

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1172 of 2016

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1. Bihar Rajya Berojgar Bheshagya Sangh through its General Secretary, Ramanuj Shahi, Son of late Ram Lakhan Shahi, resident of at & P.O.- Kanap, P.S.- Daudnagar, District- Aurangabad.
 2. Santosh Kumar, Son of Sri Kamlesh Prasad Singh, resident of Chhotu Smriti, Road No. 13 B, Rajendra Nagar, P.S.- Kadamkuan, District- Patna.
 3. Manoj Kumar, Son of Sri Suryanandan Singh, resident of Laxmipur, P.O.- Mangorihar, P.S.- Sakra, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
4. The Director-in-Chief, Health Services, Govt. of Bihar, Patna.
5. The Staff Selection Commission through its Chairman, Bihar Veterinary College, Patna.
6. The Secretary, Bihar Staff Selection Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate.
For the State	:	Mr. Vivek Prasad- GP 18 Ms. Manisha Singh, AC to GP 178
For the Commission	:	Mr. K.K.Upadhyay, Advocate. Mr. C.B.Das, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 11-11-2016

Heard learned counsel for the parties.

2. The petitioners, in the present writ application, have challenged Clause 6(1) of the Bihar Pharmacists Cadre Rules, 2014 (hereinafter referred to as the 'Cadre Rules, 2014') as *ultra vires* being repugnant to the Central Legislation, namely, Pharmacy Act, 1948 (hereinafter referred to as the 'Act') so far it relates to fixation of



minimum qualification of Intermediate/10+2 with Science for being appointed as Pharmacist, in addition to holding Diploma in Pharmacy.

3. The petitioner no. 1 claims to be Association of unemployed Pharmacists through its General Secretary and petitioners no. 2 and 3 possess certificates of Diploma in Pharmacy. They have obtained such Diploma in Pharmacy on the basis of the minimum qualification for such diploma i.e., Matriculation. The Government of Bihar framed Bihar Pharmacist (Procedure, Service Condition and Recruitment) Rules, 2004 (hereinafter referred to as the '2004 Rules') and Clause 1.2 stipulated that the educational qualification for the post of Pharmacist would be Intermediate with Science or equivalent examination and technical qualification of Diploma in Pharmacy.

4. In terms of the 2004 Rules, an advertisement bearing No. 0606 was published on 07.04.2006 for filling up 1116 posts of Pharmacist. Earlier, candidates, who had applied, pursuant to the advertisement of the State Government bearing No. 22/Pharma-1/99, for appointment to the post of Pharmacist on the basis of minimum qualification of Matriculation, moved this Court when no action was taken relating to such advertisement. The State Government, thus, by Letter No. 588(4) dated 15.05.2007, directed for inclusion of such candidates, who had applied against advertisement No. 22/Pharma-1/99 on the basis of the qualification of Matriculation and Diploma in



Pharmacy in the advertisement No. 0606 dated 07.04.2006. The petitioners, thus, filed CWJC No. 14751 of 2006 challenging Clause 1.2 of 2004 Rules on the ground that till prior to 09.07.1994, a matriculate was eligible to acquire Diploma in Pharmacy and only thereafter the regulation was amended fixing minimum qualification of Intermediate in Science in place of Matriculation for admission to Diploma in Pharmacy course, which was the case with the petitioners. The said writ application was disposed off by order dated 26.10.2010 on the basis of the stand taken on behalf of the State that such applicants who had acquired Diploma in Pharmacy, in accordance with Rules/Regulations, existing prior to 09.07.1994, would not be disqualified. In the meantime, the State Government did not proceed with the recruitment process pursuant to advertisement No. 0606 and came out with Cadre Rules, 2014 on 24.09.2014. Clause 6(1) of the Cadre Rules, 2014 also provides for the minimum educational qualification of Intermediate/10+2 (Science) and Diploma in Pharmacy, which is under challenge in the present writ application.

5. Learned counsel for the petitioners submitted that the Pharmacy Council of India, in its letter dated 31.08.2006 to the Secretary, Department of Health, Medical Education & Family Planning and ISM, Government of Bihar, has clarified the position that under Education Regulations 1981 "Diploma in Pharmacy" was



of 2 years and 750 hours practical training after 10th standard and one year and 750 hours practical training after 10+2 and further that after repeal of the Education Regulations 1981 by the Education Regulations 1991, with effect from 11.07.1992, “Diploma Course in Pharmacy” is of two years and 500 hours practical training and the admission qualifications were Intermediate examination in Science, the first year of the three year degree course in Science, 10+2 examination (academic stream) in Science; and Pre degree examination and thus, such minimum qualification of Intermediate/10+2 (Science) for holders of Diploma in Pharmacy having obtained such certificate under the Education Regulations 1981 with basic qualification of Matriculation cannot be debarred from being considered for appointment in the Pharmacist Cadre under the Health Department of the Government of Bihar. Learned counsel submitted that the same was impermissible in view of the earlier decision of this Court passed in CWJC No. 14751 of 2006 (supra). Learned counsel submitted that the Cadre Rules, 2014, being identical to the 2004 Rules, relating to the minimum qualification, which this Court, earlier, in CWJC No. 14751 of 2006(supra), has disposed off of on the stand taken by the State that matriculates, who had acquired Diploma in Pharmacy, in accordance with Rules/Regulations, existing prior to 09.07.1994, could not be disqualified from being considered,



