

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15816 of 2023

1. Golden Kumar Son of Bishnu Prasad, Resident Village-Jalalpur, P.O. and P.S.-Noorsarai, District-Nalanda-803113.
2. Ajeet Kumar, son of Bakhory Prasad Singh, Resident of -Mohiuddinpur Chak, P.O. and P.S. -Dist-Nalanda-801302.
3. Vijay Kumar Ram, son of Srikant Ram, Resident of Village Bhanti, P.O.-Kachnar, P.S.-Raghunathpur, District-Siwan-841210.
4. Rajesh Kumar, son of Rambali Singh, Resident of Village-Daudnagar, P.O. and P.S.-Daudnagar, District-Aurangabad-824143.
5. Nikhil Kumar Singh, son of Ashok Kumar Singh, Resident of Village-Telhara, P.O.-Amba, P.S.-Telhara, District-Aurangabad-824111.
6. Om Prakash Mehta, son of Shree Ram Mehta, Resident of Village-Sonaura, P.O. and P.S.-Sonaura, District Aurangabad-824301.
7. Dhananjay Kumar Yadav, Son of Ramadhar Yadav, resident of Village-Darwan, P.O. Darwan and P.S.-Danrwa, Aurangabad-824203.

... .. Petitioner/s

Versus

1. The State of Bihar through General Administrative Department, Bihar, Patna.
2. Labour Resource Department through its Principal Secretary Government of Bihar.
3. The Director Employment and Training Labour Resource Department, Government of Bihar, Patna, Bihar.
4. Directorate of Planning and Training Bihar, through its Joint Secretary Labour Resource Department.
5. The Joint Director Employment and Training Labour Resource Department Government of Bihar, Patna, Bihar.
6. The Assistant Director Training, Government of Bihar.
7. The Secretary BTSC Patna.
8. The Incharge Secretary BTSC Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15866 of 2023



1. Kaushik Kumar Son of Shri Dhananjay Sharma, Resident of Village-Samarkand, P.O.- Korma, P.S.- Ghosi, District- Jehanabad, Pin Code- 804432.
2. Mohammad Changez, Son of Mohammad Saifuddin, Resident of Awari, P.O.- Awari, P.S.-Marhowrah, District- Saran, Pin Code- 841418.
3. Rupak Kumari, Daughter of Shri Om Prakash Gupta, Resident of Village-Bisfi Gola, P.O.-Bisfi, P.S- Bisfi, District- Madhubani, Pin Code- 847122.
4. Sanjay Kumar Suman, Son of Shri Dharm Narayan Sah, Resident of At Majhaura, P.O.- Chhajna, P.S-Narhia, District- Madhubani, Pin Code- 847108.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. Principal Secretary, Labour Resources Department, Bihar, Patna.
3. Director, Directorate of Employment and Training (Training Wing), Labour Resources Department, Bihar, Patna.
4. Bihar Technical Service Commission, Patna through its Secretary.
5. Chairman, Bihar Technical Service Commission, Patna.
6. Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16335 of 2023

1. Sunil Kumar Son of Yogendra Prasad, resident of P.O. and P.S. - Shankar Saraiya, District - East Champaran, Pin Code- 845437.
2. Sikandar Kumar, Son of Bishnudayal Ram, resident of village and P.O. - Khapura, P.S.- Khapura, District - Nalanda, Pin Code- 801305.
3. Rajeev Ranjan, Son of Shankar Chaudhary, resident of Bharat Raut, P.O. and P.S. - Hajipur, District - Vaishali, Pin Code - 844101.
4. Ranjeet Kumar, son of Hari Narayan Prasad, resident of P.O. and P.S. - Barni, District - Patna, Pin Code - 804452.
5. Uday Kumar Bharti, Son of Baras Pandit, resident of Near Block Office, Uttari Sangat, Ward No.6, Phulwarisharif, P.S. - Phulwarisharif, District - Patna, Pin Code- 801505.
6. Jitendra Kumar Singh, Son of Kamta Ray, resident of Nakta Diyara, P.O.- Makhdumour Digha, P.S. - Digha, District - Patna, Pin Code - 800011.



... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Skill Development and Entrepreneurship, Government of India, New Delhi.
2. Director General, Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Government of India, New Delhi.
3. The State of Bihar through the Principal Secretary, Labour Resources Department, Bihar, Patna.
4. Director, Directorate of Employment and Training (Training Wing), Labour Resources Department, Bihar, Patna.
5. Bihar Technical Service Commission, Patna through its Secretary.
6. Chairman, Bihar Technical Service Commission, Patna.
7. Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2162 of 2024

1. Nagendra Ram Son of Shivdhayan Ram, Resident of Ward No. 7, Village-Rampur Ganguly, P.O.-Rampur Ganguly, P.S.-Riga, District-Sitamarhi, Pin-843327.
2. Shyam Babu Shafi Son of Ram Binod Shafi, Resident of Village-Hari Chhapra, Munik Chawk. P.O.-Lagma. P.S.-Dumra, District-Sitamarhi, Pin-843323.
3. Ujjain Raju Kumar Sinh Son of Ramvilash Sinh, Resident of Village-Kailashpuri Ward No.-11, P.O. and P.S.-Sitamarhi, District-Sitamarhi, Pin-843301.
4. Rajesh Mahto Son of Baidh Nath Mahto, Resident of Village-Chak Mahila, P.O.-Chak Mahila, P.S.-Sitamarhi, District-Sitamarhi, Pin-843302.
5. Vishwameet Kumar Son of Dhanbir Prasad, Resident of Village-Ward No. 8, Shri Rampur, P.O.-Naranga, Via-Parihar, P.S.-Bela, District-Sitamarhi, Pin-843324.
6. Sujeet Kumar Son of Jay Narayan Mahto, Resident of Village-Ward No. 1 Tilanghi, P.O.-Banarjhula, Via- Bhutahi, P.S.-Sonabarasa, District-Sitamarhi. Pin-843317.
7. Ravi Shankar Son of Shabmhu Acharya, Resident of Village- Ward No. 5,



Muraul, P.S.-Bajpatti, District- Sitamarhi, Pin -843314.

8. Vikash Saurabha Son of Trivedi Ranjeet Kumar. Resident of Village and P.O.-Bhorhan, Mohanpur, P.S.- Shyampur Bhatahan, District-Sheohar, Bihar-843329.
9. Kumar Dipendra Singh @ Kr. Dipendra Singh Son of Tilyug Narayan Yadav, Resident of Village-Ghaghra, P.O.-Baburvan, P.S.-Parihar, District-Sitamarhi, Pin-843324.
10. Sharda Nandan Kumar @ Sharda Nandan Kr. Son of Nawal Kishor Pandey, Resident of Village-Baghari, P.O.-Baghari, P.S.-Runni Saidpur, District-Sitamarhi, Pin-843323.
11. Praveen Kumar Son of Ganga Prasad Yadav, Resident of Village-Khoprahiya, P.O. - Andauli, P.S.-Parihar, District-Sitamarhi. Pin-843324.
12. Manoj Kumar Son of Shri Rambriksh Yadav, Resident of Village Ward No. 9, Sardalpatti, P.O.- Sardal Patti, P.S.-Sitamarhi, District-Sitamarhi, Pin-843324.
13. Birendra Kumar Son of Raja Nandan Singh, Resident of Village-Rupauli Ward No. 05, P.O.-Bishanpur, P.S.-Dumra, District-Sitamarhi, Pin-843302.
14. Lalit Kumar Son of Ram Pujan Thakur, Resident of Village and P.O.-Mohani Mandal Dubaha, P.S.-Suppi, District-Sitamarhi, Pin-843327.
15. Shreya Shrivastava Daughter of Sachidanand Prasad, Resident of - Old Circus Compound Ward No. 2, Ghaoshala Road, P.S.-Chak Mahila Sitamarhi, District-Sitamarhi, Pin-843302.
16. Pradeep Kumar Son of Krishna Chandra Jha, Resident of Ward No. 29, Aadarsh Nagar, South of Kala Niketan, Rajo Patti, P.O. and P.S.- Sitamarhi, District-Sitamarhi, Pin-843301.
17. Yashwant Kumar Son of Ram Haldhar Das, Resident of Village and P.O.- Baluah, Tahsil - Mahishi, District- Saharsa. Pin-852216.
18. Chandrika Sah Son of Ram Swarth Sah, Resident of Ward No. 10, Sira, P.O. - Vishanpur, Parmanandpur, P.S.- Sitamarhi, District-Sitamarhi, Pin-843302.
19. Satya Narayan Kumar @ Satya Singh Son of Bachchu Bhagat, Resident of Village-Partapur, P.S.- Sitamarhi, District-Sitamarhi, Pin-843311.

