
(2017) 01 RAJ CK 0088
In the Rajasthan High Court
Case No : 12145 of 2016

Rajveer Singh & Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Constitution of India, Article 14, Article 14, Article 309, Article 309 - Appointment of Commission to inquire into and report on the administration of

Citation : (2017) 01 RAJ CK 0088

Hon'ble Judges : Govind Mathur, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : B.S. Sandhu, Ajeet Singh Shekhawat

Judgement

1. The petitioners have challenged validity of advertisement dated 16/09/2016 issued by Rajasthan Subordinate and Ministerial Staff Service Recruitment Board, Jaipur pertaining to recruitment of I.T.I. Instructors allegedly issued in violation of prescribed standards as enunciated by National Council for Vocational Training (NCVT) under Directorate General of Training (DGT), Ministry of Skill Development & Entrepreneurship because of scaling down the necessary qualification.

2. In nutshell, Rajasthan Subordinate and Ministerial Service Selection Board issued an advertisement No.6/2016 laying down technical qualifications, but qualification of Craft Instructor Training Scheme (CITS), which is stated to have been made mandatory for I.T.I Instructors by DGT was ignored and petition raises a question that candidates, lacking necessary qualification of CITS, being ineligible, cannot be inducted.

3. The recruitment of Vocational Training Instructors are to be made under Rajasthan Technical Education Subordinate Service Rules, 1975 (hereinafter referred to as the rules of 1975), which are subsequently amended and as per

amended provisions of 2013, in the principle Rules of 1975, new serial No.4(d), 6(a), 6(b), 6(c), 6(d), 6(e), 6(f) and 6(g) have been inserted and according to appended schedule, qualification for Junior Instructors, is prescribed as under:-

4(d) Junior Instructor (Computer Operator and Programming Assistant) 100% by direct recruitment (A) Academic: Secondary under old scheme from any Central/ State Board of Secondary Education or Secondary under 10+2 scheme from any Central/ State Board of Secondary Education. (B) Technical : 3 years Diploma in Computer Science/Engineering/ Technology from a recognized Board. Or M.C.A. or B.E./B.Tech. in Computer Science/ Engineering/Technology from a recognized University. Or B.C.A./B.Sc. Computer Science/DOEACC "A" Level from a recognized University Or National Trade Certificate or National Apprenticeship Certificate in the Trade concerned; and (C) Experience : Experience in the trade concerned in industry or in a Government Department on a Technical post or on a teaching post in a recognized teaching institution after acquiring qualification of - 3 years" Diploma in Computer Science/Engineering/ Technology from a recognized Board - 02 years" Or M.C.A. or B.E./B.Tech. In Computer Science/ Engineering/Technology from a recognized University - 01 year's Or B.C.A./B.Sc. Computer Science/DOEACC "A" Level from a recognized University - 02 years" Or National Trade Certificate/National Apprenticeship Certificate - 03 years"

6(a) Junior Instructor(Advanced Module of Production & Manufacturing Sector) 100% by direct recruitment (A) Academic: Secondary with Physics, Chemistry & Mathematics as optional subject under old scheme from any Central/ State Board of Secondary Education. Or Secondary under 10+2 scheme from any Central/ State Board of Secondary Education. (B) Technical : Degree in Mechanical/ Production Engineering /Technology awarded by any recognized University. Or Diploma in Mechanical/ Production Engineering /Technology awarded by any State Board of Technical Education. and (C) Experience : Experience in the industry or in a Government Department on a Technical post or on a teaching post in a recognized teaching institution after acquiring qualification of- Degree in Mechanical/Production Engineering /Technology - 3 years" Or Diploma in Mechanical/Production Engineering /Technology - 5 years"

6(b) Junior Instructor (Advanced Module of Electronics Sector) 100% by direct recruitment (A) Academic : Secondary with Physics, Chemistry & Mathematics as optional subject under old scheme from any Central/ State Board of Secondary Education. Or Secondary under 10+2 Scheme from any Central/State Board of Secondary Education. (B) Technical : Degree in Electronics Engineering/ Technology awarded by any recognized University. Or Diploma in Electronics Engineering/ Technology awarded by any recognized Board of Technical Education; Or HNTC (Higher National Trade Certificate in related area; and (C) Experience : Experience in the industry or in a Government Department on a technical post or on a teaching post in a recognized teaching institution after acquiring qualification of- Degree in Electronics Engineering/ Technology - 2 years" Or Diploma in Electronics Engineering/ Technology - 4 years" Or HNTC

