

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.19 of 2012 and
W.P.No.28887 of 2012 and
M.P.Nos.1 of 2012 and 1 of 2014

W.A.No.19 of 2012:

1. The Government of India
rep.by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
Moulana Azad Road,
New Delhi-110 011.
2. The Director General of Health Services,
Nirmm Bhawan,
Moulana Azad Road,
New Delhi-110 011.
- 3.The Drugs Controller General of India,
Food and Drugs Bhawan,
Kotla Road,
New Delhi-110 002. ... Appellants

-vs-

- 1.Indian Pharmacy Graduates Association
F-2, "A" Block,
DDA Shopping Complex,
Meerabagh,
New Delhi 110 087.
rep.by its Secretary of Tamil Nadu Branch
M.Dilip Kumar
- 2.Dr.Surinder Singh
- 3.The Chairman,
Union Public Service Commission,
Dholpur House, Shajahan Road,
New Delhi-110 069. ... Respondents

W.P.No.28887 of 2011:

Indian Pharmacy Graduates Association
F-2, "A" Block,
DDA Shopping Complex,
Meerabagh,
New Delhi 110 087.
rep.by its Secretary of Tamil Nadu Branch
M.Dilip Kumar

..Petitioner

-vs-

- 1.The Government of India
rep.by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
Moulana Azad Road,
New Delhi-110 011.
- 2.The Chairman,
Union Public Service Commission,
Dholpur House, Shajahan Road,
New Delhi-110 069.
- 3.The Director General of Health Services,
Nirmn Bhawan,
Moulana Azad Road,
New Delhi-110 011.
- 4.The Drugs Controller General of India,
Food and Drugs Bhawan,
Kotla Road,
New Delhi-110 002.
- 5.Dr.Surinder Singh

... Respondents

W.A.No.19 of 2012 filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.No.27468 of 2016
dated 20.12.2011 in M.P.No.2 of 2011 in W.P.No.28887 of 2011.

M.P. No. 2/2011: To grant stay of the impugned notification No.
G.S.R.452(E) dated 14.06.2011 pending W.P.

W.P.No.28887 of 2011 filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Declaration declaring that the Notification No.G.S.R.452(E)
dated 14.06.2011 issued by the first respondent as
unconstitutional, ultra vires, null and void.

W.A.No.19 of 2012:

For Appellants :: Mr.G.Rajagopalan,
Addl.Solicitor General of India
assisted by Dr.V.Venkatesan,
Sr.Central Govt.Standing Counsel

For Respondents:: Mr.P.Wilson, Sr.Counsel for
Mr.G.Sankaran for R1

No appearance for R2

Mr.K.Sridhar for R3

W.P.No.28887 of 2011:

For Petitioner :: Mr.P.Wilson, Sr.Counsel for
Mr.G.Sankaran

For Respondents:: Mr.G.Rajagopalan,
Addl.Solicitor General of India
assisted by Dr.V.Venkatesan,
Sr.Central Govt.Standing Counsel
for R1, R3 and R4

Mr.K.Sridhar for R2

No appearance for R5

JUDGMENT

(Delivered by M.DHANDAPANI, J.)

It is stated in the affidavit filed in support of the writ petition in W.P.No. 28887 of 2011, which has been filed by the Indian Pharmacy Graduates Association, that the petitioner-Association has been formed with a laudable object of protecting the interest of its members who are Pharmacy Graduates in service both in State and Central Governments, non-service Graduates employed privately and unemployed Pharmacy Graduates. Many of the members of the petitioner-Association are working in Drugs Control Department of various States as well as Central Government. The present writ petition has been filed against the Notification issued by the first respondent in G.S.R.452(E) dated 14.06.2011 by which recruitment rules for the post of Drug Controller General (India) has been notified for the first time, on the ground that it is opposed to the provisions of Drugs and Cosmetics Act, 1940 and Rules, 1945.

