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

Decided on: 13.12.2022

+ **W.P.(C) 16199/2022**

**ANJALI COLLEGE OF PHARMACY AND
SCIENCE**

..... Petitioner

Through: Mr Aseem Mehrotra and Ms Deeksha,
Advocates.

versus

PHARMACY COUNCIL OF INDIA

..... Respondent

Through: Mr Abhishek Singh, Mr Amit Sharma,
Ms Vijaya Singh, Mr Akshat
Choudhary, Mr Shreshth Arya, Mr
Madhav Bhatia and Mr Aditya Pandey,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The petitioner/ institute has assailed the order dated 31.10.2022 passed by the Executive Committee of the Respondent/Pharmacy Council of India in its 380th meeting (hereinafter referred to as the “impugned order”), whereby the Respondent has instructed the petitioner/institute to not make admissions from the 2022-2023 academic session. Aggrieved with the said impugned order, the petitioner has filed the present writ petition seeking the following reliefs:-

“a) issue an appropriate Writ, direction or order in the nature of writ of certiorari quashing Impugned Decision of 380th Executive Council of Respondent dated 31.10.2022 whereby approval for academic year 2022-23 has been declined to the Petitioner;

b) issue an appropriate Writ, direction or order in the nature of writ of mandamus commanding the Respondent to grant extension of approval in respect of B. Pharma with 60 seats, D. Pharma with 60 seats and M. Pharma (Pharmaceutics) with 15 seats for academic year 2022-23;

c) issue any other Writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

BACKGROUND FACTS

2. The facts germane for deciding the present writ petition are that the petitioner/institute is a college which has been imparting education in the field of pharmacy since 1998. For the academic year 2021-2022, the petitioner was having an approval for sanctioned strength of 60 B. Pharma seats, 60 seats of D. Pharma and 6 seats of M. Pharma-(Pharmaceutics). For the academic year 2022-2023, the petitioner submitted an application on 21.12.2021 for extension of approval for all the above-said three courses.

3. Admittedly as per the norms of the respondent, the premises of the petitioner were inspected by a team of inspectors on 10/11.09.2022, who forwarded their inspection report to the Executive Committee. The Executive Committee after considering the report of the inspectors took a decision on the application of the petitioner in its 376th meeting on 14.09.2022, the relevant part of which, reads as follows:-

"It was decided to call Principal along with teaching staff to appear before Personal Hearing Committee (PHC)."

4. Aggrieved by the aforementioned decision of the Executive Committee, WP(C) No. 14262/ 2022 was filed by the petitioner seeking the following reliefs:-

“a) issue an appropriate Writ, direction or order in the nature of writ of certiorari quashing Impugned Decision of Executive Council of Respondent under Item No. 376 EC/140 dated 14.9.2022;

b) issue an appropriate Writ, direction or order in the nature of writ of mandamus commanding the Respondent to grant extension of approval in respect of B. Pharma with 60 seats, D. Pharma with 60 seats and M. Pharma (Pharmaceutics) with 15 seats for academic year 2022-23;

c) Issue any other Writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

5. It appears that during the pendency of the aforementioned Writ Petition, an appeal was preferred by the petitioner on 03.10.2022, against the aforesaid decision dated 14.09.2022 of the Executive Committee asking the Principal along with teaching staff to appear before Personal Hearing Committee.

6. When the above Writ Petition was listed before this Hon'ble Court on 07.10.2022, the learned counsel for the petitioner confined his prayer only to an issuance of a direction for disposal of the petitioner's appeal in a time bound manner. Accordingly, the Writ Petition was adjourned to enable the learned counsel for the respondent to take instructions. The relevant portion of order dated 07.10.2022 reads as under:-

“1. At the outset, Mr. Aseem Mehrotra, counsel for Petitioner, states that subsequent to filing of the present petition, an appeal has been filed against the decision of Executive Council of Respondent [Pharmacy Council of India - hereinafter "PCI"] dated 14th September, 2022 (uploaded on 30th September, 2022), which is impugned in the present petition.

2. Mr. Mehrotra states that in light of the fact that the appeal is pending, he does not wish to press the present petition and only requests for a direction for disposal of the appeal in a time-bound manner. Mr. Kirtiman Singh, counsel for PCI, seeks time to take instructions.

3. Re-notify on 11 October, 2022”

7. The Writ petition of the petitioner was then listed and disposed of on 11.10.2022 with the following directions:-

“1. Pursuant to order dated 7th October, 2022, Mr. Kirtiman Singh, counsel for Respondent, states that an intimation of the date of hearing of Petitioner's appeal shall be sent to Petitioner within a period of one week from today, and the same shall be disposed of within the time frame fixed by the Supreme Court vide order dated 26th August, 2022 in **Parshavanath Charitable Trust v. All India Council for Tech. Edu. and Ors**

2. Taking this statement on record, and binding Respondent to the same, the present petition is disposed of along with pending application(s).”

8. The petitioner felt aggrieved with the above order as the same did not lay down any timeline for the respondent to dispose of the appeal of the petitioner and thus, preferred an intra-court appeal L.P.A. No. 602/2022 against the said order. The appeal of the petitioner was listed before the Division Bench of this Court on 19.10.2022, when the petitioner prayed for the withdrawal of the LPA with liberty to file a review petition before the learned Single Judge.