... .. Petitioner/s

Versus

1. The State of Bihar Through General Administrative Department, Govt. of Bihar, Patna.
2. The Labour Resource Department Through its Principal Secretary



Government of Bihar, Patna.

3. The Director Employment and Training Labour Resource Department Government of Bihar, Patna, Bihar.
4. The Directorate of Planning and Training Bihar, Through its Joint Secretary Labour Resource Department, Govt. of Bihar, Patna.
5. The Joint Director Employment and Training Labour Resource Department. Government of Bihar, Patna, Bihar.
6. The Assistant Director Training Government of Bihar, Patna.
7. The Secretary B.T.S.C. Patna.
8. The Incharge Secretary B.T.S.C. Patna.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 3385 of 2024

1. Rajiw Ranjan son of Bindeshwari Prasad, resident of Parwatiya Tola, Ward No. 1, P.O. and P.S.-Bettiah, District-West Champaran, Pin Code-845 438.
2. Sikandar Prasad son of Bishun Dev Prasad Resident of Nawagawan, P.O.-Laxmipur, P.S.-Chuhari, District-West Champaran, Pin Code-845 450.
3. Beauty Kumari, d/o of Jagdev Yadav, resident of Ward No. 34. P.O.and P.S. Siswania, District-West Champaran, Pin Code-845 453.
4. Amar Jyoti, son of Satyendra Prasad Ray, resident of Lakhanpur Tal, P.O.and P.S.and District-Vaishali, Pin Code-844 504.
5. Chandan Tiwari, S/o Satyendra Tiwari resident of Khash Mahal, Road No. 3, Chiraiyatand, P.O.- GPO, P.S.-Jakanpur, District-Patna, Pin Code-800 001.
6. Bambam Kumar, son of Deep Narayan Yadav, resident of Tali Barari, P.O. and P.S.-Barari, District-Katihar, Pin Code-854 104.
7. Biharilal Prasad, son of Ramswrup Prasad, resident of Jaukatiya, Ward o. 18. P.O. and P.S.-Jawkatia, District-West Champaran, Pin Code-845454.
8. Kaushik Kumar, son of Dhananjay Sharma, resident of village-S Amarkhand, P.O.- Korma, P.S.-Ghosi, District-Jehanabad, Pin Code-804 432
9. Sanni Kumar, son of Nandkishor Prasad, resident of Vasudevpur Beldar Virkuwar Dalhatta, P.O. and P.S. and District-Munger, Pin Code-811 201.
10. Ajit Kumar, son of Bakhari Prasad Singh, resident of Chakmohiddinpur, P.S.Mohiuddinpur, P.S.- Chiksaura, District- Nalanda, Pin Code- 801302



... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. Principal Secretary, Labour Resources Department, Bihar, Patna.
3. Director, Directorate of Employment and Training (Training Wing), Labour Resources Department, Bihar, Patna.
4. Bihar Technical Service Commission Patna through its Secretary.
5. Chairman, Bihar Technical Service Commission, Patna.
6. Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 15816 of 2023)

For the Petitioner/s	:	Mr.Md. Shahnawaz Ali, Advocate Mr. Padmanath Kashyap, Advocate Mr. Deepak Kumar, Advocate Mr. Pushkar Bhardwaj, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General
For the BTSC	:	Mr.Nikesh Kumar, Advocate
For the Intervenor	:	Mr. P.N. Shahi, Sr. Advocate Mr. Shyam Sundar Kumar, Advocate Mr. Ritesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 15866 of 2023)

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General
For the BTSC	:	Mr.Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 16335 of 2023)

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General
For the BTSC	:	Mr.Nikesh Kumar, Advocate
For the UOI	:	Mr. Anand K. Ojha, Sr. CGC
For the Intervenor	:	Mr. P.N. Shahi, Sr. Advocate Mr. Shyam Sundar Kumar, Advocate Mr. Ritesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 2162 of 2024)

For the Petitioner/s	:	Mr.Ram Niwas Ray, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General
For the BTSC	:	Mr.Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 3385 of 2024)

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General
For the BTSC	:	Mr.Nikesh Kumar, Advocate



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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-05-2024

The interplay of executive instructions issued by the Central Government, based on recommendations of an academic body and the rules framed by the State Government under Article 309 of the Constitution of India, in regulation of the selection, appointment and terms of employment in a cadre in the service of the Government, is the issue arising in the above cases. The cadre is that of the ‘Industrial Training Instructors’ within the State of Bihar, regulated, earlier by the Rules framed in 2013, which were repealed and the Rules of 2018 came into force. An advertisement for selection and appointment published in the year 2016, under the Rules of 2013 was not proceeded with.

