

Neutral Citation No. - 2024:AHC-LKO:27205-DB
Reserved

Chief Justice Court

Case :- SPECIAL APPEAL No. - 57 of 2024

Appellant :- Ekta Singh And 3 Others

Respondent :- State Of U.P. Thru. Prin. /Addl. Chief Secy. Deptt. Of Appointment Lko. And 2 Others

Counsel for Appellant :- Prateek Shrivastava, Avinash Singh Vishen

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

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per : Jaspreet Singh, J.)

1. This intra court appeal has been filed by the appellant who in their writ petition had assailed part of the advertisement dated 01.02.2024 annexed with the writ petition as Annexure P-1 whereby it mandated only such persons could apply for the posts (subject matter of the advertisement) who had qualified Preliminary Examination Test-2023 (hereinafter referred to as 'PET-2023') and a further relief was sought to declare the advertisement dated 01.02.2024 as ultra vires to the Uttar Pradesh Ayush Department Ayurvedic Pharmacist Service Rules, 2023 (hereinafter referred to '2023 Pharmacist Service Rules') with a further direction to allow the writ petitioners to apply for the post of Ayurvedic Pharmacist in pursuance of the advertisement as mentioned and their challenge did not find favour with the learned Single Judge as the petition preferred by the appellants along with three other petitions which were clubbed were dismissed by a common order dated 04.03.2024 which is under challenge in this appeal.

2. Briefly, the facts giving rise to the instant appeal is, that the Uttar Pradesh Subordinate Services Selection Commission (hereinafter referred to as the "Commission") issued an advertisement dated 01.02.2024 wherein

it was provided that persons who sought to apply for the recruitment on the post of Pharmacist (Ayurved) in the year 2024 must have an essential qualification of having qualified the PET-2023 examination.

3. It was stated that the appellants (writ-petitioners) are registered Ayurvedic Pharmacist and possessed requisite qualifications for being appointed to the advertised posts. Only on account of reasons that the Commission had introduced the qualification of having successfully cleared the PET-2023 Examination as an eligibility for applying to the advertised post and this led the petitioners to be excluded from the zone of applying to the advertised posts.

4. It is also stated that the appellants had passed the Diploma Course in 2017 and were registered as Ayurvedic Pharmacist with the Board in 2018.

5. The appointment on the post of Pharmacist (Ayurvedic) was earlier governed by the Uttar Pradesh Ayurvedic and Unani Pharmacist Service Rules, 1991 and the Commission is the recruiting agency for the said post. The State of U.P. in the year 2015 enacted the Uttar Pradesh Direct Recruitment to Group C post (Mode and Procedure) Rules, 2015 (hereinafter referred to as “2015 Rules”) and by virtue thereof the Commission was the recruiting agency of all Group C post in the State of U.P.

6. In the year 2023, the 1991 Rules were replaced by the Uttar Pradesh Ayush Department Ayurvedic Pharmacist Service Rules, 2023.

7. In August, 2023 the State as well as the Commission invited applications for the PET-2023 while in November, 2023, Rule 8 of ‘2023

Pharmacist Service Rules’ were amended and earlier the qualification which was prescribed, was, having passed Intermediate Examination with Science of the Board of High School and a diploma in Unani Pharmacy from a recognized institution, however, post the amendment a further prescription was inserted that is to say that the candidate must have passed the Intermediate Examination with Science (Biology or Mathematics). It is in the aforesaid backdrop that the appellants who possessed the necessary eligibility for the appointment on the post of Pharmacist (Ayurvedic) but for the condition inserted regarding having qualified the PET-2023, the appellants had been deprived of applying for the said posts.

8. The appellants had raised a challenge to the part of the advertisement dated 01.02.2024 on the premise that the advertisement was ultra vires in so far as it inserted the condition that only such persons were eligible for those posts who had qualified PET-2023.

9. It is further stated that Section 17 and Section 18 of the Uttar Pradesh Subordinate Services Selection Commission (hereinafter referred to as ‘U.P.S.S.S.C’ Act of 2014) does not permit insertion of such condition in the advertisement. It is stated that it is the Department who seeks recruitment on Class C post who must first determine the vacancies and then send the requisition to the Commission and only thereafter the advertisement should be issued by the Commission.

10. The contention before the writ court was that the 2023 Pharmacist Service Rules came into effect on 27.04.2022 and the qualification was amended by the Ayush Department of the State by the first Amendment Rules of ‘2023 Pharmacist Service Rules’ which came into effect 20th

November, 2020 while the impugned advertisement was published on 01.08.2023 which is contrary to the qualification provided under the Service Rules.

