

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 12 & 29 OF 2024

DISTRICT : THANE

N.P Patil & Ors)
M.M Bidkar & ors)...**Applicants**

Versus

he State of Maharashtra & Ors)...**Respondents**

Shri A.A Gharte, learned advocate for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Debashish Chakrabarty (Member) (A)

DATE : **31.01.2024**

ORDER

1. The applicants by way of interim relief pray that this Tribunal be pleased to stay the execution, implementation and operation of the impugned Recruitment Rules dated 6.9.2023 published by Respondent no. 1, to the said extent of Rule 9(b)(ii) & Rule 9(b)(i)(B). The said rule 9 is reproduced in the beginning.

“9. Appointment to the post of Principal, Government Industrial Training Institute or Vice Principal, Government Industrial Training Institute or Inspector, Vocational Education and Training or Controller of Examinations, Maharashtra State Board of Skill, Vocation Education and Training, Group-A

(Technical) (Junior) (Gazetted), Maharashtra Education Service, in the Directorate shall be made either:-

- (a) by promotion of a suitable person having eligibility for promotion and having not less than three years regular and continuous service on the post of Head Master, Government Technical High School or Centre, Group-B (Technical) (Gazetted), Maharashtra Education Service, or Principal, Government Industrial Training Institute or Vice Principal, Government Industrial Training Institute or Assistant Apprenticeship Advisor, Group-B (Technical) (Gazetted), Maharashtra Education Service, on the basis of common seniority, from amongst the persons holding the said post:

Provided that the officers appointed in the lower cadre prior to the publication of these rules, shall continue to be eligible for promotion according to the educational qualification they hold at present. However, from the publication of these rules, the officers appointed in the lower cadre will be required to possess the educational qualification mention in rule 9(b)(ii) for promotion;

OR

(b) by nomination from amongst the candidates recommended by the Commission on the basis of result of Competitive Examination conducted therefor, who fulfils the following criteria, namely:-

- (i) Age limit:-.....
- (ii) **Minimum Educational Qualification:-**
Degree in Engineering or Technology at least in second class.
- (iii) Experience. A work experience of Professional or Teaching or Administrative Cadre of not less than Seven years after possessing a qualification mentioned in rule 9 (b)(ii) in the Government or Semi-Government or private establishment or any Corporation or any other institute.”

Further the applicants pray that they be allowed to participate under the Advertisement dated 15.12.2023, issued by Respondent no. 2, M.P.S.C to the post of Principal or Vice-Principal in Government Industrial Training Institute (Group-A) (Technical)(Junior) (Gazetted) through nomination and that the Respondents No 1 & 2 be directed to give age relaxation to the applicants of 5 years as per G.R dated 1.11.2003 and allow the applicants to participate in the advertisement.

2. The State of Maharashtra by introducing Rule 9(a) by the Director of Vocational Education and Training (Gazetted) Recruitment Rules, 2023 have amended the earlier Rules wherein the Degree Holders along with Diploma Holders in respect of appointment to the post of Principal (Junior Scale) were allowed to appear for the examination. However, by introducing these new Rules the State of Maharashtra has closed the doors of Diploma Holders who aspire to be Principal/Vice-Principal of the Vocational Training Institute. It is a policy decision of the State. The issue raised before us while giving challenge to Rule 9(a) of the said Rules is in view of Entry No. 66 in List I, Schedule VII & /Article 73 of the Constitution of India the State of Maharashtra is not competent to make such Rules which are inconsistent with the directions/ guidelines laid down by National Council of Vocational Training (NCVT) the recognized body by the Industrial Training Department of the Union of India. The NCVT was established under the administrative order of the Central Government with the approval of the Cabinet with the object that this body will give directions to enhance the qualification and uplift the standard of vocational training including also for the post of Vocational Instructors in the Industrial Training Institutes.

3. In the present case, as pointed out by the learned counsel for the applicants, Entry No. 66 in List-I of the VIIth Schedule is

regarding Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. The subject of higher education or research and scientific and technical institutions is not under State List but in Entry No. 25 in List No. III, Concurrent List of VIIth Schedule this subject is allocated to the State. The Entry No. 66 and 25 are reproduced below:-

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

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.” (emphasis placed).

