

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on : 05.03.2024
Date of Decision : 04.04.2024

1.

CWP No. 37892 of 2018 (O&M)

Dinesh Kumar and others

Union of India and others

Versus

...Petitioners

...Respondents
2.

CWP No. 27658 of 2019 (O&M)

Ajay Kumar and others

Union of India and others

Versus

...Petitioners

...Respondents
3.

CWP No. 23887 of 2021 (O&M)

Jitender Kumar and others

State of Haryana and others

Versus

...Petitioners

...Respondents
4.

CWP No. 1992 of 2022 (O&M)

Rozy and others

State of Haryana and others

Versus

...Petitioners

...Respondents
5.

CWP No. 3424 of 2022 (O&M)

Shamsher Singh and others

State of Haryana and others

Versus

...Petitioners

...Respondents
6.

CWP No. 4139 of 2022 (O&M)

Sonu and others

State of Haryana and others

Versus

...Petitioners

...Respondents
7.

CWP No. 8666 of 2023 (O&M)

Harminder Pal Singh and others

Union of India and others

Versus

...Petitioners

...Respondents
8.

CWP No. 8984 of 2023 (O&M)

Anil Kumar and others

Union of India and others

Versus

...Petitioners

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Mr. Abjijeet Singh Rawlaey,
Mr. Abishai George, Advocates, for the petitioners
in CWP Nos. 37892 of 2018 and 8984 of 2023.

Mrs. Anu Chatrath, Senior Advocate with
Mr. Nikhil Singh, Advocate, for the petitioners
in CWP No. 27658 of 2019.

Mr. Sandeep Dhull, Advocate for
Mr. Somesh Gupta, Advocate, for the petitioners
in CWP Nos. 4139 of 2022 and 8666 of 2023.

Mr. Satya Pal Jain, Additional Solicitor General with
Mr. Somesh Gupta, Senior Panel Counsel, for Union of India
in CWP No. 37892 of 2018, 27658 of 2019, 1992, 3424 and 4139 of
2022.

Mr. Anil Chawla, Senior Panel counsel for respondent nos. 5 to 7
Union of India/ in CWP No. 23887 of 2021.

Mr. H. S. Oberoi, Advocate, for the respondent/ Union of India
In CWP Nos. 8666 and 8984 of 2023.

Ms. Shruti Jain Goel, Senior Deputy Advocate General, Haryana.

Mr. Lalit Rishi, Advocate and
Mr. Vivek Aggarwal, Advocate, for respondent
nos.5 to 13 in CWP No. 37892 of 2018.

Mr. D. S. Patwalia, Senior Advocate with
Mr. B. S. Patwalia, Mr. Lalit Rishi,
Mr. Akshit Pathania, Advocates, for respondent nos. 5 to 14
in CWP No. 27658 of 2019.

Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate, for respondent nos. 15 to 22
in CWP No. 27658 of 2019.

SANJEEV PRAKASH SHARMA, J.

These writ petitions were heard together as common question of law
has been raised therein. The prayer made is also identical in all the cases. The
respective counsel were heard at length.

2. Brief facts which are necessary for the disposal of these writ petitions are that the petitioners are those who have passed National Trade Certificate/ National Apprenticeship Certificate. They have cleared one year course in Craftsman Training for Instructor under Craft Instructor Training Scheme (hereinafter to be referred as "CITS"). They also possessed two years experience of working.

3. The bone of contention raised by the petitioners is with regard to the qualifications prescribed by the State of Haryana for appointment of Craft Instructor as laid down in the Industrial Training Department Haryana Field Offices (Group-C) Service Rules, 2013 (hereinafter to be referred as "Group-C Rules-2013").

4. An advertisement No. 10/2017 was issued by the Haryana Staff Selection Commission (for short, 'the Commission') for 1064 posts of Craft Instructor. The same was, however, cancelled due to relaxation of age of contractual employees. Some other advertisement nos. 5/2018 dated 26.12.2018, 6/2018 and 7/2018 both dated 27.12.2018 were issued by the Commission for filling up of 2388 posts of Craft Instructors, but for various reasons the same too were cancelled on 11.06.2019. Fresh advertisement no. 12/2019 was published on 20.07.2019 inviting applications for filling of 3206 posts by the Commission.

