



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

WRIT PETITION NO. 5313 OF 2024

- 1] Shekhar S/o. Kaduba More,
Age : 22 years, Occu : Private Service,
R/o. At Post Katpur,
District : Aurangabad
- 2] Arjun S/o. Digambar Rathod,
Age : 34 years, Occu. : S.T. Service,
R/o. Vishira Tanda, Dist : Beed
- 3] Anil S/o Jairam Thakare,
Age : 37 years, Occu : S.T. Service,
R/o. Uday Colony, Aurangabad,
Tal. & District : Aurangabad
- 4] Sachin S/o. Ambadas Adik,
Age : 31 years, Occu. : S.T. Service,
R/o. Dongaon, Tal. Kannad,
District : Aurangabad
- 5] Rajabhau S/o. Uttam Sutar,
Age : 41 years, Occu : S.T. Service,
R/o. At Post Pungari,
Tal. & District : Parbhani
- 6] Akash S/o. Satilal Suradkar,
Age : 29 years, Occu : Private Service,
R/o. Mohan Kh. Tal. Sillod,
District : Aurangabad
- 7] Satale Chetan Virabhadra
@ Chetan S/o. Virbhadra Satale
Age : 31 years, Occu : S.T. Service,
R/o. Uday Colony, Aurangabad,
Tal. & District : Aurangabad
- 8] Aakash S/o. Malachand More,
Age : 23 years, Occu : Private Service,
R/o. At Post Vihamandava,
Tal. Paithan, District : Aurangabad
- 9] Ajay S/o. Dnyaneshwar Kale,
Age : 23 years, Occu : Private Service,
R/o. At Post Takali Ambad,
Tal. Paithan, District : Aurangabad

- 10] Akash S/o. Sanjay Ghate,
Age : 24 years, Occu. : Private Service,
R/o. At Post Shevata, Tal. Paithan,
District : Aurangabad
- 11] Imtiyazuddin S/o. Moinoddin Kazi,
Age : 34 years, Occu : Private Service,
R/o. White House, Bhandar Galli,
Old Bazaar, Beed, Tal. & Dist. : Beed
- 12] Mahesh S/o. Ganesh Magar,
Age : 22 years, Occu : Private Service,
R/o. Daudgaon, Tal. Aundha,
District : Hingoli

.. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Vocational Education & Training,
Mantralaya, Mumbai – 32
- 2] The Director General Training (DGT)
Ministry of Skill Development and
Entrepreneurship Employment
Exchange Building, Library Avenue
PUSA Complex, New Delhi – 110 012
- 3] The Director of Vocational Education,
& Training / DVET, Maharashtra
State, Mumbai – 1 Office at
Municipal Corporation Road,
Mumbai – 400 011
- 4] Vishal Balkrushna Tayade
Age : 29 years, Occu : Student,
R/o. Shivajinagar, Mehkar,
Tq. : Mehkar Dist : Buldhana – 443 301
- 5] Pramod Ashok Bansode,
Age : 32 years, Occu : Student,
R/o. Plot No. 139, Sahyadrinagar,
Satara Parisar, Aurangabad
Tq. Aurangabad Dist : Aurangabad

... Respondents

...

Mr. Sameer Vaidya h/f. Mr. B.N. Magar, Advocate for petitioner
Mr. S.B. Deshpande, Senior Advocate along with Mr. M. K. Goyanka, AGP &
Mr. Shreyas Deshpande, Advocate for respondents no. 1 and 3 :
Mr. R.R. Bangar, Advocate for the respondent no. 2
Mr. Avinash S. Deshmukh, Advocate for respondents no. 4 and 5

...

**WITH
WRIT PETITION NO. 5271 OF 2024**

- 1] Rameshwar Vishwanath Hadbe,
Age : 32 years, Occu : Service,
R/o. At Hadbewadi, Post Ujani,
H.No. 756, Mhada Murtijapur,
Tq. Ambajogai, Dist. Beed
- 2] Krushna Nathrao Phad,
Age : 28 years, Occu : Nil,
R/o. At Post Dharampuri,
Tq. Parali, Beed
- 3] Ajinkya Anil Mohite,
Age : 30 years, Occu : Service,
R/o. 'Devdan', Plot No. 4,
Near Masoba Temple, Vasantnagar,
Kupwad, Sangli – 416 416
- 4] Yogesh Anil Khandagale,
Age : 24 years, Occu : Service,
R/o. At Post Toka, Tq. Newasa,
Dist. Ahmednagar 414 603
- 5] Rajesh Ankush Ghuge,
Age : 29 years, Occu : Service,
R/o Nirmitti Samriddhi Apartment,
Vaman Nagar, Jule, Solapur – 413 004
- 6] Nitin Balasaheb Durgude,
Age : 29 years, Occu : Nil,
R/o. Ganeshwadi, PO. Khednagar,
Ahmednagar
- 7] Mahindra Keshavrao Kedare,
Age : 29 years, Occu : Nil,
R/o. At Palshi Khu-Post-Palshi Bu,
Tq. Kannad, VTC, Palshi,
Dist. Chh. Sambhajinagar
- 8] Vinod Yeshwant Shelke,
Age : 43 years, Occu : Service,
R/o. Nanchanwel, Kannad,
Dist. Chh. Sambhajinagar
- 9] Ganesh Manohar Naik,
Age : 31 years, Occu : Nil,
R/o. C/o. Bhushan Vyaghrambare,

