make it clear that such requirement is essential and necessary only for the trades where courses under CITS are available. Thus, we find no inconsistency or conflict of any kind whatsoever between O.M. dated 30.06.2023 and 01.09.2023. Hence, by no stretch of

imagination, Notification dated 01.09.2023 can be said to be repugnant to O.M. dated 30.06.2023. Plea raised [2025:RJ-JP:21522-DB] (46 of 56) [CW-16312/2024] by the petitioner in this regard is totally baseless, unfounded and misconceived; and is hereby rejected.”

“60. We have examined the aforesaid O.M. dated 30.06.2023 and Notification from one another angle that as to whether the Notification dated 01.09.2023 laying amendment in the Schedule tends to scale down the standard set by the guidelines issued by the Central Government or not. Assuming for a moment, in case, a conclusion can be drawn that the State Notification dated 01.09.2023 does not, in any manner, relax the qualification of possessing NCIC/CTIS certificate ignoring that such relaxation can be granted as per O.M. dated 30.06.2023 issued by the Central Government, even then such conclusion in no manner would lead to a situation where the standard set by the Central Government has been intended to be lowered down by the State Government.”

“61. Admittedly, qualification prescribed vide Notification dated 01.09.2023 is nowhere inferior or lower to the qualification prescribed in DGT O.M. dated 30.06.2023. Thus, we find that the stand taken by the State Government is absolutely correct and justified that the State Government has no intention to prescribe any scaled down or inferior qualification than the qualification prescribed by the Central Government. Rather the standard set by the State Government in amended Rules are higher than those specified in Central Guidelines.”

13. Mr. M.C. Pant, learned counsel for the petitioners adopts the arguments as advanced by Mr. Vinay Kumar, learned counsel for the petitioners. He also made the following arguments:-

- (i) After communication dated 30.07.2024 of the State Government made to the Commission, whereby, it was brought to the notice of the Commission that the necessity of NCIC has been relaxed by the Office Memorandum dated 30.06.2023 of the DGT, the Commission should have returned the requisition or ought to have issued fresh advertisement, which was not done.
- (ii) The DGT is the supreme authority to declare the education qualification, and any Rule, which does not meet the requirement of DGT qualification cannot be upheld.
- (iii) Even if the Service Rules are not changed, the Court should read down the Service Rules to hold

that the instructions and qualifications issued by the DGT shall prevail.

- (iv) The language implied in Rule 8(2) of the 2003 Rules clearly manifests a case of legislation by reference, whereby the evolving standards prescribed by the DGT stand automatically engrafted into the Service Rules.
- (v) The Office Memorandum dated 30.06.2023 of the DGT has statutory flavour, and even the Service Rules prescribe that the essential qualification be such, as may be determined by the DGT.

14. It is argued that, in fact, it is the employer, who will decide the essential qualification and in the instant case, by its communication dated 30.07.2024, the State Government has brought it to the notice of the Commission that the necessity of the NCIC has been relaxed. Accordingly, the recruitment ought to have been made.

15. In support of his contention, Mr. M.C. Pant, learned counsel for the petitioners, has referred to the principles of law, as laid down by this Court in SPA No.285 of 2025, Manali Chaudhary and Others v. State of Uttarakhand and Others, where in Para No.10, this Court has held that, **“the authority to decide the qualification for a post is with the employer....”** In Para No.10, this Court observed as follows:-

“10. After hearing the learned counsel for the parties we are of the considered view that the judgment & order under appeal is not sustainable as the authority to decide the qualification for a post is with the employer and the recruiting agency is bound by the decision taken by the employer. In the present case, the employer vide its communication had clearly specified that the three years diploma in Agricultural Engineering is valid and is equivalent qualification to the two years diploma possessed by the candidates. Thus, the recruiting agency, i.e., the UKPSC had to adhere to the said decision. Even, in the writ proceeding; with respect to the requisite educational qualification which a candidate should possess; the stand of the employer was clear and the said fact is evident from the various orders referred in the proceedings of the Writ Court. Thus, the rejection of the case of the petitioners by the recruiting agency was improper.”

16. In support of his contentions, Mr. M.C. Pant, learned counsel for the petitioners, has also placed reliance on the principles of law, as laid down by the Hon’ble Dehli High Court in the case of Shri G.S. Bhogal v. Union of India and Others, in CW No.4227 of 1998, and by the Central Administrative Tribunal, Principal Branch, New Delhi, in the case of Mrs. Garima Singh v. Union of India and others (OA No.3278 of 2010).