11. It was thus contended that the entire process as adopted by the State and the Commission is contrary to the provisions of the 2023 Pharmacist Service Rules and also against The Uttar Pradesh Subordinate Services Selection Commission (Procedure and Conduct of Business) Regulations, 2015 (hereinafter referred to as “2015 Regulations”).

12. These submissions were contested, before the writ court, by the Commission, amongst other grounds including that the issue in hand was already considered by Single Judge of this Court in ***Writ-A No. 96 of 2022 (Smt. Mridul and 16 others Vs. State of U.P. and Others)*** which was decided on **04.02.2022**. This judgment was also upheld by a Division Bench of this Court in Special Appeal No. 74 of 2022 decided on 09.03.2022 which was also followed by another Division Bench in ***Special Appeal No. 332 of 2022 (Neetu Singh & 9 Others Vs. State of U.P. and others)*** decided on 07.05.2022 and thus the challenge as raised by the writ-petitioner did not find favour with the learned Single Judge who dismissed four writ petitions by a common order dated 04.03.2024, which is under challenge in this appeal, only at the behest of the present appellants.

13. Sri Avinash Singh, learned counsel for the petitioner has vehemently urged that the interpretation put forward by the Commission to the ‘2023 Pharmacist Service Rules’ read with the Uttar Pradesh Subordinate Services Selection Commission Act, 2014, Regulations of 2015 are incorrect as it is against the legislative mandate.

14. The precise submission is that it is first for the Department to determine the number of vacancies in terms of '2023 Pharmacist Service Rules' which is to be read along with Section 17 of the U.P. Subordinate Selection Services Commission Act. It is only thereafter that the Commission can advertise the vacancy in accordance with the mode and procedure rules, 2015 and keeping in light Section 18 of the Uttar Pradesh Subordinate Service Selection Commission Act, 2014 and Regulation 6 (3) of the 2015 Regulations.

15. It is only thereafter that the Commission can hold the exam including the PET or any other similar screening test. Once, this process has been adopted only then the results can be declared, however, in the instant case, the advertisement has been published on 01.08.2023 without indicating as to how many vacancies have been determined by the Ayush Department and in process thereof the posts have been advertised without the said determination and it has also been mandated that only such candidates can apply who have qualified PET-2023.

16. It is further urged that the eligibility criteria fixed for the posts of Ayurvedic Pharmacist have been changed as per the amendment which came into effect on 20th November, 2023 and even prior thereto the advertisement for PET-2023 was published while the impugned advertisement is of August, 2023 and in this way the petitioner has been deprived of applying for the said post and to that extent the said advertisement incorporating such conditions ought to be declared as ultra vires.

17. It was also urged that the reference made to the earlier decision of the

learned Single Judge in **Smt. Mridul** (supra) which has been upheld by a Division Bench of this Court in Special Appeal No. 74 of 2023 and followed by another Coordinate Bench of this Court in **Neetu Singh** (supra) in Special Appeal No. 332 of 2022 are not applicable, inasmuch as, they do not consider Section 17 and 18 of the UPSSC Act of 2014, hence, the said decision may not come in the way of the appellants and the matter requires to be considered which has not been done by the learned Single Judge, hence, the appeal.

18. The learned counsel for the petitioner in support of his submissions has relied upon the decision of the Apex Court in *Ashish Kumar Vs. State of Uttar Pradesh and Others; 2018 (3) SCC 55*; *Dr. P.N. Dubey & Others Vs. State of M.P.; 1997 (3) SCC 497* so also in *Renu V. District and Sessions Judge, Tis Hazari Courts, Delhi and Another; (2014) 14 SCC 50*.

19. Sri Gaurav Mehrotra, learned counsel along with Sri Utsav Mishra, learned counsel for the Commission has urged that the issue has already been settled by a coordinate Bench of this Court in the case of **Smt. Mridul** (supra).

20. It is urged that from the conjoint reading of the various provisions in The UPSSSC Act, 2014, Pharmacist Service Rules, 2023, The 2015 Regulations and a Government Order dated 20th November, 2020, there can be no manner of doubt that the Commission is empowered to hold a two tier examination for all Group C posts in the State of Uttar Pradesh.

21. It is also pointed out that there is a fundamental defect in the

submission of the learned counsel for the appellants, inasmuch as, the Government order dated 20th November, 2020 has not been challenged and till such time the said Government Order subsists, there can be no indirect challenge or a challenge to a consequential order, hence, the appeal has no merit.

