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Neutral Citation No. - 2023:AHC-LKO:74413

Court No. - 18

Case :- WRIT - A No. - 974 of 2015

Petitioner :- Ramesh Chandra Baghel And 61 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Mayankar Singh,Lalta Prasad Misra,Prafulla
Tiwari,Shailendra Kumar Dubey,Vijay Kumar Srivastava

Counsel for Respondent :- C.S.C.,Utsav Mishra

CONNECTED WITH

(1) Case :- WRIT - A No. - 7472 of 2013

Petitioner :- Hari Krishna Sharma

Respondent :- State Of U.P. Thru Prin.Secy.Medical And Health Services And Ors

Counsel for Petitioner :- Shiv Pratap Singh,Deepak Singh

Counsel for Respondent :- C.S.C.

(2) Case :- WRIT - A No. - 7052 of 2014

Petitioner :- Chandra Mohan And 40 Ors.

Respondent :- State Of U.P. Thru Its Prin.Secy.Medical And Health Deptt.Andors

Counsel for Petitioner :- R.C. Tewari

Counsel for Respondent :- C.S.C.

(3) Case :- WRIT - A No. - 7223 of 2014

Petitioner :- Jai Bahadur Singh And 8 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Medical And Health Deptt. Lk

Counsel for Petitioner :- Rakesh Chandra Tewari

Counsel for Respondent :- C.S.C.

(4) Case :- WRIT - A No. - 21 of 2015

Petitioner :- Km. Anita Devi And Another

Respondent :- State Of U.P.Thru Prin.Secy.Of Medical And Health Servicesandors

Counsel for Petitioner :- Pt. S. Chandra,Saurabh Shukla

Counsel for Respondent :- C.S.C.

(5) Case :- WRIT - A No. - 59 of 2015

Petitioner :- Ashok Kumar Yadav And 4 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Medical And Health Deptt. Lk

Counsel for Petitioner :- Rakesh Chandra Tewari

Counsel for Respondent :- C.S.C.10

(6) Case :- WRIT - A No. - 965 of 2015

Petitioner :- Ahsan Ahmad And 16 Ors.

Respondent :- State Of U.P.Thru Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Mayankar Singh,Meenakshi Singh Parihar,Pravin Kumar
Singh

Counsel for Respondent :- C.S.C.

(7) Case :- WRIT - A No. - 2045 of 2015

Petitioner :- Abdul Haseeb And 8 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Mayankar Singh
Counsel for Respondent :- C.S.C.

(8) Case :- WRIT - A No. - 5896 of 2015
Petitioner :- Hari Mohan Sharma And 3 Ors.
Respondent :- State Of U.P. Through Prin. Secy. Medical And Health Deptt. Lk
Counsel for Petitioner :- Rakesh Chandra Tiwari
Counsel for Respondent :- C.S.C.

(9) Case :- WRIT - A No. - 6495 of 2015
Petitioner :- Anurag And 3 Ors.
Respondent :- State Of U.P. Through Prin. Secy. Medical And Health Services
Counsel for Petitioner :- Saurabh Shukla
Counsel for Respondent :- C.S.C.

(10) Case :- WRIT - A No. - 6711 of 2015
Petitioner :- Angad Singh Kachhvah
Respondent :- State Of U.P. Thru. Prin.Secy. Medical And Health And 2 Others
Counsel for Petitioner :- Rakesh Chandra Tewari
Counsel for Respondent :- C.S.C.

(11) Case :- WRIT - A No. - 7060 of 2015
Petitioner :- Ashish Pratap Singh And Another
Respondent :- State Of U.P. Thru Prin.Secy.Medical And Health Deptt. And Ors.
Counsel for Petitioner :- R.C. Tewari
Counsel for Respondent :- C.S.C.

(12) Case :- WRIT - A No. - 2951 of 2016
Petitioner :- Rajeev Kumar Srivastava And 11 Ors.
Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Medical Health And Ors.
Counsel for Petitioner :- Mayankar Singh, Shailendra Kumar Dubey, Vijay Kumar Srivastava
Counsel for Respondent :- C.S.C.

(13) Case :- WRIT - A No. - 12710 of 2016
Petitioner :- Gyan Singh
Respondent :- State Of U.P. Thru Prin.Secy.Medical And Health Deptt.And Ors.
Counsel for Petitioner :- Rakesh Chandra Tewari
Counsel for Respondent :- C.S.C.

(14) Case :- WRIT - A No. - 15957 of 2016
Petitioner :- Yasmeen Saeed And 3 Ors.
Respondent :- State Of U.P. Thru Prin.Secy.Medical Edu.Govt.Of Up And Ors.
Counsel for Petitioner :- Rajneesh Kumar Mishra
Counsel for Respondent :- C.S.C.

(15) Case :- WRIT - A No. - 21456 of 2016
Petitioner :- Sushil Kumar Tyagi And Another
Respondent :- State Of U.P. Thru Prin.Secy.Medical And Health Lucknow And Ors.
Counsel for Petitioner :- Rajneesh Kumar Mishra
Counsel for Respondent :- C.S.C.

(16) Case :- WRIT - A No. - 21927 of 2016
Petitioner :- Shailendra Kumar Singh And 4 Ors.
Respondent :- State Of U.P. Thru Prin.Secy.Medical And Health Services And ors.

Counsel for Petitioner :- Ashwani Kumar, Fateh Bahadur Singh
Counsel for Respondent :- C.S.C.

(17) Case :- WRIT - A No. - 22956 of 2016
Petitioner :- Rajiv Kumar Tiwari And 51 Ors.
Respondent :- State Of U.P. Thru Prin. Secy. Deptt. Of Medical Health And Ors.
Counsel for Petitioner :- Mayankar Singh, Prafulla Tiwari, Shailendra Kumar Dubey, Vijay Kumar Srivastava
Counsel for Respondent :- C.S.C.

(18) Case :- WRIT - A No. - 29215 of 2016
Petitioner :- Karan Singh
Respondent :- State Of U.P. Thru Prin. Secy. Medical And Health Lko And Ors
Counsel for Petitioner :- Shiv P. Shukla
Counsel for Respondent :- C.S.C

(19) Case :- WRIT - A No. - 2003 of 2017
Petitioner :- Mahendra Kumar And 5 Ors.
Respondent :- State Of U.P. Thru Prin. Secy. Medical Deptt. Lucknow And Ors.
Counsel for Petitioner :- Rakesh Chandra Tewari
Counsel for Respondent :- C.S.C.

(20) Case :- WRIT - A No. - 1752 of 2018
Petitioner :- Bajrangi Prajapati And 20 Ors.
Respondent :- State Of U.P. Thru Prin. Secy. Medical And Health Services Andors.
Counsel for Petitioner :- Prafulla Tiwari
Counsel for Respondent :- C.S.C.

(21) Case :- WRIT - A No. - 2052 of 2018
Petitioner :- Chandra Prakash Gupta And 12 Ors.
Respondent :- State Of U.P. Thru Prin. Secy. Medical And Health Services Andors.
Counsel for Petitioner :- Prafulla Tiwari
Counsel for Respondent :- C.S.C.

(22) Case :- WRIT - A No. - 7159 of 2018
Petitioner :- Digvijay Singh And 8 Ors.
Respondent :- State Of Up Thru Prin. Secy. Medical And Health Lko. And Ors.
Counsel for Petitioner :- Rakesh Chandra Tewari
Counsel for Respondent :- C.S.C.

(23) Case :- WRIT - A No. - 2978 of 2019
Petitioner :- Sanjeev Kumar
Respondent :- State Of U.P. Thru. Prin. Secy. Medical And Health Services And
Counsel for Petitioner :- Saurabh Shukla, Pragati Singh, Rekha Gautam
Counsel for Respondent :- C.S.C.

(24) Case :- WRIT - A No. - 35841 of 2019
Petitioner :- Neeraj Saini And 44 Ors.
Respondent :- State Of U.P. Thru Prin. Secy. Medical Health And Family And Ors.
Counsel for Petitioner :- Bipin Kumar Rai, Syed Mohd. Arshad Rizvi
Counsel for Respondent :- C.S.C., B.K. Singh

(25) Case :- WRIT - A No. - 36328 of 2019
Petitioner :- Deepesh Saxena And Ors.
Respondent :- State Of U.P. Thru Prin. Secy. Medical Health And family Welf. And ors

Counsel for Petitioner :- Syed Mohd. Arshad Rizvi, Bipin Kumar Rai
Counsel for Respondent :- C.S.C., B.K. Singh

(26) Case :- WRIT - A No. - 7730 of 2020
Petitioner :- Pankaj Sharma And 3 Ors.
Respondent :- State Of U.P. Thru Prin. Secy. Deptt. Of Medical Health Andors.
Counsel for Petitioner :- Shailendra Kumar Dubey, Neeraj Kumar Rai
Counsel for Respondent :- C.S.C.

(27) Case :- WRIT - A No. - 11971 of 2020
Petitioner :- Sanjay Kumar And Ors.
Respondent :- State Of U.P. Thru. Prin. Secy. Medical Health Lko. And Ors.
Counsel for Petitioner :- Vijay Kumar Srivastava, Vijay Kumar Srivastava
Counsel for Respondent :- C.S.C.