2. Another advertisement for selection of Industrial Trade Instructors was then published in the year 2023, under the Rules of 2018. In the interregnum, there were appointments made on contract and as Short



Term/Guest Lecturers. The advertisement of 2023 intended the selection to be conducted as per the Rules of 2018, by (i) a written examination, (ii) the marks obtained in the Graduate/Diploma in Engineering or the ITI trade Certificate Exams, (iii) giving preference to the qualification of certificate of 'Craft Instructors Training Scheme' (CITS) and (iv) weightage to the contractual employees. The petitioners in the writ petitions who are Short Term/ Guest Lecturers challenged the advertisement on grounds; (i) that, the Rules of 2018 not having been enforced at the time of advertisement since the Gazette Notification came later, (ii) that, the CITS qualification is not to be given a mere preference, but is mandatory, (iii) that, equivalence of Regular & RPL CITS not having been reckoned and (iv) that, the action of the State was discriminatory insofar as the Short Term/ Guest Lecturers, who are discharging the very same duties and are similarly situated as the contractual employees, were not granted the weightage for the years they continued in the service of the State in the same manner as the contractual employees were continued.



3. Shri Abhinav Shrivastava, learned Counsel appearing for the petitioners, argued with reference to CWJC No. 3385 of 2024. When the early writ petitions were filed, the petitioners had challenged the Rule and the advertisement on the ground that the CITS was not made a mandatory qualification. Only later, the petitioners realized that the Rules of 2018, based on which the advertisement was brought out cannot survive, for the Rules of 2018 having not been notified in the official Gazette; upon which CWJC No. 3385/2024 was filed based on which arguments were addressed. It is pointed out that the earlier Rules of 2013 was invoked and it gave short shrift to the various instructions by the Central Government that CITS should be made a mandatory qualification for Trade Instructors so as to enhance the standards of training imparted in the Industrial Training Institutes; the vocational training hubs in the country and the State. A challenge was made against an advertisement issued, which challenge was upheld and there was a direction issued by a learned Single Judge of this Court to make the qualification of CITS mandatory for the purpose of selection of Trade Instructors. The State slept



over the matter, but issued an advertisement in the year 2016 where CITS was made an essential qualification. This was not proceeded with for no reason. In the meanwhile, appointments were made both contractually and as Guest Lecturers; who are discharging the very same duties and continuing similarly in the Industrial Training Institutes (ITIs). In the year 2018, the new rules were framed wherein the mandatory qualification of CITS was made a desirable qualification; which is against the mandate of the Central Government. The interplay of Entries 63, 64, 65 and 66 of List-I of Schedule-VII to the Constitution of India and Entry-25 of the Concurrent List; List-III of Schedule VII, gives primacy to the executive instructions issued by the Central Government. The State cannot dilute the prescription made by the Central Government on the recommendation of the National Council for Vocational Training (NCVT), the Apex Body tasked with the job of ensuring and enhancing the standard of education in Vocational Training Institutes. It is pointed out that there was no Gazette Notification issued enforcing the Rules of 2018, in which context, the advertisement issued in terms of



the Rules of 2018 cannot be sustained. The prescription of a written examination is as per the Rules of 2018, which cannot be enforced in the selection and appointment to the cadre, for reason of it being not properly notified.

4. The ground of discrimination was also urged specifically referring to the documents produced in the writ petition to convince us that if the selection is proceeded with, the petitioners who are Guest Lecturers and other similarly situated persons should be given the same weightage as applicable to the contractual employees; who are identically situated in the ITIs in the State. It is also pointed out that CITS could be acquired by regular study and by a procedure called Recognition of Prior Level (RPL). Both the regular CITS and the RPL-CITS have been equalized by the Central Government which equalization is not reflected in the advertisement, causing further discrimination. It is the compelling argument of the learned Counsel for the petitioners that the State cannot proceed with the advertisement and the entire selection has to be shelved and a proper selection initiated under the Rules of 2018, which has now been notified in the Gazette of 2023;



after the advertisement of 2023.