9. In the meanwhile, the respondent vide email dated 18.10.2022 informed the petitioner that the date of hearing of the appeal of the petitioner was 21.10.2022 and reiterated its earlier decision to call the Principal along with the entire faculty before the Personal Hearing Committee (hereinafter PHC) at the

office of the respondent. Accordingly, the petitioner institute presented its Principal along with some teaching faculties before the PHC on 21.10.2022.

10. Pertinently, immediately after the petitioner institute presented its teaching faculties before the PHC on 21.10.2022, the Respondent issued a notification bearing Ref. No. 14-443/2022/2022-PCI (appeal process 2022-2023)/14367 on 22.10.2022 notifying that the Executive Committee of the respondent in its 379th meeting has resolved to restore the intake of institutions wherever the same was reduced for the academic session 2022-2023 to the level of previous approved intake of academic session 2021-2022 on the institutions submitting an affidavit along with their appeal application and also updating the faculty data on the Respondent's portal. The relevant extract of notification dated 22.10.2022 read thus:-

“....

2. I am directed to state that 379 Executive Committee in its meeting held on 15.10.2022 has decided as under –

- a) wherever admission intake was reduced in 2022-2023 academic session in pharmacy course(s), the previous approved intake during 2021-2022 academic session be restored for 2022-2023 academic session also.*
- b) to notify to all such Institutes that an affidavit* should be uploaded on institution's dash board on the portal of Pharmacy Council of India, New Delhi within one month of receipt of this Notification without fail. There should not be any change/modification/alteration in the affidavit provided with this Notification. In case any change is observed, the same will not be entertained at any cost and the liabilities will rest only with the Institute and NOT PCI.*

3. In view of above, all institutions are hereby directed to submit the prescribed affidavit (enclosed as Annexure-A) along with their appeal application (enclosed as Annexure-B) and update the faculty data on PCI portal within one month of receipt of this notification.”

11. Thereafter, the review petition [Review Pet. 282/2022] came to be disposed of by the learned Single Judge taking note of the statement of the learned counsel for the respondent that the petitioner institute is not entitled to the relaxation of the notification dated 22.10.2021 and that the appeal of the petitioner pending before the competent authority has been heard and decided by the 380th meeting of the Executive Committee held on 31.10.2022. The relevant portion of the order dated 11.11.2022 reads as under:-

“1. Pursuant to order dated 9th November, 2022, Ms. Manmeet Kaur Sareen, counsel for Respondent, has returned with instructions. According to her, the notification dated 22th October, 2022, conveying decision of 379th Executive Committee meeting, which came to be issued after the conclusion of appeal proceedings, is not applicable to the Petitioner. In any event, she states that Petitioner's appeal has been heard and decided by 380th meeting of the Executive Committee held on 31st October, 2022.

2. Mr. Aseem Mehrotra, counsel for Petitioner, states that the decision taken in the said meeting has not been conveyed to the Petitioner till date, to which Ms. Kaur assures that the decision shall be conveyed within three days from today.”

IMPUGNED ORDER DATED 31.10.2022

12. The impugned order dated 31.10.2022 was conveyed to the petitioner. Notably, the applications of the petitioner for each of the courses i.e. B. Pharm, D. Pharm and M. Pharma (Pharmaceutics) have been rejected on identical grounds. It would be apposite to extract the impugned order passed in the 380th meeting of the Executive Committee, which reads as under:

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B.Pharm	The Registrar Dr APJ Abdul Kalam Technical University Institute of Engineering and Technology Campus Sitapur Road Lucknow	380th EC (31.10.2022) decided as under - The following decisions have been taken A)Anjali College of Pharmacy & Sciences Agra Firozabad Road Nh 2 Etmadpur Agra 283202 (Uttar Pradesh) PCI-104 1.The latest information on record including the findings of PHC dt.21.10.2022 was placed and considered. 2.It was noted that PHC has pointed out as under - Regarding faculty a)Institute has reported that total 25 faculty members are presently working in Anjali college of Pharmacy and Science. Out of these, only 18 faculty members including the Principal were present before the PHC. Out of these eighteen faculty members present, only 10 faculty members as per IR were present and 08 newly appointed faculty members (who have joined after the last inspection held on 10th and 11th September 2022) were present. b)The Institute submitted leave applications of remaining 07 faculty members. During vetting, it was found that the leave applications were not signed by the faculty members or the signatures of the faculty members on leave application were not matching with the signature as presented in SDF submitted. c)Dr. Mihir Y. Parmar appeared in the capacity of New Principal before the PHC. He has joined the institute on 17.10.2022. His total teaching experience is 14 Years 07 Months and 25 Days against the required experience for Principal as 15 Years. He could not produce the relieving letter from previous institute i.e. Sanjay College of Pharmacy, Mathura. d)Dr. Pawan Kumar was present as a Professor but his teaching experience was not adequate for professor i.e. 10 Years as per submitted documents. Many documents were blurred and not clearly legible. He submitted an Experience certificate submitted from Sundardeep College of Pharmacy mentioning the experience w.e.f. 11th July 2012 to 24th December 2021. During careful vetting of the document, it was found that the date of issue of the experience certificate was	Not Approved
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		28th February 2017. On pointing out, he corrected it with pen before the PHC but failed to produce the original experience certificate. e) Mr. Kris Jains joining report mentioned in SDF 19.07.2022 is whereas the joining date mentioned in joining report is 25.07.2022. Designation mentioned in SDF is Associate Professor whereas designation mentioned on joining letter is Assistant Professor. f) Regarding Ms. Rekha Rani - Copy of the relieving letter issued by KDC College of Pharmacy, Mathura submitted by the candidate has overwriting in the date of resignation as well as date of relieving. The candidate was asked to produce/show the original documents but failed to do so. g) General Comments i) Documents submitted along with SDF of many faculty members were blurred and not legibly readable. ii) Faculty members/institute has failed to show the original academic qualification documents, experience certificates, other relevant documents. Only photocopies of some documents were enclosed with SDF. iii) The institute has failed to produce the proof of salary paid as per norms as No Form 16/TTR receipt, etc. were presented as a proof of salary paid to the faculty members. Many faculty members including the Principal, Professor, etc. was not having the requisite experience. h) Regarding Complaint Submitted by Dr. Nitesh Kumar Sharma The complainant has submitted that the notarization of the affidavit submitted has been done before purchase of the stamp papers. The institute has submitted in their representation in writing saying that Dr. Nitesh Kumar Sharma has misplaced the first page of the affidavit deliberately. The principal has submitted in writing that he has joined recently and only management will respond to this point. i) Recommendations of Personal Hearing Committee (PHC):- Considering the above facts, it was recommended as under:- The newly appointed Principal Dr. Mihir Y. Parmar does not fulfill the minimum teaching experience criteria. The institute has failed to produce the documentary evidence of the salary paid as per norms, and institute has failed to maintain the faculty cadre ratio. Leave applications submitted by the	
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		institute do not bear the signature of the concerned faculty or the signatures do not match with signatures mentioned in SDF. Signature and stamps of the principal (Dr. Deepak) on many of the documents are exactly matching. The matter needs further investigation to establish the originality of the signatures of the concerned. Regarding complaint related to the affidavit submitted, the institute has submitted their representation in writing. Since, the matter involves some matter related to signature on the duly stamped undertaking, appropriate legal opinion may be taken in this regard by PCI and the matter may be proceeded accordingly. 3. In view of above, it was decided to - a) instruct the institution not to make admission from 2022-2023 academic session. b) it was further decided to seek clarification from the Management on Principal's letter dt. 21.10.2022 submitted to PHC with regard to signatures of Shri Nitesh Kumar Sharma.	
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SUBMISSIONS OF THE PETITIONER

13. Mr. Aseem Mehrotra, the learned counsel for the petitioner would submit that the petitioner/institute has the requisite number of faculty and that the decision of the Executive Committee to call the Principal of the institute along with all the faculty members reeks of *mala fide*. Inviting the attention of the Court to the inspector's report (annexure P-4), he submits there was no need for all the faculty members to present themselves before the PHC when the report of the inspectors has in no uncertain terms recorded that the total number of faculty members working in the petitioner institute is 25 i.e. the minimum required faculty under the norms and regulations. The learned counsel for the petitioner seeks to rely upon a judgment of a Coordinate Bench of this Court titled as "**Dr. M. K. Shah Medical College and Research Centre vs. National Medical Commission**": 2022 SCC OnLine Del 938 to submit that statutory bodies like the respondent should not ordinarily diverge from the

report of the Inspectors/Experts and shall not arrive at arbitrary conclusions without giving any opportunity to the petitioner to explain the so called deficiency. The relevant paragraph of **Dr. M. K. Shah Medical College and Research Centre** (supra) reads as under:-

“47. Having found that none of the impugned orders are sustainable, what next? This Court is conscious of the fact, while exercising writ jurisdiction, and that too in a matter like this where the standards of medical education are concerned, the Court should normally not interfere with the working of the experts or the conclusions arrived at by the statutory bodies like respondent no. 2, specifically created for this purpose. However, in the present case, it evidently emerges that it is not as if the experts who had inspected the petitioner institute had found any deficiency with the petitioner institute, but it is the MARD which has chosen to ignore those reports and form its own arbitrary conclusions, without giving any opportunity to the petitioner to explain the so-called deficiency or suspicious information. In these circumstances, when the action of the respondent appear to be wholly arbitrary and not in consonance with the regulations, in light of the fact that the petitioner institute has all the requisite and clinical material, as also the fact that it has worked as Covid dedicated hospital for a long period, I am of the view that remanding the matter back to the respondent for reconsideration at this stage, when the only hope of the petitioner is to participate in the remaining rounds of counselling in the NEET 2021-202 including the mop up counselling round and the stray counselling round, would be highly unfair not only to the petitioner but also to the prospective students, especially in a country like ours which is already struggling to provide the number of medical professionals required for meeting the growing needs of the general public. At this stage, I may also refer to the decision of the Apex Court in Rajiv Memorial Academic Welfare Society (Supra) wherein it has been held that the Court can, in certain cases, grant permission to a medical institute, without directing re-inspection of the same. Paragraphs 19 and 20 thereof read as under:

“19. We are satisfied that in the aforesaid circumstances, there was no need to direct conducting of re-inspection by the Medical Council of India and for the academic year 2015-2016 direction could have been given by the High Court for grant of permission once the order of the Central Government was found to be contrary to law.

