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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 18th February, 2020*

+ W.P.(C) 2475/2019, C.M.11520 /2019
+ W.P.(C) 5551/2019, C.M.24331 /2019
+ W.P.(C) 3411/2019, C.M.15681/2019
+ W.P.(C) 3413/2019, C.M.15684 /2019
+ W.P.(C) 3417/2019, C.M.15708 /2019
+ W.P.(C) 3418/2019, C.M.15709 /2019
+ W.P.(C) 3419/2019, C.M.15710 /2019
+ W.P.(C) 3426/2019, C.M.15726 /2019
+ W.P.(C) 3447/2019, C.M.15810 /2019
+ W.P.(C) 3524/2019, C.M.16189 /2019
+ W.P.(C) 3609/2019, C.M.16543/2019
+ W.P.(C) 3614/2019, C.M.16573 /2019
+ W.P.(C) 3626/2019, C.M.16608/2019
+ W.P.(C) 3631/2019, C.M.16619 /2019
+ W.P.(C) 4205/2019, C.M.18864 /2019
+ W.P.(C) 4206/2019, C.M.18865/2019
+ W.P.(C) 4207/2019, C.M.18866 /2019
+ W.P.(C) 4208/2019, C.M.18867/2019
+ W.P.(C) 4209/2019, C.M.18868/2019
+ W.P.(C) 4212/2019, C.M.18872/2019
+ W.P.(C) 4349/2019, C.M.19305/2019

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

versus

NIDHI PANDEY & ANR.
ASHISH BHAVSAR
NEERAJ KUMAR & ANR
MOHIT KHANNA
RAJARAJAN RAJESEKAR & ANR.
HARSHA N & ANR.
RAVISINH SOLANKI & ANR.
UMAKANT SAMBHAJI PATIL AND ANR.
AMOL NIKANTH WAGMARE & ANR.
VIBHU YADAV & ANR.

KIRUBAKARAN. N AND ANR.
 VENKATESH KOTA AND ANR.
 YOGESH DNYANOBA N. GAUSHETWAR AND ANR.
 RANJIT JADHAV & ANR.
 MANGESH D. MALKAPURE & ANR.
 RANJITA NAYAK & ORS.
 ROHIT SHARMA & ANR.
 NEERAJ KUMAR & ANR.
 NAVEEN YADAV
 RAJESH RAO & ORS.
 SHABARI GIRINATH KALA & ORS. Respondents

Present: Mr.Naresh Kaushik, Ms.Vibhuti Tyagi, Mr.Tapsvi Raj and Mr.Nitin Kumar, Advocates for the petitioner in all the matters. Ms.Anju Bhattacharya, Ms.Deepika Kumari and Ms.N.Chandra, Adv. for respondent no.1 in item no.33. Mr.Arun Bhardwaj, CGSC for UOI in items no.33 & 53. Mr.Mayank Kshirsgar, Ms. Pankhuri, Mr. Mohd. Arif and Mr.Parthasarathy Bose, Advocates for the respondents no.3 and 4 in item no.51 and for respondents no.1 in item no.53. Mr.Rakesh Kumar, CGSC for UOI with Mr.Amit Kumar Dogra, Adv.in items no.34, 39, 43, 44 & 49. Mr.Anuj Aggarwal, CGSC for UOI with Mr.Tenzing Thinlay Lepcha, Adv. in item no.35. Mr.Hitendra Nath Rath & Mr. Veronica Shika Johnson, Advts. for Respondent no.1 in items no.36 to 49 & 52 . Mr.Ravi Prakash, CGSC for UOI with Mr. Farman Ali, Adv. in items no.36, 37, 40 and 47. Mr.Ripu Daman Bhardwaj, CGSC for UOI with Mr.T.P.Singh and Mr.Kavindra Gill, advts. in items no.38, 42, 45 and 52. Mr.Parveen Kumar Aggarwal, Mr. Pareekshit Bishnoi and Mr.Abhishek Grover, Advts. for R-1 in item no.50. Mrs.Avnish Ahlawat, standing counsel, GNCTD with Mr.Nitesh Kr.Singh, Adv. for respondent no. 3 in item no.35 & 55. Mr.Mr.Amit Mahajan, CGSC for UOI with Mr. Santosh Kumar Pandey, Adv. for UOI in items no.34, 35, 41, 46, 48 & 51. Mrs. Avnish Ahlawat, Standing Counsel for GNCTD (Services) with Mr. Nitesh Kumar Singh, Advocate in items No.52 & 53.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The issues involved in these batch matters are common, whereby challenge is laid to order dated 22.03.2018 made by the Central Administrative Tribunal ('Tribunal'). These petitions are therefore being decided by this common order. For the sake of convenience, the facts noted in the case of "*UPSC v. Nidhi Pandey & Another*", W.P.(C) 2475/2019 arising out of O.A.2390/2016 are being noticed.
2. The petitioner/Union Public Service Commission ('UPSC') published Advertisement No.04/2015 in issue dated 28th February- 6th March 2015 of Employment News, inviting online applications for recruitment to 147 posts of Drug Inspectors (Vacancy No.15020403128) in the Central Drugs Standard Control Organization (CDSCO) in the Ministry of Health & Family Welfare. Out of 147 posts, 3 were 'permanent' and remaining 144 posts were 'temporary'. The 147 vacancies were distributed amongst the following categories:-

