2024:PHHC:171454

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
-.-

Reserved on :-19.11.2024
Date of Decision :- 19.12.2024

1. **CWP-1713-2021(O&M)**

Harpreet Kaur ....Petitioner

VERSUS

State of Punjab and Others ....Respondents

2. **CWP-2873-2021(O&M)**

Satpal ....Petitioner

VERSUS

State of Punjab and Others ....Respondents

3. **CWP-5988-2021(O&M)**

Mohit Kumar ....Petitioner

VERSUS

State of Punjab and Others ....Respondents

CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: **For the Petitioners**

Mr. D.V.Sharma, Sr. Advocate with
Ms. Sunder Kumari, Advocate for
Mr. Tushar Sharma, Advocate (in CWP-1713-2021)

Mr. Nitish Jhanjhria, Advocate and
Mr. B.S.Makar, Advocate (in CWP-5988-2021)

For the Respondents

Mr. Maninder Singh, Sr. DAG, Punjab.

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Mr. Nitin Kaushal, Advocate and
Mr. Ajit Singh, Advocate for respondent No.3 – University.

Mr. Sunny R. Singla, Advocate and
Mr. Sagar Garg, Advocate
Mr. Parampreet S. Bajwa, Advocate
Mr. Manjit Singh, Advocate
for respondent No.4 (in CWP-2873-2021)

Mr. Rakesh Sobti, Advocate
for respondent No.4 (in CWP-1713-2021)

Mr. Ashwani Talwar, Advocate
Mr. Sahej Mahajan, Advocate
for respondent No.5.

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SUDEEPTI SHARMA, J.

1. CWP-1713-2021

PRAYERS MADE IN THE PRESENT WRIT PETITION ARE AS UNDER:-

i) Issue a writ of mandamus declaring condition No.IV of Serial No.5 of Appendix 'B' of the Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016 attached as Annexure P-19 to be arbitrary, unconstitutional, against the Pharmacy Act, 1948 and has no nexus with the object sought to be achieved.

ii) Issue a writ of mandamus directing the official respondents to count 7 marks for the experience Government Multi Speciality Hospital, Sector 16, Chandigarh and appoint her as a Pharmacist (Pharmacy Officer);

iii) Issue any other appropriate writ, order or direction, which this Hon'ble Court may deem fit under the circumstances of the case;

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BRIEF FACTS OF THE PRESENT CASE ARE AS UNDER:-

The petitioner passed diploma in Pharmacy from the Punjab State Board of Technical Education and Industrial Training, Chandigarh during the Session 2007-2008 and 2008-2009. After passing the diploma in Pharmacy the petitioner had undergone three months training and thereafter got herself registered with Pharmacy Council, Union Territory Chandigarh on 30.07.2010. She passed the degree of pharmacy from I.K.Gujral Punjab Technical University, Jalandhar in the examination held in November 2012. After that got herself registered with Pharmacy Council, U.T.Chandigarh on 30.07.2010 under Section 32(2) of Pharmacy Act, 1948. She was appointed as Pharmacist on outsource basis through Keshav Security Services Private Limited in Government Multispecialty Hospital, Sector 16, Chandigarh on 11.03.2013 and remained there upto 11.12.2013. She was employed through XEAM Private Venture Limited as a Pharmacist for serving in Government Multispecialty Hospital, Sector 16, Chandigarh from 01.01.2014 to 30.04.2017. She was again engaged through Secure Guard Security and Mind Power Services on outsource basis on 01.05.2017. As per record her experience was over 7 years and 9 months.

She applied in backward class category and was on merit No.10. During the counselling the petitioner was required to fill in the documents verification form for recruitment as pharmacist.

Since she was registered with Pharmacy Council of Union Territory Chandigarh, she was not given any mark for about 7 years and 9 months experience. When she applied, she attached provisional degree from Technical University, Jalandhar. Thereafter, she got the regular degree. She came to know that objection has been raised against her candidature that she is not registered with

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Punjab State Pharmacy Council. She applied for transfer of the registration to the Punjab State Pharmacy Council, Mohali and NOC for transfer of registration dated 28.10.2020 was issued. After that she surrendered her registration with Pharmacy Council U.T.Chandigarh and got herself registered with Punjab State Pharmacy Council, Mohali on 29.10.2020.

The result of written examination was published on the website. Thereafter on 30.12.2020 final selection list was published. The name of the petitioner was spotted in the selection list. She was debarred on the ground that she was not registered with Punjab State Pharmacy Council in view, Condition IV of Sr.No.5 of Appendix 'B' of the Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016.

