

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2654 OF 2023

WITH

CA/8958/2023 IN WP/2654/2023

- | | | |
|----------------------------------|-----|--------------------|
| 1. Rajesh s/o Dnyaneshwar Rathod | | |
| 2. Vinod s/o Yeshwant Shelke | ... | PETITIONERS |

VERSUS

- | | | |
|--|-----|--------------------|
| 1. Mr. Balu s/o Namdeo Bhosale, | | |
| 2. Mr. Nilesh s/o Prakashappa Burkule | | |
| 3. Mr. Tushar s/o Pandurang Pawar | | |
| 4. Mr. Mininath s/o Ramprasad Humbe | | |
| 5. Mr. Pritesh s/o Sanjeev Kuntewad | | |
| 6. Mr. Rameshwar s/o Baliram Waghmare | | |
| 7. Mr. Pramod s/o Jilindar Kalapure | | |
| 8. Kum. Snehal Pandurang Pawar | | |
| 9. Mr. Navnath s/o Janku Devre | | |
| 10. Mr. Dhairyashil s/o Deepak Madake | | |
| 11. Mr. Pradeekumar s/o Sundarrao Tangade | | |
| 12. Mr. Savata s/o Dayaram Mahajan | | |
| 13. The Union of Trained Craft
Instructors, Maharashtra,
through its Aurangabad Divisional
President Applicant No. 2 in O.A. | | |
| 14. The State of Maharashtra,
through its' Secretary,
Vocational Education & Training,
Mantralaya, Mumbai -32. | | |
| 15. The Director General Training (DGT),
Ministry of Skill Development and
Entrepreneurship Employment, Exchange
Building Library Avenue, PUSA Complex,
New Delhi - 110012 | | |
| 16. The Director of Vocational Education and
Training /DVET, Maharashtra State, Mumbai -1
Office at: 3 Municipal Corporation
Road, Mumbai 400 001 | ... | RESPONDENTS |

...
 Advocate for Petitioners : Mr. S.R. Barlinge
 AGP for respondent Nos.14 and 16 : Mr. S.K. Tambe
 Standing counsel for respondent No.15 : Mr. B.M. Dhanure
 Advocate for respondent Nos.1 to 13 : Mr. S.S. Dambe
 Advocate for applicant in CA/8958/2023: Mr. Asim Sarode a/w
 Ms. Susmita Dound

...
**CORAM : MANGESH S. PATIL AND
 SHAILESH P BRAHME, JJ.**

Reserved on 20.07.2023

Pronounced on : 24.08.2023

ORDER (MANGESH S. PATIL, J.) :

By way of this petition under Article 226 of the Constitution of India the petitioners are challenging the judgment and order passed by the Maharashtra Administrative Tribunal Bench at Aurangabad in Original Application No.761/2022 on 03.02.2023.

2. The Original Application was preferred by the respondent Nos.1 to 12 herein with following prayers :

B. By issuing appropriate order or direction the advertisement issued by the respondent No.3 i.e. Annexure 'A-4' for post of Instructor/Craft Instructor of ITIs may quash and set aside.

OR

As per latter dated 25.11.2019 and 03.12.2019, 31.01.2020, 27.07.2020, 22.07.2021, 02.02.2022 respondent No.3 may direct to declare and add CTI/CITs qualification is mandatory qualification for appointment of instructor and Craft Instructors in ITIs in pursuance to advertisement dated 17.08.2022 Annexure A-4' and direct to act upon it for this recruitment and further recruitments of instructors in all ITI's.

C. By issuing appropriate order or directions direct the respondent no. 3 to add/incorporate the CTI/CITS qualification as mandatory qualification for post of Instructor and craft instructor ITI, in advertisement no 1/2022 dated 17.08.2022 at clause no. 8 by issuing a necessary corrigendum.

- D. *Necessary directions may kindly be issued against the respondent no.1&3, for constitute the committee if not for modifying Government Resolution dated 18th November-1983 (Annexure-A-4) as per guidelines of DGT for the post of 'Craft-Instructors', by incorporating the qualification of CTI/CITS as a mandatory instead of considering it, as preference and accordingly issue modified Government Resolution within a stipulated time.*
- E. *Any other equitable relief, in favor of the applicant, as this Hon'ble Court deems fit, may kindly be awarded in the interest of justice.*

The operative part of the order under challenge reads as under :