UR	-	78
OBC	-	38
ST	-	13
SC	-	18
3. The applicants claiming to be qualified for the post of 'Drug Inspector' filled-up application forms electronically as prescribed in the advertisement. The applicant Nidhi Pandey was issued an e-admit card with Roll No.008467 for the examination to be conducted on

26.07.2015. Similarly, applicants in other OAs were also issued e-admit cards and allotted roll numbers (details of which are not required to be noticed here). The examination was held on the notified date i.e. 26.07.2015; and the result of the examination was declared and notified on the website of respondent No.1 on 16.09.2015. The applicants were shown to have been short-listed, subject to verification of documents. As per notice dated 16.09.2015 the candidates were informed that they were required to furnish self-attested copies of the documents, along with a copy of the online recruitment application within 15 days, being not later than 30.09.2015 to verify their eligibility for the said post. It was further stipulated that the date and time of interview will be intimated later via e-mail.

4. It is noted that the applicant having been short listed, submitted all the requisite documents as per notice dated 16.09.2015. Subsequently, the applicant received an email dated 08.07.2016 from respondent No.1 informing her that her candidature had been cancelled for not fulfilling the essential experience requirement as mentioned in the advertisement. The contents of the email are reproduced hereunder:-

“Dear Candidate,

*I am to refer to your application for the subject post/s and to inform you that your candidature has been cancelled by the Commission due to **lack of Essential Experience in any of the below mentioned condition:***

- a) Eighteen months experience in the manufacture of substances specified in Schedule 'C' to the Drugs and Cosmetic Rules, 1945.*

OR

- b) Eighteen months experience in testing of substances specified in Schedule 'C', **in a laboratory approved for this purpose** by the licensing authority.*

OR

c) Three Years experience in inspection of firms manufacturing any of the substances specified in Schedule 'C' to the Drugs and Cosmetic Rules, 1945.

*Sd/-
(R.K.Roy)
Under Secretary
Union Public Service Commission"*

5. In her O.A. Nidhi Pandey, respondent No.1 herein, claimed firstly that she possesses requisite experience in the field of manufacturing substances under Schedule 'C' of the Drugs & Cosmetics Rules, 1945 (the 'Rules'), which was sufficient compliance with the terms of the advertisement; and secondly, that no experience in testing substances specified in Schedule 'C' as required in the advertisement, is mandated under statutory rules for the post of Drug Inspector. The Tribunal was of the view that the issue in hand was fully covered by a decision of the Full Bench of the Allahabad High Court in ***Kuldeep Singh & Others vs. State of U.P. and Another***: Civil Misc. Writ Petition No.46079/2010 decided on 10.04.2014; and in light of that decision, the Tribunal disposed of all connected OAs by a common order dated 22.03.2018. A review application filed was also dismissed by the Tribunal by order dated 29.11.2018.
6. Mr.Naresh Kaushik, learned counsel appearing for the petitioner/UPSC submits that the advertisement inviting applications is crystal clear as regards the essential qualifications for the post of 'Drug Inspector' and requires a degree in Pharmacy or Pharmaceutical Science or Medicine, with specialization in Clinical Pharmacology or Microbiology from a recognized University or equivalent, which form the essential qualifications for the said post. Reading the advertisement further

Mr.Kaushik submits, that the experience of 18 months in specific fields of work was also clearly prescribed. Mr.Kaushik submits that this advertisement was also in consonance with Recruitment Rules 2010, which read as under:

"Education (EQ-A): Degree in Pharmacy or Pharmaceutical Science or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or equivalent.