20. The offshoot of the aforesaid discussion would be to allow the appeal filed by the appellant Society and dismiss the appeal of the Medical Council of India. The Government of India is directed to pass appropriate orders granting permission to the appellant society in respect of the college in question for the academic year 2015-2016 within a period of two days, having regard to the fact that the last date for conducting the admissions is 30-09-2015. The college is also permitted to admit the students in accordance with law”

14. Mr Mehrotra, also submits that it was not possible for all the faculty members of the institute to present themselves and the failure of the faculty members to appear before the PHC was beyond the control of the petitioner, inasmuch as, the petitioner was informed of the date, time and venue of the PHC only on 18.10.2022 at 05:09 P.M. He submits that 12 faculty members had left for their home town for Diwali as the same was on 24.10.2022 after getting their leaves approved before 18.10.2022. Further, according to the learned counsel for the petitioner, of 12 faculty members who had left for their home, 05 still presented themselves before the PHC and another 07 members were on their way but could not arrive at the location at the given time due to reasons beyond their control.

15. He would also contend that no objection can be raised by the respondent in respect of the 08 faculty members who were appointed by the petitioner after the inspection had been conducted. He sought to justify new appointment of

faculty stating that that the petitioner was constrained to appoint new faculty members as 07 faculty members had left the petitioner institute on account delay on part of the respondent in granting approval for conducting classes in the academic year 2022-2023.

16. As regards the objection of the respondent in respect of lack of qualification of Dr. Mihir Y. Parmar who was appointed as new Principal of the petitioner institute, Mr. Mehrotra, would submit that Dr. Mihir Y. Parmar has the requisite experience as per regulations notified by the respondent titled as “*Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014*”. At this stage it may be apt to reproduce the relevant of the said regulations, which provides for the minimum requirement for an individual to be appointed as a director/ Principal/head of institution, which are as follows:

TABLE
MINIMUM REQUIREMENTS OF ACADEMIC QUALIFICATIONS, TEACHING, RESEARCH AND INDUSTRY EXPERIENCE FOR TEACHING POSTS IN PHARMACY COLLEGES/INSTITUTIONS

I. Diploma course:

Name of the Post	Academic qualification	Teaching/Research/Industry Experience
Principal/Director/ Head of Instt./ Head of Deptt.	PCI recognized Post Graduate qualification in any discipline of pharmaceutical sciences. OR PCI recognized Pharm.D	Essential 5 years teaching experience in PCI approved/recognized Pharmacy College. Desirable Administrative experience in a responsible position.

नित्यमेव जयते

Lecturer (Pharmacy subjects)	PCI recognized M.Pharm/ Pharm.D OR PCI recognized B.Pharm (i) A person holding M.B.B.S. qualification can be considered for the post of Lecturer in the subjects of Anatomy & Physiology and Bio-Chemistry & Clinical Pathology. (ii) A person holding M.Sc. (Maths) degree shall be eligible for the post of Lecturer (Mathematics) on part-time basis.	— <u>Essential</u> 3 years professional experience.
	(iii) A person holding M.Sc. (Zoology) or M.Sc. (Botany) degree shall be eligible for the post of Lecturer (Biology) on part-time basis. (iv) A person holding B.E.(C.S.) or MCA degree shall be eligible for the post of Lecturer(Computer Science) on part-time basis.	

II. B.Pharm /Pharm.D/Post graduate course in Pharmacy –

Director/Principal/ Head of Institution	First Class B.Pharm with Master's degree in Pharmacy (M.Pharm) in appropriate branch of specialization in Pharmacy or Pharm.D (Qualifications must be PCI recognized). With Ph.D degree in any of Pharmacy subjects (Ph.D. Qualifications must be PCI recognized).	<u>Essential</u> 15 years experience in teaching or research out of which 5 years must be as Professor/HOD in a PCI approved/ recognized pharmacy college. <u>Desirable</u> Administrative experience in a responsible position.
Professor	First Class B.Pharm with Master's degree in Pharmacy (M.Pharm) in appropriate branch of specialization in Pharmacy or Pharm.D (Qualifications must be PCI recognized). With Ph.D degree in any of Pharmacy subjects (Ph.D. Qualifications must be PCI recognized).	<u>Essential</u> 10 years experience in teaching in PCI approved/ recognized Pharmacy College or research experience out of which 5 years must be as Associate Professor in PCI approved/recognized Pharmacy College.
Associate Professor	First Class B.Pharm with Master's degree in Pharmacy (M.Pharm) in appropriate branch of specialization in Pharmacy (Qualification must be PCI recognized).	3 years experience in teaching or research at the level of Assistant Professor or equivalent in PCI approved/ recognized Pharmacy Colleges.

[अथ (B)-अनु 4]	अथ (B) अनु 4 : अध्यापक	11 7
	A PCI recognized Pharm.D degree holder shall also be eligible for the posts of Associate Professor in the subjects of pathophysiology, pharmacology and pharmacy practice. Associate Professor shall acquire PCI recognized Ph.D in any of Pharmacy subjects within 7 years to become eligible for the post of Professor.	
Lecturer/Assistant Professor	First Class B.Pharm with Master's degree in Pharmacy (M.Pharm) in appropriate branch of specialization in Pharmacy (Qualification must be PCI recognized). A PCI recognized Pharm.D degree holder shall also be eligible for the posts of Lecturer/Assistant Professor in the subjects of pathophysiology, pharmacology and pharmacy practice.	A lecturer will be re-designated as Assistant Professor after 2 years of teaching experience in PCI approved/ recognized Pharmacy College.