5. CWP No. 37892 of 2018 was preferred challenging aforesaid advertisement no. 12/2019 on the ground that it did not conform to the instructions laid down by the Directorate General of Training, Ministry of Skill Development & Entrepreneurship, Government of India (for short, 'the DGT') requiring the candidates to possess mandatory qualification/ course under CITS for appointment as Craft Instructor in terms of its letter dated 03.12.2019.

Vide interim order dated 04.12.2019, this Court allowed the official respondents to continue with the selection process initiated under Advertisement no. 12/2019 with condition that appointments shall not be made till further orders. On 19.07.2022, interim order was vacated and the department after completing the recruitment process, appointed 1200 candidates out of 3206 candidates, who possessed CITS qualification.

6. Another CWP No. 27658 of 2019 was filed wherein this Court vide order dated 07.02.2023 stayed the recruitment process with liberty to proceed with appointments of only those candidates who possessed CITS certificates. This resulted in appointment of 2900 candidates while several of the candidates, who do not have CITS course, have not been offered appointments although they are in merit.

7. In the aforesaid background, certain events need to be noticed. The DGT issued guidelines on 29.09.2010 to various States directing that ITI Instructors must receive training as per the norms laid down by the National Council for Vocational Training (hereinafter to be referred as 'NCVT') and must possess the Craft Instructor Training Certificate. On 04.01.2013, the Industrial Training Department, State of Haryana, notified the Group-C Rules-2013 (supra), wherein they provided for filling up the post of Instructor, Craft Instructor, Craft Instructor (COE), Craft Instructor (women) as under:-

“9(3) In case of direct recruitment for the post of Instructors, Craft Instructor, Craft Instructor (COE), Craft Instructor (women), these shall be / can be made in such a way so as to maintain the availability upto 50% of appointed persons possessing Diploma/ Degree qualification for the posts for which the essential qualifications has been prescribed as Diploma or Degree or National Trade Certificate/ National Apprenticeship Certificate with / without Craft Instructor Training Course in respective trade.”

The Rule as noted above did not provide for a candidate to necessarily have in his possession Craft Instructor Certificate. On the other hand, Union of India again issued instructions dated 01.01.2016 to the Director dealing with the Vocational Training to comply with the decisions taken by the NCVT on norms and courses in its meeting held on 17.12.2015. Respondent- Union of India had made it compulsory for appointment of Instructors to have done CITS course. As per their norms for recruitment of Instructors, CITS course was to be done mandatory for all ITIs Instructors. The DGT again issued a letter on 16.01.2017 requesting the State Governments and Union Territory Administrations to follow the guidelines as laid down therein for recruitment of Instructors in ITIs. The said request was again repeated on 11.07.2019. In the said letter, the observations of this High Court were also quoted recording the statement made by the State counsel that the competent authority would take appropriate decision with regard to inclusion of CITS. The DGT again wrote a letter on 31.01.2020 requesting therein to revise the recruitment rules of Vocational Instructors of ITIs and include CITS qualification as an essential qualification to bring qualitative improvement in Vocational Training Courses across the country. It also observed that if the CITS trained Instructors were not available, necessary orders might be passed in terms of the order dated 03.12.2019. But it stressed that CITS trained Instructors be given preference in the recruitment process.

8. On the strength of the aforesaid letter, learned counsel appearing for the petitioners state that Union of India vide its letter dated 11.01.2022 had further clarified that DGT has mandated CITS qualification for recruitment of the Vocational Instructors so that uniform, standardized and systematic training can be imparted. They further submitted that the candidates, who do not possess the CITS qualification, would not be eligible for appointment as Vocational Instructor and have prayed to quash the advertisement dated 20.07.2019 read with corrigendum

whereby applications have been invited for regular recruitment against various categories of posts of Craft Instructors in terms of the new Group-C Rules 2013 which are contrary to the directions as issued by the Union of India.

9. Learned counsel for the petitioners have vehemently argued the case and submit that under Article 246 of the Constitution of India, the Parliament has exclusive power to make laws on any matter enumerated in List I of the Seventh Schedule i.e. Union List, while both Parliament and Legislature have power to make laws on any matter enumerated in List III of the Seventh Schedule i.e. Concurrent List. Learned counsel referring to Entry 63, 64 and 65 of the Union List and Entry 25 of the Concurrent List submit that in terms of Article 73 and 162 of the Constitution of India, each State is bound to follow the law as laid down by the Government of India and in support thereto relied on the judgment of Hon'ble the Supreme Court in *Rai Sahib Ram Jawaya Kapur and others vs State of Punjab* AIR 1955 SC 549.