5. The learned Advocate General commenced his arguments with the statement that the selection is now complete and the petitioners also have participated in it. There is absolutely no prejudice caused to the petitioners in the selection being proceeded with, especially when they have all applied under the advertisement and also participated in the test. The results have not been declared because of the interim order issued by this Court and if immediate appointments are not made, the entire vocational training within the State, would collapse. The attempt of the petitioners is only to continue as Short Term/Guest Lecturers; who cannot also by any stretch of imagination termed to be akin to contractual employees. The contractual employees were selected through a regular process after ensuring their qualifications and to sanctioned posts after following the roster; which is not the case of employment of Short Term/Guest Lecturers. The principle of equality would stand vitiated if un-equals are treated equally and there is no valid case set up to find discrimination. The attempt of the petitioners is to only continue in their short-



term employments and frustrate the selection process; which if proceeded with and appointments made, would only enhance the standard of education. Even if a *de novo* selection is carried out after fresh advertisement, the very same process will have to be adopted.

6. As to the mandatory nature of CITS, it is pointed out that even prior to the advertisement, the Central Government had diluted the prescription and had insisted only upon a selected candidate, who does not have CITS, being obliged to obtain the qualification within a period of three years. This stipulation has been adopted by the State Government in the advertisement. The Rules of 2018 have subsequently been notified and since there is no prejudice caused to the applicants, who have already participated in the selection process initiated under the new set of rules, which also stands now properly notified, the writ petitions are to be dismissed.

7. Shri P.N.Shahi, learned Senior Counsel appearing for the intervenors contended that there is no question of invalidation of the Rules of 2018 for reason of absence of Gazette Notification, as is discernible from



Section 6 of Bihar and Orissa General Clauses Act, 1970. The Rules of 2018 specifically indicates that it will come into operation immediately. Reliance is also placed on the judgments of the High Court of Allahabad and the High Court of Bombay, which found the rules framed in the respective States making the CITS a preferential qualification to be perfectly in order. The States' power under Article 309 to make statutory rules cannot be overcome by mere executive instructions issued by the Central Government.

8. Shri Anand Kumar Ojha, learned Counsel appearing for the Central Government also was heard. The parties had relied on a number of decisions which we shall refer to, in the course of the judgment.

9. For laying a proper foundation and understanding the core issue, we would detail the facts by reference to CWJC No. 3385 of 2024. The petitioners therein are graduate engineers who also possess the CITS qualification; the certificates of some of the petitioners having been produced at Annexure-1. Annexure-2 dated 24.07.1996 is a communication from the Government of



India, Ministry of Labour regarding the Craftsman Training Scheme. The proposal of enhancing the recruitment qualification for the post of Vocational Training Instructor as emanating from the 31st meeting of the NCVT was accepted by the Government of India and the States were requested to take necessary action to amend the recruitment rules in respect of Vocational Instructors, both theory and practical. Despite the said communication, the Bihar Industrial Training Instructor Rules, 2013 (Annexure-3) did not provide for the essential qualification of CITS. A challenge was made to the said rules and the Advertisement No. 2/2013 issued for recruitment to the post of Instructors in various ITIs in the State; based on the Rules of 2013.

10. In the writ petition, a learned Single Judge had, on 26.07.2013, considered the matter elaborately, by an interim order, especially relying on the judgment of a learned Single Judge of the Allahabad High Court in ***Upendra Narain Singh vs. State of U.P. 2006 SCC Online All: 709***. Finding lack of clarity in the response made by the Central Government, it was directed that though the selection be proceeded with, there shall be no appointments



made. The Central Government was directed to clarify as to the letters issued dated 15.12.2008 and 28.09.2010 (Annexures-B & C produced in the said writ petition). After pleadings were exchanged, relying on the judgment of the Allahabad High Court and also two other High Courts, the core issue raised for consideration was whether the State of Bihar had the liberty to give a go-by to the basic eligibility and qualification laid down by the Union of India. The reliance placed on the Rules of 2013 was rejected since the Gazette Notification was dated 25.07.2013 and the advertisement was previous to that. The State was directed to issue a fresh advertisement in consonance with the requirements laid down in Bihar Industrial Training Instructors Cadre Rules, 2013, which was also directed to be made in conformity with the requirements laid down by the NCVT, as to the qualification of CITS.

