

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

**C.W.P 16961 of 2019
Date of decision : 04.03.2020**

Vikram Kumar and othersPetitioner

versus

State of Haryana and another ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Kaushik, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl.A.G. Haryana

RITU BAHRI, J. (Oral)

Petitioner is seeking quashing of impugned advertisement dated 10.09.2015 and corrigendum dated 04.06.2019 (P-1 and P-2),

Pursuant to advertisement dated 10.09.2015, the petitioner participated for the post of Drug Control Officer in Health Department, Haryana. The posts were then increased from 04 to 26, vide corrigendum dated 04.06.2019. Thereafter State of Haryana has changed the nomenclature for the post of Drugs Inspector and Senior Drugs Inspector.

The grievance of the petitioner before this Court is that respondent No. 2 has prescribed the essential/academic qualification and the experience also mentioned therein as the eligibility criteria for appointment to the post in question. However, no such experience is required under the law for the appointment to the post of Drugs Control Officers.

Learned counsel while referring to advertisement P-6 and P-7 contends that the criteria for recruitment on the post of Drugs Control

Officer/Inspector has also been adopted and followed by Centre Government as

well as other States such as Punjab, Rajasthan, Jharkhand and Himachal Pradesh etc. In these advertisements, no such experience has been fixed as essential qualification for the post of Drugs Control Officer.

Reference has been made to full bench judgment of this Court in a case of ***Kuldeep Singh and others vs. State of U.P and another, 2014 (4) SCT 626 (P-8)***

Reference has further been made to Division Bench judgment of this Court in a case of ***Sachin Sagar vs. State of Punjab and others, 2017 (1) SCT 456.***

On the other hand, learned State counsel contends that the qualification mentioned in the advertisement is in accordance with law.

Learned State counsel is relying upon judgment of this Court in a case of ***Ashu Garg and another vs. State of Punjab and others, 2013 (4) S.C.T 386.*** The operative part of the judgment reads as under:-

“11. A plain reading of the relevant Rule as contained in Appendix 'B' in reference to Rule 6 of the 2001 Rules which is para materia to Rule 49 of the 1945 Rules would make it apparent that qualifications have been prescribed for purposes of direct appointment to the post of Drug Inspector. These qualifications are in the nature of a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or Institution. The proviso wherein three kinds of experiences have been stipulated are in relation to such Inspectors who upon possession of the same would be authorized to inspect the manufacture of the substances mentioned in Schedule 'C' of the 1945 Rules. The contention

on behalf of the petitioners is to read the experience required for an Inspector to be authorized to inspect manufacture of substances mentioned in Schedule 'C' as one of the essential qualifications for appointment as a Drug Inspector. Such an interpretation does not flow from a simple and bare reading of the statutory Rules governing the appointment to the post of Drug Inspector. Rule 49 of the 1945 Rules/Appendix 'B' of the 2001 Rules lay down the essential qualifications for being appointed to the post of Inspector/Drug Inspector. The proviso attached to Rule 49 as also prescribed in Appendix 'B' of Rule 6 of the 2001 Rules is in relation of prescribing experience to the Inspectors already appointed so as to be authorized for inspection of a particular substance. As such, the submission raised on behalf of the petitioners to contend that the shortlisted candidates at Annexure P7 for appointment to the post of Drug Inspector were, in fact, ineligible on account of lacking the requisite experience is rejected as the same is founded on a clear mis-reading of the relevant statutory provision.

13. The reliance placed on behalf of the petitioners on the judgments in K.Manjusree and Parkash Vir (supra) is also wholly mis-placed. As has been noticed hereinabove, the recruitment process as also shortlisting of candidates for purposes of appointment to the post of Drug Inspector has been carried out by the respondent-authorities strictly in terms of the conditions of eligibility prescribed in the advertisement itself which, in turn, were in the nature of the

statutory conditions as laid down under the 1945 Rules as also the 2001 Rules. There has been no deviation from the conditions stipulated in the advertisement and neither has there been any change with regard to the conditions of eligibility after the initiation of the recruitment process

17. A bare reading of the statutory provisions re-produced hereinabove would clearly reveal that in terms of Rule 17 of the 1994 Rules which would govern appointment to any post in any service by direct appointment, qualification of Matriculation Examination with Punjabi language is a must. That apart, under Rule 19, there is no power as regards relaxation of educational qualifications. Accordingly, the 2001 Rules would have to be read along with Rule 17 of the 1994 Rules and wherefrom it would clearly emerge that passing Matriculation Examination with Punjabi would be essential qualification for purposes of appointment to the post of Drug Inspector.