10. Learned counsel for the petitioners further submitted that NCVT i.e. National Council for Vocational Training was set up by the Government of India in the year 1956 and it was entrusted with the responsibility of prescribing standards of training and curriculum for craftsman training.

11. The NCVT is empowered and has a function to prescribe qualifications for technical staff of training institutions. Union of India with the assistance of International Labour Organisation established a Central Training Institutes for instructions in India offering one year Craft Instructor Training Course. The said course is specially designed to equip the instructors with an understanding of labour and management relationship for preparing the trainees of their entry and progress in the trade. The Craft Instructor Training is stated to be a higher teaching qualification than Diploma in Engineering and National Trade

Apprenticeship Certificate and is a specialized design training to equip the instructor with understanding of labour and management relationship.

12. Learned counsel for the petitioners further submit that Training Rules of 2012 and the earlier Rules of 1998 did not provide Craft Training Course to be an essential qualification, however, as per note appended to the qualification, preference would be given to Degree/ Diploma holder candidates possessing Craft Training Instructor Course in the relevant trade from NCVT recognized institutions. Thus, submits that the rules framed by the authorities were contrary to the directions/ instructions issued by the Union of India, which mandate pre qualification of CITS certificate for appointment as a Craft Instructor. The action of the official respondents, therefore, in issuing the advertisement without incorporating the said CITS Certificate as an essential qualification, was unjustified.

13. Further it has been argued by learned counsel for the petitioners that the DGT instructions are binding on the State Governments. The action of the State Government for not incorporating the CITS qualification as a mandatory qualification issued by the DGT vitiates the selection of such candidates, who did not have the said pre qualification of CITS. Learned respective counsel, therefore, submit that only those candidates, who possess CITS certificate may be allowed to be appointed as Craft Instructors.

The action of the DGT in relaxing the norms and allowing the State Government to continue to fill the posts by the candidates, who did not possess the CITS certificates, has been challenged in CWP No. 37892 of 2018. They further submit that once the Union of India has reached to the conclusion that CITS is a mandatory qualification, the DGT could not have allowed the State Government to fill the posts from Non CITS qualified Diploma/ Degree holders and allowing them

to clear CITS qualification subsequently after appointment. Learned counsel submit that such decision taken by the DGT is unjustified and contrary to the norms as laid down by them.

14. Learned counsel for the petitioners submit that in terms of Entry 66 of Union List, it was binding upon the State authorities to frame rules according to the directions issued by the Central Government and the Rule 9(8) of Group-C Rule-2013 making CITS as optional to the extent, it goes contrary to the directions of the Central Government, and deserves to be declared *ultra vires* to the Constitution of India.

15. Per contra, learned counsel for the contesting respondent nos. 5 to 14 in CWP No. 27658 of 2019 submits that the rules framed under Proviso to Article 309 of the Constitution of India are legislative in character while Proviso to Article 309 confers legislative power of the Governor in situation where rules have not been framed relating to appointment by the State Legislature. He further submits that such powers exercised under Proviso to Article 309 is legislative in character and not executive as held by Hon'ble the Supreme Court in **Raj Kumar vs Union of India and others** 1975 (4) SCC 13 and **B. S. Yadav and others vs State of Haryana and others** 1981 SCC (L&S) 343.

16. Learned senior counsel for the contesting respondent nos. 5 to 14 further submits that any executive instructions/ policy decisions taken in terms of power conferred by Article 73 and Article 162 to the respective Governments, namely, Union and the State Government would be subservient to recruitment rules, which have been framed under Proviso to Article 309 of the Constitution of India. Learned counsel relies on judgment of Bombay High Court in **Rajesh and others vs Balu and others** 2023 (6) ALL MR 93 and judgment of Hon'ble the Supreme Court in **S.K. Nausad Rahaman vs Union of India** 2022 (12) SCC 1.

17. It is further submitted that the petitioners cannot be allowed approbate and reprobate as they have challenged the rule relying on the directions of the DGT with respect to CITS qualification to be mandatory while at the same time they have also challenged the DGT letter dated 03.12.2019 whereby it relaxed the said qualification for candidates to be appointed on the posts. In this regard, he relied on judgment in **Rajesh**'s case (supra).