(Higher National Trade Certificate) in related area - 5 years"

6(c) Junior Instructor (Advanced Module of Information & Technology Sector) 100% by direct recruitment (A) Academic: Secondary with Physics, Chemistry & Mathematics as optional subject under old scheme from any Central/ State Board of Secondary Education. Or Secondary under 10+2 Scheme from any Central/ State Board of Secondary Education; (B) Technical : Degree in Information Technology Engineering /Technology awarded by any recognized University. Or Diploma in Information Technology Engineering /Technology awarded by any State Board of Technical Education; Or HNTC (Higher National Trade Certificate) in related area; and (C) Experience : Experience in the industry or in a Government Department on a Technical post or on a teaching post in a recognized teaching institution after acquiring qualification of Degree in Information Technology Engineering/Technology - 2 years" Or Diploma in Information Technology Engineering/Technology - 4 years" Or HNTC (Higher National Trade Certificate) in related area - 5 years.

6(d) Junior Instructor (Advanced Modules of Electrical Sector) 100% by direct recruitment (A) Academic : Secondary with Physics, Chemistry & Mathematics as optional subject under Old Scheme from any Central/ State Board of Secondary Education. Or Secondary under 10+2 Scheme from any Central/State Board of Secondary Education. (B) Technical : Degree in Electrical Engineering/ Technology awarded by any recognized University. Or Diploma in Electrical Engineering/ Technology by any State Board of Technical Education. Or HNTC (Higher National Trade Certificate) in related area; and (C) Experience : Experience in the industry or in a Government Department on a Technical post or on a teaching post in a recognized teaching institution after acquiring qualification of- Degree in Electrical Engineering/ Technology - 2 years" Or Diploma in Electrical Engineering/ Technology - 4 years" Or HNTC (Higher National Trade Certificate) in related area - 5 years"

6(e) Junior Instructor (Advanced Module of Automobile Sector) Junior Instructor (Advanced Module of Automobile Sector) (A) Academic : Secondary with Physics, Chemistry & Mathematics as optional subject under old scheme from any Central/ State Board of Secondary Education. Or Secondary under 10+2 Scheme from any Central/State Board of Secondary Education; (B) Technical : Degree in Automobile Engineering/ Technology awarded by any recognized University. Or Diploma in Automobile Engineering/ Technology awarded by any State Board of Technical Education. And (C) Experience : Experience in the industry or in a Government Department on a Technical post or on a teaching post in a recognized teaching institution after acquiring qualification of- Degree in Automobile Engineering/ Technology - 2 years" Or Diploma in Automobile Engineering/ Technology - 4 years"

6(f) Junior Instructor (Advanced Modules of Chemical Sector) 100% by direct recruitment (A) Academic : as optional subject under old scheme from any Central/State Board of Secondary Education. Or Secondary under 10+2 Scheme

from any Central/State Board of Secondary Education; (B) Technical : Degree in Chemical Engineering/ Technology awarded by any recognized University. Or Diploma in Chemical Engineering/ Technology awarded by any State Board of Technical Education. And (C) Experience : Experience in the industry or in a Government Department on a Technical post or on a teaching post in a recognized teaching institution after acquiring qualification of- Degree in Chemical Engineering/ Technology - 2 years" Or Diploma in Chemical Engineering/ Technology - 4 years"

6(g) Junior Instructor [Advanced Module of Fabrication (Fitting & Welding) Sector] 100% by direct recruitment (A) Academic : Secondary with Physics, Chemistry & Mathematics as optional subject under old scheme from any Central/ State Board of Secondary Education. Or Secondary under 10+2 Scheme from any Central/State Board of Secondary Education; (B) Technical : Degree in Fabrication/Mechanical/ Production Engineering/ Technology awarded by any recognized University. Or Diploma in Fabrication/Mechanical/ Production Engineering/ Technology awarded by any State Board of Technical Education. And (C) Experience : Experience in the industry or in a Government Department on a Technical post or on a teaching post in a recognized teaching institution after acquiring qualification of- Degree in Fabrication/Mechanical/ Production Engineering/ Technology - 3 years" Or Diploma in Fabrication/Mechanical/ Production Engineering/ Technology - 5 years"

4. National Council for Vocational Training (NCVT) was established by Central Government and recommendations made by the Council were accepted by Central Government vide its letter dated 27/05/2014 and 07/01/2016, which relates to Prescription of CITS for recruitment of Instructors in I.T.I that a necessary qualification.