17. In the case of G.S. Bhogal (*supra*), the Hon’ble Delhi High Court has followed the principles of law, as laid down by the Hon’ble the Calcutta High Court, in Writ Petition No.11531 (W) of 1998, wherein, the Hon’ble Calcutta High Court observed as hereunder:-

“It is no doubt true that the rules of the Corporation have not yet been amended and in terms of paragraph 2 of the Office Memorandum the decision of the Central Government would not come into effect till the rules are amended. But, in my view, the Corporation was not entitled to keep the decision of the Central Government in abeyance by not amending its rules, although, the Office Memorandum had been received, by the respondent no.1 Corporation on 10th June, 1998, so as to deprive the petitioner of the benefits thereof. I am, therefore, inclined to agree with Mr. Guha that having regard to the decision taken by the Central Government at a time when the petitioner was still in service, the petitioner should not be deprived of the benefit of the said decision of the Corporation merely because it had chosen not to amend its rules as per the directions contained in the Office Memorandum in question.”

18. The principles, as laid down by the Calcutta High Court have been followed in the case of G.S. Bhogal (*supra*).

19. In the case of Mrs. Garima Singh (*supra*), The Central Administrative Tribunal, Principal Branch, New Delhi, in Para 20 held that:-

“20.....
.....
.....The Government, in any case, cannot be permitted to turn around and say that simply because its slackness, it has been unable to carry out the necessary amendments in the rules, and, therefore, the OMs shall not be binding upon it. Such a stand, particularly when the note envisaged under the OMs for amendment has been added in other services of the Government, cannot be countenanced. On one hand, the OMs having not been inserted in the rules, it may legally be submitted that the same would be of no use and consequence, whereas, on the other hand, the Government cannot be permitted to deny their existence, nor backtrack from it, particularly in the manner as mentioned above, when such note has been

inserted in other service rules, and where not so inserted, the relaxation has been granted.....
.....
”

20. Mr. Dushyant Mainali, learned counsel for the petitioners also adopts the arguments, as advanced by Mr. Vinay Kumar, learned counsel for the petitioners. He further submits that the Service Rules give a skeleton for the qualification. The essential qualification is to be prescribed by the DGT.

21. Learned Advocate General for the State submits that the Service Rules shall prevail over Office Memorandum; the Service Rules have been framed under Article 309 of the Constitution of India, and that was done pursuant to the direction dated 09.01.2020 of the DGT, which were made effective from 04.08.2022.

22. On behalf of the State, it is also argued that the advertisement was issued on 16.02.2024, and post issuance of advertisement, the essential qualification cannot be changed; there are many posts vacant in the ITIs in the State of Uttarakhand. The present exercise is for filling up of 370 posts, and once this process is complete, the State shall immediately advertise other vacancies.

23. On behalf of the Commission, it is argued that the Office Memorandum dated 30.06.2023 of the DGT cannot override the Service Rules which are framed under Article 309 of the Constitution of India. In support of it, on behalf of the Commission, reliance is placed on the principles of law, as laid down in the cases of Union of India and Others v. Jagdish Singh and Others, in W.P.(C) 13770/2024, CM APPLs. 57702/2024 & 57703/2024, Union of India and Another v. Ashok Kumar Aggarwal, (2013) 16 SCC 147, and P.D. Aggarwal and Others v. State of U.P. and Others, (1987) 3 SCC 622.

24. In the case of Jagdish Singh (*supra*), the Hon’ble Delhi High Court has held that, **“The learned Tribunal is correct in holding that the DOPT OM cannot supersede or hold contrary to**

the statutory Recruitment Rules framed in exercise of the power conferred by Article 309 of the Constitution of India.”

25. In the case of Ashok Kumar Aggarwal (*supra*), the Hon’ble Supreme Court, while dealing with the Office Memorandum, etc., in Para 59, observed as hereunder:-

“59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya (1977) 1 SCC 606, P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622, Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541, C. Rangaswamaiah v. Karnataka Lokayukta, (1998) 6 SCC 66, and Joint Action Committee of Air Line Pilots’ Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435.)”