2. <u>CWP-2873-2021</u>

<u>PRAYERS MADE IN THE PRESENT WRIT PETITION ARE AS UNDER:-</u>

i) Issue a writ of certiorari, quashing the notification dated 02.11.2016 (P-16), condition No. (iv) of Serial No.5 of Appendix 'B' of the Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016, requiring the candidate should be registered as Pharmacist with the Punjab Council set up under the Pharmacy Act, 1948 and the condition No.(iv) under the Heading qualification for the post of Pharmacist in the advertisement dated 04.08.2020 (P-10) being not only arbitrary, unconstitutional, against the Pharmacy Act, 1948 (P-8) and has no nexus with the object sought to be achieved and quashing the action of official respondents in declaring the petitioner to be ineligible for the post of Pharmacist (Pharmacy Officer) on the ground that the petitioner is not registered with the Punjab State

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Pharmacy Council, but registered with the Pharmacy Council of Rajasthan as per Section 31 & 32 of the Pharmacy Act, 1948 and as such his name has been maintained in the Central Register maintained by the Central Council containing the names of all persons in the register for a State under Section 15-A of the Pharmacy Act, 1948.

ii) It is further prayed that a writ of Mandamus be issued directing the respondents to consider the petitioner eligible and select and appoint him on the post of Pharmacist against advertisement dated 04.08.2020 (P-10), as the persons lower in merit to him have been selected and appointed and petitioner should be given all the benefits from the date other similarly situated persons have been appointed.

iii) It is further prayed that this Hon'ble Court may quash the selection and appointment of respondent No.4 who is lower in merit than the petitioner, but has been appointed if it is necessary for giving appointment to the petitioner.

iv) It is further prayed that the respondents be directed to keep one post reserved for the petitioner during the pendency of the present writ petition.

v) It is further prayed that this Hon'ble Court may be pleased to issue any other writ, order or direction as this Hon'ble Court deem fit and proper in the facts and circumstances of the present writ petition.

BRIEF FACTS OF THE PRESENT CASE ARE AS UNDER :-

The petitioner passed degree of Bachelor of Pharmacy from Rajasthan University of Health Sciences, Jaipur in 2010. Thereafter he got himself registered with the Rajasthan Pharmacy Council, Jaipur on 27.10.2010 as per Section 32(2)

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of the Pharmacy Act, 1948. He worked as Lecturer/Pharmacist in various Institutions from 05.1.2011 to 13.05.2014, 03.01.2017 to 12.07.2017, 12.07.2017 to 04.01.2018 and January 2018 to 31.03.2020. The petitioner being eligible applied for the post of Pharmacist. The result was declared in the month of October 2020 on the website. The petitioner obtained 53 marks and was 57th amongst General Category. He was called for counselling on 23.10.2020. He was required to fill in the document-verification form for recruitment as a Pharmacist. Since he was registered with Pharmacy Council of Rajasthan, Jaipur, he was not accorded any mark for his experience. The oral objection was raised against his candidature that he is not registered with Punjab State Pharmacy Council. He applied for transfer of registration for Punjab State Pharmacy Council, Mohali on 23.10.2020. In the final selection his name was not there because of condition No.4 of Basic and Professional Qualification in the advertisement that "candidate should be registered as Pharmacist with Punjab Pharmacy Council set up under the Pharmacy Act, 1948".

3. <u>CWP-5988-2021</u>

<u>PRAYERS MADE IN THE PRESENT WRIT PETITION ARE AS UNDER:-</u>

i) That this Hon'ble Court may be pleased to issue writ of certiorari for quashing the impugned advertisement dated 04.08.2020, which discriminates candidates on the basis of inter-state educational qualification under the heading of qualification in clause (iv) of impugned advertisement, as such this kind of condition was never introduced prior to this recruitment process and is only opted out by respondents to provide immunity to registered Pharmacist of Punjab State against rest of the eligible candidates from all over India. Hence

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the impugned condition is ultra-virus, discriminatory, unconstitutional and is in the violation of fundamental rights guaranteed under tenets of the article 14, 15, 16, 19 (1) (g) and 21 of Constitution of India.

ii) That this Hon'ble Court be pleased to issue a writ of certiorari for quashing the impugned order dated 25.01.2021 of the respondent No.2 for illegally and arbitrarily rejecting the candidature of petitioner on the basis of clause (iv) of impugned order, which is discriminatory/unconstitutional to the principle of equality and equal opportunity, thus infringe/contravene the provisions of Article 14, 15, 16, 19 (1) (g) and 21 of Constitution of India and as such the impugned condition has no nexus with the object sought to be achieved and it is against the classification on intelligible differentia.

iii) That this Hon'ble Court be pleased to issue a Writ of Mandamus for directing respondent No.2 to forthwith consider the representation of the petitioner for the post of Pharmacist (Pharmacy Officer) and select and appoint him on the said post of Pharmacist against advertisement dated 04.08.2020, as the persons lower in the merit to him have been have been selected and appointed and petitioner should be given all the benefits from the date other similarly situated persons have been appointed.

iv) It is further prayed that the respondents be directed to keep one post reserved for the petitioner during the pendency of this writ petition.

v) It is further prayed that this Hon'ble Court be pleased to issue any other writ, order or direction as this Hon'ble Court deem fit and proper in facts and circumstances of present writ petition.