Raghveer Nagar, Canal Road, Balapur
Naka, Old City, Akola

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Ministry of Skill Development and
Entrepreneurship Development,
Mantralaya, Mumbai
- 2] Directorate of Vocational Education
and Training, Maharashtra State,
Through its Director.
- 3] Mahapalika Marg, Post Box No.
10036, Mumbai – 400 001
- 3] Rushikesh Sanjay Khedkar,
Age : Major, Occu : None,
R/o. Aurangabad Division (Allotted)
- 4] Rakesh Sakharam Snap,
Age : Major, Occu : None,
R/o. Aurangabad Division (Allotted)
- 5] Wanve Krushna Dagdu,
Age : Major, Occu : None,
R/o. Pune Division (Allotted)
- 6] Sagar Rohidas Bhadane
Age : 27 years, Occu : Service,
R/o. Nashik (Allotted Region, Pune)
- 7] Sushant Mohan Patil,
Age : 35 years, Occu : Service,
R/o. At Post : Rethare Dharan,
Walwa, Dist. Sangli – 415407
- 8] Rutika Raj Godbole,
Age : 26 years, Occu : Service,
R/o. Ganesh Nagar Road, Y Point,
Shivajinagar, Nanded – 431602
- 9] Abhijeet Shankar Tate,
Age : 31 years, Occu : Service,
R/o. Near Thote Diary, At Post. Ashta,
Tq. Walwa, Sangli – 416 301
- 10] Apporva Sadashiv Teli,

Age : 27 years, Occu : Service,
R/o. 9/51/6, Mahasatta Chowk,
Amrai Road, Ichalkaranji,
Tq. Hatkanagale, Kolhapur – 416 115

- 11] Nitesh Madhukar Phalake,
Age : 38 years, Occu : Service,
R/o. Jadhav Aali, Samaj Mandir,
At Post Saspade, Satara – 415 519
- 12] Abhijeet Rajendra Raut,
Age : 34 years, Occu : Service,
R/o. Vijay Shircho'k Colony,
Kathora Road, Near Rangoli Lawn,
Amravati – 444 604
- 13] Kiran Manoj Masram
Age : 28 years, Occu : Service,
R/o Ward No. 1, Behind Devrao Patil School,
Nandanwan Colony, Arni, Tq. Arni,
Yavatmal – 445 103
- 14] Vaibhav Shrikant Jadhav
Age : 31 years, Occu : Service,
R/o. At Post Shendri, Gadhinglaj,
Kolhapur – 416 502
- 15] Manoj Ratilat Patil,
Age : 35 years, Occu : Service,
R/o. Plot No. 93, Prashant Nagar,
Korit Road, Nandurbar – 425 412

.. Respondents

AND

CIVIL APPLICATION NO. 9577 OF 2024 IN WP/5271/2024

**(The State of Maharashtra through its Secretary and another
Versus
Rameshwar Vishwanath Hadbe and others)**

...

Mr. Ajay S. Deshpande, Advocate for petitioners
Mr. S.B. Deshpande, Senior Advocate along with Mr. Chetan Choudhari Advocate
i/b. Mr. R.S. Wani, AGP for respondents no. 1 and 2 and
for applicant in CA/9577/2024

Mr. S.R. Barlinge, Advocate for respondents no. 4 to 6
Mr. Avinash S. Deshmukh, Advocate and Mr. Rahul R. Avhad, Advocate for
respondent no. 3

Mr. Sangharsh V. Waghmare, Advocate for respondents no. 7 to 15

...

CORAM : **MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.**

RESERVED ON : **12.11.2024 (WP 5271/2024) &
22.11.2024 (WP 5313/2024)**

PRONOUNCED ON **20.12.2024**

JUDGMENT : (MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith in both the matters.

2. Learned AGP and the learned advocates for the respective respondents waive service. At the joint request of the parties, both the matters have been heard together since they are putting up a challenge to the common judgment and order of the Maharashtra Administrative Tribunal, bench at Aurangabad dated 10-05-2024 in Original Application nos. 1120 of 2023 and 145 of 2024 with Miscellaneous Application no. 87 of 2024.

3. The issue arises out of the advertisement published by the Directorate of Vocational Education and Training, dated 17-08-2022 for filling in 1457 posts of Craft Instructors in the Industrial Training Institutes (ITIs) across the state, in respect of 48 different trades.

4. While publishing the advertisement, requisite educational qualification and experience was prescribed pursuant to the The Craft Instructors, Class III in Industrial Training Institutes and Basic Training and Related Instruction Centers in the Department of Technical Education (Recruitment) Rules, 1983 (hereinafter 'Recruitment Rules of 1983') framed by the State of Maharashtra under Article 309 of the Constitution of India. The requisite qualification prescribed was Diploma in appropriate branch of Engineering. In clause no. 8.1 of the advertisement, it was stipulated that the candidates possessing higher qualification in respective trades, would be considered eligible. It is this clause, which is the bone of dispute.