ORDER

The Original Application is partly allowed in following terms:-

- (A) *Ongoing recruitment process is allowed to continue after notifying modified clause No.15.22 of impugned advertisement, which deals with preference to be given to CITS qualified candidates. Thereby, CITS qualified candidates, who secure equal to or more than cut off marks as calculated under provisions of clause 15.20 of the impugned advertisement, should be given preference over non-CITS qualified candidates while preparing select list.*
- (B) *In the event that sufficient numbers of CITS qualified candidates are not available meeting selection criteria of cutoff marks etc., then non-CITS qualified candidates may be selected subject to their acquiring CITS qualification within prescribed time limit.*
- (C) *After ascertaining through the above process of selection, that the State has sufficient number of CITS qualified candidates; respondent Nos.1 and 2 may take steps to amend recruitment rules making professional qualification of CITS as essential qualification for the post of Craft Instructors.*
- (D) *Respondent No. 3 is directed to resolve issue of number of CITS instructors per trade etc. by effective consultation with State Governments.*
- (E) *Interim relief granted by this Tribunal on 07.10.2022 stands merged in this final order.*
- (F) *No order as to costs.*

3. Shorn of the verbiage the facts leading to filing of the writ petition are as under:

i. The respondent No.16 herein which was respondent No.3 before the

Tribunal, namely Director of Vocational Education and Training (hereinafter DVET) issued an advertisement No.1/2022 for appointment of Craft Instructors in the Industrial Training Institutes throughout the State (ITIs) against 1457 estimated vacancies across all the trades. The Education and Employment Department of the Government of Maharashtra published Recruitment Rules, 1983 purportedly under Article 309 of the Constitution for recruitment to the various posts in different ITIs including craft instructors. It provides for minimum educational qualification and experience for the post of craft instructors which are divided in the ratio of 75:25 between promotees and direct recruits respectively. It prescribes a degree or diploma in the relevant stream of engineering or ITI certificate after passing SCC with Mathematics and Science subjects or equivalent examination.

- ii. The respondent No.15 herein is the Director General Training (DGT) Ministry of Skill Development and Entrepreneurship, New Delhi which was the respondent No.2. By communication dated 27.05.2014 he informed all the State Governments that the National Council of Vocational Training (hereinafter NCVT) having accepted the recommendations of a working group constituted as per its decision in its 41st meeting, regarding norms/qualification for the instructors for different trades under Craftsman Training Scheme (CTS). The DGT further informed that for appointments to the post

of instructors the candidate should have professional qualification as ITI pass out with National Craft Instructor Certificate for the trades where CIT Scheme course was available and candidates with a degree or development in relevant field of engineering having no CITS certificate to be appointed on condition that they would get the requisite CITS training within prescribed time. It was thus directed that CITS qualification should be an essential requirement for the post of Craft Instructors.

- iii. Admittedly, in spite of several communications by the DGT, the recruitment rules were never amended and the impugned advertisement was issued. In accordance with Rule 3 (B)(b)(v) Clause 15.22 of the advertisement *inter alia* provided that preference would be given to CITS candidates in case the scores of candidates were equal. Meaning thereby that if two candidates would score same marks, a candidate having CITS certificate would be preferred. It is this clause in the advertisement which was assailed before the Tribunal on the ground that it was not in consonance with the directives issued by the DGT rather inconsistent with it and the respondent Nos.1 to 12 sought unconditional preference in the selection to the post of craft instructors over the candidates who only possessed ITI certificates or degree/diploma holders in the relevant trade.
- iv. The tribunal has relied upon the decisions of various High Courts

viz :

- a. **Upendra Narain Singh and Ors. Vs. The State of U.P and Anr.; 2006 SCC OnLine All 709** (High Court of Uttar Pradesh at Allahabad).
- b. **Suresh Kumar Bairagi and Ors. Vs. State of Uttarakhand & Ors.; Writ Petition No.775/2010 (S/S)** with connected Writ Petitions, (High Court of Uttarakhand at Nainital) decided on 11.03.2011,.
- c. **Rajveer Singh s/o. Shri Shayar Singh and Ors. Vs. Union of India through Secretary and Ors.; D.B. Civil Writ Petition No.12145/2016** (High Court of Rajasthan at Jodhpur) decided on 17.01.2017.
- d. **Naveen Dahiya Vs. State of Haryana and Ors.; CWP No.21132/2016 (O&M) decided on 17.01.2018 and in LPA No.169/2018 in CWP No.21132/2016** (High Court of Punjab and Haryana at Chandigarh) decided on 02.02.2018.

The Tribunal has held that since the subject was covered under Entry 66 from List I in the Seventh Schedule of the Constitution the Executive Instructions given by the DGT under Article 73 would prevail over the Recruitment Rules framed by the State Government under Article 309.