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BRIEF FACTS OF THE PRESENT CASE ARE AS UNDER :-

Being eligible the petitioner applied under Backward Class category and secured 47 marks and was ranked at Sr. No.253 in the open category. He was called for counselling on 22.10.2020 and was required to fill in the document-verification form for recruitment as a Pharmacist with the Punjab State Pharmacy Council on 02.11.2020. His name was not there in the selection list because of condition No.4 of Basic and Professional Qualification in the advertisement that "candidate should be registered as Pharmacist with Punjab Pharmacy Council set up under the Pharmacy Act, 1948".

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

4. Learned counsel for the petitioner(s) contend that the impugned condition (iv) under Sr. No.5 of Appendix 'B' of the Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016 is contrary to Pharmacy Act, 1948 inasmuch as registration with Pharmacy Council is one of the condition. They further contend that requirement under the Pharmacy Act, 1948 is that the person has to be registered with Pharmacy Council of the State. Thus, they contend that Rule of Registration in a particular State for employment is contrary to the Act and arbitrary restrictions have been imposed which are not covered under the Act.

5. *Per contra* learned counsel for the respondent-State contends that the impugned condition in Clause IV under Sr. No.5 of Appendix 'B' Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016 is in consonance with Pharmacy Act, 1948.

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6. Learned counsel for respondent Nos. 4 and 5 contend that respondents are working since the year 2020 i.e. for the last four years.

7. We have heard learned counsel for the parties and perused the whole record of these cases.

8. Since the similar issue is involved in all the writ petitions, therefore, vide this common judgement, we shall dispose of all the writ petitions mentioned above.

9. The question of law involved in the present writ petitions is:-

"*whether impugned condition is against the Pharmacy Act, 1948 and arbitrary?*"

10. We answer the question in negative.

11. The brief facts, given rise to the controversy in all the writ petitions are that the State of Punjab issued an advertisement for direct recruitment of 482 posts of Pharmacists/Pharmacy Officers and the last date to apply was 31.08.2020.

12. The ***Basic and Professional qualifications*** as per the advertisement are reproduced as under:-

i) Should have passed Senior Secondary Part-II Examination with Science or its equivalent from a recognized University or Institution.

ii) Should possess a degree of Bachelor of Pharmacy from a recognized University or institution.

iii) Should have passed the three months practical training in an Institution approved by the pharmacy Council of India set up under the Pharmacy Act, 1948; and

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iv) Should be registered as Pharmacist with the Punjab Pharmacy Council set up under the Pharmacy Act, 1948

13. The ***Criteria of recruitment*** as per the advertisement is reproduced as under:-

i) Written examination (By Baba Farid University of Health Sciences, Faridkot) : 90 marks

ii) *Experience (1 year – 1 mark) (Marks of Experience will be given to those candidates who are working in the Department of Health on Regular, Contract or Outsource basis in any programme) : 10 marks*

Age:-

1. Age limit: Between 18 and 37 years as on 1st Jan., 2020.

2. Relaxation in upper age for various categories is as below:

i. SC/ BC, candidates is 5 years

ii. Physically Handicapped is 10 years

iii. Candidates for Ex-Servicemen Category, the age relaxation will be as follows: "For recruitment to any vacancy in the State Civil Services whether reserved or not under these rules an Ex-Servicemen shall be allowed to deduct the period of his/her service in the Armed Forces of the Union from his/her actual age and if the resultant age does not exceed the maximum age limit prescribed for direct appointment to such vacancy in the concerned service rules, by more than 3 years, he/she shall be deemed to satisfy the condition regarding age limit"

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iv. Upper age limit may be relaxed up to 45 years for Punjab Govt. and its Board/ Corporation/ Commission and Authorities employees, all States/ Central Government employees.

v. Upper age will be relaxed upto the age of 45 years for the candidates who are working in the department of Health and Family Welfare Punjab in various wings/ programmes/ institutions on Contractual basis/ Outsource basis as per Rule 5(1) proviso 2 of Punjab Civil Services (General and Common Conditions) Service Rules 1994 but there will be no relaxation in academic qualification.

vi. Upper age limit is also relaxable up to 42 years for Widows, Divorcees and certain other Categories of Women.