4. Thus, both State and the Union of India, have power to legislate all the issues of technical education and vocational education and technical training of labour, which includes courses under I.T.I. By way of Constitution (42nd Amendment) Act of 1976, Entry No. 11 in State list prior to 1977, was substituted as Entry No. 25 w.e.f 3.1.1977. It is pertinent to note that the power of the State to legislate in respect of technical education is restricted by words “subject to the provisions of Entries 63, 64, 65 and 66 of List I”. The law makers thus allocated this subject to the Union of India in view of the national importance of the education in the Technical Institutes want to maintain uniformity in this field. Thus, the legislation of Union of India will have always a mandate over the legislation made by the State. If there is any ambiguity or inconsistency in the State law, then it being the subject in the Union list and in the Concurrent list with restrictions, the Central law has weightage over the State law.

5. Learned counsel Mr Gharte has submitted that as Entry No. 66 of Union List prevails over Entry No. 25 in respect of education and vocational training and the orders issued under Article 73 by NCVT have supremacy over the said Recruitment Rule No. 9. This argument is not correct and not acceptable. Admittedly, neither the Union nor the State have legislated the Act on the point of qualification for the post of Principal or Vice-Principal in Government Industrial Training Institutes. The State of Maharashtra was having earlier rules of selection to the post of Principal or Vice-Principal in Government Industrial Training Institute, wherein candidates having Diploma and Degree with different experience were allowed to participate in the selection process. However, Rule 9 prohibits the participation in the selection process of Diploma holders. Admittedly, NCVT is not a statutory body. NCVT gave directions and guidelines about the educational qualifications of the candidates who aspire to be Principal or Vice-Principal in Vocational Institutes. If Union of India would have framed rules, then the rules in view of Entry No. 66 in Union List would have been binding on the State in case any contrary provisions in the Recruitment Rules framed under Article 309 of the Constitution of India by the State Government. Under Article 309, the Union and State both have powers to frame the rules in respect of service conditions of Government servants. However, Union of India has not framed the Recruitment Rules hence, the executive orders passed under Article 73 cannot be substituted for Rules framed under Article 309 of the Constitution of India.

6. Hence, the Recruitment Rules framed by the State stand on higher footing than the executive order of the Union or directions given by NCVT, on the point of qualifications of the candidates aspiring to participate in the selection process for the post of

Principal or Vice-Principal in Government Industrial Training Institute.

7. The State has taken a policy decision to restrict the participation of the candidates who hold Degree in Engineering with a specific period of experience in the feeder cadre. On this point the submissions made by the learned C.P.O are correct and reliance placed on the decision of the Hon'ble Bombay High Court, Aurangabad Bench dated 24.8.2023 in **W.P No. 2654/2003, Rajesh D. Rathod & Ors Vs. Mr Balu N. Bhosale & Ors** is very useful. This being a policy decision, we cannot interfere as we don't find any fundamental right of any of the applicants being violated much less under Articles 14 & 16 of the Constitution of India. It was observed as under:-

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

those are not compatible with the instructions issued by the DGT under Article 73, the former cannot be said to be hit by any specific provision much less, by Article 254.”

8. Learned counsel for the applicants has amended the prayer clause and has further prayed that Diploma with 10 years' experience is equivalent to Degree and so the Diploma Holders should be allowed to participate. On the point of equivalence, State of Maharashtra have not framed the Rules or we have not come across any specific enactment on the point of equivalence. However, the Union of India through NCVT and by OMG dated 11.02.2015, have passed various orders wherein it has held that Diploma with 10 years' experience is equivalent to Degree holders. He submitted that therefore the orders of equivalence have a mandate under Article 73 r/w Entry No. 66 in Union list and Entry No. 25 in concurrent list.