5. As per clause 15.23 of the advertisement, the verification of documents of the candidates enlisted in the merit list was to take place. It

contemplated publication of provisional select list as well as final selection list but no lists were ever published. It was alleged that the applicants before the tribunal were kept in dark resulting in lack of knowledge about publication of selection list. It is only after circular dated 15-01-2024 in respect of the document verification was issued, that they became aware that candidates possessing only graduation (B.E.) were held eligible, even when they were not having prescribed qualification of diploma in respective trades. It was also alleged that the stipulation in the advertisement in clause no. 8.1 was merely a declaration to the effect that higher qualification would not be treated as a disqualification but was not intended to dispense with the essential requirement or prescribed qualification of diploma in second class in respective trade. The Recruitment Rules of 1983 were not intended to be diluted. The persons who were holding merely B.E. qualification were selected ignoring that they were not possessing minimum qualification of having a diploma in the respective trade. Questioning such selection list, the petitioners from writ petition no. 5271 of 2024 filed original application no. 145 of 2024.

6. Reliance was also placed on the decision of the High Court in the matter of ***Milind Shantilal Rathod and others Vs. The State of Maharashtra and others*** (writ petition no. 8568 of 2022 - dated 30-01-2023).

7. The petitioners from writ petition no. 5313 of 2024 preferred the Original Application no. 1120 of 2023 and merely put up a challenge to the advertisement no. 01/2022 on the ground that the qualification mentioned in the advertisement was not as per the Recruitment Rules of 1983. They also questioned the equalization method adopted while assigning the marks.

8. The state opposed the original applications with a basic contention that clause no. 8.1 of the advertisement was not contrary to the Recruitment Rules of 1983. It declared that candidates possessing higher qualification in the related stream, would be considered eligible. The clause was never

challenged by the original applicants. They participated in the process and are now putting up a challenge belatedly as an afterthought. Once having participated in the recruitment process without demur they were estopped from challenging the advertisement. It was also contended that higher qualification cannot be a disqualification. It presupposes having skills of the lower qualification. It was a matter of policy. The clause has been applied uniformly and no fault can be found in the preparation of the select list.

9. The private respondents who are the selected candidates also opposed the original applications on the same line as was done by the State.

10. Some of them raised issue regarding limitation. They contended that the original applications ought to have been filed within one year. But were filed belatedly without even seeking condonation of delay. The advertisement was published on 17-08-2022. It should have been challenged within one year from that day. They also contended that as per clause 15.22 (iv) of the advertisement, it was notified that in case the candidates scoring equal marks, in terms of sub-clause (i), (ii) and (iii) of clause 15.22, a candidate having higher qualification would be held eligible. It was, therefore, contended that holding of higher qualification was never considered to be a disqualification.

11. Accepting the stand of the state and the private respondents, the tribunal concluded that the state as an employer, was entitled to prescribe qualification or eligibility after taking into account the nature of the job and the requisite aptitude for efficient discharge of the work. It also held that the decision cited on behalf of the petitioners in the matters of *Milind Shantilal Rathod* (supra) and *Sangram Ramdas Gholve and others Vs. The State of Maharashtra and others; 2016 (5) ARB 783*, were not applicable to petitioners' case. Referring to *Dipti Samaddar V. Steel Authority of India Ltd.; 1996(5) SLR 117*, it held that the government could prescribe higher qualification than that is prescribed by the rules. It also referred to the decision of the Supreme Court in *Munna Roy V. Union of India; JT 2000 (9)*

SC 168, to hold that higher qualification cannot be a ground for rejection. It also distinguished the decision in the matter of *Devesh Sharma V. Union of India and others; AIR 2023 S.C. 3895*. Analyzing *Jyoti K.K. and others V. Kerala Public Service Commission and others; (2010) 15 SCC 596*, it was held that possession of higher qualification presupposes possession of a lower one. It was also held that nothing was brought on record to demonstrate that essential qualification of diploma in a particular stream or trade could be considered as a separate and not lower than the bachelors degree in that stream. It also relied upon curriculum published by the Director General of Training under the Ministry of Skill Development and Entrepreneurship and its brochure, to conclude that the qualification is prescribed by it. The stand of the petitioners that diploma in engineering is better and independent qualification for the post of Craft Instructor than bachelor of engineering in the same trade/stream was not sustainable. It was concluded that their stand that the essential qualification as per the rules was diploma and not the degree, was not acceptable.

12. To the extent of original application No. 145 of 2024, it was held that there was no error in holding the candidates possessing only a qualification of bachelor's degree i.e. 12+ four years in same faculty/stream/trade, were eligible.

13. In respect of original application No. 1120 of 2023, it was additionally concluded that there was no error or illegality in adopting equalization method and further that since the objection was being raised to the advertisement in question, after those petitioners had participated in the recruitment process, they were not entitled to do so and were estopped. Hence, both the original applications were dismissed. However, the operation of both the orders was stayed by the tribunal for a period of four weeks.