11. Subsequent to the judgment, which is produced as Annexure-4 in the writ petition, an advertisement dated 22.06.2016 was issued by the State of Bihar as is produced at Annexure-5. The educational qualification and experience for a Trade Instructor was



‘National Apprenticeship Certificate (NAC) or National Trade Certificate (NTC) or National Craft Instructors Certificate (CITS). It was specified in the advertisement that CITS would be insisted only in trades where the programme is available. It is not disputed that the advertisement was not acted upon and no selections were made. It was subsequent to this that Annexure-6, Bihar Industrial Training Instructor Cadre Manual, 2018 was brought out under Article 309 of the Constitution of India. Therein, under Rule 2(ix), CITS was defined. The CITS was shown as a desirable qualification to provide training and teaching in concerned trades under the qualifications prescribed for direct recruitment. Rule 9(E) also provided a weightage of 5 marks for every completed year subject to a maximum of 30 marks to those Instructors employed and working on contract; one complete year being considered as any period above five months of satisfactory service. The rules also provided the mode of selection; as per Rule 9(G); which stipulated 50% marks to be that obtained in written examination, 20% marks obtained in NTC/NAC/Diploma/Degree Certificate, 30% of marks



obtained in CITS examination. In addition to this was the weightage for contractual employees; which in the impugned advertisement is restricted to a maximum of 25 marks.

12. The advertisement is produced at Annexure-11, which is Advertisement No. 38 of 2023, which indicated a selection process with a total of 125 marks out of which, 50 conceded to the written examination, 20 to the qualification of diploma/engineering, 30 for CITS and 25, weightage for contract employees. It is admitted that there was no Gazette Notification of the Rules of 2018; till it came later, as per Annexure-13 dated 16.10.2023. This is the foundational facts on which the contentions have to be addressed.

13. The first issue to be considered is as to whether the CITS is a mandatory qualification; as one issued under Article 73 of the Constitution of India. It has to be noticed that a Division Bench of Allahabad High Court in **Berojgar Audhyogik Kalyan Samiti Vs. State of Uttar Pradesh; MANU/UP/0024/23**, has held; based on the changes modifying the mandatory nature of the CITS to a



desirable one, that **Upendra Narain Singh** (*supra*) as affirmed by a Division Bench is of no help to the petitioners therein who had also raised a similar challenge against the selection, asserting the mandatory nature of the CITS.

14. We also refer to the judgment of a Division Bench of the High Court of Judicature at Bombay in **Rajesh & Ors Vs. Balu & Anr, in Writ Petition No. 2654 of 2023** and analogous cases produced as Annexure-P/2 in CWJC No. 15816 of 2023, by the intervenors. After extracting Articles 73, 246, 254 and 309 as also Entry 66 in List-I and Entry 25 in List-III of the VIIth Schedule of the Constitution of India, the Division Bench held so in paragraph nos. 14 to 19, extracted hereinbelow: -

“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 1 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 1 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.”

15. A Special Leave filed from the above judgment was dismissed by the Hon’ble Supreme Court. We are quite conscious of the fact that the dismissal of an SLP,



would not give the approved decision, the sheen of a precedent of the Supreme Court. However the reasoning in the Division Bench persuades us to respectfully follow the aforesaid dictum especially noticing, Annexure-8 communication issued by the Government of India dated 31.01.2020 by which it was noticed that out of 152 CITS trades there are approved CITS courses only for 82 trades. It is in this context that the State Governments have been required to permit appointment of Instructors in such trades where there is no CITS course, on condition that the said candidates would undergo CITS training under RPL, whenever such CITS qualifications are developed by DGT. It has also been provided that any candidate who has a Degree or Diploma or NTC or NAC; if selected without possessing CITS qualification for the trades which are having CITS course, such candidates will have to undergo CITS training within three years from the date of appointment. This is specifically the condition as prescribed in the advertisement, as of now, cautioning the persons who would be appointed without CITS that, if they did not acquire such qualification within a three-year period they



would lose their eligibility to first increment and even face the threat of termination. CITS hence is not mandatory and is only a desirable qualification.

