



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.976 OF 2024
IN
REVIEW APPLICATION (ST) NO.39476 OF 2023
IN
WRIT PETITION NO.2654 OF 2023

1. The Union of Trained
Craft Instructors, through
its Authorised Signatory
2. Balu Namdeo Bhosale,
3. Nilesh Prakashappa Burkule ... **APPLICANTS**

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 - 110012
3. The Director of Vocational Education and
Training /DVET, Maharashtra State, Mumbai -1
Office at 3, Municipal Corporation
Road, Mumbai 400 001
4. Rajesh Dnyaneshwar Rathod
5. Vinod Yeshwant Shelke
6. Tushar Pandurang Pawar
7. Mininath Ramprasad Humbe
8. Pritesh Sanjeev Kuntewad
9. Rameshwar Baliram Waghmare
10. Pramod Jalindar Kalapure
11. Snehal Pandurang Pawar
12. Navnath Janku Devre
13. Dhairyashil Deepak Madake
14. Pradeekumar Uttamrao Tangade
15. Savata Dayaram Mahajan ... **RESPONDENTS**

...
 Advocate for Applicants : Mr. Sameer Vaidya h/f. Mr. S.S. Dambe
 Addl. G.P. for respondent/State : Mr. M.M. Nerlikar
 DSGI for respondent No.2 : Mr. A.G. Talhar
 ...

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

DATE : 19.01.2024

ORDER (MANGESH S. PATIL, J.) :

By way of this civil application and the review application the applicants who were the original applicants in original application No.761/2022 filed before the Maharashtra Administrative Tribunal, at Aurangabad (herein after the Tribunal) are seeking condonation of delay in filing the review application and are seeking review under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure of the judgment and order passed by us in Writ Petition No.2654/2023, whereby, the order of Tribunal passed in original application directing modification of clause No.15.22 of the advertisement published by the Director of Vocational Education and Training (hereinafter DVET) was quashed and set aside.

2. The facts leading to filing of this review application can be summarized as under :

- i. The DVET published advertisement on 17.08.2022 for filling up 1457 posts of Craft Instructors and ITIs instructors.
- ii. On the ground that the Director General Training (DGT) and the concerned Ministry of Union of India have mandated training under the

CITS (Craft Instructors Training Scheme) as an essential qualification for appointment to the posts of Instructors in the ITIs (Govt. and Private) the applicants objected to clause 15.22 of the advertisement by filing Original Application No.761/2022 in the Tribunal.

iii. According to the applicants the Recruitment Rules dated 18.11.1983 provide for giving preference to the CITS candidates while recruiting the post of Craft Instructors and IT Instructors.

iv. Even the Recruitment Rules dated 18.11.1983 of the State Government also provide for preference to be given to the candidates possessing CITS qualification while making recruitment to the post of Craft Instructors (Clause III in the ITIs).

v. The Tribunal having *inter alia* concluded that indeed preference should have been given to the CITS qualified candidates and holding that clause No.15.22 of the advertisement was not compatible with the recruitment rules issued direction to modify the clause before proceeding with the recruitment process.

vi. Being aggrieved by the order of the Tribunal couple of individuals filed the writ petition No.2654/2023.

vii. By the order under review this Court quashed and set aside the directions of the Tribunal contained in clauses 'A' and 'B' of the operative part, while allowing the writ petition partly. Hence this review application by the original applicants.

3. We requested the learned advocate for the applicants to first satisfy us at least prima facie, sustainability of the review application.

4. The learned advocate Mr. Vaidya holding for Mr. Dambe for the applicants would submit that the applicants are seeking review on two grounds. Firstly, while passing the order under review this Court has relied upon a decision of the single Judge of the Gujarat High Court, however, the applicants were unable to point out and even this Court did not take into consideration that the Gujarat Recruitment Rules which were the subject matter of the decision of the Gujarat High Court were peculiar which could not be placed before this Court to distinguish the matter in hand. Secondly, the view taken by us in the impugned order is inconsistent with the earlier decision of a coordinate bench in Writ Petition No.11055/2016 decided on 22.08.2017 to which one of us (Mangesh S. Patil, J.) was a party. The learned advocate would submit that while deciding Writ Petition No.11055/2016 this Court had expressly taken a view that the notification dated 18.11.1983 had expressly laid down that preference would be given to the candidates who had successfully completed the training in central training institute but the advertisement was not in accordance with that notification and was also inconsistent with the circular of the DGT dated 27.05.2014. The learned advocate would submit that since one of us was a member of the Division Bench which has already taken a view, the judicial propriety and discipline demanded that while passing the order under review we should have followed the view expressed in the earlier decision.