2.The petitioner states that there are no rules so far framed for recruitment to the post of Drugs Controller General

(India) which is the highest post in the Drugs Department and in the absence of the recruitment rules, there could be no rights accrued to any officer of the Drugs Department on individual basis to be represented. Therefore, the officers of the Drugs Department are commonly aggrieved to be represented through the petitioner Association. The petitioner states that the relevant provisions of Rules 49A and 50A of the Drugs and Cosmetics Rules, 1945 prescribes the qualification for appointment to the post of Drugs Controller General (India). The duties of the Inspectors are prescribed under Rules 51 and 52 which are very wide and hence a transparent method of selection is imperative for appointment of persons to the said post. Against the Notification issued, the Union Public Service Commission had received 26 applications out of which only 6 applicants were found to be eligible for consideration and the suitability of the fifth respondent and four others were assessed by a duly constituted Selection Committee and the fifth respondent was recommended for appointment to the post of Drug Controller General (India) and thereafter, the first respondent has appointed the fifth respondent herein on deputation basis as on 01.02.2008 and continued him in the said post for a period of more than 2½ years.

3.The petitioner states that in this connection, one Ramalingasamy, a retired Joint Director of Drugs Control under the Government of Tamil Nadu, has filed a writ petition in W.P.No.15607 of 2010 challenging the appointment of the fifth respondent herein to the post of Drug Controller General (India). During the course of hearing of the writ petition, it was brought to the notice of this Court that the first respondent had framed recruitment rules for the post and the same were notified in the Government of India Gazette Notification on 14.06.2011. The Division Bench of this Court has disposed of the said writ petition directing to complete the recruitment process to the said post in terms of the recruitment rules notified on 14.06.2011 as expeditiously as possible, by order dated 02.08.2011.

4.The learned senior counsel for the petitioner submits that the qualification prescribed in the recruitment rules is in violation of the statutory provisions contained in Rule 50A of the Drugs and Cosmetics Rules, 1945. The conditions imposed for deputation have been framed only to pave way for selection of the fifth respondent and few others who could be influenced by the first respondent. In other words, selection to such an important post wielding so much of authority is not by a transparent method of selection but only confined to select amongst those who are more pained in the hands of the first respondent. The learned senior counsel for the petitioner has also pointed out the inclusion of certain qualifications in the notification contrary to the Act. Further, the experience of 5

years prescribed under the Act has been changed to 15 years. Thus, it is submitted that the qualification prescribed in the impugned Notification is in contravention of the provisions contained in the Drugs and Cosmetics Act and the Rules with specific reference to Rule 50A of the Drugs and Cosmetics Rules, 1945. Finally, he submitted that the qualified persons belonging to the petitioner-Association to the said post have been affected in terms of the recruitment rules framed, in view of allowing 100% deputation of the persons from outside the Department, invoking Article 309 of the Constitution of India.

5. Stating so, the learned counsel for the petitioner prayed for quashing the Notification dated 14.06.2011 as one of null and void.

6. Mr. G. Rajagopalan, learned Addl. Solicitor General of India appearing for the respondents 1, 3 and 4 has submitted that as per the order dated 02.08.2011 passed by this Court in W.P.No.15607 of 2010, recruitment process should have been completed within a specified period based on the recruitment rules dated 14.06.2011 and hence the writ petition itself is not maintainable. Even otherwise, he submitted that the post of Drug Controller General (India) involves control of over 200 laboratories across India and have wider powers and responsibilities and hence the Government thought it fit to frame recruitment rules for the said post and hence the same were framed and notified in the Government of India Gazette. He further submitted that the post needs to be filled up by only by experienced and more qualified persons and hence, considering the importance of the post, recruitment rules were framed. Thus, according to the learned Additional Solicitor General, the contention of the learned senior counsel appearing for the petitioner-Association that formation of recruitment rules invoking Article 309 of the Constitution of India, when already rules are available under the Drugs and Cosmetics Rules, 1945, is illegal, does not hold any water. He further submitted that considering the importance of the post, the same can be filled up only by qualified persons and it cannot be confined to be filled up by promotion.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The learned senior counsel appearing for the petitioner challenges the Notification dated 14.06.2011 forming the recruitment Rules, on the ground that already rules are available under the Drugs and Cosmetics Rules, 1945 for recruitment to the post of Drugs Controller General (India), and in view of the formation of the recruitment rules, the promotion of the members belonging to the petitioner-Association has been affected, as the Recruitment Rules has prescribed new additional

qualifications, and also permitted 100% deputation. The learned senior counsel relied upon the decision of the Hon'ble Supreme Court in BSNL vs. Telecom Regulatory Authority of India, reported in (2014) 3 SCC 222 in support of his contention.