22. It has also been pointed out that the government had taken a decision which is reflected in the Government Order dated 20th November, 2020 that henceforth all Group C posts in the State of Uttar Pradesh shall be filled through a two tier examination. Once the State had given the approval, the Commission was bound to proceed accordingly and as such for all Group- C posts, a PET is held and once a person qualifies the PET in one relevant year, he is entitled to apply for any and all Group C posts which are filled through the selection process by the Commission. In light thereof, it cannot be said that the advertisement is bad as it is nothing but a reflection of a Government policy as well as the necessary rules and regulations nor it can be said that it introduces an arbitrary condition, hence, the challenge to the part of the advertisement made by the appellants is bad in the eyes of law.

23. It is also urged that all the aforesaid aspects have been considered by the Division Bench as such the decision of the learned Single Judge cannot be said to suffer from any error, consequently, the appeal must fail. It is also submitted that the decision cited by learned counsel for the petitioner in **Ashish Kumar** (supra), **P.N. Dubey** (supra) and **Renu** (supra) do not apply in the facts of the instant case, rather the matter is squarely covered by the decision of the Co-ordinate Bench in **Smt. Mridul** (supra)

24. The Court has considered the rival submissions and also perused the material on record.

25. At the outset, it may be noticed that by the impugned order dated 04.03.2024, four writ petitions were decided, however, the Special Appeal has been preferred only in respect of Writ-A No. 1180 of 2024.

26. In order to resolve the dispute as raised by the appellants, it will be necessary to refer to certain rules and regulations and also examine their interplay.

27. It will be first pertinent to notice the Uttar Pradesh Ayush Department (Ayurvedic) Pharmacist Rules, 2023 wherein Rule 2 clearly states that the Uttar Pradesh Ayush Department (Ayurvedic) Pharmacist Service is a subordinate service comprising of Group C posts. The said rules in Rule 3 (d) defines Commission to mean the Uttar Pradesh Subordinate Services Selection Commission.

28. Part 5 of Rules of 2023 aforesaid, provides for the procedure for recruitment and in Rule 14, it is provided that the Appointing Authority shall determine the number of vacancies to be filled by direct recruitment during the course of the year and also the number of vacancies to be reserved for candidates belonging to the Schedule Casts, Schedule Tribes and other Backward Class and such as other category as provided under Rule 6 and the vacancies to be filled through Commission shall be intimated to them.

29. Rule 15 provides that direct recruitment to the post in the service shall be made in accordance with the Uttar Pradesh direct recruitment to the

Group C post (Mode and Procedure) Rules, 2015 as amended from time to time.

30. At this stage, it will be relevant to notice the UPSSSC Act, 2014 wherein in Section 2, it is provided that the provisions of the Act shall apply in relation to direct recruitment to all Group C post below Group B including posts in Civil Secretariat and also to all Group C posts in the Board or a Corporation or any other Statutory Body established by or controlled by the State Government.

31. Now, it will be relevant to take a glance at the Uttar Pradesh Direct Recruitment to Group C posts (Mode and Procedure) Rules, 2015 wherein in Rule 3 it has been clearly indicated that the said mode and procedure rules, 2015 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 of India which are specified by the Government, by notification within the purview of Commission in relation to direct recruitments under Section 2 of the UPSSSC Act, 2014 except such Group C posts which are outside the purview of the Commission as provided by the Government or by any notification. The mode and procedure Rules, 2015 in Rule 8 (i) provides that the procedure for direct recruitment, the syllabus, marks of written examination/interview and the Rules relating thereof shall be as prescribed by the Commission from time to time with the approval of the Government.

32. The Uttar Pradesh Subordinate Selection Services Commission (Procedure and Conduct of Business) Regulations, 2015 in Rule 6 (2) clearly indicates that 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.

33. Similarly, in the aforesaid Rule 6 (4) of the aforesaid Rules of 2015, it is provided that in making selection by a 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 receipts 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 of the Commission to be nominated by the Chairperson.

