

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

CWP No. 13032 of 2020

Date of decision : 28.08.2020

Bhupinder Singh and others

.... Petitioners

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present : Mr. Vikas Arora, Advocate for the petitioners.

Mr. Sahil Sharma, DAG, Punjab.

Mr. R. S. Kalra, Advocate for respondent No.4.

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DAYA CHAUDHARY, J.

Case has been heard through video conferencing in view of
COVID-19 Pandemic.

The petitioners are working on the posts of Pharmacist on contractual basis in State of Punjab under the Government of India sponsored schemes and are performing the same duties and responsibilities of Pharmacist which are to be advertised through the impugned Notification but the petitioners have been declared ineligible. They are governed by The Punjab Health and Family Welfare Technical (Group-C) Service Rules, 2007. However, the Government of Punjab has repealed these Rules especially the rules relating to qualification for the post of Pharmacist with the new Rules *i.e.* The Punjab Health and Family Welfare Technical

(Group-C) Service Rules 2016. Under the old Rules of 2007, Diploma in Pharmacy was the requisite qualification for appointment on the posts of Pharmacist. In the amended Rules of 2016, Bachelor in Pharmacy is the requisite qualification fixed for appointment on the posts of Pharmacist instead of Diploma in Pharmacy. Said amendment has been challenged by the petitioners on the grounds that the vacancies occurred prior to the amendment of the Rules and those should have been filled up under the Rules of 2007. The amendment in the Rules is not only discriminatory but arbitrary as the same has been made just to debar the petitioners from participating in the selection process as they are working on contractual basis since long and have right to be considered on the posts of Pharmacist because of their long experience on the posts.

Learned counsel for the petitioners submits that the amendment in the Service Rules has been made in an arbitrary and discriminatory manner and just to reject the claim of the contractual employees like the petitioners. Learned counsel further submits that the amendment in the Rules has been made without consulting with the expert/statutory body like Pharmacy Council of India or Punjab State Pharmacy Council. Learned counsel also submits that the vacancies, which have occurred prior to the amendment of the Rules are governed by the old Rules of 2007 and not by the amended Rules of 2016. The petitioners were eligible as per the old Rules, but still it has not been taken into consideration. Learned counsel also submits that different yardsticks have been adopted to engage the candidates like the petitioners for appointment on contractual basis. Petitioners have completed their diploma prior to 2016 amendment but still

they have been declared ineligible. In support of his arguments, learned counsel for the petitioners has relied upon judgment of Hon'ble Apex Court in case ***Sukhwinder Kumar & Ors. Vs. State of Punjab & Ors. 2017 (9) SCC 438*** and judgment dated 14.11.2013 of Division Bench of this Court passed in ***CWP No. 15678 of 2011*** titled as ***Jaspal Singh and others Vs. State of Punjab and others.***

Learned State counsel has opposed the submissions made by learned counsel for the petitioners. He further submits that the petitioners have no right to challenge the amendment in the Rules. They have no right to be considered as they do not possess the requisite qualification. The amendment cannot be said to be arbitrary and discriminatory in any manner.

Learned counsel for respondent No.4 has also opposed the submissions made by learned counsel for the petitioners. He further submits that the amendment in the Rules has been made by the competent authority. As per the terms and conditions mentioned in the appointment letters of the petitioners, they were appointed purely on contractual basis on consolidated remuneration. It was also mentioned in their appointment letters that the terms and conditions of their appointment and salary of the contractual assignment were liable to be changed as per the guidelines/directions issued by the Mission Director, NHM Punjab from time to time. The petitioners have no right to be considered under the amended Rules in case they do not possess the requisite qualification. In support of his arguments, learned counsel has relied upon judgments of Hon'ble the Apex Court in cases ***Union of India Vs. Yogendra Singh 1994 (2) SLR 706, P. Suseela and Ors. Vs. University Grants Commission and Ors. 2015 (3) SLR 664*** and

judgments of Division Bench of this Court in cases ***Babita Rani Vs. State of Haryana and others 2003(1) SLR 461*** and ***Jitender Kumar Vs. State of Punjab and others 2015 (1) SLR 25***.

Heard arguments of learned counsel for the parties. We have also perused the impugned Notification and other documents available on the file.

Admittedly, the petitioners are working on contractual basis and they are having Diploma in Pharmacy. They were appointed on contractual basis and by considering the requisite qualification of diploma which was the requisite condition under the old Rules of 2007. Subsequently, an amendment in the Service Rules has been made by substituting the diploma to the degree. Under the amended Rules, the educational qualification is the Bachelor of Pharmacy instead of Diploma in Pharmacy. The petitioners are claiming their rights on the basis of old Rules of 2007 but nothing has been shown/pointed out as to how the amendment is bad in law or is discriminatory. It has also not been pointed out as to how the petitioners have the right to be considered under the amended Rules. It is the prerogative of the respondent- authorities to amend the Rules and as such, the competency of the rule making authority cannot be said to be arbitrary or discriminatory in any manner. Moreover, the petitioners are working on contractual basis as under the old Rules. They are not claiming any regularization on the posts of Pharmacist on the basis of their long service but they are challenging the amended Rules on the ground that qualification has been modified just to debar the petitioners.

Furthermore, this aspect also is in the employer's domain and it

is employer's prerogative to set the standard and fix the criterion for requisite qualification. When the employer is State, the decision may be examined on touchstone of Article 14 of the Constitution and so long as it is not arbitrary, Court would not interfere with such decision.

Accordingly, it cannot be said that the amended Rules of 2016 are bad in law in any manner.

The judgments relied upon by learned counsel for the petitioners are not applicable in the present case by considering the facts of the case as every candidate, who is aspirant to apply against any vacancy must possess the educational qualifications as prescribed under the relevant Rules. The petitioners are diploma holders but the requisite qualification under the amended Rule is Bachelor of Pharmacy. Meaning thereby, they do not possess the requisite qualification under the amended Rules and they have no vested right to be considered against the post of Pharmacist.

Dismissed.

(DAYA CHAUDHARY)
JUDGE

Dated : 28.08.2020

sunil yadav

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No