18. We have considered the submissions.

19. It is to be noticed that Entry 66 of Union List in Schedule Seventh provides for standards in institution for higher education. Entries 63 to 66 of Union List read as under:-

“63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of article 371E; any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for-

(a) professional, vocational or technical training, including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

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

20. While Entry 25 of List III (Concurrent List) as substituted by 42nd Amendment with effect from 03.01.1977 provides as under:-

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

21. Articles 73, 162 and 246 of the Constitution of India provide as under:-

Article 73 of the Constitution of India

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

- (a) to the matters with respect to which Parliament has power to make laws; and*
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:*

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

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

Article 162 of the Constitution of India.

162. Extent of executive power of State -Subject to the provisions of this Constitution, the executive power of a State shall extend to the

matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof.

Article 246 of the Constitution of India

“246. Subject-matter of laws made by Parliament and by the Legislatures of States- (1) *Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").*

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

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

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

22. From the perusal of the aforesaid provisions of Articles of the Constitution of India as well as Entries of Union List, it is apparent that the Central Government may establish vocational institutions and determine standards of such institutions and also make provisions for appointment of teachers/ instructors in such national level vocational institutions. Independently the State Government can also establish vocational and technical centres and in terms of Article 246 (2) of the Constitution of India, lay down rules which may be framed under Article 309 and proviso thereto for appointment of teachers/ instructors in such institutions. Thus, the power of framing rules for appointment and the minimum qualifications required, are available with the State Government as well as with the

Central Government for their respective institutions. The extent of executive power of the Union under Article 162 of the Constitution of India with respect to the matters relating to the legislative powers of the State is exclusive. However, in terms of the proviso, the executive power of the State can be limited by the executive power conferred upon the Union Government by any law made by the Parliament.

23. The NCVT i.e. the National Council of Vocational Training is not established under any Act passed by the Parliament and is an executive body formed by the Director General of Training, Ministry of Skill Development & Entrepreneurship, Government of India, by exercising powers under Article 73 (1) of the Constitution of India. Therefore, letter issued by the DGT requesting the respective State Governments to incorporate the requirement of Craft Instructor Training Certificate as a prerequisite qualification for appointment of instructor in various faculties, for; it is to be considered as directory and not mandatory.

24. Learned senior counsel for the petitioners Smt. Anu Chatrath has strenuously argued that the State Government cannot be allowed to ignore the directions issued by the executive of the Union. However, we differ, as Articles 73 and 162 of the Constitution of India relate to the executive powers of the Union and the corresponding provisions with regard to the executive powers of the State Government.

25. In **Rai Sahib Ram Jawaya Kapur** (supra) the aspect was discussed at length but where the statutory rules have been framed under proviso to Article 309 of the Constitution by the State, directions issued by the executive under Article 73 of the Constitution cannot override such statutory rules and the corollary would be that the rules so framed would not be declared ultra vires to the Constitution merely because the Central Government by issuing executive instructions takes a

view different from the statutory rules framed by the State Government for appointment of persons and requisite qualifications laid down for the purpose.

26. It is also noticed that the Central Government has also in its reply by way of affidavit has admitted that the “DGT is not involved in framing Recruitment Rules of any Employer.” Further “vocational training is a concurrent subject of both Central and State Governments. The development of training schemes at National level, the evolution of policy, laying of training standard, norms, conducting of examinations, certification, etc. are the responsibilities of the central government, whereas, day to day administration including an admission in ITIs, rests with the respective State Governments/ UTs. Keeping in view the aforesaid, the Union Government has rightly observed that it is a recommendation which the State Government should follow. However, the same cannot be said to have binding effect.”