- Note:**
- Notwithstanding anything contained in the Education Regulations, 1991, the Pharm.D Regulations, 2008 or any other documents approved by the PCI, the minimum qualification and experience for the teaching faculty in pharmacy shall be as mentioned in these regulations w.e.f. the date of their publication in the Official Gazette.
 - The existing teaching faculty working on regular basis shall not be affected. However, promotions of such faculty will be governed by these regulations.
 - If a class or division is not awarded at Master level, a minimum of 60 % marks in aggregate or equivalent cumulative grade point average shall be considered equivalent to first class or division, as the case may be.
 - The existing teaching faculty working on regular basis can be appointed in any other Pharmacy College/ Institution on the same post from which such faculty member retired / relieved, however, promotions of such faculty member shall be governed by these regulations.

ARCHNA MUDGAL, Registrar-cum-Secy.
[ADVT. ID/4/Exty./101/14]

Mr. Mehrotra draws the attention of the Court to paragraph 5 of additional affidavit dated 03.12.2022 filed by the petitioner to urge that Dr. Mihir Y. Parmar had more than 19 years teaching/industry experience when he joined the petitioner-institute on 17.10.2022. Paragraph 5 of the affidavit dated 03.12.2022 reads as under:

“5. I state that the Institute has 25 Teaching Faculty for running of all the three courses. Dr. Mihir Y. Parmar had more than 19 years Teaching/Industry Experience when he joined the Petitioner-Institute. The Petitioner is placing on record, the work experience of Dr. Mihir Y. Parmar which was submitted before the Personal Hearing Committee and

the same is annexed herewith as Annexure A-1/2 to the affidavit. However, the same is also being reproduced hereunder;

Sr. No.	Organization	Designation	Date	Experience Type	Total Experience
1.	Sanjay College of Pharmacy, Dr. A.P.J. Abdul Kalam Technical University, 21 st	Principal & Professor	21.8.2019 to 30.9.2022	Academic, Administrative & Research	3 years 1 Month 11 days

	Mile Stone, NH-2, Chaumuhan, Mathura, U.P.				
2.	Bharat Institute of Technology & Pharmacy, Jawahar Nehru University, Mangalpally, Ibrahimpatnam Telangana	HOD & Professor & Admin I/C	20.7.2018 to 20.8.2019	Academic, Administrative & Research	1 Year 1 Month
3.	Parul Institute of Pharmacy & Research, Parul University, Limda, Vadodara, Gujarat	HOD & Associate Professor	3.7.2017 to 2.7.2018	Academic & Research	1 Year
4.	Shree Swaminarayan Pharmacy, Kevadia Colony, Gujarat	Associate Professor & I/C Principal	22.9.2014 to 30.6.2017	Academic & Research	2 Year 9 Months 8 days
5.	College of Pharmacy, King Saudi University, Riyadh, Saudi Arabia	Asstt. Professor & Researcher	12.12.2011 to 9.9.2014	Academic & Research	2 year 8 Months 28 days
6.	Sh. Peter's Institute Pharma Sci-2-4-1211, Warangal, Kakatiya University, A.P.	Associate Professor & HOD, Pharmacy Practice	15.2.2011 to 30.9.2011	Academic & Research	7 Months 15 days
7.	GHB Pharmacy College, Aniyadm Godhra, Gujarat	Asstt. Professor & HOD, Pharmacology	1.7.2009 to 12.2.2011	Academic & Research	1 year 7 Months 12 days

8.	Shree Leuva Patel Pharmacy, Mahila College, Amreli, Gujarat	Lecturer	26.5.2006 to 7.4.2007	Academic	10 Months 12 days
9.	Ambalal Sarabhai Enterprise, Vadodara, Gujarat	Trainee Chemist	1.7.2003 to 30.6.2004	Industry	1 year

I state that the total Work Experience of Dr. Mihir Y. Parmar is 14 years 9 Months and 26 days till 30.9.2022. Dr. Parmar thereafter joined on 17.10.2022 in the Petitioner-Institute as Principal and his total experience comes to more than 15 years. That apart Dr. Parmar has industrial and research experience while he was doing Ph.D. Thus, Dr. Mihir Y. Parmar has more than the requisite experience as per Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014.”

17. Mr. Mehrotra would also contend that the objection of the PHC that Dr. Mihir Y. Parmar could not provide his relieving certificate from his erstwhile institute i.e. Sanjay Gandhi College of Pharmacy, Mathura does not hold any water as the same was provided to the PHC on 21.10.2022 and that the relieving certificate dated 30.09.2022 has also been filed before this Court as Annexure A-1/3 along with the additional affidavit.

18. Assailing the impugned order further, Mr. Mehrotra would contend that another similar objection which was raised by the PHC in respect of Dr. Pawan Kumar alleging that Dr. Pawan Kumar was lacking the requisite qualification/experience, is baseless and does not take into account material/documents which were produced before the PHC. The learned counsel for the petitioner drew the attention of this Court to the experience letters issued by the erstwhile employer of Dr. Pawan Kumar to dispel the above

objection. He submits that Dr. Pawan Kumar worked as an assistant professor from 01.07.2012 to 28.02.2017 and as an associate professor from 01.03.2017 to 24.12.2021 in Sunder Deep College of Pharmacy and has been working with the petitioner-institute since 27.12.2021. According to Mr. Mehrotra, Dr. Pawan Kumar had the requisite experience of 10 years in terms of the *Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014*, the relevant regulation of which is reads as under:-