Experience (EQ-B):

a. Eighteen (18) month's experience in the manufacture of at least one of the substance specified in Schedule "C" to the Drugs & Cosmetics Rules, 1945;

Or

b. Eighteen(18) month's experience in testing of at least one the substance specified in Schedule "C" to the Drugs & Cosmetics Rules, 1945 in a laboratory approved for this purpose by Licensing Authority;

Or

c. Three (3) years experience in inspection of firms manufacturing any of substance specified in Schedule "C" to the Drugs & Cosmetics Rules, 1945 during the tenure of their services as Drugs Inspectors."

7. Mr.Kaushik further submits that Recruitment Rules 2010 were formulated on the basis of Rule 49 of the Drugs & Cosmetics Rules 1945, which we also reproduce below:

"Rule 49 of the Drugs and Cosmetic Rules, 1945 provides for the qualifications of Inspectors:

"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 specialization In Clinical Pharmacology or Microbiology from a University establishes 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 authorized 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."*

8. In this backdrop it is submitted that the action of the UPSC in cancelling the candidature of the respondents was in accordance with the advertisement and the Recruitment Rules. It is further submitted that the Tribunal has misread the Recruitment Rules, which are to be read the way they are written without further interpretation. It is stated that the Recruitment Rules 2010 were notified on 19.02.2010, i.e. much after the Rules under the Drugs & Cosmetics Act, 1940 and would therefore prevail. Counsel further submits that the UPSC was simply following the mandate of the user department; and the advertisement was published purely on the basis of Recruitment Rules 2010; and that there is no fault in the recruitment process adopted by the petitioner. It is contended that the order of the Tribunal has resulted in gross miscarriage of justice, which is likely to impact the process of recruitment adopted by the UPSC. Counsel submits that the Tribunal has failed to consider that the decision of the Full Bench of the Allahabad High Court, which according to him, lays down the position followed by the petitioner. Counsel further relies upon a decision rendered by the Apex Court in ***Official Liquidator vs. Dayanand & P.U.Joshi & Others*** reported as (2008) 10 SCC 1, in the context of which Ground 'E' of the petition is referred to, which we reproduce below:

“E. Because Hon’ble Tribunal, while passing the impugned judgment and orders dated 22.03.2018 and 29.11.2018, did not take into consideration the law laid down by the Hon’ble Apex Court in “Official Liquidator vs. Dayanand &/ P.U. Joshi Ors” (2008) 10 SCC 1. The Hon’ble Apex Court in the aforementioned judgment held that prescribing the source and mode of recruitment and the qualification and criteria of selection are matters which fall exclusively within the domain of the employer. Relevant portion of the said judgment is extracted as under:

"41. The creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to recreate or abolish posts or cadres or to prescribe the source or mode of recruitment and lay down the qualification etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or vitiated by malafides."

(Emphasis supplied)

9. Mr.Kaushik also submits that the Tribunal did not take into consideration that the requirement of experience does not create any conflict with Rule 49 of the Drug & Cosmetics Rules 1945; and further that the need of the employer can only be catered to by experienced persons, which can be achieved by setting higher standards at the selection stage itself. Reliance is placed upon decision dated 22.09.2015 rendered by a Division Bench of the High Court of Punjab & Haryana in W.P.14287/2013 and order dated 19.02.2016 made in Review Petition No.445 of 2015 in that matter. Relevant portion of the judgment relied upon is extracted below:

"...3. Learned counsel appearing for the review applicants vehemently submitted referring to Rule 49 of the Drugs and Cosmetics Rules, 1945, the Recruitment Rules, 2010 and the above advertisement issued by UPSC that experience as Drugs Inspector was not at all required for applying for the post of Drugs Inspector. It is his further submission that Drugs and Cosmetics Rules, 1945 contemplate acquisition of such experience only during the tenure of the respective candidate as Drugs Inspector after appointment. Therefore the perception of experience found in the advertisement is applicable to the post appointment scenario.

"...6. Drugs and Cosmetics Rules, 1945 speak of the minimum experience required for inspection of the manufacturing units but the above Recruitment Rules contemplates such an experience as a necessary qualification for the applicants to apply for the post of Drugs Inspectors. The advertisement given by UPSC also categorically stipulates such an experience is a pre requisite for applying for the post of Drugs Inspector."