(28) Case :- WRIT - A No. - 12241 of 2020
Petitioner :- Dilip Kumar And Ors.
Respondent :- State Of U.P. Thru. Prin. Secy. Medi. Health Services And Ors.
Counsel for Petitioner :- Vivek Kumar Srivastava
Counsel for Respondent :- C.S.C.

(29) Case :- WRIT - A No. - 17024 of 2020
Petitioner :- Suraj Kumar And Ors.
Respondent :- State Of U.P. Through Prin. Secy. Medical Health Services Andors.
Counsel for Petitioner :- Anil Kumar Pandey
Counsel for Respondent :- C.S.C.

(30) Case :- WRIT - A No. - 19906 of 2020
Petitioner :- Deepak Mishra And Others
Respondent :- State Of U.P. Thru. Prin. Secy. Medical Health Lko And Ors.
Counsel for Petitioner :- Pravin Kumar Singh, Avinash Chandra
Counsel for Respondent :- C.S.C.

(31) Case :- WRIT - A No. - 20709 of 2020
Petitioner :- Wamiq Adeel And Ors.
Respondent :- State Of U.P. Thru. Prin. Secy. Medical/Health Services Andors
Counsel for Petitioner :- Adesh Upadhyay, Avinash Chandra, Pravin Kumar Singh
Counsel for Respondent :- C.S.C.

(32) Case :- WRIT - A No. - 6808 of 2021
Petitioner :- Baij Nath And Ors.
Respondent :- State Of U.P. Thru. Prin. Secy. Medical And Health Services And Ors.
Counsel for Petitioner :- Lalta Prasad Misra, Prafulla Tiwari
Counsel for Respondent :- C.S.C., Gaurav Mehrotra

(33) Case :- WRIT - A No. - 15506 of 2021
Petitioner :- Atul Kumar Kanaujia And Ors.
Respondent :- State Of U.P. Thru. Prin. Secy. Medical And Health And Ors.
Counsel for Petitioner :- Vijay Dixit, Dilip Mani
Counsel for Respondent :- C.S.C., Gaurav Mehrotra

(34) Case :- WRIT - A No. - 106 of 2022
Petitioner :- Pradeep Kumar Mishra And Others
Respondent :- State Of U.P. Thru Prin. Secy. Medical And Health Deptt Lko And 2 Others

Counsel for Petitioner :- Rakesh Chandra Tewari
Counsel for Respondent :- C.S.C.

(35) Case :- WRIT - A No. - 2187 of 2022

Petitioner :- Om Prakash Verma And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Dept. Of Medical Health Services
 Lko.And Others

Counsel for Petitioner :- Sudhir Kumar Pandey,Apoorv Dev

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Lavania,J.

1. Sri H.G.S. Parihar, learned Senior Advocate assisted by Ms. Meenakshi Singh Parihar & Sri Pravin Kumar Singh, Advocates, Dr. L.P. Mishra, learned Senior Member of the Bar assisted by Sri Prafulla Tiwari, Advocate, Sri R.C. Tewari, Advocate and Sri Vijay Dixit, Advocate, learned counsels appeared and argued for the petitioners. Other Advocates appearing in this bunch of petitions for the petitioner(s) have adopted the submissions advanced by these counsel.

2. Sri Shailendra Singh, learned Chief Standing Counsel, Sri Nishant Shukla, learned Additional Chief State Standing counsel and Sri Yogesh Awasthi, learned Additional Chief Standing counsel appeared and argued for the State-respondents.

3. The subject matter of petitions in this bunch relates to appointment/recruitment on the post of Pharmacist (Allopathy). This post is governed by the U.P. Pharmacists Service Rules, 1980 (in short "Rules of 1980").

4. It would be apt to indicate that U. P. Pharmacist service has been described as Subordinate Service comprising Group "C" Post. Rule 3 (a) defines the "Appointing Authority" in respect of Chief Pharmacists and in respect of Pharmacist, working in or attached to the offices/hospitals, and rule 3 (d) defines the member of service meaning a person appointed in substantive capacity under the provisions of these rules or the rules or orders in force prior to the commencement of these rules to a post in the cadre of the service. Rule 3 (f) defines "Service" means the Uttar Pradesh Pharmacists Service, and rule 3 (g) defines "Year of recruitment" which means a period of twelve months commencing from first day of July of a calendar year. Part II deals with the cadre of Service, and rule 4 thereof deals with the strength of the service and provides that each category of posts therein shall be such as may be determined by the

Governor from time to time. Part III deals with the Source of recruitment, sub-rule (1) of rule 5 thereof provides that recruitment to the post of Pharmacist by direct recruitment and that of Chief Pharmacists by promotion from amongst the permanent Pharmacists. Part IV deals with qualification. Rule 8 deals with Academic Qualification and prescribes that a candidate for direct recruitment to the posts in the service must possess diploma in Pharmacy from a recognized institution and must also be recognized with the State Pharmacy Council of Uttar Pradesh. Rule 9 deals with preferential qualification, and Rule 10 deals with Age. Part V deals with procedure of recruitment and rule 14 thereof deals with determination of vacancies. Rule 15 deals Procedure for Direct Recruitment. Rules 17, 18, 19 and 20 deal with appointment, probation, confirmation and seniority. Part VIII deals with other provisions, Rule 26 thereof provides that in regard to the matters not specifically covered by these rules or by special orders, person appointed to the service shall be governed by the rules, regulations and orders applicable generally to government servants serving in connection with the affairs of the State.

5. This Court finds from the pleadings and reliefs sought in the petitions as also the submissions advanced by the counsel for the parties that the petitions of this bunch are based upon the judgment passed by the Division Bench of this Court dated 04.05.2009 of Special Appeals leading of which was **Special Appeal No. 377 of 2008 (Prem Chandra and others vs. State of U.P. and others)** and the judgment passed by the Hon'ble Apex Court in bunch of Special Leave to Appeals filed by the State of U.P. leading of which was **Special Leave to Appeals (C) No. 20558 of 2009 (State of U.P. and another vs. Santosh Kumar Mishra and another)**, which were dismissed vide judgment dated 03.08.2010 reported in (2010) 9 SCC 52 as also the judgment dated 23.09.2014 passed by the Hon'ble Apex Court in **Contempt Petition (C) No. 269/2012 [Donesh Rajput v. Pradeep Kumar Shukla]** reported in (2015) 1 SCC 628 as also Rules of 1980 particularly Rule 15, which reads as under:-

"15. Procedure for Direct Recruitment - (1) For the purpose of recruitment, there shall be constituted a Selection Committee comprising -

1. Additional Director, to be nominated by the Director;
2. Joint Director, dealing with establishment of Pharmacists;

3. Secretary, State Pharmacy Council.

(2) The Selection Committee shall prepare a list of candidates in order of merit, as disclosed by marks obtained by them in the diploma examination. If two or more candidates obtain equal marks, the Selection Committee shall arrange their names in order of merit on the basis of their general suitability for the post. The number of the names in the list shall be larger (but not larger by more than 25 percent) than the number of the vacancies. The list so prepared shall hold for one year only.

(3). The Director shall forward the requisite number of the names in order of merit, from the list to the concerned appointing authority/appointing authorities."

6. From the pleadings and documents on record as also the reliefs sought in the petitions, which are being decided by this judgment, and also from the submissions made by the learned counsel for the parties, this Court is of the view that following Questions are to be answered:-

(a) As to whom the benefit of past practice adopted by the department i.e. batchwise-merit for recruitment on the post(s) of Pharmacist can be provided or in other words, who would be entitled to the benefit of the judgment passed in the case of **State of U.P. vs. Santosh Kumar Mishra, (2010) 9 SCC 52.**

(b) As to whether the appointments beyond the posts advertised in Advertisement dated 22.07.2012 are liable to be quashed.

(c) As to whether the recruitment on the post(s) of Pharmacist should be made strictly in terms of Rule 15 of the Rules of 1980.

7. In the aforesaid background of the case, it would be appropriate to first indicate the factual matrix, in brief, related to earlier round of litigation related to recruitment on the posts of Pharmacist (Allopathy), which went upto the Hon'ble Apex Court, as the same is relevant for Question No. (a), framed above.

8. The factual matrix, in brief, is to the effect that an Advertisement No. 2/Appointment/2007 dated 12.11.2007 (in short "Advertisement") for recruitment on 766 posts of Pharmacist was published in Dainik Jagran Daily News Paper on 18.11.2007. As per the terms and conditions of the Advertisement, the selection was to be held in accordance with the mode, manner and procedure prescribed under U.P. Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) Rules, 2002 (in short "Rules of 2002") amended through First Amendment w.e.f. 21.06.2003.

9. The selection process initiated vide Advertisement was assailed before this Court in a bunch petitions leading of which was **Writ Petition No. 7699 (S/S) of 2007 (Sunil Kumar Pal and others vs. State of U.P. and others)**. The main ground of assailing the Advertisement and procedure prescribed for selection based upon the Rules of 2002 was to the effect that the past practice in the department for recruitment on the posts of Pharmacist (Allopathy) was batchwise-merit and accordingly the selection for 766 posts advertised should be made as per past practices i.e. batchwise-merit. In other words, as per the case set forth, the claim before the Writ Court was to the effect all diploma-holder {qualification prescribed for the post of Pharmacist (Allopathy) under the Rules of 1980 is diploma in Pharmacy from an institution recognized by Pharmacy Council of India} are required to be appointed against the vacancies which became available in each recruitment year by first appointing those Pharmacists who had obtained their diplomas earlier. In some petitions, the Rules of 2002 was also challenged.