14. Certain ***terms and conditions*** were prescribed in advertisement. Relevant portion of the same is reproduced as under:-

"2. a) Knowledge of Punjabi:- No person shall be appointed to any post in any service by direct appointment unless he has passed Matriculation examination with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi language, which may be specified by the Government from time to time.

b) Provided further that where educational qualifications for a post in any service are lower than the Matriculation standard, then the person so appointed shall have to pass an examination of Punjabi Language equivalent to Middle standard.

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c) Provided further where a War Hero, who has been discharged from defence service or paramilitary forces on account of disability suffered by him or his widow or dependent member of his family, is appointed under the instructions issued in this behalf by the Government, the person so appointed will not be required to possess aforesaid knowledge of Punjabi Language.

d) Provided further that where a ward of defence service personal, who is bonafide resident of Punjab State, is appointed by direct appointment, he/she shall have to pass an examination of Punjabi Language equivalent to Matriculation standard or he shall have to qualify a test conducted by the Language Wing of the department of Education of Punjab Government with in a period of two years from the date of his appointment.

3. Reservation will be as per applicable rules and Punjab Government Policy Guidelines. Number of posts given in the advertisement for reserved category is provisional.

4. The SC/ BC category certificate should be in accordance with the instructions of the Department of Welfare Punjab and the certificate for the Ex-Serviceman, Freedom Fighters, Economically Weaker Section and Sports persons categories should be in accordance with the instructions of the concerned Department.

5. Candidates should select their categories carefully, because candidates belonging to categories other than General Category are entitled to fee concession/ exemption, age relaxation and job reservation. The Category once selected/filled will not be changed

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under any circumstances. Candidates shall submit certificates issued by the Competent Authority in support of their claim to a particular category.

x x x x x x

8. The qualification of candidates should be prior to the last date of filling the applications.

x x x x x x

12. Department has not any mechanism to check the certificates of candidates who are applying online. If, at any stage certificate of the candidate is found fictitious / bogus or ineligible, the candidature of the candidate will be cancelled and action will be taken according to law.

13. Mere qualifying the written examination would not make the candidates eligible for appointment until and unless they produce Police Verification certificate, clearance of criminal charges if any pending against him/her in the court of law and other Police actions to the satisfaction of department.

x x x x x x

16. The certificates/diplomas/ degrees issued by non-recognized institutions will not be considered and the candidature of candidates will be declared ineligible.

x x x x x x

18. Merely appearing in the written test will not entitle the candidates for the right to selection unless they fulfil the prescribed eligibility criteria and other terms and conditions of the advertisement.

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Selection will be on the inter-semerit of the written test and marks of experience subject to the reservation prescribed by the Government.

15. The undisputed fact is that the petitioner in CWP-1713 of 2021 was registered with Pharmacy Council of Union Territory, Chandigarh and since she was to apply for the above referred to post in Punjab and one of the condition was that the applicant should be registered as Pharmacist with the Punjab Pharmacy Council set up under the Pharmacy Act, 1948, therefore, she applied for transfer of registration to Punjab State Pharmacy Council, Mohali and NOC for transfer of registration was issued on 28.10.2020. After that she surrendered her registration with Pharmacy Council of U.T.Chandigarh and got herself registered with the Punjab State Pharmacy Council, Mohali on 29.10.2020.

16. The undisputed fact in CWP-2873-2021 is that the petitioner got himself registered with Rajasthan Pharmacy Council of Jaipur on 27.10.2010 as per Section 32(2) of Pharmacy Act, 1948 and since he was to apply for the above referred to post in Punjab and one of the condition was that the applicant should be registered as Pharmacist with the Punjab Pharmacy Council set up under the Pharmacy Act, 1948, therefore, he applied for transfer of registration to Punjab State Pharmacy Council, Mohali on 23.10.2020.

17. The undisputed fact in CWP-5988-2021 is that the petitioner was registered with Rajasthan Pharmacy Council on 05.09.2018 and since he was to apply for the above referred to post in Punjab and one of the condition was that the applicant should be registered as Pharmacist in the Punjab Pharmacy Council set up under the Pharmacy Act, 1948, therefore, he applied for transfer of registration to Punjab State Pharmacy Council, Mohali and was got himself registered with the Punjab State Pharmacy Council on 02.11.2020.

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18. A perusal of the above shows that all the petitioners were registered with different States as Pharmacists. But since they were to apply for the post of Pharmacy Officer/Pharmacist in the State of Punjab and one of the essential condition was that the applicant should be registered as Pharmacist with the Punjab Pharmacy Council set up under the Pharmacy Act, 1948, therefore, all the petitioners in the above-numbered writ petitions got themselves registered as Pharmacist with the Punjab State Pharmacy Council, Mohali, but after the cut-off date.

19. Before proceeding further it is required to give introduction as well as statement of objects and reasons in the enactment of Pharmacy Act, 1948.