10. Ms.Anju Bhattacharya, learned counsel appearing for respondent No.1 in W.P.(C) No. 2475 of 2019 however submits that there is no infirmity in the decision rendered by the Tribunal. Counsel submits that the issue at hand is fully covered by the decision rendered by a Full Bench of the Allahabad High Court; and all issues sought to be raised have been finally laid to rest by the said decision. She submits that Recruitment Rules 2010 were admittedly drawn-up on the basis of Rule 49 of the Rules; and in turn the advertisement has been prepared based on the Recruitment Rules 2010 of the parent department; and that therefore, the Recruitment Rules and the advertisement could not have exceeded the essential qualifications stipulated in Rule 49.
11. We have heard learned counsel for the parties and have considered their rival submissions.
12. Since the decision of the Tribunal is based on the decision of the Full Bench of the Allahabad High Court, we deem it appropriate to extract

the issue which was placed before the Full Bench for their consideration in the case of **Kuldeep Singh** (*supra*):

“On 11 February 2011, a Division Bench of this Court made a reference to the Full Bench of the following questions:

(1) Whether the experience required in the proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945 is only a bar of authorization to inspect the manufacture of substances, or is an essential qualification under Rule 49 for direct appointment as Drug Inspector under Rule 5 (4) of the U.P. State Drug Control Gazetted Officers' Service Rule, 1995.

(2) Whether the Division Bench judgment in State of U.P. Vs. Zunab Ali & Ors,' has been correctly decided.”

13. In our view, the Tribunal in its order dated 22.03.2018, has correctly interpreted the Rules in question and the applicability of the Full Bench decision of the Allahabad High Court to the issue.
14. In para 12 of the order passed, the Tribunal has taken note of the fact that the Drugs & Cosmetics Act, 1940 extends to the whole of India. The relevant portion of the discussion pertaining to Drug Inspectors, as mentioned in the aforesaid para, is reproduced below:

Section 3 (e) defines the Inspector and reads as under:-

“[(e) "Inspector" means—

(i) in relation to [Ayurvedic, Siddha or Unani] drug, an Inspector appointed by the Central Government or a State Government under section 33G; and

(ii) in relation to any other drug or cosmetic, an Inspector appointed by the Central Government or a State Government under section 21;]”

Section 21 deals with manner of appointment and powers and duties of Drug Inspectors, which reads as under:

"21. Inspectors,—(1) The Central Government or a State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or State Government, as the case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him, the drugs or [classes of drugs or cosmetics] or classes of cosmetics in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest [in the import, manufacture or sale of drugs or cosmetics] shall be appointed to be an Inspector under this section.

(4) Every Inspector shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority 2 having the prescribed qualifications, [as the Government appointing him may specify in this behalf.]"

Powers of Inspectors are further mentioned in Section 22, which reads as under.-

"[22. Powers of Inspectors.—(1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,—

4 [(a) inspect, -

(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic;

(ii) any premises wherein any drug or cosmetic is being sold or stocked or exhibited or offered for sale, or distributed;

(b) take samples of any drug or cosmetic, --

(i) which is being manufactured or being sold, or is stocked or exhibited or offered for sale, or is being distributed;

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;

(c) at all reasonable times, with such assistance, if any, as he considers necessary,--

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter has been, or is being, committed; or

iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed, and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed; not to dispose, of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence;]"

As regards the powers and duties of Inspectors are concerned, sub-Section (2) of Section 21 provides that the powers and duties shall be such as may be prescribed. "Prescribed" means prescribed under the rules. Section 33 of the same Act empowers the Central Government to make rules. The relevant extract of Section 33 is reproduced hereunder:

"33. Power of Central Government to make rules. — [(1) The Central Government may [after consultation with, or on the recommendation of, the Board] and after previous publication by notification in the Official Gazette, make rules for the purposes of giving effect to the provisions of this Chapter:

Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that 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.]

(2) Without prejudice to the generality of the foregoing power, such rules may—

(b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors;... "

From the conjoint reading of the aforesaid provisions, we find that mode of appointment and powers of Inspectors are enumerated in Sections 21 and 22 of the Act, whereas the qualifications and duties of inspectors are to be prescribed by the rules to be framed by the Central Government in exercise of its statutory power. The Central Government has framed rules in exercise of its powers under Section 33 called as Drugs & Cosmetics Rules, 1945. Rule 49 prescribes the qualifications of Inspectors to be appointed under the Act. Rule 49 is reproduced hereunder:-

“[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 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.”