10. The Writ Court upon due consideration disposed of the bunch of petitions vide judgment dated 23.05.2008, whereby, the Writ Court declined to interfere in the Rules of 2002 as also the prayer sought in the petitions, which was to the effect that the recruitment process should be carried out as per past practice i.e. batchwise-merit.

11. In the judgment dated 23.05.2008, the Writ Court observed that the Rules of 2002 as amended in 2003 would not apply in selection process of Pharmacists (Allopathy) under the Rules of 1980 unless amendment is made in clause (a) of Sub-Rule (3) of Rule 5. This observation was made after taking note of relevant Rule and observing that *"Undisputedly evaluation under clause (a) of sub-rule (3) is not at all feasible, as qua academic qualification prescribed for under 1980 Rules, qua the same no criteria has been provided for."* Relevant portion of the judgment dated 23.05.2008 reads as under:-

"The next question is as to what procedure should be adopted by Selection Committee constituted in terms of Rule 6 of the Uttar Pradesh Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) Rules, 2002, and Uttar Pradesh Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003 for conducting selection of Pharmacists. These Rules provide procedure for direct recruitment, and sub-rule (3) of rule 5 clearly provides that selection shall carry 100 marks, and the merit list is to be

prepared in the following manner: Sub-rule (3) (a) (i) of rule 5 provides that marks for academic qualification shall be awarded to each candidate in the manner provided therein. Academic qualification has been provided as Intermediate, Bachelor and Postgraduate, and therein it has also been provided that if a candidate gets 60% in Intermediate examination, he would be entitled to twenty marks and in case a candidate gets forty five per cent or above but less than sixty per cent marks, he would be entitled to receive fifteen marks. In case a candidate gets thirty three per cent or above but less than forty five per cent marks, he would be entitled to receive ten marks. Similarly qua Bachelor's degree if a candidate gets 60%, he would be entitled to ten marks and in case a candidate gets forty five per cent or above but less than sixty per cent marks, he would be entitled to receive eight marks. In case a candidate gets thirty three per cent or above but less than forty five per cent marks, he would be entitled to receive six marks. Clause (a) (2) of sub-rule (3) of rule 5 provides that such posts for which academic qualifications and technical qualifications both are prescribed, the marks shall be awarded to each candidate in the following manner: For minimum academic qualification prescribed for the post if a candidate gets 60%, he would be entitled to ten marks and in case a candidate gets forty five per cent or above but less than sixty per cent marks, he would be entitled to receive eight marks. In case a candidate gets thirty three per cent or above but less than forty five per cent marks, he would be entitled to receive six marks. Similarly if a candidate gets 60% and above in minimum technical qualification prescribed for the post, he would be entitled to twenty marks and in case a candidate gets forty five percent or above but less than sixty per cent marks, he would be entitled to receive fifteen marks, and in case a candidate gets thirty three per cent or above but less than forty five per cent marks, he would be entitled to receive ten marks.

The question to be answered is as to whether the candidates who are holding academic qualification of diploma in Pharmacy from recognized institutions and are registered with the State Pharmacy Council of U.P. qua them such procedure for awarding marks can be adopted. Rules are clear that selection shall carry 100 marks, and the merit list of the candidates has to be prepared in the manner prescribed. Admittedly, clause (a) (I) of sub-rule (3) of rule 5 cannot be pressed into service for the simple reason that academic qualification, namely Intermediate, Bachelor's Degree and Postgraduate Degree, which have been prescribed under Rule 8 of 1980 Rules do not fall within the academic qualification, which are prescribed and mentioned therein. Further the provision of clause (a) (2) of sub-rule (3) of rule 5 of the Uttar Pradesh Procedure for Direct Recruitment of Group "C" Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003 deals with computation of marks of such posts for which academic qualifications and technical qualifications both are prescribed. Said criteria can be adopted in respect of the post for which academic qualifications and technical qualifications both are prescribed. As far as the post of Pharmacist is concerned, academic qualification has been provided under rule 8 of 1980 Rules, the same can be termed either academic qualification or technical qualification, but certainly, it cannot be academic qualification as well as technical qualification both. At this juncture, it has been sought to be suggested from the side of State, that for admission in Diploma in Pharmacy

Course under Education Regulation 1991, minimum qualification prescribed is Intermediate in Science, the marks obtained in Intermediate Examination and marks obtained in Diploma in Pharmacy are to be clubbed, and merit list is to be prepared accordingly. Language of the rule is clear and specific, such post for which academic qualification and technical qualification both are prescribed. "Prescribed" means prescribed by Rules, made under that particular Act. Under 1980 Rules, Intermediate Qualification is not one of the prescribed qualification, rather under Rule 8 of the aforementioned Rules, the prescribed qualification is Diploma in Pharmacy from the State recognized institution and registration with State Pharmacy council. Merely because Intermediate Examination is the minimum qualification prescribed for admission in Diploma in Pharmacy Course, it cannot be ipso facto presumed that Intermediate Examination is also one of the prescribed qualifications under 1980 Rules. Thus, on the own showing of the Rules, said criteria cannot be pressed into service vis-a-vis the post of Pharmacist, the provisions as contained under sub-rule (3) of rule 5 of the Uttar Pradesh Procedure for Direct Recruitment of Group "C" Posts (Outside the Purview of Public Service Commission) Rules, 2002 and the Uttar Pradesh Procedure for Direct Recruitment of Group "C" Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003, are not at all applicable as far as selection and appointment of Pharmacists are concerned unless and until necessary amendment is made in the Uttar Pradesh Procedure for Direct Recruitment of Group "C" Posts (Outside the Purview of Public Service Commission) U.P. Procedure for Direct Recruitment of Group "C" Posts (Outside the Purview of Public Service Commission) Rules, 2002 and the Uttar Pradesh Procedure for Direct Recruitment of Group "C" Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003 making arrangement for providing of marks, as one in hand. Entire scheme of things clearly show that sub-rule (4) of rule 5 provides that after the results of the evaluation under clauses (a), (b), (c) and (d) of sub-rule (3) have been received and tabulated, the Selection Committee shall, having regard to the provisions of reservation referred to in rule 4, hold an interview. Evaluation under clause (a) of sub-rule (3) is not at all feasible in the selection in hand, then as far as sub-rule (4) of rule 5 is concerned, same also cannot be pressed into service, inasmuch as said provision can be invoked only after the results of the evaluation under clauses (a), (b), (c) and (d) of sub-rule (3) have been received and tabulated. Undisputedly evaluation under clause (a) of sub-rule (3) is not at all feasible, as qua academic qualification prescribed for under 1980 Rules, qua the same no criteria has been provided for.

Consequently, inevitable conclusion is that unless and until sub-rule (3) of rule 5 of Uttar Pradesh Procedure for Direct Recruitment of Group "C" Posts (Outside the Purview of Public Service Commission) Rules, 2002 and the Uttar Pradesh Procedure for Direct Recruitment of Group "C" Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003 is amended, same cannot be pressed into service in reference to clause (a) of sub-rule (3) of rule 5 vis-a-vis the post of Pharmacist under 1980 Rules. "

12. The Writ Court vide judgment dated 23.05.2008 directed the State to hold the selection strictly in accordance with the provisions as envisaged under Rule 15(2) of the Rules of 1980, which says that the Selection Committee should prepare the list of candidates in order of merit on the basis of marks obtained by them in diploma examination. The writ Court also directed to hold the selection after constituting the Selection Committee in terms of Rules of 2002. The relevant portion of the judgment dated 23.05.2008 on reproduction reads as under:-

"Thus, Uttar Pradesh Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) Rules, 2002 and the Uttar Pradesh Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003, do not envisage any written examination. Once written is not envisaged, 50 marks for interview cannot be said to be arbitrary fixation of marks, as has been held by Hon'ble Apex Court in the case of Andhra Pradesh State Financial Corporation v. C.M. Ashok Raju and others reported in J.T. 1994 (5) SC 481. Consequently, said Rules are intra vires.

Consequently, in the facts and circumstances of the present case, all the writ petitions are disposed of with the direction that Director General, Medical and Health U.P. Lucknow is competent to issue advertisement and constitute Selection Committee in terms of rule 6 of the Uttar Pradesh Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) Rules, 2002 and the Uttar Pradesh Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003, but until and unless amendment is made in clause (a) of sub-rule (3) of rule 5 thereof, selection cannot be undertaken by computing the marks as per procedure prescribed therein, rather selection has to take place as per provisions as contained under Rule 15 (2) of the U.P. Pharmacists Service Rules, 1980, on the basis of the marks obtained in Pharmacy Diploma Examination, irrespective of the year in which candidate has appeared in Diploma Examination."