Professor	First Class B.Pharm with Master's degree in Pharmacy (M.Pharm) in appropriate branch of specialization in Pharmacy or Pharm. D (Qualifications must be PCI recognized) With Ph.D degree in any of Pharmacy subjects (Ph.D. Qualification must be PCI recognized).	<u>Essential</u> 10 years experience in teaching or research experience out of which 5 years must be as Associate Professor in PCI approved/ recognized pharmacy college. <u>Desirable</u> Administrative experience in a responsible position.
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19. The petitioner would also submit that the objection qua faculty member Ms. Kris Jain is also unsustainable as the discrepancies pointed out qua her are no discrepancies at all. It is submitted that Ms. Kris Jain was appointed vide office order dated 19.07.2022 and she has joined her duties from 25.07.2022. Similarly, the objection of the respondent in not accepting the relieving letter issued by KDC College of Pharmacy, Mathura on the ground that there is an overwriting in the date of resignation as well as date of relieving cannot be sustained. Mr. Mehrotra, the learned counsel for the petitioner would draw the

attention of this Court to the relieving letter dated 22.04.2022 issued by KDC College to contend that no such overwriting exists on the document. Further, the failure of the faculty members in producing the original documents before the PHC cannot lead to an adverse inference being drawn against the petitioner-institute in as much as the respondent in its email dated 18.10.2022 had never informed the petitioner-institute that the faculty members ought to bring their original documents. Further, when the original documents were verified by the inspectors at the time of inspection, there was no need for the PHC to take a view which was inconsistent to the report of the inspectors.

20. Mr. Mehrotra, the learned counsel for the petitioner would further submit that the Appointment and Joining Letters of all faculty members were submitted before PHC clearly mentioning the designation and salary of each faculty member. He states that all faculty members have the requisite experience and the faculty cadre ratio is also maintained.

21. The petitioner would also allege *mala fide* on the part of the respondent in as much as the petitioner-institute was not granted benefit of the notification dated 22.10.2022 despite the petitioner submitting an affidavit seeking restoration of its intake on the same strength as the previous academic year i.e. 2021-2022.

SUBMISSIONS OF THE RESPONDENT

22. Mr. Abhishek Singh, the learned counsel for the respondent refutes all the above contentions of the Petitioner. Supporting the impugned order dated 31.10.2022, he would submit the present Writ Petition is not maintainable as it involves disputed questions of fact. Further, Mr. Singh would submit that this Court under Article 226 of the Constitution would not interfere with the

decision of the Executive Committee, which is an expert body unless the decision of the body shocks the conscience of the Court. He relied upon the decision of a Co-ordinate Bench of this Court entitled *Janta College of Pharmacy vs. All India Council for Technical Education*, 2019 SCC Online Del 9421, to contend that this Court cannot supplant its views over that of the expert body and the test to determine the reasonableness of the decision of the expert body is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken and which led to manifest injustice.

23. Elaborating further on his submissions, the learned counsel for the respondent would further contend that two faculty members namely Dr. Neetesh Sharma and Mr. Akhil Mangal who were working as the Principal and Asstt. Professor, respectively, in petitioner-institute were accused to have demanded and collected money from students to pass them in sessional and practical examination as also to complete their short attendance. He submits that intriguingly when the above said persons tendered their resignations to the petitioner-institute, the same stood rejected by the petitioner. This according to the learned counsel for the respondent, manifests that the resignations of Dr. Neetesh Sharma and Mr. Akhil Mangal were not accepted by the petitioner-institute to maintain the requisite number of faculty members. To support his argument that the aforesaid persons were still on the rolls of the petitioner, the learned counsel for the invited the attention of the court to the Standard Inspection Form (S.I.F.) filed along with its application which included the names of the above noted persons.

24. The learned counsel for the respondent would further submit that Dr. Mihir Y. Parmar i.e. the current Principal of the petitioner-institute is not

eligible to be appointed as a Principal in the petitioner-institute as he does not have the requisite essential experience of 15 years. To support his case, the learned counsel for the respondent would draw the attention of the Court to paragraph 5 of the Additional Affidavit filed by the petitioner where the experience of the petitioner has been admitted to be 14 years 9 months and 26 days. He further referred to the tabulated chart and specifically to Sl.No.5, i.e., College of Pharmacy, King Saudi University, Riyadh, Saudi Arabia, to contend that the time spent by Dr. Mihir Y. Parmar, i.e., period of two years eight months and twenty days is not to be counted towards his qualification/experience as it is not a college approved by the PCI.

25. To fortify the above contention of his, Mr. Singh referred to the essential qualifications for an individual to be appointed as a Director/Principal/Head of Institution, which is “15 years experience in teaching or research out of which 5 years must be as Professor/HOD in a PCI approved/Recognized pharmacy college”. He also contends that even as of today, Dr. Mihir Y. Parmar does not have the requisite experience of 15 years even if he is allowed the benefit of the period spent by him at the college in Saudi Arabia. He submits that for all these reasons, Dr. Parmar is not eligible to be appointed as Principal of the petitioner institute.

26. Mr. Singh, would also contend that the notification dated 22.10.2022 cannot enure to the benefit of the petitioner/institute as the said notification is applicable only to institutions whose intake has been reduced. Whereas, in the case of the petitioner/institute, the intake has not been reduced but approval has been denied.

REASONS AND CONCLUSION

27. I have considered the submissions of the learned counsels for the parties and have perused the relevant documents placed on record.