14. In consonance with the stand of the petitioners in writ petition No. 5271 of 2024, Mr. Ajay Deshpande, their learned advocate, would

submit that according to the Recruitment Rules of 1983, the educational qualification for the post of Craft Instructor, expressly provides that the candidate must be a diploma holder in the requisite trade. He would submit that the Recruitment Rules of 1983 do not expressly state that it is a minimum qualification. He would submit that possessing the higher qualification, as provided in clause 8.1 of the advertisement, stating that even the degree holders would be eligible, would not dispense with the requirement of possessing a diploma in concerned trade. He would submit that this clause merely takes care of the trite legal position as laid down in ***Munna Roy (supra)*** that the higher qualification cannot be a disqualification. However, he submitted that though no objection can be taken for participation of the degree holders that would not dispense with the basic requirement of possessing the diploma. Without there being any such rule, dispensing such diploma and allowing the candidates and selecting them, who are merely possessing degree in the respective trade, should not have been resorted to and would be rather inconsistent with the Recruitment Rules of 1983. He would submit that clause 8.1 would be inconsistent with the Recruitment Rules of 1983, if it is to be interpreted in the manner in which it has been done by the respondents and which has been found favour with the tribunal. He would refer to ***Ranjit Kumar Meher vs. State of Orissa and others : (2017) 4 SCC 568*** and ***Employees' State Insurance Corporation vs. Union of India and others, (2022) 11 SCC 392***, which in turn, followed ***Malik Mazhar Sultan & Anr vs U.P. Public Service Commission & Ors; (2006) 9 SCC 507***. He would submit that the tribunal has erred in appreciating such trite principle which has resulted in dismissal of the original application, illegally. He would refer to the following decisions:-

- (i) ***Milind Shantilal Rathod (supra)***,
- (ii) ***Devesh Sharma (supra)***,
- (iii) ***Zahoor Ahmed Rather and oth.vs.Sheikh Imtiyaz Ahmad; (2019) 2 SCC 404***,

(iv) Abhishek Sharma and others vs. State of U.P. and others; 2022 SCC OnLine All 241

(v) Puneet Sharma and others vs. Himachal Pradesh State Electricity Board Ltd. And anr. ; 2021 SCC Online S.C. 291.

(vi) Jyoti K.K (supra)

(vii) Dhananjay Malik and others vs. State of Uttaranchal and others; (2008) 4 SCC 171.

15. By referring to the recent government notification dated 10.07.2024, whereby the Group Instructor and Instructors, group-C (Technical), Maharashtra Education Service in the Directorate of Vocational Education and Training (Recruitment) Rules, 2024 (hereinafter ‘Rules of 2024’), Mr. Deshpande would submit that in order to do away with a specific wording of Recruitment Rules of 1983, now in Rules 4, 5 and 6, it has been explicitly worded by prefixing the word “minimum” to the words “educational qualification”. He would submit that this in itself demonstrates that even the State tacitly understood and agreed to the trite legal position, that unless the recruitment rules expressly mention that the educational qualification is minimum, the requisite educational qualification would constitute an essential qualification and even if a candidate possesses higher qualification that would not make him eligible unless he possesses the essential qualification, as prescribed by the Recruitment Rules of 1983.

16. So far as the stand of the respondents that these Rules of 2024, would govern even the recruitment process in question, which is still to reach finality, Mr. Deshpande, would submit that such change in the recruitment rules after the recruitment process had started, has been deprecated by the supreme court in the matter of Zonal Manager, *Bank of India, Zonal Office, Kochi and others vs. Aarya K. Babu & anr; (2019) 8 SCC 587.*

17. Senior advocate Mr. Sanjeev Deshpande, for the respondent-

State, would submit that some of the candidates had raised same challenge in respect of same recruitment process and had preferred separate original application No. 761 of 2022, which was allowed by the tribunal, but the order was partially reversed by the High court in writ petition No. 2654 of 2023, which was taken to the supreme court by the candidates but S.L.P. was dismissed on 17.10.2023 and even an attempt to review the order of the High court had failed. However, he submitted that the challenge in these matters is on different footings. He would submit that the original application No. 145 of 2024 was filed belatedly, after the results were declared on 23.5.2023 in respect of CBT-I and result of CBT-II were declared on 25.8.2023. The provisional selection list was prepared, documents were verified and the appointment orders were issued from 15.1.2024. He would submit that out of total 1457 posts advertised, appointments have been given to 1063 candidates. The result has been put on hold in respect of 245 candidates, who possess degrees in the respective trade and still there remain 149 vacancies.

18. On legal aspects, senior advocate Mr. Sanjeev Deshpande, would submit that after having participated in the recruitment process without posing any challenge to clause 8.1, the petitioners are not entitled to wreck up the issue belatedly and are estopped from doing so, in the light of the law laid by the supreme court in the case of ***State of Uttar Pradesh vs. Karunesh Kumar; AIR 2023 SC 52***. He would submit that considering the marks secured by the petitioners, they do not even stand a chance of getting appointed against the remaining 149 vacancies also.