13. Being dissatisfied by the judgment of writ Court dated 23.05.2008, several Special Appeal(s) under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 were filed, leading of which was **Special Appeal No. 377 of 2008 (Prem Chandra and others vs. State of U.P. and others)**. These appeals were decided by the Division Bench of this Court vide judgment dated 04.05.2009. The Division Bench of this Court, after considering the observations made by the writ Court that the Rules of 2002 as amended in the year 2003 would not be applicable in the selection process as also past practice in the department for

holding selection/recruitment, disposed of all the appeals. The relevant portion of the judgment dated 04.05.2009 on reproduction reads as under:-

"It has been submitted by the counsel for the appellants as well as learned counsel for the State that few hundred diploma holders, who belong to different batches right from the year 1992 to 2002 are in queue seeking appointment and they have been denied appointment earlier on the ground that diploma holders belonging to prior batches are still to be appointed, and the diploma holders of prior batches have to be accommodated first, as per the policy and process of selection, which was prevalent in the department and their merit will not allow them to be appointed in the presence of the diploma holders of earlier batches (years). But today, when they became entitled for being appointed on the same very principle, i.e. having obtained diploma, prior in time than the Pharmacists of subsequent batches, they are again being denied appointment on the ground that the selection has to be made strictly on merit, irrespective of the batch in accordance with the Rules of 2002, read with Rules of 2003 as well as 1980 Rules.

The appellants though, under the rules were entitled to be appointed on the basis of their merit, even in the presence of diploma holders of prior batch of lower merit, but were denied consideration for appointment because of the procedure adopted by the State Government in making the appointments, with the result, persons of comparatively lower merit were appointed and are in service, whereas the appellants stand ousted even from the zone of consideration.

We are informed that about 300 diploma holders falling in the same category are before this Court who have been fighting for their cause and, therefore, we feel that the directives issued in these appeals be confined only to those persons who are vigilant and have approached this Court and those who have succumbed to their ouster, would not get the benefit of this order.

We may also clarify that as per the statistics given by the appellants' counsel, there were about 800 writ petitioners but after the decision of the learned Single Judge, only about 300 persons are before this Court and rest of them left themselves to their fate. Such persons cannot be entitled to the benefit of this order.

Rule 15 (2) whether can be interpreted in two ways or not is not relevant for the present controversy as the interpretation given by the State Government makes it clear that under the impression that the Rules so provide, all selections have been made till date and, therefore, the appellants who are before this court are also entitled to be considered in the same manner in which the cases of other similarly situated persons have been considered. Any other order passed by this court would not only defeat their right of appointment for no fault of theirs, but would also deprive them of their right of consideration for appointment by their total exclusion from the zone of consideration, by interpreting the rule, on both the occasions, against their interest.

A peculiar and a piquant situation has arisen in the instant case, where it is not the case, that an aspirant of the higher post in service on becoming eligible for promotion or a person seeking direct appointment on the date when he is to be considered for such a promotion or appointment, seeks to interpret the rule of recruitment in

a particular manner, looking to the past practice, to his advantage, but here is a case, where the appellants were excluded from consideration of their appointment at the relevant time earlier, by interpreting the rule to their disadvantage, and were made to believe that likewise their candidature shall be considered later on, for which various circulars and instructions were also issued by the State Government, but when their turn came for getting employment, they are again being put out of consideration, by interpreting the rule in a different manner.

Injustice thus, caused to them, in the hands of the State Government, therefore, requires to be corrected.

We also take notice of the fact that under the present advertisement, 766 vacancies have been notified, therefore, the present appellants, who are much less in number, can also be considered for appointment, leaving sizeable vacancies for the rest of the candidates.

We, therefore, dispose of these special appeals with the direction that the appellants' cases shall be considered in accordance with the pre-existing practice by considering their appointment on the basis of their merit taking their batches into consideration as was being done earlier but this process would be available only for the appellants and they would be accommodated if they are otherwise found eligible and the remaining vacancies would be filled in by following Rule 15 (2) strictly as directed by the learned Single Judge.

At this juncture, Dr. L.P. Misra placed before the Court U.P. Lok Seva (Bharti Ke Liye Aayu Seema Ka Shithilikaran) Niyamawali, 1992, in support of his submission that the appellants are entitled to be given the age relaxation.

We without entering into this question in detail, do observe that the age relaxation be given to the appellants as per rules, if they have crossed the age limit for the reason that right from the year 1998, no selection has been made and in certain cases, age relaxation has been granted. The selection process be completed within three months from the date of receipt of a certified copy of this order.

All the special appeals are disposed of accordingly."

14. The judgment dated 04.05.2009 was assailed before the Hon'ble Apex Court in a bunch of Special Leave to Appeals filed by the State of U.P., leading of which was **Special Leave to Appeals (C) No. 20558 of 2009 (State of U.P. and another vs. Santosh Kumar Mishra and another)**. These appeals were dismissed vide judgment dated 03.08.2010 **reported in (2010) 9 SCC 52**. The relevant portion of the judgment and order dated 03.08.2010 on reproduction reads as under:-

"39. We have carefully considered the submissions made on behalf of the respective parties, having particular regard to the fact that a practice which had been consistently followed and had deprived some of the diploma-holders in Pharmacy earlier, is now being discarded against them to deprive them of an opportunity of employment. Although, an attempt has been made by Ms Shobha Dikshit to justify

the action of the State authorities, in the face of apparent injustice caused to the private respondents in these special leave petitions, we are unable to accept her contentions.

40. In our view, the learned Single Judge while deciding the various writ petitions filed by the private respondents herein and allowing the benefit of relaxation of age, erred in directing that the selections of even the said respondents were to be made strictly on the criteria of merit, irrespective of the batch in which the incumbents had obtained their diplomas in Pharmacy. The said error was rightly corrected by the Division Bench in the special appeals, which had been filed, which is reflected in the extract of the impugned judgment set out hereinbefore. The Division Bench quite rightly held that the injustice caused to the private respondents on account of the interpretation of the rule to their disadvantage at a subsequent stage by the State Government, required to be corrected.

41. It is on account of a deliberate decision taken by the State Government that the private respondents were left out of the zone of consideration for appointment as Pharmacists in order to accommodate those who had obtained their diplomas earlier. The decision taken by the State Government at that time to accommodate the diploma-holders in batches against their respective years can no doubt be discontinued at a later stage, but not to the disadvantage of those who had been deprived of an opportunity of being appointed by virtue of the same Rules. In our view, the same decision which was taken to deprive the private respondents from being appointed, could not now be discarded, once again to their disadvantage to prevent them from being appointed, introducing the concept of merit selection at a later stage. The same may be introduced after the private respondents and those similarly situated persons have been accommodated.

42. The various decisions cited by Ms Dikshit are of little help to the case of the petitioners. The facts in *Suraj Parkash Gupta* [(2000) 7 SCC 561 : 2000 SCC (L&S) 977] bear no comparison to the facts at issue in these special leave petitions. There can be no divergence of opinion with regard to the principles of law laid down in the said decision, but the same was referred to in the facts of that case, where it was held that in the absence of any provision for rotation in the Rules, the same could not be claimed on the basis of the past practice.

43. As indicated hereinbefore, in this case a certain set of rules were applied in a manner which deprived the private respondents of an opportunity to be considered for appointment as Pharmacists, despite having acquired the requisite qualification and being deprived of appointment once again by discarding the same rules to their detriment. In our view, the decision in *N. Suresh Nathan* [1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 : (1992) 19 ATC 928] is more apposite to the facts of this case. Of course, this is not a case for applying the “doctrine of past practice” alone, in addition, this is a case which involves the deprivation of certain candidates by application of the procedure differently at two different points of time.

44. We, therefore, are of the view that in the facts of this case no interference is called for with the decision of the Division Bench of the High Court impugned in these SLPs. The 12 special leave petitions filed by the State of U.P., being SLPs Nos. 20558, 20769, 20774, 20785, 20901, 20908, 22655, 22678, 22732, 22749, 22851, 22955 of

2009, along with SLPs (C) Nos. 25647 and 25649 of 2009, filed by Vaibhav Kumar Singh and others and Brijesh Kumar Sharma and others, whose cases are similar to that of the State of U.P., are dismissed, but without any order as to costs.

45. Special Leave Petitions (C) Nos. 22114 of 2009 and 32977 of 2009 filed by Ajay Singh and others and Shravan Kumar Pandey and others, stand allowed. The petitioners therein shall be entitled to the same benefits as those diploma-holders governed by the 1980 Rules, having obtained their diplomas in Pharmacy prior to 1998. There will be no order as to costs in these SLPs also."

15. As appears from the record, the State of U.P. was not following the directions issued by the Division Bench of this Court vide judgment and order dated 04.05.2009 affirmed by the Hon'ble Apex Court vide judgment dated 03.08.2010, as such, the contempt petitions were filed before the Hon'ble Apex Court, in which, orders were passed on different dates. Thereafter, in **Contempt Petition (C) No. 269/2012 [Donesh Rajput v. Pradeep Kumar Shukla]**, I.A. Nos. 4-5/2013 and I.A. Nos. 5-6/2014 were preferred, which were finally disposed of by the Hon'ble Apex Court vide judgment dated 23.09.2014, reported in **(2015) 1 SCC 628**.