9. Interplay between Article 73 and Article 309 of the Constitution of India was the line of Rule (9)(a) of the “Director of Vocational Education and Training (Group A) (Gazetted) Recruitment Rules 2023” dated 6.9.2023, are framed under Article 309 of the Constitution of India. Thus, such orders are considered as orders issued under Article 73 of the Constitution of India. Article 73 reads as under:-

“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 in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.”

Thus, the executive powers of the Union of India can be extended to the matters for which the Parliament has powers to make the laws.

10. Learned Counsel has pointed out a Gazette Notification of Government of India dated 26.05.1977 where it is said that on the recommendations of the board of assessment for educational qualification and recommendation of defence the Director (Technical), Government of India has decided to recognize Diploma in Engineering in appropriate discipline plus total 10 years of technical experience in the appropriate field as equivalent to the degree in Engineering. Learned Counsel has relied on the office memorandum issued by the Government of India, Ministry of communications of IT Department, OMG dated 11.02.2015 on the point of equivalence of Degree and Diploma Holders in Engineering. The Union of India pursuant to the Delhi High Court order dated 05.08.2014 in Writ Petition (c) No.4879/2014 and CAT (PB) by its order dated 26.04.2013 in O.A.No.2651/2012 declared that the Diploma in Engineering with 10 years technical experience has been recognized as equivalent to Degree in Engineering. Learned Counsel therefore has submitted that the Applicants who are Diploma Holders are in service since last more than 10 years are to be treated as holding equivalent and eligible for the post of Principal / Vice-Principal in Government Industrial

Training Institute (Group-A) (Technical) (Junior) (Gazetted) and therefore prays that by way of interim relief they are to be allowed to fill-up the application forms for the present examination. Though we agree with the case of the Applicants that after putting in more than 10 years in service and that educational qualification with Diploma in Engineering one may earn adequate skill knowledge and proficiency to hold position of Principal, however, in view of the terms used in Rule 9(a) of the 2023 Recruitment Rules, legally we cannot accept the same.

11. Learned counsel for the applicant relied on the decision of the Hon'ble Supreme Court dated 24.1.2023 in **Baharul Islam Vs. Indian Medical Association, AIR 2023 SC 721**, on the point of List No. 1, Entry No. 66 and List No. 3, Entry No. 25 in the 7th Schedule. The Hon'ble Division Bench of the Supreme Court, while dealing with these two entries that the State Legislature has no competence to enact a law contrary to the standards in respect of Allopathy and Modern Medicine to the standards determined by the Central Law, i.e., Indian Medical Council Act. In the said case the Hon'ble Supreme Court concluded that:-

“25. In the result, we arrive at the following conclusions:-

25i. Entry 25 of List III of the Seventh Schedule of the Constitution of India deals with the subject education which is in the Concurrent List under which both the Parliament or the Union Legislature as well as the State Legislatures have legislative competence to legislate. However, Entry 25 of List III is subject to, inter alia, Entry 66 of List I which is the Union List. Entry 66 of List I deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Thus, when any law is made under Entry 25 of List III by a State Legislature, the same is always subject to Entry 66 of List I. In other words, if any law made by the Parliament comes within the scope of Entry 66 of List I, then the State

Legislation would have to yield to the Parliamentary law. Thus, where one Entry is made “subject to” another Entry, it would imply, that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specifically dealt with by the appropriate legislature.”

In the case before us, NCVT who has given the directions about the standards of the Technical Institutes is not a Statutory Body or a body formed under any Act like Indian Medical Council Act. Therefore, any directions, recommendations and regulations of NCVT even if adopted by the Union of India cannot be substituted rules, a statute made by the Legislature and thus the action of the State having a legislative competence to frame recruitment rules in respect of Technical Education or service conditions that cannot be treated as illegal for the reason that the field is not occupied by the Central Legislation.

12. So far as uniformity in the standards in Technical Education and Vocational Training is concerned, we did consider the Maharashtra State Board of Skill, Vocational Education and Training Act, 2021 as pointed out by the learned counsel. Under this Act, the Board is established. Section 25 of the said Act deals with powers and duties of the Board. The relevant sub-sections are reproduced below:-

“22. to advise the Government on matters of policy relating to Certificate and Diploma Level Vocational Education and Training, Skill Development and Entrepreneurship program of Central and State Government in general, and on the following matters, in particular, namely:-.....