28. Much emphasis has been laid by the learned counsel for the parties on the experience of Dr. Mihir Y. Parmar. It is not in dispute that for an individual to be appointed as the Principal in the petitioner/institute conducting B. Pharm/Pharm.D/Post graduate course in Pharmacy, the regulations provides that the said individual must have *“15 years experience in teaching or research out of which 5 years must be as Professor/HOD in a PCI approved/recognized college”*. Whereas, for conducting the Diploma course the essential qualification of the Principal is *“5 years teaching experience in PCI approved/recognized Pharmacy College”*. Concededly, Dr. Parmar has an experience of 14 years 9 months and 26 days as on 30.09.2022. He came to be appointed by the petitioner only on 17.10.2022, and thus, the inspectors did not have an opportunity to verify the credentials/experience of Dr. Parmar. In this backdrop, the Executive Committee of the respondent pointing out deficiency in Dr. Parmar’s teaching experience, in contrast to the inspector’s report, cannot be said to be arbitrary or whimsical.

29. I also do not find merit in the submission of Mr. Mehrotra that as on today, Dr. Parmar has the requisite experience of 15 years, therefore, there is no deficiency in that regard. I am of the view that the experience or eligibility of Dr. Parmar is not to be seen as it exists today. Such eligibility has to be seen with reference to the last date fixed for the submission of application for approval. Undisputedly, Dr. Parmar was not having the requisite experience of 15 years at that time. He did not have the said experience even on the date

when inspection of the petitioner/institute was carried out. Therefore, the petitioner cannot be said to have met the criteria under the regulations for conducting B.Pharm/M.Pharm courses for the academic year 2022-2023. However, it is not in dispute that Dr. Parmar possesses the essential teaching experience of minimum five years for being appointed as Principal for Diploma Course at the petitioner/institute.

30. In so far as the objection that Dr. Pawan Kumar did not have the requisite experience of 10 years in a PCI approved college for being appointed as a Professor, the same is only to be noted to be rejected. I have gone through the relieving certificate of Dr. Pawan Kumar issued by Sunder Deep College of Pharmacy and I find that Dr. Pawan Kumar had worked as an Assistant Professor from 01.07.2012 to 28.02.2017 and as an Associate Professor from 01.03.2017 to 24.12.2021 in the same college. Thereafter, he has been working with the petitioner/institute since 27.12.2021. The relieving certificate issued by the erstwhile college of Dr. Pawan Kumar is annexed as Annexure P-20 (colly) to the petition. Inspectors' report also verifies the candidature of Dr. Pawan Kumar and his presence in the college on the day of physical inspection. I am, therefore, of the opinion that Dr. Pawan Kumar was eligible to be appointed as a Professor in the petitioner-institute and the objection raised by the Personal Hearing Committee is not tenable.

31. The next objection of the respondent is qua Ms. Rekha Rani. The objection is that there is an overwriting in the date of resignation and relieving, therefore, the relieving letter issued by KDC College of Pharmacy, Mathura cannot be said to be genuine. A perusal of the relieving letter of Ms. Rekha Rani issued by KDC College of Pharmacy, Mathura would reveal there is no

overwriting on the said letter. It is luminously clear that Ms. Rekha Rani resigned from her erstwhile institution vide resignation letter dated 06.04.2022 and was relieved from her duties vide relieving letter dated 22.04.2022. The relieving letter is extracted below:-

W.P.(C)-16199/2022
KDC COLLEGE OF PHARMACY
 Approved by AICTE/PCI Affiliated to AKTU/BTE
 Address : Barari Road, Ole, Mathrua - 281122 (U.P.)

AKTU Code : 1029
 BTE Code : 1087
 PCI Code : 3025
 Ph. : 9412652147
 9690779211

Ref. No. : KDC/2022/RL-10 Relieving Letter Date : 22/04/22

TO WHOM SO EVER IT MAY CONCERN

Dear Rekha Rani

This has reference to your letter of resignation dated 06/04/22, wherein you have requested to be relieved from the services of the College on

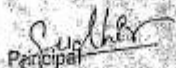
We would like to inform you that your resignation is hereby accepted and you are being relieved from the services of the College after serving one month notice period, with effect from closing office hours of Date: 23/04/22.....

We also certify that your full and final settlement of account has been cleared with the organization.

Your contributions to the organization and its success will always be appreciated.

We at College wish you all the best in your future endeavors.

For (KDC College of Pharmacy)

Yours
 Sincerely,

 Principal
 KDC College of Pharmacy
 Mathrua
 Director/Principal

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32. Similar objection of the respondent qua Ms. Kris Jain is that there is a discrepancy in her designation in the SDF filed by the petitioner/institute and her joining letter. As per the impugned order dated 31.10.2022, the designation of Ms. Kris Jain in the joining letter is “Assistant Professor” though it has been

claimed that she is an Associate Professor. I have perused the joining letter dated 25.07.2022 and I find that the designation of Ms. Kris Jain is "Associate Professor" and not "Assistant Professor" as mentioned in the impugned order. The objection of the respondent shows non-application of mind and is against the material which was placed before the PHC. The said objection thus, cannot be sustained. It is apt to reproduce the joining letter dated 25.07.2022, which is as under:-

To,

W.P.(C)-16199/2022

The Principal

Anjali College of Pharmacy and Science,

NH-2, Agra-Firozabad Road,

Etmadpur, Agra - 283202.