19. He would submit that possessing higher qualification pursuant to clause 8.1 of the advertisement, cannot be regarded as a disqualification. The Recruitment Rules of 1983 did not prohibit the persons having higher qualification. Rule 3(b) cannot be interpreted in the manner as is being submitted on behalf of the petitioners. He would place reliance on ***Zahoor***

Ahmed Rather (supra) and Shifana P.S. vs. State of Kerla and others; (2024) 8 SCC 309.

20. Mr. Deshmukh for respondent nos. 3 to 6 in Writ Petition No. 5271/2024 would make the submissions on the line, those were made by Senior Advocate Mr. Sanjeev Deshpande for the State. He would submit that by participating in the selection process the petitioners have acquiesced in the prescription contained in clause 8.1 and are estopped from raising any objection in that regard. He would submit that the selection process had reached an advanced stage. Document verification was undertaken. Hundreds of candidates were selected by publishing a final select list and even the appointment orders were issued. Some of those candidates, who have already been appointed, possess the higher qualification of degree in engineering as is possessed by these respondent nos. 3 to 6. Their appointments have not been challenged and even they are not parties before the Tribunal or even before this Court. The challenge put up by these petitioners is based on misconception inasmuch as qualification of diploma in engineering is not the only qualification essential for the post of craft-instructor. He would refer to Rule 3(B) of the Recruitment Rules of 1983 and would submit that diploma in engineering is one of the qualifications prescribed thereunder. Even the other qualification mentioned in Rule 3(B) (II)(b) is also a qualification which entitles a candidate to be considered.

21. Mr. Deshmukh's another limb of argument was to the effect that this Rule 3 does not expressly debar the candidates possessing higher qualification. The degree in engineering in the respective trade would certainly be a higher qualification than the basic qualification of diploma in engineering. The petitioners' stand to distinguish degree in engineering from the diploma in engineering is fallacious. No illegality has been committed by the Tribunal in appreciating all these facts and circumstances and while interpreting the Recruitment Rules of 1983. He would also

buttress his submissions by relying upon **Jyoti K.K., Dipti Samaddar, Zahoor Ahmad Rather, Munna Roy (supra)**.

22. The learned advocate Mr. Barlinge for respondent nos.4 to 6 and the learned advocate Mr. Waghmare for respondent nos. 7 to 15 in Writ Petition No. 5271/2024 would also make the submissions in tune with what has been submitted by learned senior advocate Mr. Sanjeev Deshpande and the learned advocate Mr. Deshmukh. Additionally, they would submit that the original application was filed by the petitioners beyond the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 (hereinafter 'the Tribunals Act') and the original application itself was not maintainable. They would place reliance on the decision of a division bench of this Court at the Principal Seat in the matter of **Swapnil Vijay Jadhav and another Vs. The Settlement Commissioner and Director of Land Record and another (Writ Petition (Stamp) No. 31643/2022, decided on 09.01.2023)**, to substantiate their arguments that having participated in the selection process without any demur, no challenge to clause No. 8.1 could have been maintainable after more than a year of the advertisement. In this context they would also rely upon **Dhananjay Malik (supra)**. They would also refer to the decision in **Puneet Sharma (supra)** to substantiate their submissions that degree in engineering is a higher qualification than a diploma in the same discipline. Since the Recruitment Rules of 1983 do not expressly exclude degree holders, the petitioners have no chance to succeed.

23. They would further submit that if all the clauses from the advertisement are read in conjunction, it would demonstrate that in clause 15.22 it was expressly notified that in case of the candidates obtaining equal marks, a candidate having higher qualification would be selected. It was also declared in the very same clause that the qualification prescribed in the Recruitment Rules of 1983 is the minimum qualification. Therefore, the petitioners having never raised any objection to such advertisement containing clause No. 8.1 and 15.22 and having participated in the

recruitment process, are estopped from questioning the selection process on the grounds they are agitating.

24. Mr. Barlinge and Mr. Waghmare would further submit that the State in its wisdom has considered the degree in engineering in the respective trade as a higher qualification than the diploma of engineering in the same trade. The inevitable conclusion would be that in the absence of any express prohibition in the Recruitment Rules of 1983, the degree holders cannot be excluded.

25. The rival submissions now fall for our consideration. It would be apposite to reproduce the relevant Recruitment Rules of 1983 as well as the clauses in the advertisement:

Rule 3 of the Recruitment Rules of 1983 reads as under:

“3. Appointment to the post of Craft Instructor in the Industrial Training Institute and Basic Training and Related Instruction Centre under Craftsmen Training Scheme and Apprenticeship Training Scheme in the Department shall be made either-

(A) by promotion of a suitable person from an appropriate trade, on the basis of seniority subject to fitness holding any of the Instructional posts mentioned in the Schedule appended to these rules, in the Government Technical High Schools or Centres, Government Industrial Training Workshops and other Government Technical Institutions under the control of the Deputy Director of Technical Education-cum-Deputy Apprenticeship Adviser (Senior) of the respective regions and possessing the qualifications and experience prescribed for appointment by nomination in clause (B) of this rule, or

