

Court No. - 18

Case :- WRIT - A No. - 1180 of 2024

Petitioner :- Ekta Singh And Others

Respondent :- State Of U.P. Thru. Prin. Secy./ Addl. Chief Secy. Deptt. Of Appointment Sectr. Lko. And Others

Counsel for Petitioner :- Prateek Shrivastava, Avinash Singh Vishen

Counsel for Respondent :- C.S.C., Gaurav Mehrotra

and

Case :- WRIT - A No. - 1469 of 2024

Petitioner :- Krishna Kumar Tiwari And Others

Respondent :- State Of U.P. Thru. Prin./Addl. Chief Secy. Deptt. Of Appointment And Sectr. U.P. Lko. And Others

Counsel for Petitioner :- Ajay Pratap Singh

Counsel for Respondent :- C.S.C., Gaurav Mehrotra, Shyam Lal

and

Case :- WRIT - A No. - 1663 of 2024

Petitioner :- Raghvendra Kumar Mishra And 9 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Ayush Govt. Of U.P. And 2 Others

Counsel for Petitioner :- Dharmendra Kumar Tripathi, Kirti Rawat, Vikas Pandey

Counsel for Respondent :- C.S.C., Gaurav Mehrotra, Shyam Lal

and

Case :- WRIT - A No. - 1713 of 2024

Petitioner :- Anshul Kumar And Another

Respondent :- State Of U.P. Thru. Chief Secy., Govt. Of U.P., Civil Sectr. Lko. And Another

Counsel for Petitioner :- Avdhesh Shukla

Counsel for Respondent :- C.S.C., Gaurav Mehrotra, Shyam Lal

Hon'ble Manish Kumar, J.

1. Heard Shri Prateek Shrivastava, Shri Avinash Singh Vishen, Shri Ajay Pratap Singh, Shri Dharmendra Kumar Tripathi, learned counsels for the petitioners, Shri Gaurav Mehrotra,

learned counsel for the Uttar Pradesh Subordinate Services Selection Commission (UPSSSC) assisted by Shri Utsav Mishra, Advocate and learned counsel for the State-respondents. Vakalatnama filed today by Shri Lav Kumar Agarwal, Advocate is taken on record.

2. These four writ petitions involve common question hence they are being decided by this common judgment. The prayers made in the four writ petitions are quoted here-in-below:-

1. WRIT - A No. - 1180 of 2024

"CERTIORARI quashing the clauses mandating that the only those persons can apply for the posts who have qualified PET 2023 in Advertisement No. 01-परीक्षा/2024 भेषजिक (आयुर्वेदिक) मुख्य परीक्षा (प्रा०अ०प) dated 01.02.2024, (as contained in Annexure No. P1).

(ii) DECLARE as ultra vires to the Uttar Pradesh Ayush Department Ayurvedic Pharmacists Service Rules, 2023, clauses in Advertisement No. 01-परीक्षा/2024 भेषजिक (आयुर्वेदिक) मुख्य परीक्षा (प्रा०अ०प) dated 01.02.2024 which mandate that the only those persons can apply for the posts of Pharmacist Ayurvedic who have qualified PET 2023.

(iii) MANDAMUS commanding the Opposite Party No. 2 to allow the petitioners for applying for the post of Ayurved Pharmacist in pursuance of No. 01-परीक्षा/2024 भेषजिक (आयुर्वेदिक) मुख्य परीक्षा (प्रा०अ०प) dated 01.02.2024."

2. WRIT - A No. - 1469 of 2024

"issue a writ, order or direction in the nature of: CERTIORARI quashing the clauses mandating that the only those persons can apply for the posts who have qualified PET 2023 in Advertisement No. 01-परीक्षा/2024 भेषजिक (आयुर्वेदिक) मुख्य परीक्षा (3) dated 01.02.2024, (as contained in Annexure No. 1).