16. It reflects from the judgment dated 23.09.2014 that while passing the same, the Hon'ble Apex Court considered all the aspects of the case including the report submitted by the State of U.P. regarding filling of vacancies in terms of the judgment of the Division Bench of this Court dated 04.05.2009. Further, the Hon'ble Apex Court also considered the terms and conditions of Advertisement and relevant Rules of 1980 and thereafter, observed as under:-

"26. When this Court held that the benefit should be extended to similarly placed persons who were to be accommodated, what it really meant to state was that those who responded to the advertisement made on 12-11-2007, by which applications were called for filling up the post of 765 vacancies of Pharmacists, were to be considered only by following the procedure prescribed under Rules 14 and 15 of the 1980 Rules. Certainly, without following the relevant Rules, namely, Rules 14 and 15 and ignoring the requirements contained in the advertisement dated 12-11-2007, no candidate can be considered for being appointed to the post of Pharmacist. In other words, for a person to claim himself to be similarly placed i.e. on a par with the writ petitioners, namely, the appellants before the Division Bench of the High Court and the private respondents in the special leave petition in *Santosh Kumar Mishra [State of U.P. v. Santosh Kumar Mishra, (2010) 9 SCC 52 : (2010) 2 SCC (L&S) 723]*, primarily they should have applied in response to the advertisement dated 12-11-2007. If they had not responded to the said advertisement by filing the appropriate applications, they cannot subsequently be heard to say that

they were all similarly placed and that therefore, the State of Uttar Pradesh should consider them as similarly placed candidates like that of the private respondents in the special leave petition, for being considered for the post of Pharmacists, merely because they belonged to some of the batches of 1998 to 2002.

27. Such a claim made on behalf of any of the candidates, much less the 360 candidates who staked their claim before the Principal Secretary, Law cannot, therefore, be countenanced. The Principal Secretary, Law, having now reported in his report dated 27-9-2013 that none of the 360 candidates were the applicants, there is no scope for treating them as similarly placed persons as held in *Santosh Kumar Mishra* [State of U.P. v. Santosh Kumar Mishra, (2010) 9 SCC 52 : (2010) 2 SCC (L&S) 723]. Consequently, their claim now raised before us cannot also be acceded to. We, therefore, make it clear that neither the above 360 persons referred to in the report of Principal Secretary, Law dated 27-9-2013 or any other candidate who did not apply in response to the advertisement dated 12-11-2007 claiming himself to be a member of the batch 1998 to 2002, can seek for consideration of his claim on a par with the private respondents in Santosh Kumar Mishra [State of U.P. v. Santosh Kumar Mishra, (2010) 9 SCC 52 : (2010) 2 SCC (L&S) 723] in order to consider his claim for conferring the benefit granted in the said judgment.

28. Once we steer clear of the said position in IAs Nos. 1-2 of 2014 in Contempt Petition (C) No. 115 of 2014, the only other aspect to be considered is as to whether there is any case made out for contempt as alleged in Contempt Petition (C) No. 115 of 2014. The said contempt petition has been filed by some of the candidates of the year 2002. It is alleged that in spite of the judgment of this Court in *Santosh Kumar Mishra* [State of U.P. v. Santosh Kumar Mishra, (2010) 9 SCC 52 : (2010) 2 SCC (L&S) 723] , as well as subsequent orders passed in various contempt petitions including the order dated 29-4-2013 [*Vibha Singh v. Rama Singh*, Contempt Petition (C) No. 73 of 2013, order dated 29-4-2013 (SC)] , the respondent State has failed to fill up the vacancies and, therefore, they are liable to be proceeded against for contempt of judgment of this Court dated 3-8-2010 passed in *State of U.P. v. Santosh Kumar Mishra* [State of U.P. v. Santosh Kumar Mishra, (2010) 9 SCC 52 : (2010) 2 SCC (L&S) 723] .

29. In the light of our order passed in IA No. 5 of 2014 in Contempt Petition (C) No. 269 of 2012 and IAs Nos. 1-2 of 2014 in Contempt Petition (C) No. 115 of 2014, we are convinced that for the present, the allegation of contempt made in Contempt Petition (C) No. 115 of 2014 cannot survive. Therefore, the said contempt petition is closed in the light of the order passed in IAs Nos. 1-2 of 2014 and our directions in IA No. 5 of 2014.

30. The State of Uttar Pradesh is directed to conclude the process of ascertainment of vacancies and fill up the remaining vacancies in accordance with the judgment of this Court dated 3-8-2010 in Santosh Kumar Mishra [State of U.P. v. Santosh Kumar Mishra, (2010) 9 SCC 52 : (2010) 2 SCC (L&S) 723] and in accordance with the clarification now made in this judgment. In the light of the present orders now passed, we do not find any scope for passing any orders in the rest of the matters mentioned in this Court's order dated 14-2-2014 [*Donesh Rajpoot v. Pradeep Kumar Shukla*, IA No. 4 in Contempt Petition (C)

No. 269 of 2012, order dated 14-2-2014 (SC)] which are disposed of. Accordingly the IAs are also disposed of. No costs."

17. From a careful perusal of the judgments, referred above, particularly the judgment dated 23.09.2014 passed by the Hon'ble Apex Court, it appears that Hon'ble Apex Court has set at rest the controversy and according to the same, a candidate having diploma in Pharmacy from a recognized institution can claim the benefit of past practice in the department i.e. batchwise-merit for recruitment on the Post of Pharmacist (Allopathy) or in other words, can claim benefit of judgment of the Hon'ble Apex Court passed in the case of State of U.P. vs. Santosh Kumar Mishra reported in (2010) 9 SCC 52, if the candidate fulfills following two conditions:-

- (i) should be a member of batch 1998 to 2002 and;
- (ii) should have applied against the posts advertised vide Advertisement dated 12.11.2007.

18. The facts, related to Question No.(a), indicated in table below are relevant for coming to the conclusion on Question No.(a).

Sl. No	Writ Number	Year of passing diploma in pharmacy	
1.	Writ-A No. 974/2015	2003 to 2007	In this regard, averments have been made in para 12 of the petition.
2.	Writ-A No. 7472/2013	passed diploma in Pharmacy in the year 1999 and Board of Technical Education Delhi issued a Diploma Certificate in Pharmacy on 01.01.2003.	In this regard, averments have been made in para 6 and a perusal of Annexure No. 7 referred in para 7 of the petition reflects that certificate by Board of Technical Education Delhi was issued on 01.01.2003. In the petition, the petitioner has not indicated the facts pertaining to submitting the application pursuant to Advertisement dated 12.11.2007.
3.	Writ-A No. 6307/2014 (decided)	1992 to 2002	As per Annexure No. 2, the petitioners of this petition got themselves registered with U.P. Pharmacy Council between 1994 to 2003 after passing diploma in Pharmacy between 1992 to 2002, however, to substantiate that the petitioners applied pursuant to Advertisement dated 12.11.2007, no document has been placed on record and the averments made in this regard in para 35 of the petition are completely vague.
4.	Writ-A No. 7052/2014	1994 to 2002	As per Annexure No. 2, the petitioners of this petition got themselves registered with U.P. Pharmacy Council between 1994 to 2003 after passing diploma in Pharmacy between 1994 to 2002, however, to substantiate that the petitioners applied pursuant to Advertisement dated 12.11.2007, no document has been placed on record and the averments made in this regard in para 38 of the petition are completely vague.
5.	Writ-A No. 7176/2014 (decided)	2002	In para 4 of the petition, it has been indicated that the petitioners of this petition completed their diploma course in Pharmacy in the year 2002 and got themselves registered with U.P. Pharmacy Council, however, in the petition, it has not

			been indicated that all the petitioners applied pursuant to Advertisement dated 12.11.2007.
6.	Writ-A No. 7223/2014	1994 to 2002	As per Annexure No. 2, the petitioners of this petition got themselves registered with U.P. Pharmacy Council between 1997 to 2003 after passing diploma in Pharmacy between 1994 to 2002, however, to substantiate that the petitioners applied pursuant to Advertisement dated 12.11.2007, no document has been placed on record and the averments made in this regard in para 38 of the petition are completely vague.
7.	Writ-A No. 21/2015	Petitioner No. 1-1999 Petitioner No. 2-2002	In para 22 of the petition, it has been indicated that the petitioners of this petition completed their diploma course in Pharmacy in the year 1999 and 2002 and got themselves registered with U.P. Pharmacy Council in the year 1999 and 2002, however, in the petition, it has not been indicated that the petitioners applied pursuant to Advertisement dated 12.11.2007.
8.	Writ-A No. 59/2015	2000-2002	As per Annexure No. 2, the petitioners of this petition passed diploma in Pharmacy between 2000-2002, however, to substantiate that the petitioners applied pursuant to Advertisement dated 12.11.2007, no document has been placed on record and the averments made in this regard in para 44 of the petition are completely vague.
9.	Writ-A No. 965/2015	2003 to 2007	In this regard, averments have been made in para 12 of the petition.
10.	Writ-A No. 2045/2015	2003 to 2007	In this regard, averments have been made in para 12 of the petition.
11.	Writ-A No. 5896/2015	1996 to 2002	As per Annexure No. 2, the petitioners of this petition passed diploma in Pharmacy between 1996 to 2002, however, to substantiate that the petitioners applied pursuant to Advertisement dated 12.11.2007, no document has been placed on record and the averments made in this regard in para 35 of the petition are completely vague.
12.	Writ-A No. 6495/2015	1998 to 2002	As per averments made in this petition, the petitioners got themselves registered with U.P. Pharmacy Council between 2000 to 2013 after passing diploma in Pharmacy between 1998 to 2002, however, to substantiate that the petitioners applied pursuant to Advertisement dated 12.11.2007, no document has been placed on record and the averments made in this regard in para 15 of the petition are completely vague.
13.	Writ-A No. 6711/2015	before 2002	As per averments made in para 34 of this petition, the petitioner of this petition obtained diploma in Pharmacy prior to 2002, however, to substantiate same, no document has been placed on record and further it is also not clear from the record that the petitioner applied pursuant to Advertisement dated 12.11.2007.
14.	Writ-A No. 7060/2015	2002	As per averments made in para 34 of this petition, the petitioners of this petition obtained diploma in Pharmacy in the year 2002, however, to substantiate same, no document has been placed on record and further it is also not clear from the record that the petitioners applied pursuant to Advertisement dated 12.11.2007.
15.	Writ-A No. 2951/2016	2003 to 2007	In this regard, averment has been made in para 12 of the petition.
16.	Writ-A No. 12710/2016	2002	As per averments made in para 30 & 32 of this petition, the petitioner of this petition obtained diploma in Pharmacy in the year 2002 and applied pursuant to Advertisement dated 12.11.2007, however, to substantiate same, no document has been placed on record.
17.	Writ-A	1999 to 2002	As per Annexure No. 1, the petitioners of this petition got