From the reading of Rule 49, we find that it contains academic qualifications. However, the proviso refers to experience of Inspectors in certain areas. There is no dispute about the academic qualification in any of the cases. The only dispute relate to the nature of experience. The advertisement notice prescribes the academic qualifications as also the experience mentioned therein as the eligibility criteria for appointment to the post of Inspector. There are three categories of experience. Under sub-rule (i) of Rule 49, 18 months' experience in the manufacture of at least one of the substances specified in Schedule C is referred and under sub-rule (ii) 18 months experience in testing of at least one of the substances in Schedule C in a laboratory approved by the licensing authority is referred whereas under sub-rule (iii), experience 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 Drug Inspector is also referred. It is noticed that these experiences are in the alternative, meaning thereby, experience may be in any of the specified areas. Proviso to Rule 49, however, exempts the possession of academic qualification in respect to the persons appointed as Inspectors on or before 18.10.1993. The rejection notice refers to lack of experience as essential qualification.

(Emphasis Supplied)

The question in hand was dealt with by the Full Bench in para 16, 24 and 26 of their judgment, which we reproduce below:

“ 16. Now, we proceed to interpret the provisions of Rule 49 of the Drugs and Cosmetics Rules, 1945. The substantive part of Rule 49 specifies that in order to be appointed as an Inspector under the Act, a person must have (i) a degree in Pharmacy; or (ii) a degree in Pharmaceutical Sciences; or (iii) a degree in Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. The first proviso, however, specifies that only those Inspectors who fulfill the experience referred to in clause (i) or (ii) or (iii) shall be authorized to inspect the manufacture of substances mentioned in Schedule C to the Rules. When a Court interprets a statutory provision, or a provision which is made by the delegate of the legislature while framing subordinate legislation, it must give effect to the plain, literal or grammatical meaning of the provision. Under the substantive part of Rule 49, the qualifications which are required to be held by an Inspector have been specified. These are mandatory requirements and before a person can be appointed as an Inspector, he must necessarily hold the educational qualifications which are prescribed in the substantive part. The proviso, however, specifies that “only those Inspectors” shall “be authorized to inspect the manufacture of substances mentioned in Schedule C” who possess the experience as set out in one of the three clauses thereto. In other words, the proviso carves out an exception. A person who holds the qualifications which are referred to in the substantive part of Rule 49, is eligible to be appointed as an Inspector. Once appointed as an Inspector, such a person would be empowered to exercise the powers which are conferred upon an Inspector under Section 21(2) and Section 22 together with Rules 51 and 52 of the Rules of 1945. However, the effect of the proviso is that only those Inspectors who fulfill the

experience which is prescribed in one of the three clauses of the first proviso to Rule 49 can be authorized to inspect the manufacture of substances mentioned in Schedule C. But for the provisions contained in the proviso to Rule 49, there would have been no embargo on an Inspector being authorized to inspect the manufacture of substances mentioned in Schedule C. The effect of the proviso is that even though a person is appointed as an Inspector, he can be authorized to inspect the manufacture of Schedule C substances only upon fulfilling the experience as prescribed in clauses (i) or (ii) or (iii) to the first proviso to Rule 49. Hence, the proviso engrafts an exception by entailing that before an Inspector can be authorized to inspect the manufacture of substances mentioned in Schedule C, he must fulfill the requisite experience as prescribed in the proviso. Clause (i) of the proviso stipulates an experience of 18 months in the manufacture of a Schedule C substance. Clause (ii) of the proviso stipulates 18 months' experience in the testing of a Schedule C substance in a laboratory approved by the licensing authority. Clause (iii) of the proviso stipulates experience which is gained 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 service as Drug Inspectors. Ex facie, clause (iii) of the proviso specifies experience which is gained during the tenure of service as a Drug Inspector and not before appointment. The second proviso to Rule 49 contains a stipulation that the requirement of academic qualifications shall not apply to those persons appointed as Inspectors on or before 18 October 1993. Rule 49 was substituted with effect from 19 October 1993. Hence, what the second proviso provides is that it protects the services of those Inspectors who had been appointed before the introduction of Rule 49 in its present form on 19 October 1993. Rule 51 specifies the duties of an Inspector to inspect premises licensed for the sale of drugs. Rule 52 specifies the duty of an Inspector "authorized to inspect the manufacture of drugs or cosmetics". Before an Inspector can be regarded as being authorized to inspect the manufacture of a Schedule C drug, he must possess the experience specified in the first proviso to Rule 49 of 1945 Rules. Consequently, the experience specified in the first proviso to Rule 49 is not a condition of eligibility or a qualification for appointment as an Inspector within the meaning of Rule 49. Undoubtedly and as a matter of general principle, it is open to the appointing authority to prescribe the conditions of eligibility for the holding of a post. The conditions of eligibility may, in a given case, legitimately include the possession of an academic qualification and of experience even prior to appointment. But, once the field is governed by a rule which has been framed in exercise of a rule making power vested