26. In the case of P.D. Aggarwal (*supra*), the effect of Office Memorandum has been examined by the Hon’ble Supreme Court, and in Para 20, the Hon’ble Supreme Court observed as follows:-

“20. The office memorandum dated December 7, 1961 which purports to amend the United Province Service of Engineers (Buildings and Road Branch) Class II Rules, 1936 in our opinion cannot override, amend or supersede statutory rules. This memorandum is nothing but an administrative order or instruction and as such it cannot amend or supersede the statutory rules by adding something therein as has been observed by this Court in Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910. Moreover, the benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the service rules are entitled to have their seniority reckoned in accordance with the provisions of Rule 23 as it was then, from the date of their becoming member of the service, and this cannot be taken away by giving retrospective effect to the rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable.”

27. An Intervention Application has also been filed in WPSS No.2156 of 2024, which is IA No.03 of 2025, by the candidates, who were included in the provisional merit list.

28. Mr. C.D. Bahuguna, learned Senior Advocate argued on behalf of the interveners that post issuance of the advertisement, the qualification cannot be changed. He submits that the interveners may be permitted to intervene in the writ petition.

29. The Court is examining the effect of the Office Memorandum dated 30.06.2023 issued by the DGT. Merely because the interveners are included in the provisional merit list, they do not get any right of appointment. They may not be heard in the instant matter. Therefore, the Intervention Application, IA No.3 of 2025, is liable to be rejected.

30. The Service Rules, which govern the field, are the 2003 Rules. Initially, the requirement of NCIC conducted under CITS was not mandatory for appointment to the posts of Instructor in the ITIs, but, on 09.01.2020, the DGT made a communication to all the State Governments making NCIC conducted under CITS as mandatory. Pursuant to it, the Rules were changed with effect from 04.08.2022, and the NCIC was made mandatory for the appointment to the posts of Instructor in the ITIs.

31. Rule 8 of the 2003 Rules, as amended, provided that the qualification shall be as given in Appendix-B, which, as stated, has made NCIC an essential qualification for recruitment to the posts of Instructor in the ITIs. Fact remains that Rule 8 of the 2003 Rules also provides that if in any course NCIC is not run, for such course, the NCIC shall not be a mandatory qualification. This Rule further provides that technical qualification for the posts of Instructor shall be such as shall be determined by the DGT from time to time and as may be made applicable by the State Government by its order.

32. As per the amended Rule 8 of the 2003 Rules, the DGT guidelines, *per se*, shall not be made applicable for appointment to the posts of Instructor in ITIs. But the DGT laid qualification, as made applicable by the State Government by its order, shall be the essential qualification for the posts of Instructor in ITIs. Therefore, it cannot be said that merely because DGT had issued Office Memorandum dated 30.06.2023, the Service

Rules get changed. In order to make the qualification laid down by the DGT applicable in a State, an order of the State Government is required to be passed in view of Rule 8 of the 2003 Rules.

33. This Court has held that educational qualification, as laid down by the DGT, *per se*, shall not be made applicable for appointment to the posts of Instructor in the ITIs, unless State Government issues an order for making those qualifications applicable. The question is has it been done in the instant case?

34. It is argued on behalf of the petitioners that on 25.07.2024, the respondent no.2, the Director, had written it to the State Government that NCIC qualification may be relaxed in view of the Office Memorandum dated 30.06.2023 of the DGT, and, it is also a fact that thereafter, on 30.07.2024, the Secretary, State of Uttarakhand, communicated to the Secretary, Commission, to take action in accordance with the Office Memorandum dated 30.06.2023 of the DGT, but it did not stop here. The Commission did not act on the communication dated 30.07.2024 of the State Government. (At the cost of repetition, it may be noted that this communication dated 30.07.2024 is Annexure No.6 to the rejoinder affidavit of the petitioners in WPSS No.404 of 2024).

35. Can it be said that the qualification change, as made by the Office Memorandum dated 30.06.2023 by the DGT, has been made applicable by the State Government by its communication dated 30.07.2024 to the Commission? It cannot be said because the Commission on 18.10.2024 sought directions from the State Government, and the State Government, by its communication dated 08.11.2024, communicated to the Commission that since there is a shortage of Instructors in the ITIs, the recruitment process shall continue, and in future, the requisition shall be amended. This communication dated 08.11.2024 of the Additional Director, Training, is Annexure No.7 to the rejoinder affidavit filed by the

petitioners in WPSS No.404 of 2024, which means that, in fact, the State Government did not pass an order for making the change in the essential qualification, as done by the DGT by its Office Memorandum dated 30.06.2023. The Office Memorandum dated 30.06.2023 was not made applicable by the State Government till date because, as stated, in its communication dated 08.11.2024, on behalf of the State, the Commission was informed that amendment will be made for further recruitment.