	No. 15957/201 6		themselves registered with U.P. Pharmacy Council between 1999 to 2003 after passing diploma in Pharmacy between 1999 to 2002, however, in para 28 and 32 of the petition, vague averments have been made regarding submitting applications forms by the petitioners pursuant to Advertisement dated 12.11.2007, and to substantiate the same, no document has been placed on record.
18.	Writ-A No. 21456/201 6	before 2002	As per averments made in para 35 of this petition, the petitioners of this petition obtained diploma in Pharmacy prior to 2002, however, to substantiate same, no document has been placed on record and further it is also not clear from the record that the petitioners applied pursuant to Advertisement dated 12.11.2007.
19.	Writ-A No. 21927/201 6	2002	As per averments made in this petition, the petitioners of this petition completed their diploma in Pharmacy in the year 2002 but there is no averments in the petition based upon which it can be deduced that they applied pursuant to Advertisement dated 12.11.2007.
20.	Writ-A No. 22956/201 6	2003 to 2007	In this regard, averments have been made in para 12 of the petition.
21.	Writ-A No. 29215/201 6	before 2002	As per averments made in para 41 of this petition, the petitioner of this petition obtained diploma in Pharmacy prior to 2002 but from para 6 & Annexure No. 2, the year of passing diploma is not clear and it is also not clear from the record that whether the petitioner applied pursuant to Advertisement dated 12.11.2007 or not.
22.	Writ-A No. 2003/2017	2001 to 2002	As per Annexure No. 1, the petitioners of this petition passed diploma in Pharmacy between 2001 to 2002, however, to substantiate that the petitioners applied pursuant to Advertisement dated 12.11.2007, no document has been placed on record and the averments made in this regard in para 31 of the petition are completely vague.
23.	Writ-A No. 1752/2018	2003 to 2007	In this regard, averments have been made in para 4 of the petition.
24.	Writ-A No. 2052/2018	2002 or 2003	In this regard, averments have been made in para 4 of the petition but in the petition has not been stated that petitioners applied pursuant to Advertisement dated 12.11.2007.
25.	Writ-A No. 7159/2018	before 2002	As per averments made in para 33 of this petition, the petitioners of this petition obtained diploma in Pharmacy prior to 2002, however, to substantiate the same, no document has been placed on record and further it is also not clear from the record that the petitioners applied pursuant to Advertisement dated 12.11.2007.
26.	Writ-A No. 2978/2019	1992	From the averments made in this petition, it is not clear that the petitioner of this petition passed diploma course in Pharmacy and further it is also not clear from the record that whether he applied pursuant to Advertisement dated 12.11.2007 or not. The petition is completely misconceived on this aspect.
27.	Writ-A No. 35841/201 9	-	In para 3 of this petition, only this much has been indicated that petitioner Nos. 1 to 45 have qualification diploma in Pharmacy (D. Pharma) and are registered Pharmacists and it is also not clear from the averments made in this petition that whether the petitioners applied pursuant to Advertisement dated 12.11.2007 or not.
28.	Writ-A No. 36328/201 9	-	In para 3 of this petition, only this much has been indicated that petitioner Nos. 1 to 52 have qualification diploma in Pharmacy (D. Pharma) and are registered Pharmacists and it is also not clear from the averments made in this petition that whether the

			petitioners applied pursuant to Advertisement dated 12.11.2007 or not.
29.	Writ-A No. 7730/2020	2003 to 2006	In this regard, averment has been made in para 12 of the petition.
30.	Writ-A No. 11971/2020	2003 to 2007	In this regard, averment has been made in para 8 of the petition.
31.	Writ-A No. 12241/2020	2004 to 2007	As per Annexure No. 3, the petitioners of this petition got themselves registered with U.P. Pharmacy Council between 2004 to 2007 after passing diploma in Pharmacy between 2004 to 2007, to substantiate that the petitioners applied pursuant to Advertisement dated 12.11.2007, no document has been placed on record.
32.	Writ-A No. 17024/2020	Petitioner No. 1-2003 Petitioner No. 2-2004 Petitioner No. 3-2003	Petitioner Nos. 1, 2 and 3 completed their diploma course in Pharmacy in the year 2003, 2004 and 2003, as appears from averments made in this petition as also from the documents annexed as Annexure Nos. 1, 2 and 3 respectively to this petition.
33.	Writ-A No. 19906/2020	2003 and 2004	In this regard, averment has been made in para 7 of the petition.
34.	Writ-A No. 20709/2020	2003 and 2004	In this regard, averment has been made in para 7 of the petition.
35.	Writ-A No. 6808/2021	2003 to 2007	In this regard, averment has been made in para 4 of the petition but there is no averments in the petition based upon which it can be deduced that petitioners applied pursuant to Advertisement dated 12.11.2007.
36.	Writ-A No. 15506/2021	2003 to 2007	In this regard, averment has been made in para 4 of the petition but there is no averments in the petition based upon which it can be deduced that petitioners applied pursuant to Advertisement dated 12.11.2007.
37.	Writ-A No. 106/2022	upto 2002	In para 23 of this petition, it has been indicated that the petitioners of this petition obtained diploma in Pharmacy upto the year 2002, however, to substantiate the same, no document has been placed on record and further it is also not clear from the record that the petitioners applied pursuant to Advertisement dated 12.11.2007 rather in para 23, it has specifically been indicated that the petitioners have not applied pursuant Advertisement dated 12.11.2007.
38.	Writ-A No. 2187/2022	2003 to 2007	In this regard, averment has been made in para 12 of the petition but there is no averments in the petition based upon which it can be deduced that petitioners applied pursuant to Advertisement dated 12.11.2007.

19. It is trite law that:-

- (i) Bald or vague or general assertions/allegations can never serve the purpose.
- (ii) The pleadings should be very specific and precise.
- (iii) In the petition material particulars should be indicated.
- (iv) The burden of proof is on the party which makes the factual averment.

(v) In absence of pleadings, evidence, if any, cannot be considered.

(vi) The party should not be permitted to travel beyond its pleadings and;

(vii) The decision of the case cannot be based on the grounds outside the pleadings.

20. Based upon the facts aforesaid as also the principles related to pleading and proof, this Court is of the view that all the petitioners are not fulfilling both the two mandatory conditions, indicated above, and as such, the petitioners of this bunch of petitions are neither entitled to benefit of batchwise-merit, a principle earlier adopted by the department for recruitment on the posts of Pharmacist, nor they are entitled to get the benefit of the judgment of the Hon'ble Apex Court passed in the case of **Santosh Kumar Mishra** (Supra). Question No.(a), framed above, is answered accordingly.

21. It would not be out of place to note that Rule 15 of the Rules of 1980 does not provide batchwise-merit. On the other hand, it provides that the Selection Committee should prepare a merit list on the basis of marks obtained in the diploma course. Meaning thereby, irrespective of batch, the merit list should be prepared of all the applicants/candidates after considering the marks obtained in diploma course.

22. Answer to question No. (b) is also in negative. It is for the following reasons:

(i) The Hon'ble Apex Court in the judgment dated 23.02.2014 has observed that "The State of Uttar Pradesh is directed to conclude the process of ascertainment of vacancies and fill up the remaining vacancies in accordance with the judgment of this Court dated 3-8-2010 in *Santosh Kumar Mishra* [State of U.P. v. *Santosh Kumar Mishra*, (2010) 9 SCC 52 : (2010) 2 SCC (L&S) 723] and in accordance with the clarification now made in this judgment."

(ii) And it appears that according to aforesaid directions of the Hon'ble Apex Court, the appointments were made by the State Government and being so the said appointments made in compliance of the direction of the Hon'ble Apex Court are not liable to be interfered at the instance the petitioners of the petitions i.e. Writ- A No.59 of 2015; Writ- A No.6495 of 2015 and Writ- A No.2978 of 2019.

23. Now coming to Question No. (c). For coming to conclusion on Question No. (c), upon due consideration, this Court is of the view that following provisions are not required to be dealt with, though based upon the same submissions were made.