(c) co-ordination with National Council of Vocational Education and Training for the implementation of policies;

(e) to maintain uniform standard of certificate and diploma level vocational education and training;

(57) to discharge the functions of the State Council of Vocational Training as per the guidelines of National Council

of Vocational Education and Training or as may be prescribed by the Board.”

However, these powers and duties in this Act cannot be substituted when the Rule 9(a) is in the field.

13. Learned C.P.O has produced Notification dated 16.1.2024 of the Gujarat, where for the post of appointment of Deputy Director of Training, Class-I, in Gujarat Skill Training Services, under the Directorate of Employment and Training, eligibility is held as Bachelor's Degree in Engineering or Technology. Same is the case of Tamil Nadu and in their advertisement dated 25.8.2021 the educational qualification was considered as Degree and not Diploma.

14. So far as the amended prayer of equivalence is concerned, we found that the Union of India has earlier consistently held that Diploma with 10 years of experience is equivalent to the Degree in Engineering field. The State of Maharashtra by its G.R dated 23.8.2011, has taken a policy decision about the equivalence of the syllabus in Engineering and Technical fields. The later portion of the G.R deals with the decision taken in respect of the equivalence decided by the Central Government should be in respect of any Degree and Diploma in any stream is accepted and adopted by the State of Maharashtra. The reason for such adoption of the policy is also stated that the State Government doesn't have the team of these experts so also other machinery fixing the equivalence between the Degree and Diploma in various fields.

15. The arguments of the learned C.P.O that if the prayer of equivalence is accepted then it is as good as holding rule making powers under Article 309 of the Constitution of India of the State subservient to the executive orders passed by the Union of India

under Article 73 of the Constitution of India are valid. It appears that in the judgment of the Hon'ble Bombay High Court in the case of **Rajesh D. Rathod (supra)**, the Division Bench while holding the mandate of the rules under Article 309 of the Constitution of India superior to the executive orders passed by the Central Government under Article 73 of the Constitution of India, the Bench had no opportunity to discuss the issue of the equivalence as it was not raised. Similarly, in the case of **Baharul Islam (supra)**, decided by the Hon'ble Supreme Court, the issue of the relation between rule making powers under Article 309 of the Constitution of India and the executive powers under Article 73 of the Constitution of India the point of equivalence was not raised and hence not deliberated. However, in the present case, both the issues are raised along with equivalence. We note that while accepting equivalence of the Diploma with 10 years of experience to Degree, the rules of eligibility should not be sabotaged.

16. On the point of equivalence, it appears that the State of Maharashtra has taken a policy decision that Diploma with 10 years of experience is equivalent to Degree. However, in order to apply the equivalence, we need to consider Rule No. 9, which is challenged before us. The relevant portion of Rule 9 (b)(ii) is reproduced below:-

“(ii) **Minimum Educational Qualification:-**
Degree in Engineering or Technology at least in second class.”

There is no mention as 'Degree' and 'its equivalence'. Had there been a term of equivalence used after the word 'Degree', then the policy decision on the point of equivalence taken by the State of Maharashtra would have been applicable and the submissions of the learned counsel for the applicants would not be accepted.

However, it is pertinent to note that State of Maharashtra in the earlier rules considered Degree with 5 years' experience and Diploma with 10 years' experience were eligible to apply for the post of Principal or Vice-Principal in Government I.T.I (Group-A) (Technical)(Junior) (Gazetted). But by way of amendment, the State of Maharashtra has deleted Diploma with 10 years' experience. Thus, it is a conscious policy decision that only Degree holders are eligible and allowed to appear in the examination.

17. We find that no case is made out for grant of interim relief. Accordingly, the prayer for grant of interim relief is rejected.

18. S.O to 28.2.2024. Respondents are directed to file affidavit in reply.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 31.01.2024
Dictation taken by : A.K. Nair.