

Neutral Citation No. - 2024:AHC-LKO:29195

**Court No. - 6**

**Case :-** WRIT - A No. - 2877 of 2024

**Petitioner :-** Shiv Prakash Pandey And Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Food Safety And Drug  
Administration Deptt. Lko. And Others

**Counsel for Petitioner :-** Prafulla Tiwari, Naveen Shukla

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

And

**Case :-** WRIT - A No. - 2874 of 2024

**Petitioner :-** Ms. Kastoori Mishra And Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Food Safety And Drug  
Administration Deptt. U.P. Lko. And Others

**Counsel for Petitioner :-** Prafulla Tiwari, Naveen Shukla

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

**Hon'ble Abdul Moin, J.**

1. Heard Sri Prafulla Tiwari and Sri Naveen Shukla, learned counsels for the petitioners, Ms. Deep Shikha, learned Chief Standing Counsel for the respondents no.1 and 2, and Sri Gaurav Mehrotra along with Sri Utsav Misra, learned counsels appearing for respondents no.3 and 4.

2. There is consensus amongst learned counsels for the contesting parties that both the aforesaid writ petitions involve a common question of law and as such the Court proceeds to hear the aforesaid writ petitions together. For convenience, the facts of Writ-A No.2877 of 2024 have been taken into consideration.

3. Writ-A No.2877 of 2024 has been filed with the following prayers:

*“(a) To issue a writ, order or direction in the nature of certiorari quashing the condition imposed in the impugned Advertisement No. 05- Examination/2024 dated 22.02.2024 issued by U.P. Subordinate Service Selection Commission that only those candidates will participate in the selection process who have qualified the Preliminary Eligibility Test-PET-2023 in so far it relates to filing the*

*306 posts of Junior Analyst (Drug), the true of which is contained as Annexure 1 to this writ Petition.*

*(b) To issue a writ, order or direction in the nature of mandamus commanding the Opp-parties to permit the petitioners to submit their application forms against the 306 posts of Junior Analyst (Drug) without imposing the condition of appearing in PET-2023 Examination and also to accept the application forms of the petitioners and to allow the petitioners to participate in the selection process going to be held in furtherance of the Advertisement No. 05-Examination/2024 dated 22.02.2024 issued by U.P. Subordinate Service Selection Commission.*

*(c) To issue a writ, order or direction in the nature of mandamus commanding the Opp-parties to grant age relaxation to petitioners No. 1, 5, 6, 10, 19, 29, 30, 32, 33, 34 and 41 for the purposes of submission of their applications forms against 306 posts of Junior Analyst (Drug).*

*(d) To award the cost of this petition in favour of the petitioners.”*

*To issue any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case.*

4. Writ-A No.2874 of 2024 has been filed with the following prayers:

*(a) To issue a writ, order or direction in the nature of certiorari quashing the condition imposed in the impugned Advertisement No. 04- Examination/2024 dated 21.02.2024 issued by U.P. Subordinate Service Selection Commission that only those candidates will participate in the selection process who have qualified the Preliminary Eligibility Test-PET-2023 in so far it relates to filing the 360 posts of Junior Analyst (Food), the true of which is contained as Annexure 1 to this writ Petition.*

*(b) To issue a writ, order or direction in the nature of mandamus commanding the Opp-parties to permit the petitioners to submit their application forms against the 360 posts of Junior Analyst (Food) without imposing the condition of appearing in PET-2023 Examination and also to accept the application forms of the petitioners and to allow the petitioners to participate in the selection process going to be held in furtherance of the Advertisement No. 04-Examination/2024 dated 21.02.2024 issued by U.P. Subordinate Service Selection Commission.*

*(c) To award the cost of this petition in favour of the petitioners.*

5. Bereft of unnecessary details, the facts canvassed are that the petitioners have challenged the advertisement dated 22.02.2024, a copy of which is Annexure-1 to the writ petition, so far as the advertisement prescribes that it is only those candidates who have qualified the Preliminary Eligibility Test-2023 (for short 'PET-2023') would be eligible to appear in the said examination.

