

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

(1) L.P.A. No.1778 of 2016

Sachin Saggar

...Appellant

VERSUS

State of Punjab & Ors.

....Respondents

(2) L.P.A. No.1795 of 2016

Keerti Seth

...Appellant

VERSUS

State of Punjab & Ors.

....Respondents

Date of Decision: 15.09.2016

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr.K.S.Dadwal, Advocate for the appellants.

SUDIP AHLUWALIA, J.

These two Intra-Court Appeals are directed against the judgment of the Ld. Single Judge dated 19.10.2012, which had actually disposed of as many as 13 Writ Petitions filed on behalf of the candidates for appointment to the Post of Drug Inspectors in the State of Punjab. It may be mentioned that all those Writ Petitions were filed during the middle of the recruitment proceedings when a short list of candidates eligible for interview was drawn up by the respondents.

2. The challenge in those Writ Petitions to the selection procedure

was basically on two grounds -

(i) Firstly, according to some Writ Petitioners, the shortlist had been drawn up by including candidates, who were otherwise ineligible for appointment as Drugs Inspector on account of their lack of prescribed essential experience as specified in the Rules, which had resulted in displacement of the Writ Petitioners from the shortlist drawn up;

(ii) Visible unconstitutionality in the matter of awarding an additional five marks for Proficiency in Punjabi Language (up to Matric level) in favour of candidates coming from Rural Schools in preference to those from Urban Areas;

3. The appellants in these two appeals, however, are not concerned with the second ground mentioned above, as their challenge to the recruitment process was limited to the alleged ineligibility of some shortlisted candidates (private respondents Nos.3 to 6). The challenge to recruitment process on the ground of unconstitutionality of the condition of five Marks in favour of the Rural based candidates in language proficiency was on behalf of other Writ Petitioners, such as the one in CWP No.17007 of 2010, who do not appear to have challenged the impugned judgment.

4. The case of the appellants is that the shortlist was motivatedly drawn up by the authorities by including ineligible candidates, who did not possess the requisite experience mentioned in the eligibility condition. On the other hand, the respondents' contention is that the Recruitment Rules do not prescribe any experience as an essential qualification for selection as Drugs Inspector.

5. The Ld. Single Judge found the respondents' contention as

more convincing and, therefore, dismissed the Writ Petitions, after having referred to an earlier decision on this point, of a Division Bench of the Allahabad High Court by observing inter-alia -

“Identical issue even came up for consideration before a Division Bench of the Uttar Pradesh High Court in Special Appeal No.804 of 2010 (State of U.P. v. Zunab Ali and others), wherein the same view had been taken and it had been held in the following terms:

“For appointment on the post of Drug Inspector, statutory essential qualifications have been prescribed under Rule 49 of the Drugs and Cosmetics Rules, 1945.

Rule 49 prescribes as under:

“Qualifications of Inspectors- A person who is appointed as Inspector under the Act shall be a person who has a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law:

Provided that only those Inspectors:

i) who have not less than 18 months' experience in the manufacture of at least one of the substances specified in Schedule C, or

ii) who have not less than 18 months' experience in testing of at least one of the substances in Schedule C in a Laboratory approved for this purpose by the licensing authority, or

iii) who have gained experiences of not less than three years in the inspection of firms manufacturing any of the substances specified in Schedule C during the tenure of their services as Drugs Inspectors; shall be authorised to inspect the manufacture of the substances mentioned in Schedule C.

(Provided further that the requirement as to the

academic qualification shall not apply to persons appointed as Inspectors on or before the 18th day of October, 1993)”.

6. The above observations of the Allahabad High Court found reflection in an another decision of the High Court in “Vinod Kumar Gupta Vs. State of U.P. (2010) 79 ALR 879”, wherein it was held that if a person is not having the experience as per proviso to Rule 49, even then, his appointment as Drugs Inspector cannot be questioned on this ground.

7. Now perusal of the qualification prescribed by the respondent/authorities for the post of Drugs Inspector in the relevant Public Notice (Annexure A-1) shows that the essential qualification of a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or Institution is identical. Likewise, there is the same proviso relating to the experience Clauses (i) (ii) & (iii), which are applicable only in case of *'those Inspectors'* who “*shall be authorized to inspect the manufacture of the substances mentioned in Schedule 'C' of the Drugs and Cosmetics Rules, 1945*”.

8. From a plain reading of the above qualifications notified by the Respondent authorities, which in turn had been adopted from Rule 49 of the Drugs and Cosmetics Rules, it is, thus, seen that the proviso only suggests that it is applicable only to the ***'Inspectors'*** (not applicants) and would thus come into operation *only after the appointment as an Inspector*, since it only restricts the assigning of job to inspect only a particular class of Drugs. But it has no application in the matter of bare recruitment or appointment of a person generally as a Drugs Inspector (Emphasis supplied). For this reason, we find no infirmity in the decision of the Ld. Single Judge in

holding that the proviso relating to experience as covered in the relevant rules as well as the advertisement issued by the respondent/authorities is not an essential qualification merely for 'recruitment' as a Drugs Inspector. Rather the same would come into play only when an already appointed Drugs Inspector would have to be assigned the job of inspecting the specified class of Drugs. No exception to the decision of the Ld. Single Judge can, therefore, in dismissing the Writ Petition on this ground, be taken.

9. Nevertheless, a rather half hearted reference to the recruitment rules for appointment as Drugs Inspectors in the Central Drugs Standard Control Organization covered under Notification dated 19.2.2010 of the Union Ministry of Health and Family Welfare, was made on behalf of the appellants. A copy of the relevant Notification in the Gazette has been filed as **Annexure A-1**, in which, the proviso relating to experience as covered under Rule 49 of the Drugs and Cosmetics Rules, has also been included as an essential qualification for 'recruitment to the post of Drugs Inspector in the Directorate General of Health Services under the Ministry of Health and Family Welfare'. On the face of it, therefore, it is clear that such qualifications are applicable for recruitment of Drugs Inspectors in the Directorate General of Health Services under the Central Government in the Ministry of Health and Family Welfare.

10. In this regard, the contention of the appellants is that the respondents in the present case were, therefore, obligated to regard the proviso relating to the experience related clause as an essential qualification for recruitment as Drugs Inspector. We are afraid that we cannot agree with this submission since undoubtedly Health and Family Welfare is also a State

subject under the Constitution, as also Public Services in the State. The respondents representing the State of Punjab are, therefore, under no legal obligation to automatically adopt the qualification prescribed in the Central Government's aforesaid Notification, and so were, therefore, well within their right to conduct the recruitment process in terms of their own existing Punjab Health and Family Welfare (Group- B) Services Rules, which were already in existence at the relevant time after having been notified on 22.10.2001.

11. For the aforesaid reasons, we find no substantive merit in these appeals, which are accordingly dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

September 15, 2016
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***