(B) by nomination from amongst candidates who-

(I) unless already in the service of Government, are not more than thirty years of age, and

(II) possess-

(a) a Diploma at least in Second Class in appropriate branch of Engineering or Technology of the Board of Technical Examinations, Bombay or its equivalent qualification; or

(b) have passed the Secondary Schools Certificate Examination with Mathematics and Science or its equivalent examination; and possess either,-

(i) National Apprenticeship Certificate in the appropriate trade of the National Council for Training in Vocational Trades or its equivalent; or

(ii) National Trade Certificate in appropriate trade of the National Council for Training in Vocational Trades or its equivalent; or

(iii) Trade Certificate in respective trade awarded by the State Council for Training in Vocational Trades of the Maharashtra; or

(iv) persons from Defence Service having basic qualifications and possessing trade Certificate and two years' experience in the respective trade as mentioned in sub-clause (III) below; and

(III) have practical experience in appropriate trade for a period of not less than four years including the minimum period prescribed for training by the persons possessing the qualifications mentioned in sub clauses (a) and (b) (i), (ii) and (iii) of clause (B) of this rule; and for persons possessing the qualifications mentioned in sub-clause (b) (iv) of clause (B) (II) of this rule, two years practical experience in appropriate trade after acquiring the

qualifications in a respective trade in an industry or Government Department or Industrial Undertaking or Commercial concern or Corporation or Board established by Government:

Provided that, preference may be given to candidates who have successfully completed training in the Central Training Institute for the post of Instructor.

Provided further that, the requirement of experience may not be insisted upon in case of persons possessing Diploma in Second Class.”

26. The clauses no. 8.1 and 15.22 in the advertisement read as under:

“8.1- संबंधित व्यवसायात उच्च शैक्षणिक अर्हताधारक उमेदवार पात्र समजण्यात येईल.

(Candidates having higher qualification in the concerned trade would be treated as eligible)

15.22- प्राधान्यक्रम:-

Preferences:-

ज्या पात्र उमेदवारांचे एकूण गुण समान असतील अशा उमेदवारांचा गुणवत्ता यादीतील प्राधान्यक्रम पुढीलप्रमाणे निश्चित करण्यात येईल.

(Candidates scoring equal marks would be preferred as follows:)

(iv) उपरोक्त (i), (ii) व (iii) मधील व अन्य पदांच्या बाबतीत उपरोक्त (ii) व (iii) मधील अटी देखील समान ठरत असल्यास अर्ज सादर करण्याच्या अंतिम दिनांकास उच्चस्तर शैक्षणिक अर्हता धारण करणा-या उमेदवारास प्राधान्यक्रम देण्यात येईल.

(If the conditions in the above (i), (ii) & (iii) are also equal, preference will be given to the candidate who possess higher educational qualification on the date of the advertisement.)

27. The advertisement was published on 17.08.2022 and the petitioners from Writ Petition No. 5313/2024 filed the Original Application No. 1120/2023 on 29.11.2023, with following prayers :

“B) Hold and declare that, by issuing appropriate order or direction the advertisement issued by the respondent no.3 i.e. EXHIBIT- "B" for post of Instructor/Craft Instructor of ITIs may quash and set aside and for that purpose issue necessary orders;

Whereas the petitioners from Writ Petition No. 5271/2024 preferred the Original Application No. 145/2024 on 06.02.2024, with following prayers:

“A. This Hon'ble Tribunal may kindly direct the respondent No. 2 to delete the candidates with HSC + Engineering degree from the list of selected candidates and respondent No. 2 be directed to reverify their documents and ensure if they possess the essential qualification of diploma in Engineering according to the Recruitment Rules of 1983.
B. This Hon'ble Tribunal may kindly direct the respondent No. 2 to publish a revise list of the candidates in accordance with the Recruitment Rules of 1983.”

28. Admittedly, the petitioners from both these writ petitions participated in the selection process without any demur. It is trite, as laid down in catena of decisions that once having participated in the selection process a candidate is estopped from questioning the clauses in the advertisement. Suffice for the purpose to refer to the **Karunesh Kumar (supra), Tajvir Singh Sodhi and others Vs. State of Jammu and Kashmir and others; 2023 SCC OnLine SC 344, Swapnil Vijay Jadhav (supra), Dhananjay Malik (supra).**

Keeping aside the issue of limitation, once having participated in the recruitment process, the petitioners are not entitled to take exception to the clauses and that being the only prayer made by the petitioners from Writ Petition No. 5313/2024 in their Original Application No. 1120/2023, on this ground alone, their petition is liable to be dismissed.