9. But according to the learned Additional Solicitor General of India, the members of the petitioner-Association cannot claim as a matter of right to be recruited to the said post of Drugs Controller General (India) by way of promotion. However, he also submitted that if the members of the petitioner-Association satisfies the requirements as prescribed under the Recruitment Rules framed as per the Notification dated 14.06.2011, they can very well compete in the selection process and there is no bar to the same.

10. Referring to Section 33 of the Drugs and Cosmetics Act, 1940, the learned Addl. Solicitor General of India has submitted that the Central Government has got powers to make rules after consultation with the Board and after previous publication by notification in the official Gazette, for the purpose of giving effect to the provisions contained in the chapter, provided that consultation with the Board may be dispensed with if the Central Government is of the opinion that such circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules. Thus, the learned Solicitor General of India has submitted that only by adhering to such provision, the recruitment rules have been framed necessitating invoking of Article 309 of the Constitution of India. He further submitted if any such need arises, recruitment shall be made by deputation and not necessarily by promotion.

11. It is seen that the post of Drugs Controller General (India) is a responsible post and it came into existence in the year 1981. Normally higher posts are filled up by way of promoting the existing officers. But the post of Drugs Controller General (India) is a post which controls over 200 laboratories across India. The person recruited should be capable of handling the affairs, for which more experience is required. If the Government feels that such post requires more experience, then it has to recruit the qualified personnel so as to achieve the objective of the said post. Even though the learned senior counsel for the petitioner claims that the members of the petitioner-Association got affected in view of framing new recruitment rules prescribing additional qualifications and experience, the Central Government has got ample powers to frame new rules for Drugs Controller General (India).

12. In the case of Ashutosh Gupta v. State of Rajasthan, reported in (2002) 4 SCC 34, the Hon'ble Supreme Court has discussed about the rule making power under Article 309 of the Constitution of India. The relevant portion of the said judgment reads as under:

"Where the challenge is made to a statutory provision being discriminatory, allegations in writ petition must be specific, clear and unambiguous. There must be proper pleadings and averments in the substantive petition before the question of denial of equal protection of infringement of fundamental right can be decided. There is always a presumption in favour of the constitutionality of enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity possess in making laws operating differently as regards different groups of persons in order to give effect to policies. It must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience. The claim of equal protection under Article 14, therefore, is examined with the aforesaid presumption that the State Acts are reasonable and justified. If we examine the challenge to the impugned provision from the aforesaid standpoint, we have no hesitation to hold that the appellants have utterly failed to establish any material from which grievances about the discrimination alleged can be said to have been made."

13. The learned senior counsel for the petitioner-Association did not establish that the new Rule formed is discriminatory. The allegations in the writ petition must be specific, clear and unambiguous. There must be proper pleadings to show that the new Rule is discriminatory and against the provisions of the Drugs and Cosmetics Act, 1940. In the absence of any specific, clear and unambiguous allegations, it cannot be stated that the new Rule is discriminatory.

14. In the judgment of the Hon'ble Supreme Court in the case of V.K.Sood v. Secretary, Civil Aviation, reported in 1993 Supp (3) SCC 9, in respect of rule making power, it has been held as under:

"5. In General Manager, S.Rly. v. Rangachari (AIR 1962 SC 36) another Constitution Bench held that equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the

equality of opportunity and nothing more. Article 16 (1) or 16(2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office or post. Any provision as to the qualifications for the employment or appointment to an office or post reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity. In *State of Mysore v. P.Narasimha Rao* (AIR 1968 SC 349), this Court held that the provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for such service as such. The same was the view in another Constitution Bench decision reported in *State of J&K v. Triloki Nath Khosa* [(1974) 1 SCC 19]. In *State of Orissa v. N.N.Swamy* [(1977) 2 SCC 508], this Court held that the eligibility must not be confused with the suitability of the candidate for appointment.