*"I**NTRODUCTION***

In India there was no restriction to practise the profession of pharmacy. One could practise this profession as any other profession. Persons, having no knowledge and having no education in pharmacy or pharmaceutical chemistry or pharmacology, were engaged in this profession. Hundreds of cases were brought to the notice of the Government wherein the compounding, mixing, or dispensing of medicines was being done by persons who were not adequately educated in this line. The system was causing great harm to the health of people by wrong compounding, mixing or dispensing. It was found necessary to enact a law for the regulation of the profession and practice of pharmacy. To achieve this goal the Pharmacy Bill, 1947 was introduced in the Legislature which was later referred to the Select Committee. The recommendations of the Selection Committee were incorporated in the Bill.

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STATEMENT OF OBJECTS AND REASONS

It is desirable that, as in most other countries, only persons who have attained a minimum standard of professional education should be permitted to practise the Profession of Pharmacy. It is accordingly proposed to establish a Central Council of Pharmacy, which will prescribe the minimum standards of education and approve courses of study and examinations for Pharmacists, and Provincial Pharmacy Councils, which will be responsible for the maintenance of provincial registers of qualified pharmacists. It is further proposed to empower Provincial Governments to prohibit the dispensing of medicine on the prescription of a medical practitioner otherwise than by, or under the direct and personal supervision of, a registered pharmacist."

20. A perusal of the above shows that Pharmacy Act, 1948 was enacted for the regulation of the profession and practice of pharmacy. The relevant provisions of the Pharmacy Act, 1948 are reproduced as under:-

"***2. Interpretation****.-In this Act, unless there is anything repugnant in the subject or context:-*

x x x x

(f) "medical practitioner" *means a person ---*

(i) holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act. 1956 (102 of 1956); or

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(ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practicing the modern scientific system of medicine; or

(iii) registered in a medical register of a State, who, although not falling within sub-clause (i) or sub-clause (ii) is declared by a general or special order made by the State Government in this behalf as a person practicing the modern scientific system of medicine for the purposes of this Act; or

(iv) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 (16 of 1948); or

(v) who is engaged in the practise of veterinary medicine and who possesses qualifications approved by the State Government;

x x x x

***(h) "register"** means a register of pharmacists prepared and maintained under Chapter IV;*

***(i) "registered pharmacist"** means a person whose name is for the time being entered in the register of the State in which he is for the time being residing or carrying on his profession or business of pharmacy;*

***(j) "State Council"** means a State Council of Pharmacy constituted under section 19, and includes a Joint State Council of Pharmacy constituted in accordance with an agreement under section 20.*

x x x x

***10. Education Regulations**.-(l) Subject to the provisions of this section, the Central Council may, subject to the approval of the*

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Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist.

(2) In particular and without prejudice to the generality of the foregoing power, the Education Regulations may prescribe

(a) the nature and period of study and of practical training to be undertaken before admission to an examination;

(b) the equipment and facilities to be provided for students undergoing approved courses of study;

(c) the subjects of examination and the standards therein to be attained;

(d) any other conditions of admission to examinations.

(3) Copies of the draft of the Education Regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments, .and the Central Council shall before submitting the Education Regulations or any amendment thereof, as the case may be, to the Central Government for approval under subsection (1) take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(4) The Education Regulations shall be published in the Official Gazette and in such other manner as the Central Council may direct

(5) The Executive Committee shall from time to time report to the Central Council on the efficacy of the Education Regulations and may

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recommend to the Central Council such amendments thereof as it may think fit.

A perusal of the above shows that the Pharmacy Council of India is empowered to make Education Regulations prescribing the minimum standard of education required for qualification as a pharmacist. Education Regulations prescribe:-

(i) The nature and period of study and a practical training to be undertaken before admission to an examination.

(ii) The equipment and facilities to be provided for students undergoing approved courses of study.

(iii) The subjects of examination and standards therein to be attained.

(iv) Any other condition of admission to examinations.

11. Application of Education Regulations to States.- *At any time after the constitution of the State Council under Chapter III and after consultation with the State Council, the State Government may, by notification in the Official Gazette, declare that the Education Regulations shall take effect in the State:*

Provided that where no such declaration has been made, the Education Regulations shall take effect in the State on the expiry of three years from the date of the constitution of the State Council.

Chapter III of Pharmacy Act, 1948 deals with State Pharmacy Councils.

Section 19 reads about Constitution and composition of State Councils.

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Chapter IV of Pharmacy Act, 1948 states about Registration of Pharmacist. Sections 29 to 32 of this Chapter are reproduced as under:-

29. Preparation and maintenance of register.-*(l) As soon as may be after this chapter has taken effect in any State, the State Government shall cause to be prepared in the manner hereinafter provided a register of pharmacists for the State.*

(2) The State Council shall as soon as possible after it is constituted assume the duty of maintaining the register in accordance with the provisions of this Act.