34. Significantly, if the Government order dated 20th November, 2020 is perused, its Clause 4 is important which provides that the State had taken a policy decision that all Group-C posts to be filled by the Commission shall be done through a two tier examination. The preliminary test would be held on yearly basis and the marks obtained in the said examination would be valid for one year and in order to bring the mode of procedure rules, 2015, in conformity, separate exercise to amend the same would be done. It will be appropriate to reproduce Clause 4 of the Government Order dated 20th November, 2020 which reads as under:-

"इस सम्बन्ध में मुझे यह भी कहने का निर्देश हुआ है कि उपर्युक्त तथ्यों के आलोक में सम्यक् विचारोपरान्त उत्तर प्रदेश अधीनस्थ सेवा चयन आयोग द्वारा उपलब्ध कराये गये नवीन आवेदन प्रक्रिया एवं द्विस्तरीय परीक्षा प्रणाली के प्रस्ताव पर इस संशोधन के साथ अनुमोदन प्रदान किये जाने का निर्णय लिया गया है कि प्रारम्भिक परीक्षा का आयोजन वार्षिक रूप से किया जाएगा तथा इस परीक्षा में प्राप्त अंक अगले एक वर्ष अथवा भारत सरकार द्वारा भविष्य में आयोजित की जाने वाली परीक्षा में प्राप्त अंक जो भी पहले हो, तक के लिए प्रभावी होंगे। राष्ट्रीय भर्ती संस्था (NRA) के गठन के उपरान्त आयोग द्वारा मुख्य परीक्षाओं के लिए अभ्यर्थियों की शार्टलिस्टिंग हेतु राष्ट्रीय भर्ती संस्था (NRA) द्वारा आयोजित सामान्य अर्हता परीक्षा (CET) के स्कोर का ही उपयोग किये जाने के संबंध में उत्तर प्रदेश अधीनस्थ सेवा चयन आयोग (प्रक्रिया एवं कार्य संचालन) विनियमावली - 2015 में आवश्यक संशोधन की कार्यवाही पृथक से की जा रही है।"

35. From the conjoint reading of the provisions as noticed above, it would be clear that the State Government had taken a policy decision as reflected in the aforesaid Government Order dated 20th November, 2020. In the mode of procedure Rules, 2015, Rule 8 (i) clearly amplifies that the Commission is authorized to adopt a procedure for direct recruitment and has the power to prescribe the procedure also the syllabus, marks of written examination/interview with the approval of the Government including the right to hold a competitive examination. Regulation 6 (i), 6 (iv) of the Uttar Pradesh Subordinate Selection Service Commission (Procedure and Conduct of Business) Rules, 2015 are being reproduced for ready reference:-

“Regulation 6 (i) :- 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.

$$x \text{-----} x \text{-----} x \text{-----} x \text{-----} x \text{-----} x$$

(iv) In making selection by competitive examination or interview including preliminary test, the Commission may take recourse to modern testing aids including the use of computers at one stage or more stages of selection viz the stages of receipt and processing of the applications, issue for 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."

36. It is not disputed by the appellants that all the posts in Uttar Pradesh Ayush Department (Ayurvedic) Pharmacist Services is a subordinate service comprising of Group C posts. It is also not disputed that the said posts are to be filled by the Commission.

37. It is also not disputed that the direct recruitment to the Group C posts are to be done in accordance with the Uttar Pradesh Direct Recruitment to Group C posts (Mode and Procedure) Rules, 2015 as amended from time to time. Once, the enabling powers have been noticed, it leaves no manner of

doubt that the Commission is authorized to hold a preliminary examination.

38. At this juncture, if the advertisement impugned dated 01.02.2024 is seen, it would indicate that it refers to a clear condition that the Service Selection Board is inviting applications for total 1002 posts which are all Group C posts and for the purposes of shortlisting all such candidates who have qualified the PET-2023 shall be entitled to apply. The said advertisement in Clause 6 indicated the eligibility and Clause refer to the selection process. Clause 8 also refers that only such candidates who have qualified the PET-2023 can apply. In the aforesaid backdrop, it cannot be said that the Commission has inserted any condition which violates any provision of law or does not have the necessary sanction and approval of the State Government.

39. It is also not disputed that the petitioners have not assailed the Government Order dated 20th November, 2020. Once, the said Government Order remains intact, it clearly amplifies the approval given by the State which has been taken note of by the Commission and it has incorporated a condition regarding eligibility for the Group C posts in so far as the candidates are concerned who wish to apply, they must clear the PET-2023.