- v. A similar challenge to recruitment process under the same recruitment rules was put up in the year 2014 in Original Application No.566/2014. The Original Application was allowed by the order dated 06.05.2016. It was held that the guidelines issued by the DGT in respect of CITS certificate being essential eligibility criteria for the post of Craft Instructors and the State Government was directed to start a fresh recruitment process for the post of Craft Instructors considering the guidelines issued by the Central Government. This

order in the Original Application No.566/2014 was assailed before this Court in Writ Petition No.11055/2016. By the order dated 22.08.2017 it was held that even the notification dated 18.11.1983 namely the Recruitment Rules specifically laid down that the preference may be given to the candidates who successfully completed training in the central training institute for the post of instructor. It was held that the advertisement did not prescribe for such preference to be given which was in tune with the circular issued by the DGT dated 27.05.2014. To this extent the order of this Court confirmed the decision of the Tribunal in Original Application No.566/2014.

- vi. The Tribunal, therefore, in the impugned order concluded that the directions issued by the DGT were binding on the State Government and the Recruitment Rules were not in conformity with those guidelines. It has also held that Clause 15.22 of the advertisement was inconsistent with these guidelines. The Original Application was allowed partly in above terms, namely it directed to modify the clause No.15.22 and to continue with the recruitment process with such modification providing specifically that CITS qualified candidates would alone be given preference over non-CITS candidates while preparing the select list. It also directed that even in case sufficient number of CITS qualified candidates were not available those can be recruited from non-CITS candidates subject to

their acquiring such qualification within prescribed time limit. It also directed the State Government to take steps for carrying out necessary amendment in the Recruitment Rules specifically providing for CITS certificate as an essential qualification for the post of craft instructors. Hence this petition.

4. The respondent Nos.14 and 16 that is the State Government and the DGT have filed affidavit-in-reply. They have not raised any dispute regarding facts. However, according to them the advertisement in Clause No.15.22 provided for preference to be given to the candidates having successfully completed CITS course. It is also submitted that the Recruitment Rules having been holding the field since 1983 Rule 6 specifically requires the persons appointed as craft instructors to undergo training at the central training institute on deputation and to clear it within three chances else they would be liable to either reversion or termination. It is also mentioned that the Recruitment Rules have been framed under the enabling power of the State Government under Article 309 of the Constitution. Only preference was to be given to the CITS candidates. It was expressly mentioned in the advertisement that in case the candidates scored equal marks such a preference would be given to a CITS certificate holder. Thus according to them the advertisement was strictly in accordance with the recruitment rules.

5. The Respondent Nos.1 to 12 who are the original applicants have also filed affidavit-in-reply and reiterated the averments in their

original applications and supported the impugned order.

6. Learned advocate Mr. Barlinge for the petitioners who were some of the respondents before the Tribunal and also the candidates in the recruitment process, would submit that the impugned order does not expressly declare Clause No.15.22 of the advertisement to be inconsistent with the recruitment rules. He would submit that so long as this clause was found to be in consonance with the Recruitment Rules, the Tribunal could not have intervened. The Tribunal merely expected the State Government to modify the Recruitment Rules and even issued a direction in the operative part which is indicative of the fact that even it felt the need for modification of the Recruitment Rules. If this is so, the Tribunal could not have struck down Clause 15.22 which was in accordance with the Recruitment Rules. He would submit that even if the Tribunal was of the view that the executive instructions issued under Article 73 of the Constitution would supersede the Recruitment Rules framed under Article 309, the only direction it could have given was to modify the Recruitment Rules and the entire advertisement ought to have been then quashed and set aside. The directions given by the Tribunal are self contradictory, inasmuch as, it allows the recruitment process to go on with a modified clause and simultaneously directs the State Government to consider modification of the Recruitment Rules which reliefs cannot go hand in hand.

7. Mr. Barlinge would submit that executive instructions under Article 73 cannot limit the operation of the Recruitment Rules framed under

Article 309.

8. The learned AGP also submitted that since the advertisement and Clause 15.22 was strictly in accordance with the Recruitment Rules, till the time those were not modified, no fault could have been found with the clause which expressly provided preference to be given to a CITS candidate in case the scores were equal. He would submit that it is not the case of the respondent Nos.1 to 12 or it is not the observation of the Tribunal that the clause was not in accordance with the rules without which there could not have been any challenge to the recruitment process.