6. Thus it would be clear that, in the exercise of the rule-making power, the President or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission."

15. With a prayer similar to the one made in this writ petition, a public interest litigation was filed before the Delhi High Court in W.P.(C)No.8091 of 2011 (*V.K.Mittal v. Union of India and others*), challenging the new Rules and the same was dismissed by judgment dated 14.02.2012. Relevant portion of the said judgment reads as follows:

"6. It is clear from the aforesaid that in case the tenure is shortened without any sufficient cause or in an arbitrary manner, such a deputationist has a right to challenge this action. Furthermore merely because a person who is on deputation can be sent back at the

will of the post department would not be a ground to hold that such a Rule is bad in law. It is for the employer to lay down the Rule for appointment to a particular post unless the Rules are found to be discriminatory or against the provisions of the Act / Constitution, this Court cannot sit in judicial review and determine as to whether such a Rule is bad or there could be a better Rule for appointment. These matters are to be left to the expert bodies and / or the employer. We, thus, find no merit in this writ petition which is accordingly dismissed. We record here that learned counsel for the Respondent had argued that this writ petition in public interest is not maintainable as it is a service matter and further based on newspaper reports. Since we are dismissing the writ petition on merits, we leave the aforesaid question of law."

16. In the case on hand, the Government has framed the rules invoking Article 309 of the Constitution of India, regulating the method of recruitment to the post of Drugs Controller (India) in the Central Drugs Standard Control Organisation, Directorate General of Health Services in the Ministry of Health and Family Welfare. The recruitment rules framed includes 100% deputation including short-term contract, of the officers under the Central / State Government / Union Territories / recognised Research Institutions / Public Sector Undertakings / Semi-Government / Autonomous / Statutory Organisations, having requisite qualifications as stated therein. Initially, if a Department is formed, many rules will be framed by the Government to carry out the task so that the machinery runs smoothly, without any hurdles in decision making. Thus, the recruitment rules framed is not contrary to the Drugs and Cosmetics Act, 1940. It may not be out of place to state that the formation of Recruitment Rules does not prevent the members of the petitioner-Association to compete in the selection process, if they satisfy the norms as prescribed in the Recruitment Rules. While formation of a new Department, the Government may resort to practices involving deputation of qualified persons from any other Department including persons who are working in the same Department, who have sufficient experience and expertise in the subject.

17. With the above observations, the writ petition stands dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

18. The writ appeal in W.A.No.19 of 2012 has been filed by the Government of India challenging the order passed in the interim application in M.P.No.2 of 2012 in W.P.No.28887 of 2011 dated 20.12.2011, in which stay has been granted by a learned single Judge of this Court as regards the method of recruitment

to the post of Drugs Controller (India). Since the writ petition itself has been dismissed as above, nothing survives in this writ appeal and accordingly the same is dismissed as infructuous. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

KM

To

1. The Secretary to Government,
Government of India
Ministry of Health and Family Welfare,
Nirman Bhawan,
Moulana Azad Road,
New Delhi-110 011.
2. The Director General of Health Services,
Nirmal Bhawan,
Moulana Azad Road,
New Delhi-110 011.
3. The Drugs Controller General of India,
Food and Drugs Bhawan,
Kotla Road,
New Delhi-110 002.
4. The Chairman,
Union Public Service Commission,
Dholpur House, Shajahan Road,
New Delhi-110 069.

+1 CC to Mr.G. Sankaran, Advocate sr 37267
+1 CC to Mr.V.Venkatesan, Advocate sr 37066.

W.A.No.19 of 2012 and
W.P.No.28887 of 2012 and
M.P.Nos.1 of 2012 and 1 of 2014

SP(06/07/2018)