5. The Central Government, accepting the recommendations of NCVT for enhancement of excellence in teaching, as such, the directions issued by the Central Government are mandatory and are binding upon the State Government, so the State Government cannot conduct recruitment in ignorance of the said qualification and Central Government has laid down guidelines for recruitment of instructors for I.T.I.s by providing 30% waitage marks to such CITS qualified candidates but the imperative guidelines were ignored by the State of Rajasthan, while issuing its recruitment process.

6. Learned counsel for the petitioners, while referring and taking support of Upendra Narain Singh vs. The State of U.P. decided on 08/08/2006 (Allahabad High Court), Ranjan Kumar & Ors. vs. Union of India & Ors.(Civil Writ Jurisdiction Case No.7890 of 2013), decided on 17/06/2014 (by Patna High Court), Mahendra Kumar Chandrawat vs. The State of Rajasthan & Ors. (SBCWP No.5560/2014) decided on 05/08/2014 & Mahendra Kumar & Ors. vs. The State of Rajasthan & Ors. (SBCWP No.8352/2013) decided on 9/02/2015 (by Rajasthan High Court Bench Jaipur) has contended that qualification of teachers of technical institution are specified in Entry No.66 of List I of schedule-VII, which clearly takes over

Entry 25 of list III, so Central Government alone has power to prescribe the standards of recruitment, hence the powers of State Government to include the qualification under the Rules made under Article 309 will succumb to the directions of Central Government given under Article 73 of the Constitution and has said that Rule making powers exclusively falls within the entries of List I, so the direction issued under Article 73 will over ride the statutory rules made under Article 309 of the Constitution, hence, the directions of modifying CITS qualification cannot be diluted and such a dilution is violative of Article 14 of Constitution and contrary to the object of achieving excellence in technical services. On the contrary, learned counsel for the respondents has contended that the process of selection has already commenced and the petitioners have also participated and have not been debarred from participating from the recruitment and has further contended that it is very much under the domain of the recruiting respondents to scale down the qualification and such a power is not in transgression to the directions/guidelines of Central Government so, non-inclusion of the CITS qualification does not, in any way, violates essential qualification for the said selection.

7. Heard rival contentions of both the sides and examined the record, it is not disputed that the National Council for Vocational Training (NCVT) working under the Directorate General of Training (DGT), Ministry of Skill Development & Entrepreneurship has been entrusted to prescribe standards and curriculum for Crafts Man Training and guidelines issued by Director General of Training, Government of India for recruitment of Instructors in I.T.I of holding a qualification of Craft Instructors Training Scheme (CITS), which already stands accepted by the Central Government and Central Government acting upon the same guidelines having issuing instructions on 27/05/2014 and 07/05/2016 that CITS is mandatory for all the ITI Instructors and laying down such instructions for recruitment accordingly.

8. We, have to examine whether the directions issued by the Central Government on the recommendations of NCVT are mandatory and are binding upon the State Government, which has the powers under proviso to Article 309 to frame service rules subject to the provisions of the Constitution and acts of appropriate legislature and further having acted upon these recommendation, whether the State Government could have again lower down the qualification capriciously without a justifiable reason. The executive power of the Union under Article 73 extends to matters with respect to which parliament has power to make laws, in the absence of legislation by parliament, the State may in its executive power deal with matters prescribed in concurrent list and Specific legislation is not required for exercise of executive power pertaining to a particular subject. The exercise of power, however, is subject to provisions of the Constitution. Article 309 provides for regulating the recruitment in conditions of service of the persons appointed in public services and posts in connection with the affairs of the union or any of the state, until provision in that behalf are made by the legislation. The President in the case of the Union and the Governor in case of

the State have been authorized to make regulations, which are legislative in character. Article 309 does not prohibit, the prescription of rules for selection or for qualification for appointment.