16. Now we have to consider whether the Rules of 2018 have been properly notified.

17. ***Harla Vs. State of Rajasthan; AIR 1951 SC 467*** dealt with the necessity of promulgation and publication of law. It was declared that *‘in the absence of any special law or custom, it would be against the principles of natural justice to permit the subject of a State to be punished or penalized by laws, of which they had no knowledge and of which, they could not even with the exercise of reasonable diligence, have acquired any knowledge.’(sic)*. It was hence held that before a law can be made operative it has to be promulgated or published, it must be broadcast in some recognizable way so that all men may know what it is. The mere passing of the Jaipur Opium Act in the year 1924 without promulgation or publication in the gazette or other means, to make the Act known to the public, was held to be not sufficient to make it law.

18. **B.K. Srinivasan Vs. State of**



Karnataka; (1987) 1 SCC 658 held so in paragraph no.

15:-

“15. There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the “conscientious good man” seeking to abide by the law or from the standpoint of Justice Holmes's “unconscientious bad man” seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner; whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily



recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient [Narayana Reddy v. State of A.P., (1969) 1 Andh WR 77].”

19. We have to observe that the aforesaid decisions were with respect to penal laws and laws requiring compliance by the citizens, which the citizen had a right to know before it was implemented and made operative.

20. ***Deepak Babaria Vs. State of Gujarat; (2014) 3 SCC 502***, while considering the various authorities, referred with approval, to the decision in **State of U.P. Vs. Singhara Singh; AIR 1964 SC 358**, which reiterated the proposition of law laid down in **Taylor Vs. Taylor [(1875) LR 1 Ch D 426 at p. 431.]**, in the following manner: -

“The rule adopted in Taylor v. Taylor [(1875) LR 1 Ch D 426 at p. 431.] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle



behind the rule is that if this were not so, the statutory provision might as well not have been enacted."

[underlining by us for emphasis]

21. ***Municipal Corporation of Greater Mumbai Vs. Anil Shantaram Khoje and Ors; (2016) 15 SCC 726***, on the aspect of recruitment processes held that rules become operative only from the date of publication in the official gazette; as per the stipulation in the enactment under which the rules were framed.

22. The Bihar and Orissa General Clauses Act, 1917 provides so in Section 28: -

"28. Publication of orders and notifications in the Gazette.- Where in any Bihar and Orissa Act [or Bihar] or in any rule made under any such Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the Gazette."

23. Section 6 of the said Act is also extracted hereunder:

***"6. Coming Into operation of Acts.-(1) Where any Bihar and Orissa Act is not-expressed to come into operation on a particular day, then it shall come into operation on the day on which the assent thereto of the Governor-General is first published in the [official Gazette] in pursuance of Section 81 of the Government of India Act, 1915.
(1-A). Where any Bihar Act is not expressed to come into operation on a particular day-***



(i) in the case of a Bihar Act made before the commencement of the Constitution, it shall come into operation, if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, the Governor General or His Majesty, as the case may require, is first published in the official Gazette, and if it is an Act of the Governor of Bihar, on the day on which it is first published as an Act in the official Gazette;

(ii) in the case of a Bihar Act made after the commencement of the Constitution, it shall come into operation on the day on which the assent thereto of the Governor or the President, as the case may require, is first published in the official Gazette.

(2) Unless the contrary is expressed, Bihar and Orissa Act or Bihar Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.”

24. The rule framed under Article 309 of the Constitution of India, the Rules of 2018 was brought out on 11.05.2019 and it was specified that it shall come into force immediately as seen from Rule 1(3). There is no penalty imposed under the said Rules nor is it one which requires compliance from citizens. It is a Rule regulating the selection, appointment and terms of service in a specified cadre. There can be no insistence that the general public should be put to notice of the same or that the future aspirants to the cadre should have advance information. The requirements are publicized at the time of the advertisement



calling for applications to participate in the recruitment. We find no infirmity in the advertisement brought out under the Rules of 2018.