36. The Hon'ble Bombay High Court, in the case of Rajesh and Another v. Balu and Others, MANU/MH/5213/2023, has considered the effect of Office Memorandum and statutory Rules, and held that, **“where there is a conflict between executive instructions and Rules framed under Article 309, the rules must prevail.”** In Paragraphs 17, 18 and 19 of the judgment, the Hon'ble Bombay High Court observed as hereunder:-

“17. We seek support to our such interpretation from the observations in the matter of Government of Andhra Pradesh v. Smt. P. Laxmi Devi (Smt.), (2008) 4 SCC 720. Relevant paras read as under:

“33. According to Kelsen, in every country there is a hierarchy of legal norms, headed by what he calls as the “grundnorm” (the basic norm). If a legal norm in a higher layer of this hierarchy conflicts with a legal norm in a lower layer the former will prevail (see Kelsen's The General Theory of Law and State).

34. In India the grundnorm is the Indian Constitution, and the hierarchy is as follows:

- (i) The Constitution of India;
- (ii) Statutory law, which may be either law made by Parliament or by the State Legislature;
- (iii) Delegated legislation, which may be in the form of rules made under the statute, regulations made under the statute, etc.;
- (iv) Purely executive orders not made under any statute.

35. If a law (norm) in a higher layer in the above hierarchy clashes with a law in a lower layer, the former will prevail. Hence a constitutional provision will prevail over all other laws, whether in a statute or in delegated legislation or in an executive order. The Constitution is the highest law of the land, and no law which is in conflict with it can survive. Since the law made by the legislature is in the second layer of the hierarchy, obviously it will be invalid if it is in conflict with a provision in the Constitution (except the directive principles which, by Article 37, have been expressly made non-enforceable).”

18. Even following observation from S.K. Nausad Rahaman v. Union of India, (2022) 12 SCC 1 would be relevant:

28. Fourth, norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in;

(i) A law enacted by the competent legislature;

(ii) Rules made under the proviso to Article 309 of the Constitution; and;

(iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of Civil services under the States.

29. Fifth, where there is a conflict between executive instructions and rules framed under Article 309, the rules must prevail. In the event of a conflict between the rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules.

30. Sixth, a policy decision taken in terms of the power conferred under Article 73 of the Constitution on the Union and Article 162 on the States is subservient to the recruitment rules that have been framed under a legislative enactment or the rules under the proviso to Article 309 of the Constitution.

29. In the light of the above, the Tribunal has grossly erred in blindly following the decisions of the High Courts which held that the administrative guidelines issued by the DGT under Article 73 will have primacy over the recruitment rules framed by the State under Article 309. For the reasons given by us, so long as the field for providing for the qualification for the post of craft instructor is not occupied by a law made by the Parliament under Entry No. 66 of List I from Seventh Schedule, the executive instructions issued by the respondent - DGT by resorting to Article 73 will not supersede the Recruitment Rules, 1983 framed under Article 309 pursuant to which the impugned advertisement was issued. The observations and conclusions which form the basis for the Tribunal to pass the impugned order are clearly unsustainable in law.”

37. The observation of the Hon’ble Bombay High Court is based on the law, as laid down by the Hon’ble Supreme Court in the cases, as referred to in the above observation of the Hon’ble Bombay High Court.

38. In the instant matter also, the Office Memorandum dated 30.06.2023, may not prevail over the statutory Rules framed under Article 309 of the Constitution of India. As stated, even otherwise, the 2003 Rules stipulate that the instruction of DGT with regard to the educational qualification may not, *per se*, be enforceable unless they are made applicable by the order of the State Government.

39. In the instant matter, the Office Memorandum dated 30.06.2023, has not been made applicable by the State of Uttarakhand even till date.

40. There is a question as to whether the educational qualification can be changed post advertisement?

41. In the case of Tej Prakash Pathak (*supra*), the Hon'ble Supreme Court has categorically held that eligibility criteria cannot be changed midway through the recruitment process, unless the existing Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit.

42. In the instant case, the Service Rules do not provide that the essential qualification may be changed at any stage of the recruitment process. Therefore, in the instant case, in fact, the essential qualification could not have been changed post issuance of the advertisement dated 16.02.2024.