- (i) Uttar Pradesh Procedure for Direct Recruitment for Group "C" posts (Outside the purview of the Uttar Pradesh Public Service Commission) Rules, 2001.
- (ii) Uttar Pradesh Procedure for Direct Recruitment for Group 'C' Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) (First Amendment) Rules, 2001.
- (iii) U.P. Procedure for Direct Recruitment to Group 'C' Posts of Technical Nature or for Specific Qualifications are prescribed (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules 2001.
- (iv) Uttar Pradesh Procedure for Direct Recruitment for Group 'C' Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) (Second Amendment) Rules, 2001.
- (v) Uttar Pradesh Procedure for Direct Recruitment for Group 'C' Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 2002.
- (vi) Uttar Pradesh Procedure for Direct Recruitment for Group 'C' Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) (First Amendment) Rules, 2003.

24. The provisions which are required to be taken note of are as under:-

- (i) U.P. Subordinate Service Selection Commission Act, 2014 (in short "Act of 2014").
- (ii) Uttar Pradesh Subordinate Services Selection Commission (Procedure and Conduct of Business) Regulations, 2015 (in short "Regulations of 2015").
- (iii) U.P. Direct Recruitment to Group 'C' Posts (Mode and Procedure) Rules, 2015 (in short "Rules of 2015").
- (iv) Uttar Pradesh Direct Recruitment to Junior Level Posts (Discontinuation of Interview) Rules, 2017 (in short "Rules of 2017").

25. The Act of 2014 came into force on 20.06.2014. This Act was enacted to provide for the establishment of Subordinate Service Selection Commission in the State of U.P. for certain categories of Subordinate Services and for the matter connected therewith or incidental thereto.

26. The statement of Objects and Reasons of the Act of 2014 being relevant on reproduction reads as under:-

"Statement of Objects and Reasons.--It is necessary to select able, worthy and hardworking personnel for appointment to certain posts in administrative departments of the State. It is also necessary to ensure the quality of selection, its impartiality and transparency in their selection. Though the institution of Uttar Pradesh Public Service Commission is present at Constitutional Level but owing to increased pressure on its working, difficulty is being realised regarding selection on Group 'C' posts. In near past, selection on Group 'C' posts was being done under the direct supervision of the State Government but Head of Departments has to devote much time for the above selections which is severely affecting the Government works as well as the works of public interest. Due to all these reasons, it is quite necessary to establish an independent Subordinate Service Selection Commission consisting of the Chairperson and Members similar to that of the Uttar Pradesh Public Service Commission for timely selection on certain Group 'C' posts. It has therefore, been decided to make a law to provide for the establishment of a Commission by the name of the Uttar Pradesh Subordinate Services Selection Commission for the Selection on certain Group 'C' posts in the State.

Since the State Legislature was not in session and immediate Legislative action was necessary to implement the aforesaid decision, the Uttar Pradesh Subordinate Services Selection Commission Ordinance, 2014 (U.P. Ordinance No. 5 of 2014) was promulgated by the Governor on June 2, 2014. The provisions of the said Ordinance could not be introduced in the Legislature for unavoidable reasons and the said Ordinance was going to lapse after July 30, 2014, the Uttar Pradesh Subordinate Services Selection Commission (Second) Ordinance, 2014 (U.P. Ordinance No. 7 of 2014) was promulgated by the Governor on July 28, 2014.

This Bill is introduced to replace the aforesaid Ordinance No. 7 of 2014."

27. Section 2 of the Act of 2014 indicates applicability of the said Act, which on reproduction reads as under:-

"2. Applicability -The provisions of this Act shall apply in relation to direct recruitment to all Group 'C' posts below Group 'B' posts including posts in the Civil Secretariat and also to all Group 'C' posts in a Board or a Corporation or any other statutory body established by or controlled by the State Government:

Provided that the State Government may, by notification, withdraw from or add any post in the purview of the Commission."

28. Exception carved out under Section 3 of the Act of 2014 being relevant on reproduction reads as under:-

"3. Exception - Nothing in this Act shall apply to recruitment to any post--

- (a) in the Secretariat of each House of the State Legislature;
- (b) under the High Court or a Court subordinate thereto;
- (c) under the State Public Service Commission;
- (d) under the Lokayukta appointed under the Uttar Pradesh Lokayukta and Up-Lokayuktas Act, 1975;
- (e) governed by the Police Act, 1861."

29. In exercise of power under Section 22 of the Act of 2014, the State Government may, by notification, make rules for carrying out the purposes of the Act. Section 16 and Section 23 of the Act of 2014 indicate that the Commission with the previous approval of the State Government, make or amend regulations relating to the discharge of its functions under the Act including charging of fees for holding examinations or interviews or both for making selection under the Act. Sub-Section (2) of Section 23 of the Act of 2014 indicates that the regulations made under sub-section (1) shall not be inconsistent with the provisions of the Act or the rules made thereunder.

30. Under the Act of 2014, the Commission framed Regulations of 2015, which are in force since 12.02.2015 (date of publication in the Gazette). The procedure for selection of candidates is prescribed under Regulation 6 of the Regulations of 2015, which reads as under:-

"6. Procedure for selection of candidates —(1) The Commission shall make selection of candidates by competitive examination or by interview or by both through objective or other form of test in accordance with the provisions of the relevant service rules/regulations.

(2) The Commission may with the prior approval of the Government, hold a combined competitive examination for a group of posts and may also take a preliminary test or examination for screening of candidates.

(3) The Commission shall advertise the vacancies through the Print media or Electronic media or both and invite applications from eligible candidates. Manner of inviting application forms includes online submission of application forms through Internet as prescribed by the Commission. Applications received in response to advertisement shall be scrutinized by the office in the manner determined from time to time.

(4) In making selection by competitive examination or interview including preliminary examination or test, the Commission may take recourse to modern testing aids including the use of computers at one or more stages of selection viz, the stages of receipt and processing of applications, issue of call letters, evaluation of answer books, issue of interview letters and processing of results under the close supervision of one or more officers of the Commission to be nominated by the Chairperson.

(5) Notwithstanding anything to the contrary contained in, relevant Service Rules or Government orders regarding recruitment, the Commission may hold preliminary examination/screening test for finding out suitable candidates for admission to main examination or interview, as the case may be.

(6) Preliminary examination shall mean screening test to be conducted by the Commission with the purpose of finding out suitable candidates in required proportion as fixed by the Commission in each category, reserved and unreserved for admission to the main examination or interview, as the case may be.

(7) Preliminary examination shall be conducted in the manner prescribed in the Uttar Pradesh Direct Recruitment through Public Service Commission Preliminary Examination Rules, 1986 as amended from time to time, which is deemed to be adopted for the said purpose. The marks obtained by the candidates in the preliminary examination/screening test shall not be counted for determining final order of merit.

(8) The Commission shall fix the place, dates and time of examination which includes preliminary examination/screening test and main examination, as the case may be.

(9) The centers of examinations shall be fixed with prior approval of the Commission.

(10) All arrangements for such examinations shall be made by the Controller of Examination cum Joint Secretary in consultation with the Secretary and in accordance with such directions as may be issued by the Commission in that behalf."

31. On 11.05.2015 the Rules of 2015 were published. Rule 2 of the Rules of 2015 provides overriding effect. It says that "these rules shall have effect notwithstanding anything to the contrary contained in any other services rules made by the Governor under the proviso to Article 309 of the Constitution, or orders for the time being in force."

32. Rule 3 of the Rules of 2015 provides the applicability of the Rules of 2015. It says that "these rules shall apply to direct recruitment to Group 'C' posts under the rule making power of the Governor under the proviso to Article 309 of the Constitution, which are specified, by the Government, by notification, within the purview of the Commission, in relation to direct recruitment, under Section 2 of the Uttar Pradesh Subordinate Services Selection Commission Act, 2014 except such Group 'C' posts which are specified outside the purview of the Commission, by the Government, by notification, in relation to direct recruitment, under the proviso to Section 2 of the said Act."

33. Rule 5 of the Rules of 2015 says that "Direct recruitment to Group 'C' Posts, where the direct recruitment is only source of recruitment or, as the case may be, direct recruitment is one of the sources of recruitment, shall be made through the Commission". This provision is also mandatory in nature.

34. A conjoint reading of Rule 2 and 5 of the Rules of 2015 indicate that after the Act of 2014, the selection on Group 'C' Posts has to be made by the Commission and it would be appropriate to refer that the Commission is empowered to frame Regulations with the approval of State Government for conducting its business including the selection.

35. Exception provided under the Act of 2014 indicates that nothing in the Act shall apply to recruitment to any post (a) in the Secretariat of each House of the State Legislature; the High Court or a Court subordinate thereto; (b) under the State Public Service Commission; (c) under the Lokayukta appointed under the Uttar Pradesh/Lokayukta and Up-Lokayuktas Act, 1975 and (d) governed by the Police Act, 1861.

36. Thus, from the aforesaid, it is apparent that except the post indicated in Section 3 of the Act of 2014, detailed above, the Rules of 2015 would apply to all Group 'C' posts in State of U.P.

37. From the aforesaid, it can be deduced that the Rules of 2015 would apply on the post in issue i.e. Pharmacist (Allopathy), which undisputedly is a Group 'C' Post.