27. Learned counsel for the petitioners has also relied on a judgment passed by Division Bench of Allahabad High Court in **Pawan Kumar Sagar and others vs State of U.P. and others** 2006 (24) SCT 197, wherein the Allahabad High Court took a view that the amendment made in U. P. Industrial Training Institute Service Rules 2003 is violative of Constitutional Scheme of distribution of legislative powers. The view taken by the Allahabad High Court in **Pawan Kumar Sagar** (supra) has to be considered with respect to an erroneous assumption of vocational training to be part of Entry 66 of the Union List, whereas vocational training is completely different referable to Entry 25 of the Concurrent List i.e. List III. Entry 66 is for higher education or research and scientific and technical institutions. Government Central Institutes are, therefore, not comparable or equal to the higher education institutions of research, scientific and technical qualifications like IITs, Engineering Colleges, etc. Once a fulcrum of the decision

is based on an erroneous interpretation, the rest of the judgment would also fail. We, therefore, respectfully disagree with the view taken by the Allahabad High Court in **Pawan Kumar Sagar** (supra).

28. In **S. K. Nausad Rahaman's** case (supra), Hon'ble the Supreme Court while analyzing the basic precepts of service jurisprudence held as under:-

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

- (i) A law enacted by the competent legislature;*
- (ii) Rules made under the proviso to Article 309 of the Constitution; and*
- (iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States.*

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

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

29. At the same time, we may not be misunderstood to mean that the State Government should not follow the guidelines issued by the Central Government, however, if for practical reasons, it is not possible to make such a requirement as mandatory, and the rules framed under Proviso to Article 309 of the Constitution have not been incorporated such a condition for the purpose of appointment as

Craft Instructors; this Court by Writ of Mandamus would not direct the State Government to frame their rules accordingly nor can a rule framed by the State Government be declared ultra virus on the said basis. It would be worthwhile to notice the stand taken by the Central Government in the present cases. Affidavit has been filed in CWP No. 27658 of 2019 on behalf of the Union of India and it has been stated that the Director General of Training (the DGT) is not involved in framing recruitment rules of any employer. Guidelines, syllabi or office orders, if any, issued from time to time are common to all stakeholders, such State Governments, Union Territories, private ITIs or students. Paras 3 and 4 of the affidavit are extracted below:-

- “3. That DGT is not involved in framing Recruitment Rules of any Employer. Guidelines, syllabi or office orders if any issued time to time are common to all Stakeholders such as State Governments, UTs, Private ITI or students.*
- 4. The Craftsman Training Scheme (CTS) is the major vocational training program under the aegis of National Council for Vocation Training in Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Government of India. Vocational Training is a concurrent subject of both Central and State Governments. The development of training schemes at National level, the evaluation of policy, laying of training standard, norms, conducting of examinations, certification, etc. are the responsibilities of the central government, whereas, day to day administration including an admission in ITIs, rests with the respective State Governments/ UTs.”*

30. Thus, it is apparent that the CTS is a Union Centric Course and all persons in various States cannot be expected to have joined the said training scheme. Moreover, such training programme can also be conducted after selection. The CTS, as stated in the affidavit, is being offered through network of ITIs, and therefore, it cannot be denied that such pre qualification is very important to be

provided to the Instructors. Hence, all the State Governments have been asked to provide such additional qualification. While this Court approves the said aspect, however, it is difficult to accept contention of learned counsel for the petitioners that candidates, who have not obtained the said qualification or training, should be deprived of from being selected as Craft Instructors under the Rules framed by the State, which does not provide for such a necessary qualification. Further this Court also finds that in the advertisement too issued by the official respondents the essential qualification is as under:-

“i) AICTE recognized Bachelor degree in Engineering/ Technology or its equivalent in Mechanical / Production/ Industrial/ Fabrication Engineering from AICTE recognized institution/ university or Institutions established by Ministry of Human Resource Development (MHRD), Government of India, on full time regular mode basis, with one year practical/ teaching experience.

OR

Diploma in Engineering or its equivalent in Mechanical/ Production/ Industrial/ Fabrication from State Board of Technical Education of any State Government with two years practical/ teaching experience.

ii) Hindi/ Sanskrit upto Matric Standard or higher education.”

31. We are afraid that the judgment passed by Allahabad High Court failed to take notice of the fact that under Entry 66 of the Union List, the standard of education does not include vocational training. In fact, even under Entry 25 of List III (Concurrent List) of Schedule Seventh, it is apparent that while the education, including technical education, medical education and universities have been made subject to the provisions of entries 63, 64, 65 and 66 of List I; and a semicolon (;) has been added, whereafter the words ‘vocational and technical training of labour’ have been mentioned.