43. The effect of Office Memorandum dated 30.06.2023, and the advertisement dated 16.02.2024, is to be seen. The advertisement dated 16.02.2024 has been issued pursuant to the 2003 Rules, as amended with effect from 04.08.2022 post communication dated 09.01.2020 of the DGT, which made NCIC an essential qualification for recruitment to the posts of Instructor in the ITIs.

44. The question is what is this Office Memorandum dated 30.06.2023? It has already been quoted hereinbefore. It makes NCIC as a preferential qualification. The Office Memorandum dated 30.06.2023 has not done away with the NCIC. The Office Memorandum dated 30.06.2023 has been issued by the DGT on multiple grounds, one of which is that a number of representations have been received from the State Government/Union Territories and other stakeholders with regard to non-availability of CITS courses and CITS trained candidates in several States, specially for the New Age and industry 4.0 related trades. And it records that if any

candidate is having CITS qualification in addition to the Degree/Diploma in relevant stream, preference will be given to such candidates over the Degree/Diploma candidates not having CITS qualification. It further provides that if any selected candidate, who has not done CITS or any other form of pedagogy training, shall undergo pedagogy training within one year from the date of appointment. It further provides that if any candidate, who is selected without possessing CITS qualification for the trades, which are having CITS course, such candidates will have to undergo CITS training within 3 years.

45. One thing is clear from the Office Memorandum dated 30.06.2023 of the DGT that it has not done away with the NCIC requirement. It has relaxed the necessity of NCIC at the initial stage, but it has further provided that in case candidates with NCIC under CITS are available, such candidates shall have preference, and in case NCIC qualification holders are not available, and candidates are selected, those candidates are required to undergo the CITS training within 3 years.

46. According to the 2003 Rules, NCIC is the essential qualification. A reading together of these Rules makes it clear that if a candidate having NCIC under CITS is available, he shall get preferential appointment, and non-NCIC holder may get appointment only if NCIC holders are not available. In view of it, this Court does not see any repugnancy in the Office Memorandum dated 30.06.2023 and the advertisement.

47. What is the effect of this advertisement on the petitioners? In fact, there is no effect on the petitioners. Even if the Office Memorandum dated 30.06.2023 is made applicable, the preferential appointment is to be given to such candidates, who possess NCIC under CITS.

48. During the course of hearing, on behalf of the Commission, it was argued that there are sufficient number of candidates holding NCIC. In WPSS No.2156 of 2024, on 20.11.2025, this Court passed the following order:-

“Let the respondent no.3 file a short affidavit giving the following details:-

- (i) How many valid application forms were received?
- (ii) How many candidates have NCIC Certificates?
- (ii) How many candidates do not have NCIC Certificates?”

49. The respondent no.3 is the Commission. The Commission had filed the affidavit, which is as follows:-

- “A total of 2861 applications were received by the answering respondent against the various post of ITI instructor.
- A total of 409 applicants were successful in providing the National Craft Instructor Certificate (NCIC) which was obtained by the candidates before the last cut-off date for
- A total of 28 candidates have acquired National Craft Instructor Certificate (NCIC) after the last cut off date
- A total of 2424 candidates have failed in providing National Craft Instructor Certificate (NCIC) before the answering respondent.”

50. It may be stated that the total vacancies advertised are 370 under different trades, though, the petitioners in WPSS No.2156 of 2024, have filed a reply to the short counter affidavit that has been filed by the Commission disputing the facts. According to it, the Commission has not revealed as to what criteria has been adopted by the Commission to verify the validity of this fact by providing the details of those Institutes from which they obtain NCIC certificates and recognition of the Institute. In fact, that is a verification part.

51. There are 370 posts advertised, and according to the advertisement dated 16.02.2024, which is as per the 2003 Rules, the NCIC under CITS is a necessary qualification. As per the short counter affidavit of the Commission, 409 applicants were successful in providing the NCIC, which was obtained by those candidates before the last cut-off date. In any case, even if the Office Memorandum dated 30.06.2023 is made applicable, the petitioners cannot get preference over those candidates, who have got NCIC

under CITS before the cut-off date. Therefore, even if the Office Memorandum dated 30.06.2023 is made applicable on the ongoing recruitment process, it, in no manner, prejudices any of the rights of the petitioners.

52. In view of the foregoing discussion, this Court does not see any reason to make any interference in the writ petitions. Accordingly, the petitions deserve to be dismissed.

53. The intervention application (IA No.3 of 2025 in WPSS No.2156 of 2024) is rejected.

54. All the writ petitions are dismissed.

(Ravindra Maithani, J)
23.04.2026

Ravi Bisht