6. The contention of learned counsel for the petitioners is that the petitioners intend to apply for the post of Junior Analyst (Drug) under the Uttar Pradesh Food Safety and Drug Administration Department. The Uttar Pradesh Food Safety and Drug Administration Department Analysts (Food and Drug Laboratory) Service Rules, 2017 (hereinafter referred to as the 'Rules, 2017'), a copy of which has been filed as Annexure-2 to the petition, indicates that there were 60 posts of Junior Analyst (Drug). By means of Notification dated 30.11.2023, a copy of which is Annexure-8 to the petition, 306 more posts of Junior Analyst (Drug) have been created.

7. Subsequent thereto, the respondent-Commission has issued impugned advertisement inviting applications for 361 posts of Junior Analyst (Drug) and also prescribing that a candidate intending to apply for the said post should have qualified PET-2023.

8. The contention of learned counsel for the petitioners is that as initially there were only 60 posts of Junior Analyst (Drug) which have only been enhanced/increased vide notification dated 30.11.2023 and the PET-2023 had already been held on 28/29.10.2023 in which the petitioners did not appear, consequently the posts of Junior Analyst (Drug) which have been created subsequent to holding of the PET examination through notification dated 30.11.2023 may not be governed by the condition of qualifying the PET-2023 examination. The further contention is that the requisition which has been sent by the department to the Commission should only have been confined to 60 existing posts of Junior Analyst (Drug) and could not take into consideration the subsequent 306 posts which have been created and as such it is prayed that the condition of qualifying the PET-2023, so far as it pertains to the petitioners, should be waived off and they should be

permitted to appear in the examination without insistence of qualifying the PET-2023 and that age relaxation should also be granted to some of the petitioners as specified in prayer clause (c) as they have become overage as the post of Junior Analyst (Drug) has now been advertised since last advertisement of 2011 i.e. after 13 years.

9. So far as Writ-A No.2874 of 2024 is concerned, the same pertains to the post of Junior Analyst (Food) of which initially there were 60 posts and 360 posts have been created vide notification dated 30.11.2023, a copy of which is Annexure-7 to the petition. The impugned advertisement is dated 21.02.2024, a copy of which is Annexure-1 to the petition, with respect to 417 posts of Junior Analyst (Food). However, no benefit of age relaxation has been sought.

10. On the other hand, Sri Gaurav Mehrotra, learned counsel appearing for the Commission states that PET has been introduced by means of Government Order dated 20.11.2020. The said Government Order categorically provides for holding of a PET examination and further providing that it is only those candidates who have qualified the PET examination would be eligible to appear for the posts in question.

11. Sri Mehrotra argues that apart from the fact that the Government Order dated 20.11.2020, which provides for qualifying the PET examination, has not been challenged, another aspect of the matter is that a perusal of the notification for holding PET-2023, a copy of which has been filed as Annexure-7 to the petition, would indicate that the condition of qualifying in the PET-2023 has been specified for all posts as would be apparent from a perusal of the said notification.

12. Placing reliance on the aforesaid notification dated 01.08.2023, the argument of Sri Mehrotra is that when the Government Order dated 20.11.2020 itself provides of a person to have qualified the PET examination and while issuing the notification for holding of the PET examination for the year 2023 on 01.08.2023, it was clearly specified before specifying that the said PET examination would be applicable in terms of the aforesaid Government Order dated 20.11.2020 for all posts consequently even if by

means of the notification dated 30.11.2023, 306 additional posts of Junior Analyst (Drug) have been created, the same would not and cannot depart from the fact that a person in order to appear in the examination as notified by the Commission has to have qualified the PET examination. Sri Mehrotra also states that requisition had been sent by the department to the Commission on 09.02.2024.

13. Reliance has also been placed on two Division Bench judgments of this Court in the cases of Smt. Mridul vs. State of U.P. and others passed in Special Appeal No.74 of 202 decided on 09.03.2022 and Ekta Singh and 3 others vs. State of U.P. and others passed in Special Appeal No.57 of 2024 decided on 03.04.2024, to argue that certain other candidates had also challenged the condition of qualifying in the PET examination which has not found favour by both, the Hon'ble Single Judge of this Court and by the Division Bench of this Court and as such the petitioners are not entitled for any relief and as such it is prayed that the aforesaid writ petitions be dismissed.