by statute, the statutory rules must govern. Where, as in the present case, the statutory rule does not incorporate a requirement of experience as a condition of appointment, a requirement of experience as a condition of eligibility can be introduced only by way of an amendment to the statutory rules. Neither the State in its administrative capacity nor, for that matter, the Court would have the power to rewrite subordinate legislation, in the present case Rule 49, by providing that the provisions contained in the first proviso to Rule 49 are an essential qualification or a condition of eligibility for appointment to the post of Inspector. What Rule 49 plainly postulates is that only those Inspectors who possess the experience specified in the first proviso can be authorized to inspect the manufacture of substances specified in Schedule C. This is in the nature of an exception, as explained earlier, since it permits only a certain category of Inspectors holding the required experience to inspect the manufacture of Schedule C substances. Plainly, the holding of experience is not a condition of eligibility or a condition for appointment.'

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'24. The statutory provision which we are interpreting in the present case has a different scheme altogether. The main part of Rule 49 of the Rules of 1945 provides the qualifications for appointment of an Inspector. The first proviso carves out an exception by stipulating that only certain categories of Inspectors would be authorized to inspect the manufacture of Schedule C substances. But for the proviso which places an embargo, a person who is appointed as an Inspector upon possessing the qualifications prescribed by the substantive part of Rule 49 would have been authorized to inspect the manufacture of substances mentioned in Schedule C. What the first proviso does is that it ensures that before an Inspector can be authorized to inspect the manufacture of a Schedule C substance, he or she must possess the experience stipulated in the first proviso to Rule 49. What needs to be noticed is that the proviso to Rule 49 of the Rules stipulates that only those Inspectors, who satisfy condition (i) or (ii) or (iii), shall be authorised to inspect the manufacture of the substances mentioned in Schedule 'C'. Schedule 'C' deals with only sixteen types of biological and special products. Schedule 'C(i)' deals with other special products. Schedule 'D' deals with certain other classes of drugs. For these reasons, we have come to the conclusion that the first proviso to Rule 49 does not provide an essential qualification for appointment as a Drug Inspector and the acquisition of the experience as set out in the first proviso would operate to authorize a Drug Inspector to inspect the manufacture of a Schedule C substance.'

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'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 2010, 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."

(Emphasis Supplied)

16. With the benefit of the above Full Bench judgment, a careful reading of Rule 49 leaves no room for doubt that as far as the eligibility criteria for appointment of an Inspector is concerned, an Inspector must have (i) Degree in Pharmacy or (ii) Degree in Pharmaceutical Science or (iii) Degree in Medicine with specialization in Clinical Pharmacology or

Microbiology from a University established in India by law. As far as the provisos are concerned, the same relate to those inspectors who are to be allowed to test substances and inspect establishments that manufacture certain drugs. The requirement of experience as stipulated in Rule 49 applies only after appointment and for the purpose of deciding whether a Drug Inspector is authorized to test specified substances and inspect the manufacturer of substances specified in Schedule 'C'. It is therefore impermissible in law to amend Recruitment Rules 2010 to make the requirement of experience an essential qualification for the purpose of recruitment and appointment, when such experience is not an essential qualification stipulated in Rule 49 of the Drugs and Cosmetics Rules, 1945. The inclusion of requirement of experience in the advertisement, on the strength of the Recruitment Rules, 2010 is therefore equally untenable. It would appear that by amending its Recruitment Rules, the petitioner has in a sense, amended Rule 49 which is a statutory rule. This is clearly impermissible in law.

17. In our view therefore, the Tribunal has correctly analyzed the position based upon the interpretation given in the judgment of the Full Bench of the Allahabad High court and has correctly addressed the matter.
18. To be sure, we may add that insofar as the UPSC is concerned, there is no error in their actions in relation to the recruitment process, since the UPSC is government body which only carries-out recruitment as per the mandate of the employer i.e. the user department. We may also note that no separate submissions were made in these matters by the user department, which adopted the stand of the UPSC.

19. We accordingly find that there is no merit in the writ petitions; and the same are dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 18, 2020/rb