40. In this regard, if the decision of a Coordinate Bench of this Court in **Smt. Mridul** (supra) in Special Appeal No. 74 of 2022 is seen that similar issues were raised therein which were in respect of selection to the post of Health Workers (female) which is also a Group-C post. The Co-ordinate Bench held as under:-

“Having observed as above, what we need to see is as to whether in this case the prescription relating to PET has been prescribed by the State Government i.e. the employer or independently by the Commission. The recruitment to the

post under the State Government is to be held in terms of the provisions contained in the Service Rules framed by the State Government. In the instant case, for regulating the conditions of service, Service Rules 2018 have been framed by the State Government under the proviso appended to Article 309 of the Constitution of India which are known as "U.P. Medical, Health and Family Welfare Department Health Workers and Health Supervisors (Male and Female), Non-Gazetted, Service Rules, 2018. Rule 15 (a) of Service Rules, 2018 clearly provides that direct recruitment to the post in question shall be made in accordance with the Uttar Pradesh Direct Recruitment to Group 'C' Posts (Mode and Procedure) Rules, 2015. Thus, it is the employer i.e. the State Government itself in this case which had mandated by framing statutory rules under the proviso appended to Article 309 of the Constitution of India that the direct recruitment to the post in question has to be held in accordance with Rules 2015. It is again noticeable that even Rules 2015 have been framed by the State Government that is the employer itself under the proviso appended to Article 309 of the Constitution of India.

Rule 8 (1) of the Rules 2015 provides that the procedure for direct recruitment, syllabus, marks of written examination/interview and the rules relating thereof shall be such as may be prescribed by the Commission with the approval of the Government. Thus, it is Rules, 2015 framed by the State Government under the proviso appended to Article 309 of the Constitution of India which itself provides that the procedure for recruitment, syllabus etc. shall be as which may be prescribed by the Commission. Such prescription is available in Regulations 2015 framed by the Commission with the prior approval of the State Government in terms of the provisions contained in Sections 16 and 23 of U.P. Subordinate Services Selection Commission Act, 2014. Sub-regulations (2) and (6) of Regulation 6 of the Regulations 2015 are relevant, according to which the Commission is empowered with the prior approval of the State Government to hold a combined competitive examination for a group of posts and also to take a preliminary test or examination for screening of candidates. Regulation 6 provides that preliminary examination will mean screening test to be conducted by the Commission for the purposes 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. Thus, if the provisions contained in Rules, 2018, Rules 2015 and Regulations 2015 are read in conjunction with each other the indefeasible conclusion is that if the Commission in exercise of its powers conferred on it by Rule 8 (1) of the Rules 2015 makes any prescription for holding a PET with the approval of the Government, the same cannot be faulted with. The facts narrated above make it abundantly clear that such prescription in this case has to be attributed to the State Government and not to the Commission for the simple reason that Rule 15 (a) of Service Rules 2018 provides that recruitment shall be made in terms of the provisions contained in Rules 2015 and Rule 8 (1) of the Rules, 2015 provides that the procedure for recruitment which will include the mode and manner of recruitment, can be prescribed by the Commission. Thus, the Commission has made the prescription in Regulations 2015 in terms of the provision contained in Rule 8 (1) of the Rules 2015 read with Rule 15 (a) of Service Rules, 2018 with the approval of the State Government."

41. This dictum was also followed by another Division Bench in **Nectu Singh** (supra) in Special Appeal No. 332 of 2022 which has later been followed by the other Single Judge including another Division Bench case in **Smt. Vijaylaxmi Vs. State of U.P. and Others** in Special Appeal No. 193

of 2022. Even though, there may not have been a specific reference to Section 17 and 18 of the UPSSSC Act of 2014 yet the fact remains that the issue raised in the instant petition stands covered by the earlier Division Bench cases as mentioned above.

42. Even though, if at all, Section 17 and 18 of the UPSSSC Act of 2014 is taken note of in context with the Rule 14 of the Pharmacist Rules, 2023 yet the irresistible conclusion that can be drawn and the fact that it is for the State to formulate a policy. The Commission is entitled to hold a two tier examination with the approval of the State. In light of the Government Order dated 20th November, 2020 which has not been challenged and it amplifies the approval of the Government enabling the Commission to hold a two tier examination for filling up of all Group-C posts. Hence, neither there is any lack of competence of the Commission nor there is any error in the procedure adopted by the Commission. Thus, this Court is of the considered view that the decision rendered by the learned Single Judge does not suffer from any error which may persuade this Court to interfere more so in light of the position which has been settled by the Coordinate Bench in **Smt. Mridul** (Supra), **Smt. Vijaylaxmi** (supra) and **Smt. Neetu Singh** (supra).

43. For all the aforesaid reasons, the appeal is devoid of merits and as such is *dismissed*. Costs are made easy.

Order Date : 03rd April, 2024

Asheesh

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)