29. The petitioners from Writ Petition No. 5271/2024 even did not challenge the clauses in the advertisement, perhaps releasing the limitation in putting up such challenge to the advertisement once having participated in the recruitment process. The prayer clauses 'A' and 'B' have been ingenuously drafted seeking a direction to exclude from the select list, the candidates possessing HSC + degree in engineering. This is in tune with the submission of learned advocate Mr. Ajay Deshpande, for the petitioners wherein he submitted that the petitioners never wanted to raise any objection to clause no. 8.1 for the reason that it only enabled the persons having the degree in engineering in the respective trade to participate. According to him, the petitioners understood this clause to mean that mere possessing degree would not exclude or disqualify a candidate. According to him, even if the degree holders were not to be ousted from participation, they were not eligible to participate without having the requisite or essential qualification of possessing a diploma in the respective trade, which is the qualification prescribed by Rule 3 of the Recruitment Rules of 1983.

30. Though ingenuous stand, one cannot lose sight of the fact that a plain reading of Rule 3 would demonstrate that it only prescribed the qualification for the post of Craft Instructor. Though it does not indicate that the qualification of diploma in the respective trade as a 'minimum' qualification, equally it does not indicate that it was to be the 'only' qualification. The rules do not expressly excluded the degree holders. Paragraph nos. 8 and 9 from **Jyoti K.K. (supra)** need to be reproduced which read as under:

“8. Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.

9. In the event the Government is of the view that only diploma-holders should have applied to post of Sub-Engineers but not all those who possess higher qualifications, either this Rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree-holder shall not be eligible to apply for such post. When that position is not clear but on the other hand the Rules do not disqualify per se the holders of higher qualifications in the same Faculty, it becomes clear that the Rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory Rules have been published and those Rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such Rules or make himself aware of the Rules before making appropriate applications. The High Court, therefore, is not

justified in holding that recruitment of the appellants would amount to fraud on the public.”

Though the Supreme Court was not considering the Recruitment Rules of 1983 in that matter, the principle of law laid down would clearly indicate that it is only if the rules expressly declare that the higher qualification stands excluded, possessing higher qualification would presuppose acquisition of lower qualification of diploma in that trade/subject.

31. In this context, it is necessary to note that no dispute has been raised that the degree in engineering in the respective trade being a higher qualification than diploma in engineering in that trade. The whole thrust of the stand of the petitioners and the submissions of their learned advocates is to the effect that when the rules prescribe essential qualification as diploma in engineering, even if a candidate possesses a degree, simultaneously, he should also possess a diploma to become eligible, in light of clause 8.1. Though as laid down in **Zahoor Ahmad Rather (supra)**, possessing higher qualification will not come with a presupposition of acquisition of a lower qualification, since Rule 3 does not prescribe so, it would all depend upon the scientific scrutiny as to if there are any special features in the lower qualification, which are conspicuously absent in respect of a higher qualification. In the present matters, the ‘degree in engineering’ was qualified by prescribing that it should be in the same trade. There was nothing before the Tribunal and even before us to embark upon scrutiny of this aspect, which even otherwise the Tribunal as well as this Court cannot undertake.

32. Precisely for these reasons, the decisions in the matter of **Devesh Sharma (supra)**, making a distinction, holding that in respect of post where the requisite qualification was D.El.Ed., possessing only B.Ed. qualification or the decision in **Zahoor Ahmad Rather (supra)** wherein the qualification

prescribed as SCC+ITI for the post of technician-III was declared as not to be treated as a lower qualification than the diploma, one will have to follow **Puneet Sharma (supra)**, wherein, a degree in engineering has been held to be higher/equivalent qualification than the diploma in that discipline for the post of Junior Engineer.

33. Mr. Ajay Deshpande sought to distinguish **Puneet Sharma (supra)** on the ground that it was decided on the basis of the recruitment rules which were amended at a very nascent stage of the recruitment process. True it is that the observations in **Puneet Sharma (supra)** will have to be understood in the context of such amended recruitment rules. However, as we have cursorily observed herein above, even if the Recruitment Rules of 1983 did not expressly mention that the degree holders would be eligible, in light of **Jyoti K.K. (supra)**, conversely, when those also do not expressly exclude the degree holders, by analogy even **Puneet Shamra (supra)** would be relevant and has been rightly relied upon by the Tribunal.

34. True it is that during pendency of the present dispute in the form of Original Applications and these petitions, the State has come out with new Recruitment Rules with effect from 10.07.2024. However, unlike in the matter of **Puneet Sharma** these rules have been brought into effect after the selection process is on the verge of completion, but for pendency of these petitions and those would not apply to the recruitment in dispute.

35. Even if the State has now come out with new Recruitment Rules and made it effective from 10.07.2024, those will not apply to the matters in hand wherein, the recruitment process has advanced to the last stage of giving the remaining appointments, as laid down in the matter of **Aarya K. Babu (supra)**.

36. May be, as was submitted by Mr. Ajay Deshpande, having realized the shortcomings in the Recruitment Rules of 1983 now the new rules expressly declare diploma in the respective trade as a minimum qualification.

However, merely because the State has now taken precaution to obviate any confusion, we cannot accept the submission of learned advocate Mr. Ajay Deshpande that by making such specific improvement in the wording in the new Recruitment Rules, the respondents impliedly admitted that absence of word '*minimum*' in the Recruitment Rules of 1983 would exclude degree holders. There cannot be a bar for making improvement. If the State has now tried to remove the confusion, one cannot take it as an admission.