19. Even otherwise, in the facts of the present case, a corrigendum dated 22.5.2001 as has been annexed as Annexure R2 along with the reply filed on behalf of the State had been displayed on the Website of the Department laying down the requisite condition of having passed Punjabi upto Matriculation standard. The necessity of issuing such a corrigendum arose so as to regulate the recruitment to the post of Drug Inspector strictly in terms of the 2001 Rules read with the 1994 Rules. Still further, such corrigendum had been issued prior in point of time to the last date of submission of

application forms i.e. 24.5.2010 as had been stipulated in the initial advertisement dated 2.5.2010. As such, there is no merit in the submission raised on behalf of the petitioners in Civil Writ Petition No.17007 of 2010 as regards the conditions of eligibility having been changed/alterd while the recruitment process was under way. Such submission clearly proceeds on a factually incorrect premise.

Even LPA No. 2338-2016 filed against above case has also been dismissed on 02.12.2016.

Heard learned counsel for the parties.

In the present case, pursuant to advertisement dated 10.09.2015 (P-1 and (R-1) annexed with the written statement filed on behalf of respondent No. 1, the post of Drug Control Officer were advertised. As per advertisement, the essential qualification for the post of Drug Control Officer reads as under:-

(a) *Second Class Bachelor Degree in Pharmacy*

OR

Pharmaceutical Chemistry

(b) *One and half years experience in manufacturing of at least one of the substances specified in Schedule C appended to the drugs and Cosmetic Rules 1945.*

OR

Three year experience in inspection of Firms manufacturing any of the substances specified in Schedule C.

(c) *Adequate knowledge of Hindi/Sanskrit.*

The Haryana Government vide notification dated 09.01.2008 (P-3) had changed the nomenclature of the following officers:-

<i>Sr. No.</i>	<i>From</i>	<i>To</i>
<i>1</i>	<i>Drugs Inspector</i>	<i>Drugs Control Officer</i>
<i>2.</i>	<i>Senior Drugs Inspector</i>	<i>Senior Drugs Control Officer</i>

Thus, as per above notification, the posts of Drug Control Officer were advertised as per Rule 49 of Drugs and Cosmetics Rules, 1945, which reads as under:-

1[49. Qualifications of Inspectors.—A person who is appointed an Inspector under the Act shall be a person who has a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialisation 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 experience of not less than three years in the inspection of firm 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.]

Keeping in view the above qualification for the post of Drugs Inspector in the advertisement (P-1 and R-1), only the nomenclature for the post of Drugs Inspector was changed to Drugs Control Officer. The qualification was

not changed. Hence the qualification was rightly prescribed in the advertisement and the petitioner did not fulfil one of the conditions of the experience, as mentioned in the advertisement. The petitioner was rightly not considered eligible.

Even the Full Bench judgment cited by learned counsel for the petitioner is not of any help as in that judgment in para 26, it has been observed as under:-

26. Finally, as we have noted earlier, we may clarify that it is always open to the legislature or its delegate to suitably amend a statutory provision or, as in the present case, subordinate legislation to make the holding of the requisite experience as a condition of eligibility or a qualification for appointment but, that would have to be by an amendment of the subordinate legislation. As a matter of fact, the attention of the Court has been drawn to a notification dated 27 October 201028, of the Ministry of Health and Family Welfare, Government of India, amending the recruitment rules for the post of Drug Inspectors in the Central Drugs Standard Control Organization under the Directorate General of Health Services by making the holding of the requisite experience as an essential qualification for appointment. The relevant part of the notification reads as follows:

"Essential : -

(i) Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or equivalent;

(ii)(a) Eighteen months' experience in the manufacture of at least one of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945; or

(b) Eighteen months' experience in testing of at least one of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 in a laboratory approved

for this purpose by the licensing authority; or

(c) Three years' experience in the inspection of firms manufacturing any of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 during the tenure of their services as Drugs Inspector."

No such amendment has been made in Rule 49 of the Drugs and Cosmetics Rules, 1945. The Rules, as we have interpreted them on their plain and natural meaning as they stand, do not make the experience, which is stipulated in the first proviso, as a condition of eligibility.

In view of the above, the present petition stands dismissed.

March 04, 2020
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>