(ii) DECLARE as ultra vires to the Uttar Pradesh Ayush Department Ayurvedic Pharmacists Service Rules, 2023, clauses in Advertisement No. 01-परीक्षा/2024 भेषजिक (आयुर्वेदिक) मुख्य परीक्षा (प्रा०अ०प) dated 01.02.2024 which mandate that the only those persons can apply for the posts of Pharmacist Ayurvedic who have qualified PET 2023.

(iii) MANDAMUS commanding the Opposite Party No. 2 to allow the petitioners for applying for the post of Ayurved Pharmacist in pursuance of No. 01-परीक्षा/2024 भेषजिक (आयुर्वेदिक) मुख्य परीक्षा (प्रा०अ०प) dated 01.02.2024."

3. WRIT - A No. - 1663 of 2024

"(i) To issue a writ, order or direction, in the nature of certiorari thereby quashing the impugned advertisement dated 01.02.2024 in pursuance of the advertisement No. 01 examination /2024 issued by the Secretary, Subordinate Service Selection Commission, Lucknow as Annexure No. 1 to the writ petition in the interest of justice.

(ii) To issue, a writ, order or direction, in the nature of Mandamus commanding or directing the opposite party no. 3 to permit the petitioner for submitting the application form to the post of pharmacist (Unani) in pursuance of the advertisement No. 01 examination/2024 and further be pleased to allow the petitioners to participate in selection process conduct by the respondent commission and declared the result of the petitioner if they comes under the merit.

(iii) To issue, a writ, order or direction, in the nature of Mandamus commanding or directing to the opposite parties decide the application dated 09.02.2024 moved by the petitioners contained as Annexure no. 11 within stipulated period."

4. WRIT - A No. - 1713 of 2024

"(a) Issue appropriate Writ, direction and Order(s) to Respondents for quashing the condition of Preliminary Eligibility Test 2023 as mandatory condition for applying and shortlisting of the candidates for the post of Pharmacist (Ayurvedic) in Advertisement No. 01-Exam/2024 contained as Annexure No. 1 to this Writ Petition.

(b) Issue appropriate Writ, direction and Order(s) to Respondents for quashing the notification, rules, regulations, law making condition of Preliminary Eligibility Test 2023 as mandatory condition for applying and shortlisting of the candidates for the post of Pharmacist (Ayurvedic) in Advertisement No. 01-Exam/2024.

(c) Issue appropriate Writ, direction and Order(s) to Respondents for allowing the Petitioners to apply for the post of Pharmacist (Ayurvedic) in Advertisement No. 01- Exam/2024 online/offline without the Preliminary Eligibility Test 2023 score.

(d) Issue appropriate Writ, direction and Order(s) to Respondents to conduct the fresh Preliminary Exams for the post of Pharmacist (Ayurvedic) in Advertisement No. 01-Exam/2024."

3. The present writ petitions have been preferred by the petitioners challenging the condition of Preliminary Eligibility Test (hereinafter referred as 'PET') as mandatory condition for applying and shortlisting of the candidates for the post of Pharmacist (Ayurvedic) in Advertisement No. 01-Exam/2024 dated 01.02.2024 and with a further prayer to direct the respondents to allow the petitioners to appear in the final selection.

4. The learned counsel for the petitioners have submitted that

the petitioners are having diploma in Ayurvedic Pharmacist and registered with the Board of Ayurvedic and Unani Tibbi Systems of Medicine, U.P. and are qualified and eligible to appear in the written examination against the post of Pharmacist (Ayurvedic) as per the advertisement dated 01.02.2024.

5. It is further submitted that the petitioners were not permitted to appear in the examination against the advertisement dated 01.02.2024 only on the ground that the petitioners had not appeared in the PET held in pursuance of the advertisement dated 01.08.2023.

6. It is further submitted that conducting the PET examination by the Commission is against the Uttar Pradesh Subordinate Services Selection Commission (Procedure and Conduct of Business) Regulation, 2015 and in the said advertisement of 01.08.2023 neither the posts were notified/ advertised nor the qualification was mentioned, so it was not within the knowledge of the petitioners against which post they had to appear in the PET, 2023.