retaining the same minimum qualification in the Cadre Rules, 2014 by the State Government making a judicial decision ineffective amounts to usurpation of judicial power, which is not permissible. For such proposition, he relies on a decision of the Hon'ble Supreme Court in the case of *S.S.Bola and Others vs. B.D.Sardana and Others* reported as **(1997) 8 SCC 522**.

5. Learned counsel for the State, on the basis of the counter affidavits filed on behalf of the respondents no. 3 and 4, submitted that in terms of order dated 21.07.1999 in CWJC No. 4302 of 1998, an advertisement was published by the Bihar Staff Selection Commission (hereinafter referred to as the 'Commission') for filling up 1059 posts of Pharmacist on 25.01.2000, but when things did not proceed, CWJC No. 11405 of 2004 was filed praying for issuance of a direction to make appointment and issue appointment letters in terms of the advertisement dated 25.01.2000. During pendency of CWJC No. 11405 of 2004, 2004 Rules were framed, pursuant to which a new advertisement, for filling up of 1116 posts of Pharmacist, was advertised on 07.04.2006, which was also made a subject matter in CWJC No. 11405 of 2004. The writ application was disposed off by order dated 14.11.2007 wherein on the basis of undertaking given by the Commission, a direction was issued that earlier posts of Pharmacist advertised on 25.01.2000 shall be filled up by holding a



separate selection test. It was submitted that thereafter, a communiqué of the Commission dated 03.02.2009, with regard to filling up of the posts of Pharmacist, advertised on 25.01.2000, on the basis of written test followed by interview as per 2004 Rules, was assailed in CWJC No. 3107 of 2009. The said writ application was disposed off by order dated 23.12.2009 holding that the selection for the posts of Pharmacist had to be conducted by the Commission strictly in terms of advertisement dated 25.01.2000 and challenge to the same in LPA No. 399 of 2010 was negated by order dated 16.09.2010 and SLP No. 11160 of 2011, preferred against the said order, was also dismissed by the Hon'ble Supreme Court. The process culminated in declaration of merit list of 468 candidates, which was assailed in CWJC No. 12382 of 2012 and CWJC No. 14765 of 2012, and both the writ applications were dismissed by judgment dated 14.03.2014.

6. Having considered the matter, we do not find any merit in the writ application. The fixing of minimum qualification for recruitment to any service cadre under the State is to be decided by the employer i.e., the State. The power of judicial review in such cases is limited to either the provision being unreasonable or having no bearing or nexus to the purpose for which such provision has been made, which in the present case is recruitment to the post of Pharmacist. In the present case, we do not find any repugnancy



between the Cadre Rules, 2014 and the Act as both operate in different fields. The Act relates to fixing of the minimum qualification for the purpose of pursuing and obtaining Diploma in Pharmacy. The Act is for the purpose of determining the eligibility to practice as a Pharmacist, whereas, it is for the State to decide as to what qualification it would fix for recruiting persons in the Pharmacist cadre created by the Health Department of the State Government. The purpose of the Act is to maintain the standard of education relating to award of Diploma in Pharmacy for making a person eligible to practice as a Pharmacist. Thus, persons not confirming to the same, are not qualified either for registration or to practice as Pharmacist. However, when it comes to recruitment to a post, it is the employer who can set a higher standard which is the case with the Cadre Rules, 2014. Thus, the State Government wanting such Pharmacists, who hold Diploma in Pharmacy and have also the basic qualification of Intermediate/10+2 with Science, cannot be said to be arbitrary or unreasonable. Further, with effect from 11.07.1992, under the Education Regulation 1991, the minimum qualification ceased to be Matriculation and, thus, as of now, i.e., after over 24 years, the issue has almost become academic since the existing upper age limit for recruitment to the Pharmacist Cadre, under the general category, to which the petitioners belong, has already expired.



7. As far as the issue relating to the State Government to legislate with a view to over turn a judicial pronouncement is concerned, there is no such issue involved in the present case inasmuch as the Court earlier in its order dated 26.10.2010 in CWJC No. 14751 of 2006(supra), had not laid down any rule or struck down any provision and in fact, the Court had observed as:

*“in view of aforesaid fair stand of the State
it is not necessary for us to go into the issue
of virus of the concerned rules.”*

8. Thus, the decision relied upon by the learned counsel for the petitioners in the case of **S.S.Bola** (supra) has no application in the present case.

9. In view thereof, we do not find any ground to interfere in the matter and accordingly, writ application stands dismissed.

(Hemant Gupta, ACJ)

(Ahsanuddin Amanullah, J)

Sujit/-

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