(3) The register shall include the following particulars, namely:

(a) the full name and residential address of the registered person;

(b) the date of his first admission to the register;

(c) his qualifications for registration;

(d) his professional address, and if he is employed by any person, the name of such person; (e) such further particulars as may be prescribed.

30. Preparation of first register.-*(I) For the purpose of preparing the first register, the State Government shall by notification in the Official Gazette constitute a Registration Tribunal consisting of three persons, and shall also appoint a Registrar who shall act as Secretary of the Registration Tribunal.*

(2) The State Government shall, by the same or a like notification, appoint a date on or before which applications for registration, which

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shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal.

(3) The Registration Tribunal shall examine every application received on or before the appointed date, and if it is satisfied that the applicant is qualified for registration under section 31, shall direct the entry of the name of the applicant on the register.

(4) The first register so prepared shall thereafter be published in such manner as the State Government may direct, and any person aggrieved by a decision of the Registration Tribunal expressed or implied in the register as so published may, within sixty days from the date of such publication, appeal to an authority appointed by the State Government in this behalf by notification in the Official Gazette.

(5) The Registrar shall amend the register in accordance with the decisions of the authority appointed under sub-section (4) and shall thereupon issue to every person whose name is entered in the register a certificate of registration in the prescribed form.

(6) Upon the constitution of the State Council, the register shall be given into its custody, and the State Government may direct that all or any specified part of the application fees for registration in the first register shall be paid to the credit of the State Council.

***31. Qualifications for entry on first register**.- (1) A person who has attained the age of eighteen years shall be entitled] on payment of the prescribed fee to have his name entered in the first register if he resides. or carries on the business or profession of pharmacy, in the State and if he*

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(a) holds a degree or diploma in pharmacy or pharmaceutical chemistry or a chemist and druggist diploma of an Indian University or a State Government as the case may be or a prescribed qualification granted by an authority outside India, or

(b) holds a degree of an Indian University other than a degree in pharmacy or pharmaceutical chemistry and has been engaged in the. compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than three years, or

(c) has passed an examination recognized as adequate by the State Government for commoners or dispensers, or

(d) has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than five years prior to the date notified under subsection (2) of section 30.

***32. Qualifications for subsequent registration**.-(l) After the date appointed under sub-section (2) of section 30 and before the Education Regulations have, by or under section II, taken effect in the State, a person who has attained the age of eighteen years shall on payment of the prescribed fee] be entitled to have his name entered in the register if he resides or carries on the business or profession of pharmacy in the State and if he—*

(a) satisfies the conditions prescribed with the prior approval of the Central Council, or where no conditions have been prescribed, the

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conditions entitling a person to have his name entered on the first register as set out in section 31, or

(b) is a registered pharmacist in another State, or

(c) possesses a qualification approved under section 14:

Provided that no person shall be entitled '[under clause (a) or clause (c) to have his name entered on the register unless he has passed a matriculation examination or an examination prescribed as being equivalent to a matriculation examination.

(2) After the Education Regulations have by or under section 11 taken effect in the State, a person shall on payment of the prescribed fee be entitled to have his name entered on the register if he has attained the age of [eighteen years], if he resides, or carries on the business or profession of pharmacy, in the State and if he has passed an approved examination or possesses a qualification approved under section 14 '[or is a registered pharmacist in another State.

***32A. Special provisions for, "registration of certain persons**.-*

(l) Notwithstanding anything contained in section 32, a State Council may also permit to be entered on the register-

(a) the names of displaced persons who have been carrying on the business or profession of pharmacy as their principal means of livelihood from a date prior to the 4th day of March. 1948, and who satisfy the conditions for registration as set out in section 31:

(b) the names of citizens of India who have been carrying on the business or profession of pharmacy in any country outside India and who satisfy the conditions for registration as set out in section 31:

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(c) the names of persons who resided in an area which has subsequently become a territory of India and who satisfy the conditions for registration as set out in section 31:

(d) the names of persons Who carry on the business or profession of pharmacy in the State. And

(i) would have satisfied the conditions for registration as set out in section 31, on the date appointed under sub-section (2) of section 30, had they applied for registration on or before that date; or

(ii) have been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners as defined in sub-clause (iii) of clause (f) of section 2 for a total period of not less then five years prior to the date appointed under subsection (2) of section 30;

(e) the names of persons who were qualified to be entered in the register for a State as it existed immediately before the 1st day of November, 1956, but who, by reason of the area in which they resided or carried on their business or profession of pharmacy having become part of a State as formed on that date, are not qualified to be entered having in the register for the latter State only by reason of their not having passed either a matriculation examination or an examination prescribed as being equivalent to a matriculation examination or an approved examination or of their not possessing a qualification approved under section 14:

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(f) the names of persons

(i) who were included in the register for a State as it existed immediately before the 1st day of November, 1956; and

(ii) who, by reason of the area in which they resided or carried on their business or profession of pharmacy having become part of a State as formed on that date, reside or carry on such business or profession in the latter State;

(g) the names of persons who reside or carry on their business or profession of pharmacy in an area in which this Chapter takes effect after the commencement of the Pharmacy (Amendment) Act, 1959 (24 of 1959), and who satisfy the conditions for registration as set out in section 31.