7. It is further submitted that by giving interpretation of the regulation which is against Section 17 and 18 of the Uttar Pradesh Subordinate Services Selection Commission Act, 2014 wherein it has been provided that the appointing authority shall determine the vacancies and sent the requisition to the Commission only thereafter the advertisement could be issued by the Commission.

8. It is further submitted that the service rules regarding the petitioners i.e. Ayurvedic Pharmacist has come into force for the first time on 27.04.2023 and the qualification provided has again been amended by the Uttar Pradesh Ayush Department Unani Pharmacists Service (First Amendment) Rules, 2023 and the advertisement for PET published on 01.08.2023 is against the qualifications provided under the service rules governing the selection on the post of Ayurvedic Pharmacist.

9. It is further submitted that the alleged approval taken by the Commission from the State Government is not an approval but an inter departmental communication as it has neither been notified nor published.

10. It is further submitted that till date as per the alleged approval by the State Government, there is no amendment made in the regulations, 2015 whereas it has been provided under the alleged approval of the State Government that the necessary amendment will be made separately.

11. It is further submitted that the action on the part of the opposite parties are arbitrary, discriminatory and violative of Article 14 and 16 (1) of the Constitution of India.

12. The learned counsels for the petitioners in support of their submission as mentioned above has relied upon the judgments of the Hon'ble Apex Court in the case of ***Ashish Kumar Vs. State of U.P. and Ors.*** reported in ***2018 (3) SCC 55***, ***Dr. P.N. Dubey & Ors. Vs. State of M.P.*** reported in ***1997 (3) SCC 497 and Renu & Ors. Vs. District and Sessions Judge, Tis Hazari Courts, Delhi & Anr., 2014 (14) SCC 50*** wherein, the Hon'ble Apex Court has held that it is the statutory rules which take precedence and the appointment should be made in accordance with the rules and should be transparent.

13. On the other hand, Shri Gaurav Mehrotra, learned counsel for the UPSSSC assisted by Shri Utsav Mishra, Advocate has raised a preliminary objections regarding the maintainability of the present writ petition on the following main grounds which are as follows:-

Firstly, that the petitioners have not challenged the advertisement dated 01.08.2023 wherein it has been provided for selection on Group 'C' post clearing the PET examination is mandatory. It is further submitted that the petitioners were well aware of the fact that they had to appear in the said examination for the reason that their services is comprises of Group 'C' post as per Rule 2 of the Service Rules, 2023 and Commission is the selection body of the Pharmacist (Ayurvedic).

Secondly, that the petitioners have also not challenged the approval given by the State Government in the writ petition in pursuance thereof the PET 2023 was conducted in which a large number of candidates had appeared but the petitioners neither applied nor appeared in the said examination though it was published on 01.08.2023.

14. It is further submitted that in the PET examination, the minimum eligibility educational qualification required was High School. The Group 'C' posts have different qualification as per the Service Rules of different departments.

15. It is further submitted that as far as submission of the learned counsels for the petitioners that the approval given by the State Government dated 20.11.2020 had never been notified is not acceptable for the reason, it is not required under the Regulations 2015, the Regulations talks about only approval of the State Government which was duly accorded as per the Regulations, 2015.

16. It is further submitted that the amendment which has been mentioned in the approval dated 20.11.2020 it is in the case if the National Recruitment Agency (hereinafter referred as 'NRA') would be constituted then the amendment is required and till date NRA has not been constituted so there is no occasion to make any amendment in the Regulations 2015.