25. In the present case there is no doubt that the Rule of 2018 was not notified or published in the official gazette when the advertisement came. Even if there was to be a notification; faced with the situation of the Rules of 2018 being not sustained, we have to necessarily revert to the Rules of 2013 which undoubtedly had been published in the official gazette. The Rules of 2013 is produced as Annexure-3 in CWJC No. 3385 of 2024 (from which we make reference in this paragraph to the other relevant documents). It was in the context of Annexure-3 not providing CITS, that a learned Single Judge of this Court by Annexure-4 judgment required the State Government to issue a fresh advertisement after making the Rules of 2013, in conformity to the requirement laid down by NCVT as to the qualification of CITS. The judgment has become final since the State has not appealed, but, the position has considerably changed as we noticed earlier and CITS is no more mandatory. Hence, this creates absolutely



no difficulty as of now; either with respect to the selection being proceeded with under the Rules of 2013 or the Rules of 2018; which later Rule makes the CITS a desirable qualification.

26. We also have to notice Annexure-10 communication of the Government of India which we referred to earlier, which is dated 30.06.2023. The advertisement impugned in the aforesaid writ petitions was dated 14.09.2023 as evident from Annexure-11 series produced; after Annexure-10 order of the Government of India. This does not conflict with the Rules of 2013 which has not provided CITS either as a mandatory qualification or educational qualification. This also is in tandem with the Rules of 2018. The advertisement of the State Government giving a preference to the CITS can only be treated as an adoption of the executive instructions issued by the Central Government under Article 73 of the Constitution of India.

27. Now we come to the method of selection as prescribed in the advertisement which as we noticed takes in a written examination with 50 per cent marks, 20 per cent marks for diploma or engineering certificate, 30 per



cent of CITS and 25 marks as weightage for contractual appointment. There is no procedure prescribed in the Rules of 2013 and hence the procedure prescribed by the State Government as per the advertisement, being only reasonable and also in consonance with the preferential treatment of CITS as mandated by the Central government can be upheld. The procedure does not in any manner conflict with the Rules of 2013; even if the Rules of 2018 is found to be inapplicable at the time of advertisement; which we have already found is not a valid contention.

28. Now we come to the weightage given for contractual employees. We see that in the Rules of 2018, Notification no. 8025 dated 21.05.2013 of the General Administration Department permits weightage to the contract employees; as evident from paragraph no. 9(E) of Rules of 2018. Independent of the Rules of 2018 also the notification of the General Administration Department survives and the weightage is proper. We are also of the opinion that the Short Term/Guest Lecturers cannot be equated with the contractual employees. But for producing the advertisement for appointment of Short Term/Guest



Lecturers, there is nothing stated as to how the selection was conducted. The selection of contractual employees as was pointed out by the learned Advocate General differs considerably from the engagement of Short Term/Guest Lecturers since they cannot be found, equal to the contractual employees. We are of the opinion that the weightage conceded only to the contractual employees also is in order.

29. We have to observe that even the written examination is prescribed by the Government as per Annexure-R1/E produced alongwith supplementary affidavit dated 09.05.2024 of the State Government, in CWJC No. 15816 of 2023. The procedure of selection prescribed in the advertisement is in consonance with the various Government Orders regarding written examination in selection and weightage to the contractual employees which do not conflict with each other. Though not argued, we have to notice that the Rules of 2018, specifically provided for one of two posts of Instructors, in every trade will be kept aside for Degree or Diploma in Engineering and NTC/NAC holders ie: one post would be conceded to



the Degree or Diploma holder and the other would be for NTC/NAC holders. We have to again notice Annexure-10 (CWJC No. 3385 of 2024) dated 30.06.2023 issued by the Central Government, which under the qualification for Trade Instructor indicates as follows: -

“Note: Out of the two Instructors required for the units of 2(1+1) must have Degree/Diploma and the other must have NTC/NAC qualification.”

30. Hence the selection to be carried out on that basis is also in conformity with the directions of the Central Government as adopted by the State Government in the advertisement. We find absolutely no reason to entertain the writ petitions. However it has to be observed that the Central Government has in Annexure P-10 and also by Annexure P-16 equated the regular & RPL CITS. In granting preferential claim by award of 30% of the marks obtained for CITS; we direct the State Government to consider CITS obtained under both streams, Regular & RPL. With the above reservation the other contentions are rejected.

31. Learned Advocate General submitted



before us that the entire selection process is over and only the publication of merit list and appointment remains. The State would be free to carry out the selection and appointment process; incorporating the direction by us herein above.

32. The writ petitions would stand partly allowed, permitting RPL CITS also to be reckoned, but rejecting all other grounds raised.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

(Harish Kumar, J)

sujit/ranjan--

AFR/NAFR	AFR
CAV DATE	10.05.2024
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