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Sub: Joining Letter

Respected Sir / Ma'am,

In compliance with office order dated 19/07/2022, I beg to submit my joining report today on date 25/07/2022 as ~~Associate Professor~~ in Anjali College of Pharmacy and Science, NH-2, Agra-Firozabad Road, Etmadpur, Agra - 283202.

I Kris Jain confirm joining the organization in agreement with the terms and conditions mentioned in my Appointment Letter.

Yours faithfully,

Name: Kris Jain

Signature: Kris Jain

33. In respect of the objection that original documents were not produced by the faculty members, suffice it to say that mere non-production of the originals of the documents by the aforesaid faculty members cannot be a ground to reject the application of the petitioner/institute. The email dated 18.10.2022 whereby, the petitioner was asked to present the Principal as well as all the faculty members, does not direct the faculty members of the petitioner/institute to bring the original of their respective documents. Furthermore, when the said documents have been duly verified by the inspectors of the respondents, divergence from their report without valid ground appears to be unjust.

34. Mr. Singh, the learned counsel for the respondent, also sought to justify the denial of approval by the respondent on the ground that the erstwhile Principal and Asstt. Professor of the petitioner/institute were demanding money from students to pass them in the examinations and also to complete their short attendance. Despite the alleged misconduct on their part, they were retained on the rolls of the petitioner/institute to complete the number of faculties. Mr. Mehrotra has drawn the attention of the court to email dated 03.10.2022 addressed by the petitioner to the Registrar of the respondent, wherefrom it is borne out that not only a case was registered by the petitioner against aforesaid Principal and faculty member but the respondent was also informed of the acts of the said persons vide its letters dated 21.12.2021 and 04.03.2022 with a request to take action against them. Mr. Mehrotra submits that the petitioner could not accept the resignations of the aforesaid persons in the middle of an ongoing semester in view of the circular of the respondent dated 09.10.2013 which mandates that teaching faculty will not be eligible to join other institutions during the same academic year. There is considerable merit in the submission of Mr. Mehrotra, the learned counsel for the petitioner. Even the

above fact has been voluntarily disclosed by the petitioner in the present writ petition; therefore, no *mala fide* can be attributed to the petitioner on this count.

35. In so far as the petitioner's contention that it has not been extended the benefit of notification dated 22.10.2022 is concerned, suffice it to say that the said notification speaks only of a situation where the admission intake was reduced in 2022-23 academic session. But in the case of the petitioner there is no reduction in the intake. On the contrary, the petitioner's application for approval was rejected by the respondent. Therefore, the benefit of the said notification cannot be extended to the petitioner.

36. All the objections raised by the Personal Hearing Committee (PHC) are untenable except that the Principal, Dr. Mihir Y. Parmar does not have the eligibility to be appointed as Principal for the B.Pharm and M.Pharm courses. The inspectors' report does not point out any discrepancy with regard to faculty or infrastructure. The inspectors' report could not have been discarded by the respondent without any justified reasons. There is also a doubt as regard the correctness of the procedure adopted by the EC in directing the Principal and the entire faculty to appear in person before the PHC when the inspectors' report was already available. To a query put by the court to the learned counsel for the respondent as to whether there is any regulation providing for such procedure, the answer was in the negative.

37. Since the Principal of the petitioner institute lacks the eligibility to be appointed as such for B.Pharm and M. Pharm courses, no direction could be given to the respondent to grant approval to petitioner for the said courses as it would in essence be directing the respondent to violate its own regulations. It is trite that the High Court while exercising jurisdiction under Article 226 of the

Constitution of India cannot direct statutory bodies to violate their own rules and regulations. I am also supported in my view by the judgment of the Supreme Court in *Maharishi Dayanand University vs. Surjeet Kaur*, (2010) 11 SCC 159, the relevant paragraphs of which read as under:

“11. It is settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions.

12. In State of Punjab v. Renuka Singla [(1994) 1 SCC 175] , dealing with a similar situation, this Court observed as under : (SCC p. 178, para 8)

“8. ... We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations....”

13. Similarly, in Karnataka SRTC v. Ashrafulla Khan [(2002) 2 SCC 560 : AIR 2002 SC 629] , this Court held as under : (SCC pp. 572-73, para 27)

“27. ... The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injuncted by law.”

Similar view has been reiterated by this Court in Manish Goel v. Rohini Goel [(2010) 4 SCC 393 : (2010) 2 SCC (Civ) 162 : AIR 2010 SC 1099]

38. Undisputedly, the petitioner has the requisite faculty and an eligible Principal for grant of approval for D.Pharm course. This being the position, the impugned order to the extent that it instructs the petitioner's institute not to

make admissions for the Academic Session 2022-23 for its D.Pharm course is illegal and is accordingly set aside.

39. Keeping in view the fact that petitioner is entitled for grant of approval and already there has been delay on part of the respondent in taking timely decision on the application and appeal of the petitioner, this court, instead of remanding the matter back to the respondent for issuance of fresh order, is inclined to direct the respondent to forthwith grant approval to the petitioner for its D.Pharm course.

40. The court is informed by the learned counsel for the parties that the counselling for D.Pharm course in the state of U.P. is still going on, therefore the respondent is directed to allow the petitioner's college to take admission of 60 students in the ongoing counseling of D.Pharm course for the Academic Session 2022-23.

41. The writ petition is partly allowed in the above terms.

VIKAS MAHAJAN, J.

DECEMBER 13, 2022/dss

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