14. So far as the argument of age relaxation is concerned, learned Chief Standing Counsel argues that the age relaxation would only arise in case the petitioners are eligible for appearing in the examination but in the instant case once the petitioners have not even qualified the PET, consequently there cannot be any consideration of they being eligible for appearing in the examination what to talk about grant of age relaxation.

15. Responding to that, Sri Prafulla Tiwari, learned counsel for the petitioners has argued that the Government Order dated 20.11.2020 need not be challenged considering that in terms of the notification dated 30.11.2023, 306 posts have been created and the condition of qualifying the PET-2023 would not be applicable with respect to the said posts.

16. Heard learned counsels for the contesting parties and perused the records.

17. From perusal of record, it emerges that the petitioners are all the candidates who are intending to apply for the post of Junior Analyst (Drug). Admittedly, none of the petitioners have passed PET examination. The Uttar

Pradesh Food Safety and Drug Administration Department was initially having 60 posts of Junior Analyst (Drug) which posts now stand increased by means of notification dated 30.11.2023 by which 306 additional posts have been introduced.

18. The advertisement dated 22.02.2024, a copy of which is Annexure-1 to the writ petition, has been issued by the Commission for filling in 361 posts of Junior Analyst (Drug). The advertisement specifically provides that only those candidates would be eligible to appear in the examination who have qualified the PET-2023. Admittedly, PET-2023 has been introduced in terms of the Government Order dated 20.11.2020 per which qualifying the PET examination has been made mandatory. Admittedly, no challenge has been made to the Government Order dated 20.11.2020 in the instant petition meaning thereby that the condition of qualifying the PET examination being introduced in the recruitment stands good as of date. The argument of learned counsel for the petitioners that the Government Order dated 20.11.2020 need not be challenged considering that in terms of the notification dated 30.11.2023, 306 posts have been created and the condition of qualifying the PET-2023 would not be applicable with respect to the said posts as the PET 2023 had been already held in October, 2023 and the posts have been created subsequently is patently fallacious inasmuch as once the Government Order dated 20.11.2020 has introduced the condition of qualifying the PET examination **in all recruitments** to be held by the Commission and the said condition has been indicated while issuing the advertisement dated 22.02.2024 consequently the said advertisement would govern all posts for which the notification has been sent by the department which in the instant case has been sent on 09.02.2024 meaning thereby that a candidate who intends to apply for the advertised post has to fulfill the qualification as has been prescribed in the advertisement keeping in view the Government Order dated 20.11.2020.

19. The argument that the PET-2023 would only be applicable with respect to the posts which were in existence on the date of holding of the PET examination and the PET examination having been held on 28/29.10.2023

and the notification of additional posts having been issued subsequently on 30.11.2023 as such the said posts created subsequently would not be governed by PET-2023 is again an argument which is patently fallacious more particularly taking into consideration the Government Order dated 20.11.2020 which has not been challenged by the petitioners on the argument as already indicated above.

20. Even otherwise, this aspect of the matter regarding introduction of the PET has already engaged the attention of the Division Bench of this Court in two cases namely in the case of **Smt. Mridul (supra)** as well as **Ekta Singh (supra)**. In the case of **Ekta Singh (supra)** the Division Bench of this Court after considering the judgment of **Smt. Mridul (supra)** has held as under:-

*“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)*

*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-----x-----x-----x-----x-----x-----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.*

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 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)."*

*(emphasis by the Court)*

21. So far as the argument that certain petitioners should be granted age relaxation as the last examination of Junior Analyst (Drug) was held in the year 2011 and the petitioners who have been indicated in prayer clause 'c' have become overage, suffice to state it is only when the petitioners are

eligible in terms of the advertisement meaning thereby that they have qualified the PET examination that the question of age relaxation can be considered. Once admittedly none of the petitioners have qualified the PET examination consequently there cannot be any occasion for directing the State Government to consider the age relaxation of the petitioners.

22. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is dismissed.

**Order Date :- 10.4.2024**

A. Katiyar