(2) Any person who desires his name to be entered in the register in pursuance of sub-section (I) shall make an application in that behalf to the State Council, and such application shall be accompanied by the prescribed fee.

(3) The provisions of this section shall remain in operation for a period of two years from the commencement of the Pharmacy (Amendment) Act, 1959 (24 of 1959).

Provided that the State Government may, by notification in the Official Gazette, extend the period of operation of clause (a), clause (b) or clause (c) of sub-section (I) by such further period or periods, not exceeding two years in the aggregate, as may be specified in the notification.

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***32B. Special provisions for registration of displaced persons, repatriates and other persons**.-(I) Notwithstanding anything contained in section 32 or section 32A, a State Council may permit to be entered on the register*

(a) the names of persons who possess the qualifications specified in clause (a) or clause (c) of section 31 and who were eligible for registration between the closing of the First Register and the date when the Education Regulations came into effect.

(b) the names of persons approved as "qualified persons" before the 31st December, 1969 for compounding or dispensing of medicines under the Drugs and Cosmetics Act, 1940 (23 of 1940) and the rules made there under;

(c) the names of displaced persons or repatriates who were carrying on business or profession of pharmacy as their principal means of livelihood in any country outside India for a total period of not less than five years from a date prior to the date of application for registration.

(2) The provisions of clauses (a) and (b) of sub-section (1) shall remain in operation for a period of two years from the commencement of the Pharmacy (Amendment) Act, 1976.]

21. A perusal of the above shows that as per Section 29 of the Pharmacy Act, 1948, every State is to maintain the register of Pharmacist for the State.

22. A conjoint reading of the object and reasoning behind the enactment of Pharmacy Act, 1948 and Pharmacy Act, 1948, wherein in Section 2(i) 'registered pharmacist' is defined, shows that a person gets the registration as

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Pharmacist in the State in which he is for the time being residing or carrying his profession or business of pharmacy. And that Registration is as per Section 29 of the Pharmacy Act, 1948 which is applicable to all the States. Therefore, as per the requirement of Act, a person can practice in his or her State only when he or she is registered with the Pharmacy Council of that particular State.

23. This is made more clear from the definition under Section 2(f) as referred to above of Medical Practitioner which means a person :-

(i) holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act. 1956 (102 of 1956); or

(ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practicing the modern scientific system of medicine; or

(iii) registered in a medical register of a State, who, although not falling within sub-clause (i) or sub-clause (ii) is declared by a general or special order made by the State Government in this behalf as a person practicing the modern scientific system of medicine for the purposes of this Act; or

(iv) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 (16 of 1948); or

(v) who is engaged in the practise of veterinary medicine and who possesses qualifications approved by the State Government

Meaning thereby only registered pharmacists are permitted to practice the profession of pharmacy as per the Pharmacy Act, 1948.

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NOW COMING TO PUNJAB HEALTH AND FAMILY WELFARE TECHNICAL, (GROUP 'C') SERVICE

24. Under Rule 6 of the Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016 method of appointment, qualification and experience is provided. The appointment to the service under Rule 6 of the Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016 shall be made in the manner as specified in Appendix 'B'. Sr. No.5 of Appendix 'B' is reproduced as under:-

Sr. No.	*Designation*	*Percentage for appointment by*		*Method of appointment, qualifications and experience for appointment by*	
		Direct Appointment	*Promotion*	*Direct appointment*	*Promotion*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
5.	*Pharmacist*		*Hundred per cent*	*(i) Should have passed Senior Secondary Part-II Examination with Science or its equivalent from a recognized university or institution;* *(ii) Should possess a degree of Bachelor of Pharmacy from a recognized university or institution;* *(iii) Should have passed the three months practical training in an institution approved by the Pharmacy Council of India set up under the Pharmacy Act, 1948; and* ***(iv) Should be registered as Pharmacist with the Punjab Pharmacy Council set up under the Pharmacy Act, 1948.***	

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25. A perusal of the above shows that one of the qualification for recruitment to the post of pharmacist is that a person should be registered as a pharmacist with the Punjab Pharmacy Council set up under the Pharmacy Act, 1948, which is the requirement of Pharmacy Act, 1948.