17. After hearing the learned counsel for the parties, going through the record of the case and the judgments cited by the learned counsels for the petitioners, the position which emerges out in the present case is that the learned counsel for the Commission in the short counter affidavit has enclosed the judgments passed in **Writ-A No.1180 of 2024, 'Ekta Singh & Others Vs. State Of U.P. & Others'**. In the case of **Ekta Singh & Others** (*supra*) the petitioners of that writ petition had approached this Court for quashing of the portion of advertisement dated 15.12.2001 to the extent it allows only such candidates to apply for being considered for selection to the post of Health Workers (female) who had appeared in the PET and with a further prayer to accept the applications of the petitioners for the aforesaid post ignoring the condition of PET on the ground that there is no provision in the Service Rule for holding the PET as the relief which are sought by the petitioners in the present case. The Hon'ble Single Judge by its judgment and order dated 04.02.2022 after considering the relevant provisions had dismissed the writ petition and not accepted the submission of the petitioners in that writ petition.

18. The judgment and order dated 04.02.2022 in the case of **Ekta Singh & Others** (*supra*) has been challenged by Smt. Mridul, the petitioner/ appellant in the Special Appeal No.74 of 2022 and the same has also been dismissed by the judgment dated 09.03.2022. The counsels representing the petitioners have not able to distinguish the decisions as referred to above.

19. As far as the judgment relied by the learned counsel for the petitioners in the case of **Ashish Kumar** (*supra*) it is with regard to the qualification which does not provide under the rules have been made part of the advertisement. The judgment in the case of **Dr. P.N. Dubey & Others** (*supra*) wherein the Hon'ble Apex Court has held that the selection cannot be made in pursuance of the unamended rules and that the case of **Renu & Others** (*supra*) the Hon'ble Apex Court has held that the appointments made without following the appropriate procedure under the rules/ government circulars and without advertisement or inviting applications from open market would amount to breach of Article 14 and 16 of the Constitution of India.

20. The judgments relied by the learned counsels for the petitioners are not applicable on the facts of the present case as the advertisement for PET examination published on 01.08.2023 provides educational qualification as only High School, so everyone could participate in the same without mentioning the qualification of different Service Rules having different qualifications for shortlisting the number of candidates. It has specifically been mentioned in the advertisement dated 01.08.2023 that it is mandatory for every candidate who has to appear for recruitment to the Group 'C' posts. The post of Pharmacist (Ayurvedic) is a Group 'C' post and the selecting body is the Uttar Pradesh Subordinate Services Selection Commission (UPSSSC), so it is incorrect averment that the petitioners were not in the knowledge that PET was going to be held for the post of Pharmacist (Ayurvedic). The advertisement for PET itself says that the PET was being held for all the Group 'C' posts which come within the purview of UPSSSC and the post of Pharmacist (Ayurvedic) is a Group 'C' post and comes within the purview of UPSSSC as per the Service Rules, 2023. Thus, there was sufficient notice to

all the candidates who were desirous of recruitment on Group 'C' posts in any department, that they have to appear for the PET.

21. The petitioners had not challenged the advertisement dated 01.08.2023 till the stage of advertisement for main written examination was published on 01.02.2024. They waited for such a long time and when they were restraint to appear in the examination as they had not appeared in the PET examination, then only they have approached this Court that too without challenging the approval granted by the State Government for holding the PET and the advertisement of PET examination.

22. The PET examination is to be conducted cannot be treated at par with the main written examination. It is only a qualifying exam for the purposes of shortlisting the number of candidates at the initial stage. The determination of vacancies and the qualifications are notified at the time of filling up of the vacancies at the time of conducting the main examination and as per the advertisement dated 01.02.2024 the educational qualification has been provided as per the service rules governing the petitioner i.e. Pharmacist (Ayurvedic). It is also incorrect to say that there was no transparency in the selection and the selection is going to be made without following the procedure provided under the rules and regulations and without making advertisement. The petitioners have neither challenged the approval given by the State Government nor the advertisement dated 01.08.2023 for PET in the present writ petition. Such arguments have no substance and no legs to stand.

23. In view of the facts and circumstances discussed above, the writ petitions are devoid of merits and hence are **dismissed**.

Order Date :- 4.3.2024

Mohd. Sharif