9. The learned AGP would submit that pursuant to the order under challenge, the State Government has issued a corrigendum in obedience to the directions and has now modified the clause so as to provide for preference to be given to the CITS candidates over the non-CITS candidates while preparing the select list and it is only after all the CITS candidates are placed above in the select list, the non-CITS candidates can occupy the list.

10. The learned advocate Mr. Dambe for the respondent Nos.1 to 13 would support the order. He would submit that various High Courts have consistently embarked upon and have held that the executive instructions issued under Article 73 will prevail over the Recruitment Rules framed under Article 309 and that is a correct interpretation of the provisions of the Constitution. The Tribunal has merely relied upon them to conclude that the CITS candidates deserve to be given preference against the non-CITS candidates while preparing the select list irrespective of their scores.

11. We have also heard Mr. Sarode learned advocate for the intervenors who have preferred an intervention application. These intervenors were not before the Tribunal and have sought to intervene in the present petition to oppose the selfsame judgment and order of the Tribunal. Mr. Sarode submitted that the clause 15.22 was strictly in accordance with the Recruitment Rules and even declared that the preference would be given to CITS candidate provided the scores were equal.

12. We have carefully considered the rival submissions and perused the papers. On facts there is not much of a dispute and therefore we propose to proceed on more intricate issue regarding the scope and ambit of the relevant provisions. As is noted by the Tribunal the High Courts of Uttar Pradesh, Uttarakhand, Rajasthan and the Punjab and Haryana have held that the rules framed under Article 309 by the State Government would be subservient to the executive instructions issued by the DGT of the Government of India under Article 73. However, the High Court of Gujarat in the matter of **Dilip Kumar Chhotubhai Patel and Anr. Vs. State of Gujarat and Ors.; Civil Application No.4806/2010** decided on 21.04.2010 has taken a contrary view and has held that the statutory rules framed by the State Governments under Article 309 will prevail over the executive instructions issued under Article 73. Conspicuously, the Tribunal has not resorted to any independent discussion as regards the core issue regarding the scope and ambit of Articles 73 and 309 and has simply followed the ratio laid down by the majority of the High Courts (supra) and has refused to follow the view

of the Gujarat High Court but without assigning any reason.

13. Be that as it may, we shall now deal with the relevant provisions in the Constitution :

“73. Extent of executive power of the Union._(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend -

- (a) to the matters with respect to which Parliament has power to make laws; and*
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.*

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

246. Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the ‘State List’).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

309. Recruitment and conditions of service of persons serving the Union or a State.

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act

Entry 66 - List I – Seventh Schedule

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Entry 25 - List III - Seventh Schedule

25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

14. There is no dispute about the fact that the Recruitment Rules of 1983 framed by the State Government have been so framed under the enabling powers of Article 309. Article 73 which is a part of Part V, Chapter I of the Constitution relating to the Executive of the Union Government provides that subject to the provision of the Constitution the executive power of the Union shall extend to the matters with respect to which the parliament has power to make laws. Article 246 provides for the powers of the Parliament and the legislature of a State to legislate in respect of the topics provided for in List I, List II and List III in the Seventh Schedule. There cannot be any dispute about the fact that in view of Entry 66 in List I of the Seventh Schedule the Parliament alone has the power to make laws for providing coordination and determination of standards in institution for higher education or research and scientific and technical institutions. However, Entry 25 in List III inserted by Constitution 42nd Amendment Act, 1976 inserted the subject education including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I, Vocational and Technical Training of Labour. Admittedly,

the State of Maharashtra has not made any legislation resorting to Entry No.25 from List III but since this was the state of affair in some of the matters before various High Courts, we are incorporating it.

15. Resorting to the wording of Article 73, the High Courts except the High Court of Gujarat have held that since the executive power of the Union extends to the matters in respect of which parliament has power to make laws and since the technical education is covered under Entry 66 of List I of Seventh Schedule, the executive instructions/guidelines issued by the department of the Union under Article 73 would supersede the rules framed by the State Governments under Article 309. Though these High Courts have not expressly discussed, it appears that they have resorted to such an interpretation in all probability because of the provision contained in Article 254 which restricts the power of the legislature of the State to make laws in respect of the matters which cannot be inconsistent with the laws made by the Parliament. Obviously, there cannot be any debate as far as the scope and ambit of the powers given to the Parliament and the State Government to legislate and the supremacy of the laws framed by the Parliament in the light of Article 254. However the issue is as to if by implication this circumscribing limit on the powers of the State Legislature provided under Article 254 would even apply by analogy while interpreting the interplay between Article 73 and Article 309. In our considered view, Article 73 is a part of Chapter I of Part V which provides for the powers of the Executive, whereas, Article 309 is a part of Chapter I of Part XIV