9. The determination of standards in "technical education", which includes teachers' qualification, fall under Entry 66 in List I in the exclusive domain of the Union, the education including technical education falls within Entry 25 of List III, So long as Central Government had not issued any direction accepting recommendations of the NCVT, it was open to the State Government to prescribe qualification for appointment in Industrial Training Institutes, which are technical institutions. The executive order issued under Article 73, in respect of matters on which parliament has exclusive power to make laws, have the same force as laws made by Parliament. The proviso to Clause (1) of Article 73 shall not, save as expressly provided in the 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. The qualifications of teachers of Technical Education are essentially covered within coordination and determination of standards in Institutions and is as such, covered by entry 66 of List I (union list), and not by entry 25 of List III (concurrent list) and the "State Government" explicitly knowing the position, carried out directions of the Central Government by accepting recommendations of NCVT.

10. Article 51(J) of Part IV A exhorts every citizen to strive towards excellence in all spheres of, individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement and to beholden this object fructified quality of technical education, if prescribed with an exclusive qualification as of CITS, as in matter under hand, being conversely prescribing to be diminished, ignoring the requirement of qualification as enumerated and accorded to by the Central Government, is obviously unacceptable and unjustifiable. On earlier occasions, when similar kind of lis arisen and agitated, then this Court in S.B. Civil Writ Petition No.8352/2013, Mahendra Kumar & Ors. vs. The State of Rajasthan & Ors, S.B. Civil Writ Petition No.5560/2014, Mahendra Kumar Chandrawat vs.The State of Rajasthan & Ors, while deciding the issues, remitted the matter to the Principal Secretary to the department concerned, to decide the representations of such petitioners with speaking orders, but nothing relating to the outcome thereof has been communicated nor the learned counsel for the respondent is aware about the same and Hon"ble Patna High Court in Civil Writ Case No.7890 of 2013, Ranjan Kumar & Ors. vs. Union of India & Ors, and Hon"ble Allahabad High Court in Upendra Narain Singh vs. The State of U.P., while adjudicating upon similar kind of dispute have allowed such petitions.

11. In view of the above discussions, we are of the considered view that determination of standards in technical institution pertaining to Entry 66 List I of Schedule VII will include laying down the standards for teaching and teaching qualifications, the powers of Central Government, as such under Article 246 to

legislate and to issue executive orders on the subject are valid and unimpeachable. The Administrative Power of the Union under Article 73 extends to matters with respect to which parliament has power to make laws and in non-existence of legislation by parliament, the State may in its executive power deal with matters as enumerated in concurrent list. The exercise of power, however, is subject to provisions of the Constitution. Article 309 provides for regulating the recruitment in conditions of service, for public services on the posts in connection with the affairs of the union or any of the state, until provision in that behalf are made by the legislation and the executive order issued under Article 73, in respect of which, Parliament has got exclusive power to make laws being the same once as laws made by Parliament, so once the guidelines enumerated by the Central Government and subsequently accepted and accorded to by the State regarding "technical education service" shall not be scaled down, overshadowed or diminished. The teaching standards in all the educational institutions are required to be utmost superior for the betterment of the individuals and State to achieve excellence in every field.

12. Several aspirants possessing required, similar and superior kind of teaching qualification, would gain legitimate expectation for their consideration for appointment, on the teaching posts and in case, the State Government allows the persons having lower qualification to hold the posts, the rights of such aspirants having higher and better teaching qualifications, will be marred and violated, which will obviously be unconstitutional being discriminatory and violative to their constitutional rights and concept of quality. The writ petition, challenging the questioned advertisement dated 16/09/2016, is as such, liable to be allowed and the advertisement dated 16/09/2016 relating thereto is consequently quashed. The respondent State Government is directed to issue fresh advertisement in consonance with the Central Government and NCVT Guidelines. It is also made clear that the aspirants, who were within the age limit on the last date of impugned/questioned advertisement dated 16/09/2016 and who have attained eligibility in the meanwhile, shall also be competent and eligible to apply in coming/prospective recruitment advertisement. The writ petition stands disposed of in aforesaid terms.