38. In the Rules of 2015, the procedure for direct recruitment is provided under Rule 8, which reads as under:-

"8. (1) The procedure for direct recruitment, the syllabus, marks of written examination/interview and the rules relating thereof shall be such as prescribed by the Commission from time to time with the approval of the Government.

(2) When, in accordance with the provisions of sub-rule (1) direct on the basis of written examination and interview, the following procedure shall be followed:-

(i) Application for permission to appear in the competitive examination shall be invited by the Commission in the form published in the advertisement issued by the Commission.

(ii) No candidate shall be admitted to the examination unless he holds a certificate of admission, issued by the Commission.

(iii) After the results of the written examination have been received and tabulated, the Commission shall having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and others under rule 6; summon for interview such number of candidates as, on the result of the written examination, have come up to the standard fixed by the Commission in this respect. The marks awarded to each candidate at the interview shall be added to the marks obtained by him in the written examination.

(iv) The Commission shall prepare a list of candidates in order of their proficiency, as disclosed by the aggregate of marks obtained by each candidate at the written examination and interview and recommend such number of candidates as they consider fit for appointment. If two or more candidates obtain equal marks in the aggregate, the name of the candidate obtaining higher marks in the written examination shall be placed higher in the list. If two or more candidates obtain equal marks in the written examination also, the name of the candidate senior in age shall be placed higher in the list. The Commission shall forward the list to the appointing authority.

(3) When, in accordance, with the provisions of sub-rule (1) direct recruitment is to be made on the basis of written examination only, the following procedure shall be followed:-

(i) Application for permission to appear in the competitive examination shall be invited by the Commission in the form published in the advertisement issued by the Commission.

(ii) No candidate shall be admitted to the examination unless he holds a certificate of admission, issued by the Commission.

(iii) After the results of the written examination have been received and tabulated, the Commission shall, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories under rule 6, prepare a list of candidates who have come up to the standard fixed by the Commission in this respect.

(iv) The Commission shall prepare a list of candidates in order of their proficiency as disclosed by the marks obtained by each candidate at the written examination and recommend such number of candidates as they consider fit for appointment. If two or more candidate obtain equal marks, the candidate senior in age shall be placed higher in the list. The Commission shall forward the list to the appointing authority.

(4) When, in accordance with the provisions of sub-rule (1) direct recruitment is to be made on the basis of interview only, the following procedure shall be followed:-

(i) Application for being considered for selection shall be called by the Commission in the form published in the advertisement issued by the Commission.

(ii) The Commission shall, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories in accordance with rule 6, call for interview such number of candidates, who fulfill the requisite qualifications, as they consider proper.

(iii) The Commission shall prepare a list of candidates in order of their proficiency as disclosed by the marks obtained by each candidate in the interview. If two or more candidates obtain equal marks, the candidate senior in age shall be placed higher in the list. The Commission shall forward the list to the appointing authority."

39. It is to be noted that After promulgation of the Rules of 2015, the State Government in exercise of power conferred by proviso to Article 309 of the

Constitution, framed the Rules of 2017, which came into force w.e.f. 31.08.2017, whereby, the State Government discontinued the provisions of interview prescribed in the selection procedure in the relevant service rules in making direct recruitment to Junior Level Posts [Group- 'B' (non-Gazetted), Group- 'C' and Group- 'D' Posts].

40. Rule 2 and Rule 4 of the Rules of 2017, being relevant, are extracted hereunder:-

"2. Overriding effect.-These rules shall have effect notwithstanding anything to the contrary contained in any other rules or orders.

4. Discontinuation of Interview in making direct recruitment to junior level posts.-The provisions of interview prescribed in the selection procedure in the relevant service rules in making direct recruitment to junior level posts shall stand discontinued, and upon such discontinuation—

(a) Where the procedure for direct recruitment to a junior level posts is prescribed on the basis of interview only, such selection shall be made on the basis of written examination only.

(b) Where separate marks are prescribed for written test and interview in the selection procedure, the marks for interview shall be included in the marks prescribed for written examination. In case there is no provision for written examination, the marks prescribed for interview shall be presumed as the marks prescribed for written examination.

(c) For selection to the posts where skill test or technical examination is required, the marks prescribed for such test/examination shall be only qualifying in nature and such marks shall not be counted in the over all selection procedure.

(d) If prior to commencement of these rules, the advertisement for selection to any junior level post has been made and the selection process is on going, such selection shall remain unaffected and shall be made in accordance with the advertisement issued in this behalf.

(e) If in special, circumstances, the Administrative Department of the Government finds a justification to prescribe the interview for selection to a particular junior level post, the Administrative Department will submit the appropriate proposal to the Personnel Department of the Government, which will take a well considered decision on such proposal."

41. Rule 2 of the Rules of 2017 provides overriding effect. According to this Rule, Rules of 2017 shall have effect notwithstanding anything to the contrary contained in any other rules or orders, meaning thereby, the interview provided in any other Rule for the purposes of selection on Group 'C' Posts would be discontinued w.e.f. the publication of Rules of 2017. In nutshell, for the purposes of selection on Group 'C' posts, no interview would be held after publication of the Rules of 2017.

42. At this stage, it would be appropriate to indicate that the Rules of 2015 and 2017 are general law and the Rules of 1980 is special law but taking note of overriding effect (non-obstante clause) provided under the Rules of 2015 and 2017 and considering the inconsistency on the issue of procedure for recruitment provided under the Rules of 1980 and the Rules of 2015 read with Rules of 2017, this Court is of the opinion that general law would prevail i.e. Rules of 2015 and Rules of 2017.

43. A non-obstante clause, has been construed as a legislative device to modify the ambit of the provision or law mentioned in the non-obstante clause or to override it in specified circumstances.

44. The meaning of the term ‘non obstante clause’ has been explained in Advanced Law Lexicon by P Ramanatha Aiyar as follows.

“Non obstante clause. A clause in a statute which overrides all provisions of the statute. It is usually worded:

“Notwithstanding anything in...”

Need not always have effect of cutting down clear terms of enactment.
Enacting part when clear can Control non-obstante clause.

A clause used in public and private instruments intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes.

Notwithstanding; an overriding clause.”

45. The nature and object of a non-obstante clause as an internal aid of construction was considered in *Union of India v. G.M. Kokil*, 1984 Supp. SCC 196, wherein, the Hon'ble Apex Court observed as under:—

“11....It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions....”

46. The import and effect of a non-obstante clause again came up for consideration in *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*, (1986) 4 SCC 447, wherein, the Hon'ble Apex Court observed that often a non-obstante clause is appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect. The observations in the judgment are as follows:—

“67. A clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract” is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict

an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum*, [[AIR 1964 SC 207](#), 215 : (1964) 4 SCR 280]”

47. In the case of *State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh*, (2005) SCC 129, the Hon'ble Apex Court while considering the meaning, object and effect of a non-obstante clause, observed as under:—

“45. A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions of the Act mentioned in the non obstante clause, the provision following it will have its full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non-obstante clause occurs. (See Principles of Statutory Interpretation, 9th Edn., by Justice G.P. Singh -- Chapter V, Synopsis IV at pp. 318 and 319.)

47. Normally the use of a phrase by the legislature in a statutory provision like “notwithstanding anything to the contrary contained in this Act” is equivalent to saying that the Act shall be no impediment to the measure (see Law Lexicon words “notwithstanding anything in this Act to the contrary”). Use of such expression is another way of saying that the provision in which the non obstante clause occurs usually would prevail over other provisions in the Act. Thus, non obstante clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principal enacting provision to which the non obstante clause is attached. (See *Bipathumma v. Mariam Bibi*, [(1966) 1 Mys LJ 162], Mys LJ at p. 165.)”

48. On the aspect of applicability of general law, it would be appropriate to quote the observations of the Apex Court in the case of *Ajoy Kumar Banerjee v. Union of India*, ([1984\) 3 SCC 127](#),

“38....As mentioned hereinbefore if the scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle “*Generalia specialibus non derogant*”. The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

(i) The two are inconsistent with each other.

- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

39. From the text and the decisions, four tests are deducible and these are : (i) The Legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provisions, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, *Maxwell on the Interpretation of Statutes*, Twelfth Edition, pages 196-198.”

49. From the aforesaid particularly the Aims and Objects to enact the Act of 2014 and Rule 2 of the Rules of 2015, which provides overriding effect to other Rules including the Rules of 1980, as also Rule 5 of the Rules of 2015 and the provisions of the Rules of 2017 including the overriding effect provided therein, this Court is of the view that selection on the post(s) of Pharmacist(s) has to be made strictly in terms of the Act of 2014 and Regulations made thereunder and the Rules of 2015 read with Rules of 2017 and not in terms of Rule 15 of the Rules of 1980.

50. For the reasons aforesaid, the prayer to make selection strictly in terms of Rules of 1980 is not liable to be entertained and is hereby rejected. Question No. (c), framed above, is answered accordingly.

51. For the reasons aforesaid, all the petitions of the bunch are hereby **dismissed**. No order as to costs.

52. The Court records the valuable assistance given by Ms. Aayushi Tripathi, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.

Order Date :- 08.11.2023/Arun/-