5. Taking up the first ground, as regards the single Judge decision of the Gujarat High Court, the submission of the learned advocate and the first ground being resorted to by the applicant is fallacious. Though we had referred to the decision of the Gujarat High Court, we have merely referred to that decision to point out as to how there were decisions of several High Courts touching the selfsame issue. The views being expressed by us were not compatible with the views expressed by the other High Courts but was compatible with the decision of the Gujarat High Court. For the sake of convenience, we reproduce the reference to the decisions of various High Courts from paragraph Nos.12 and 15 which read thus :

- “12. We have carefully considered the rival submissions and perused the papers. On facts there is not much of a dispute and therefore we propose to proceed on more intricate issue regarding the scope and ambit of the relevant provisions. As is noted by the Tribunal the High Courts of Uttar Pradesh, Uttarakhand, Rajasthan and the Punjab and Haryana have held that the rules framed under Article 309 by the State Government would be subservient to the executive instructions issued by the DGT of the Government of India under Article 73. However, the High Court of Gujarat in the matter of **Dilip Kumar Chhotubhai Patel and Anr. Vs. State of Gujarat and Ors.; Civil Application No.4806/2010** decided on 21.04.2010 has taken a contrary view and has held that the statutory rules framed by the State Governments under Article 309 will prevail over the executive instructions issued under Article 73. Conspicuously, the Tribunal has not resorted to any independent discussion as regards the core issue regarding the scope and ambit of Articles 73 and 309 and has simply followed the ratio laid down by the majority of the High Courts (supra) and has refused to follow the view of the Gujarat High Court but without assigning any reason.*
- 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 ITTs, 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.”

6. Considering the line of reasoning we have resorted to, coupled with the above observations, we had merely made the aforementioned observations to demonstrate as to how and why we were taking a different view than the other High Courts and it was merely pointed out that the view of the Gujarat High Court was compatible with our view.

7. After elaborately referring to Articles 73, 246, 254 and 309 and referring to entry No.66 from List I of Seventh Schedule and Entry No.25 of List III of that Schedule to the Constitution we had concluded in paragraph No.19 as under :

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.

8. In view of the above state of affairs, the submission of the learned advocate for the applicants and the stand being taken in the review application as if we had simply followed the decision of the Gujarat High Court is factually incorrect and the ground is not sustainable.

9. As far as the second ground regarding judicial discipline and propriety in view of the directions of this Court in Writ Petition No.11055/2016 is concerned, it is not that we were oblivious of that decision. In fact we had given express reasons to demonstrate as to how the directions in the Writ Petition No.11055/2016 were given without there being any consideration and decision about efficacy and sustainability as well as the scope and ambit of the circular issued by the DGT dated 27.05.2014 as well as without referring to the issue regarding the interplay

between the administrative instructions issued by resorting to Article 73 and the Rules framed under Article 309 of the Constitution. After pointing out this, we had specifically observed that in the order under review that the directions in the writ petition No.11055/2016 could not be taken as laying down any law. The relevant observations in the order under review can be found in paragraph No.20 to 22 which read as under :

20. It does appear that a similar challenge like the matter in hand was put up to an advertisement published earlier by the State Government which was challenged by preferring Original Application No.566/2014, wherein the Tribunal had ordered to start the recruitment process for the post of craft instructors afresh considering the guidelines issued by the DGT. Admittedly, the challenge to that order put up before this Court in Writ Petition No.11055/2016 was turn down on 22.08.2017. The Tribunal has therefore observed that in view of this decision of the High Court which has reached finality, the challenge being put up to the present advertisement clause 15.22 would sustain.

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

6. *As far as post of Craft Instructor is concerned, notification dated 18.11.1983 also specifically lays down that the preference may be given to the candidate who have successfully completed training in the Central Training Institute for the post of Instructor. The advertisement did not prescribe the said condition. Moreover, even as per the Circular issued by the Directorate General of Employment and Training dated 27.5.2014 i.e. prior to the advertisement, for every unit in a trade one of the Instructors appointed should be with professional qualification as I.T.I. passed out with National Craft Instructor Certificate for trades where Craft Instructor Training course was available.*

7. *Considering the aforesaid aspects, the Tribunal has not committed any error in quashing the advertisement, however, it requires to be clarified that the advertisement shall stand quashed and set aside for the post of I.T.I. Craft Instructor in different trades and the said order of the Tribunal shall not have the effect on the impugned advertisement for the post other than I.T.I. Craft Instructors.*

22. *Ex facie*, the observations of this Court to which one of us was a party (Mangesh S. Patil, J.) did not expressly consider and decide efficacy and sustainability as well as the scope and ambit of the circular issued by the DGT dated 27.05.2014 much less the issue regarding supremacy between the administrative instructions under Article 73 and the Rules framed under Article 309. In the absence of any such issue having been raised in the earlier round, in our considered view, the above observations in the order passed in the WP No.11055/2016 cannot be taken as laying down any law.

10. In view of these observations, when we had precisely pointed out the reasons for not following the observations in the order dated 24.08.2023, and particularly when, the Special Leave to Appeal preferred by the applicants aggrieved by the order under review has also been dismissed albite *in limine*, even the second ground being relied upon by the applicants is not sustainable.

11. In view of the above, both the grounds being resorted to by the applicants for seeking a review being not sustainable, the application for condonation of delay together with the review application is dismissed.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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