providing for services under the Union and the States. Articles 245 to 255 are part of Chapter I of Part XI which provides for relations between the Union and the States. If such a scheme of the Constitution is borne in mind, without there being any express provision like the one under Article 254, merely because Article 73 makes the provisions in respect of the executive power of the Union even to the matters with respect to which parliament has power to make laws, in our considered view, such executive directions or guidelines issued under that provision even if those are in respect of the matters where the parliament has powers to make laws will not be governed by the protection under Article 254 which only takes into account *inter alia* the situation where the law framed by the legislature of a State are repugnant to the laws made by the Parliament. If a State Government has framed certain rules by resorting to the enabling provision contained in Article 309 *inter alia* providing for the educational qualification for the post of craft instructors to be appointed in different ITI's, even if those are not compatible with the instructions issued by the DGT under Article 73, the former cannot be said to be hit by any specific provision much less, by Article 254.

16. If the Parliament legislates providing for minimum qualification for the post of craft instructors by resorting to Entry 66 of List I of Seventh Schedule, it will have a supremacy, however, the executive guidelines or instructions issued under Article 73 cannot be regarded as if it is a law made by the Parliament which will have a primacy by virtue of Article 254.

17. We seek support to our such interpretation from the observations in the matter of **Government of Andhra Pradesh Vs. 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 and others Vs. Union of India and Ors.**; (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.*

19. 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.

20. It does appear that a similar challenge like the matter in hand was put up to an advertisement published earlier by the State Government which was challenged by preferring Original Application No.566/2014, wherein the Tribunal had ordered to start the recruitment process for the post of craft instructors afresh considering the guidelines issued by the DGT. Admittedly, the challenge to that order put up before this Court in Writ

Petition No.11055/2016 was turn down on 22.08.2017. The Tribunal has therefore observed that in view of this decision of the High Court which has reached finality, the challenge being put up to the present advertisement clause 15.22 would sustain.

21. The relevant observations of this Court in that order contained in paragraph Nos.6 and 7 read as under :

6. *As far as post of Craft Instructor is concerned, notification dated 18.11.1983 also specifically lays down that the preference may be given to the candidate who have successfully completed training in the Central Training Institute for the post of Instructor. The advertisement did not prescribe the said condition. Moreover, even as per the Circular issued by the Directorate General of Employment and Training dated 27.5.2014 i.e. prior to the advertisement, for every unit in a trade one of the Instructors appointed should be with professional qualification as I.T.I. passed out with National Craft Instructor Certificate for trades where Craft Instructor Training course was available.*
7. *Considering the aforesaid aspects, the Tribunal has not committed any error in quashing the advertisement, however, it requires to be clarified that the advertisement shall stand quashed and set aside for the post of I.T.I. Craft Instructor in different trades and the said order of the Tribunal shall not have the effect on the impugned advertisement for the post other than I.T.I. Craft Instructors.*

22. *ex facie*, the observations of this Court to which one of us was a party (Mangesh S. Patil, J.) did not expressly consider and decide efficacy and sustainability as well as the scope and ambit of the circular issued by the DGT dated 27.05.2014 much less the issue regarding supremacy between the administrative instructions under Article 73 and the Rules framed under Article 309. In the absence of any such issue having been

raised in the earlier round, in our considered view, the above observations in the order passed in the WP No.11055/2016 cannot be taken as laying down any law.

23. In view of above, the impugned order directing modification of the Clause 15.22 of the advertisement before continuing with the ongoing recruitment process is not sustainable in law.

24. However, the direction in clauses 'C' and 'D' of the operative part (supra) expecting the State Government to amend the recruitment rules making professional qualification of CITS as essential qualification for the post of craft instructors and directing to resolve the issue of number of CITS instructors per trade by resorting to effective consultation are the directions issued to the State Government which has not challenged the impugned order and consequently, those two directions cannot be interfered within the present matter.

25. The Writ Petition is partly allowed. Directions 'A' and 'B' from the impugned order are quashed and set aside. Challenge to the rest of the order and the directions contained in Clauses 'C' and 'D' of the operative part is dismissed.

26. Intervention application is disposed of.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

27. At this juncture, the learned advocate for the original applicants i.e. respondent Nos.1 to 12 herein, seeks stay to the operation of the order of this Court so as to enable them to put up a challenge before the Supreme Court.

28. Considering the conspectus of the matter, operation of the order shall stand stayed for a period of three weeks.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)