26. A perusal of the Pharmacy Act, 1948 as reproduced above shows that it was enacted to secure the system to practice the profession of pharmacy by ensuring that only persons who have attained the minimum standard of professional education should be permitted to practice the profession of pharmacy.

27. After the establishment of Central Council of Pharmacy which prescribes the minimum standard of education and approve the courses of study and examination of Pharmacist, a register would be maintained of qualified pharmacists.

28. Different State Pharmacy Councils were constituted under Section 19 of the Pharmacy Act, 1948. This is the reason why under Chapter IV of Pharmacy Act, which deals with registration of Pharmacist under Section 29 provides for preparation and maintenance of register.

29. Every person who has attained the minimum standard of professional education as per the requirement of Pharmacy Council of India is required to be registered in the register of State in which he is for the time being residing or carrying on his profession or business of pharmacy.

30. Since, it is prescribed under the Pharmacy Act, 1948 to get himself registered in the register of the State in which he is residing or carrying on his profession or business of pharmacy, therefore, condition (iv) at Sr.No.5 of Appendix 'B' in the Punjab Health and Family Technical (Group 'C') Service Rules 2016, for appointment, qualification and experience to the effect that the

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person should be registered as Pharmacist with the Punjab Pharmacy Council set up under the Pharmacy Act, 1948 is not arbitrary.

31. Therefore, we do not find any infirmity in the Condition IV at Sr. No.5 of Appendix 'B' of the Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016. The same is upheld.

CONCLUSION

32. Now coming to the present petitions wherein all the petitioners have participated in the selection process and afterwards challenged the Rules. Undisputedly all the petitioners, namely, Harpreet Kaur, Satpal and Mohit Kumar got themselves registered with the Punjab Pharmacy Council on 29.10.2020, 23.10.2020 and 02.11.2020, respectively.

33. The object and reasoning behind the enactment of Pharmacy Act, 1948 is to ensure that only the qualified pharmacists can practice pharmacy and that is why they are required to get themselves registered with the States in which they want to practice. Meaning thereby, as per the requirement of Pharmacy Act, 1948, only registered pharmacist shall be permitted to practice profession of pharmacist.

34. A perusal of the definition of registered pharmacist shows that registered pharmacist means a person whose name is for the time being entered in the register of the State in which he is for the time being residing or carrying on his profession or business of pharmacy.

35. Though, we do not find any infirmity in condition (iv) of Sr.No.5, of Punjab Health and Family Welfare Technical (Group 'C') Service Rules, 2016 wherein a specific condition has been imposed for recruitment as pharmacist that he should be registered as pharmacist with the Punjab Pharmacy Council set up

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under the Pharmacy Act, 1948, whereas this condition in a way would impose bar on the pharmacists who are registered with other States. If reasonable time is not granted to the applicants to get their registration transferred from their State to the State for which they want to apply then that would amount to discrimination with the applicants of other states and it is but obvious that as per the requirement of Pharmacy Act, 1948, one of the conditions in every State for applying for the job of Pharmacist would be to be registered with the Pharmacy Council of that State. And if that being so, no applicant outside the State would be allowed to participate in the selection process. Therefore, justice demands that applicants from other states should be granted reasonable time period which is required as per the procedure for getting their registration transferred.

36. Before parting with the judgment, we observe as under:-

i) That it is the requirement of Pharmacy Act, 1948 that a person should be registered with the Pharmacy Council of the State in which he is to carry on his profession or business of pharmacy.

ii) Different persons from different States get themselves registered with their State and as and when there is any recruitment, they get their registration transferred to the State wherein they apply for the job and if required time period for transfer is not granted, in public interest, then it would amount to debarring them from participating in the recruitment of the States other than their own.

iii) Therefore, the State Authorities are directed not to debar the candidates, who are registered with other States only because they are not registered with their States before the cut off date.

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Rather they should grant them a period equal to the period, which is required for transfer/change of registration from one State to other, so that they do not suffer inspite of being meritorious.

iv) There is no infirmity in imposing the condition/requirement of registration with the particular State as pharmacist, whereas debarring others would amount to discrimination.

37. In view of the above, the present writ petitions are dismissed. It is clarified that since the selection process is of the year 2020 and as per condition 8 of the advertisement the qualification of the candidates should be prior to the last date of filling of the applications and one of the basic and professional qualification as per the advertisement is that he should be registered as Pharmacist with the Punjab Pharmacy Council set up under the Pharmacy Act, 1948 and further undisputedly the date of registration with the Punjab Pharmacy Council of all the petitioners in all the writ petitions is after the cut-off date i.e. 31.08.2020. Therefore, they are not entitled to any relief.

38. Pending applications, if any, also stand disposed of.

39. A photocopy of this order be placed on the files of other connected cases.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 19, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes

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