32. The aforesaid semicolon used in Entry 25 of List III cannot be ignored and has to be understood and the Legislative intent is apparent to keep vocational and labour training independent from the control of the Central Government. The Allahabad High Court in **Pawan Kumar Sagar's** case (supra) has observed as under:-

“15. There cannot be any two opinions about what the essential qualification of a training instructor in a Government Industrial Training Institute actually is. It has everything to do with the standard of a technical institution; that is the main and guiding factor. No doubt it is also a qualification necessary for obtaining service, but service is not the main factor. Also it is much more relatable to Entry 66 rather than Entry 25 which contains vocational and technical training of labour. The reason for our concluding to this effect is that the Training Instructors should be looked upon more, and much more, as those entrusted with the responsibilities of maintaining the standard of instruction rather than merely as part of a labour force. Even in a List III matter, the Central exercise of power would prevail, on the principles akin to those contained in Article 254, as Presidential assent cannot had in regard to exercise of power under Articles 162 or 309.”

33. We, however, do not subscribe to the view expressed hereinabove as the learned Judges of the Allahabad High Court in the aforesaid case have failed to take notice that the training provided under the Industrial Training Institutes is not a technical training but is a vocational training. The word ‘vocational’ has to be understood differently from that of ‘technical’ training, which means training in various Craft courses like Tailoring, Interior Decoration and Designing, Carpenter, Book Binder, Fitter, Painter Domestic, Turner, Clock and Watch Repairer, Leather Goods Maker, Artisans etc. which are relating to various daily jobs required in society and have nothing to do with engineering courses or science training of

higher standard. The technical courses are governed by the guidelines and syllabus laid down by All India Technical Council.

34. We have also carefully gone through the various judgments cited by learned counsel for the petitioners and for the reasons, as above, we do not find any of them being applicable to the facts of the case and the issue involved herein. At the same time, we agree with the contention raised by learned counsel for the contesting respondents and the judgment passed by Gujarat High Court in **Special Civil Application No. 4806 of 2010 – Dilipkumar Chhotubhai Patel and 1-petitioner (s) vs State of Gujarat and 2- respondents** holding that the statutory rules prevail over the executive directions and is found to be the correct interpretation and so agree.

35. The view taken by Bombay High Court in **Rajesh's** case (supra) is somewhat similar to the view taken in **S. K. Nausad Rahaman's** case (supra), which can be countenanced wherein the similar view taken by us has been observed, which is 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.

xxx

xxx

xxx

VARINDER SINGH
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integrity of this document

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

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

36. We are told that judgment passed in **Rajesh's** case (supra) has been upheld by Hon'ble the Supreme Court in Special Leave to Appeal (C) Nos. 20357-20358 of 2023 **Balu and others vs The State of Maharashtra and others**, decided on 17.10.2023.

37. In view of the above, challenge to Rule 9(3) fails and it is directed that the appointments be made to the posts of Instructors on the terms of the advertisement and Rule 9(3). The communication of the DGT allowing the State Government to continue with appointments to those candidates, who do not possess CITS certificate, challenged in the writ petitions, in view of our findings and conclusion as above, the said challenge also fails. The writ petitions are accordingly dismissed.

38. However, before we close the issue, it is to be observed that so far as education whether technical or vocational is concerned, the standard ought to be maintained universally all over India. More so, as a candidate has a right of seeking employment in any State, need of the RAC is to provide similar standard of education to all students in all the States. There should be no deviation in the capability of the teachers, who are required to teach and instruct in the various

courses whether vocational or technical. In view thereto, it is essential that same standard of selection should be followed by all States. It is not a case where there is any difficulty in providing CITS training in Punjab and Haryana on account of any reasons, therefore, it is necessary that the State Government should take steps to incorporate the said condition as a pre qualification in their service rules in order to maintain the same standard of all the Instructors. Those instructors, who do not possess CITS qualification, should be asked to obtain such a training even after appointment so that the standard is maintained by all Instructors while performing their duties. Accordingly, we direct the State Government to take steps keeping in view our observations, as above, and make amendments in the rules accordingly for future.

39. With the aforesaid observations, we dismiss these writ petitions and direct the official respondents to proceed further and give appointments to all the candidates, as per their merits. Exercise be done expeditiously so that the courses in all the ITIs can commence.

40. All interim orders stand vacated.

41. All pending applications shall stand disposed of.

42. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

04.04.2024
VS

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No