37. In the matter of **Sangram Ramdas Gholave (supra)** being heavily relied upon by the learned advocates for the petitioners, the Recruitment Rules expressly directed reserving of 75% posts of junior engineer for diploma holders only. Therefore, it was held that degree holders were not eligible for appointment in respect of such 75% posts of junior engineer. Pursuant to relevant rule, the advertisement expressly excluded the degree holders in engineering from being considered for the post of junior engineers and it is such exclusion that was challenged on the ground that it was arbitrary, unreasonable and unconstitutional. It was a matter where the cadre of junior engineer was divided into two groups, one, holding degree who were designated as Assistant Engineer-Grade II and, the second, junior engineers who were holding either diploma or who had served for 5/7/10 years. 25% of posts of assistant engineers grade-II were to be comprising of junior engineers. It was further provided that according to the Recruitment Rules the appointment to the post of Sectional Engineer (Civil) Group-B was to be made by way of appointment by promotion from amongst the junior engineers who had put in not less than five years regular service, if they possessed a three year diploma, seven years regular service if they possessed requisite certificate or 10 years regular service, who were not possessing either diploma or requisite certificate. It was a matter of filling up 25% posts out of total strength of junior engineers, which were reserved for candidates holding degrees and the remaining were to be filled in by nomination from amongst the candidates holding diploma. It is in view of

such peculiar Recruitment Rules, making out different quota for the degree holders and the diploma holders from the feeding cadre and by nomination, it was held that the degree holders were not qualified. In the matter in hand no such marked distinction can be found and all the posts advertised in the recruitment process in question were available to be recruited from the open market. Therefore, in light of such peculiar fact situation that was obtaining before the division bench in the matter of **Sangram Ramdas Gholve**, the petitioners are not entitled to bank upon it.

38. In the matter of **Milind (supra)**, the petitioners before the division bench were the degree holders in Civil Engineering and were aggrieved by the eligibility criteria, prescribed in the advertisement, whereby it was stated that three year diploma in Civil Engineering recognized by Government or any other qualification recognized as equivalent thereto was prescribed for the post of junior engineer and aggrieved thereby, they had preferred the original application, which was rejected and its challenge before the High Court was dismissed with the observation that the Court would not be in a position to read something into the Recruitment Rules that was missing. In the matter in hand, apart from the fact that Rule 3 of the Recruitment Rules of 1983 do not either expressly exclude the degree holders and do not even expressly state the diploma in the requisite trade to be the minimum or the only qualification and particularly when clause no. 8.1 expressly declared that even degree holders would be eligible, it may be that the candidates like the petitioners could not comprehend that this clause was innocuous and merely clarified that the degree holders were also eligible to apply. Once having seen that degree in engineering in the respective trade is higher qualification than the diploma in that trade, even the facts and circumstances in the matter of **Milind (supra)** would be peculiar and the petitioners are not entitled to rely upon it, when in that matter the challenge was to the advertisement, which is not the case in hand.

39. In the matter of **P. M. Latha and another Vs. State of Kerala and others; (2003) 3 Supreme Court Cases 541**, for the post of Lower Primary/Upper Primary Teachers in Government schools, the advertisement published prescribed the qualification as “pass in TTC (Trained Teachers Certificate)”, but the persons holding B.Ed. degree were selected on the basis that it was a higher qualification and in terms of advertisement it was held that the B.Ed. degree holders were not eligible, as it could not have been treated as higher qualification than TTC. In the matter in hand, to repeat, clause no. 8.1 expressly declared that even the degree holders would be eligible.

40. In the matter of **Ranjit Kumar Meher (supra)** the qualification prescribed in the advertisement was not in consonance with the recruitment rules and since the appellant before the Supreme Court admittedly was not possessing the qualification as prescribed by the rules, he was held ineligible. Again, in the matter in hand, holding of degree in engineering in the respective trade is admittedly a higher qualification and has not been expressly excluded in Rule 3 of the Recruitment Rules of 1983. Therefore, the petitioners are not entitled to derive any benefit even from this decision.

41. The upshot, there is no error or illegality in the order of the Tribunal under challenge. It has taken a plausible view, which cannot be disturbed in exercise of the powers under Article 226 of the Constitution of India.

42. The writ petitions are dismissed. Pending Civil Application is disposed of. Rule stand discharged.

(PRAFULLA S. KHUBALKAR J.)

(MANGESH S. PATIL, J.)

43. After pronouncement of the judgment and order, the learned Advocates for the petitioners request for staying operation of the order and continuation of ad interim relief for a reasonable time to enable them to

approach the Supreme Court.

44. The learned AGP and the learned Advocates for the respondents oppose the request on the ground that the ad interim order passed by the tribunal has been in operation since February 2024 and being a matter of recruitment, the request may not be considered.

45. Considering the overall conspectus of the matter, we are not inclined to continue the ad interim relief. However, we declare that any appointment made hereinafter would be subject to the final outcome of the challenge before the Supreme Court.

(PRAFULLA S. KHUBALKAR J.)

(MANGESH S. PATIL, J.)

mkd/-