

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.158 of 2020

In
Civil Writ Jurisdiction Case No.22551 of 2019

-
-
1. The State of Bihar through the Principal Secretary, Health and Family Department, Bihar, Patna.
 2. State Health Society, Bihar through its Executive Director, Bihar, Patna.

... .. Appellant/s

Versus

1. Arvind Kumar Son of Bijay Chaudhary, Resident of Village-Bari Ashikpur, P.S.-East Colony, Nayan Gaon, District-Munger.
2. Sanjeev Kumar Mishra, Son of Narsingh Mishra, Resident of Village-Bharpurwa, P.S.-Vijayipur, District-Gopalganj.
3. The Chairman, Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No.2, Community Centre, Maa Anandmai Marg, Okhla Phase I, New Delhi.
4. The Registrar, Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No.2, Community Centre, Maa Anandmai Marg, Okhla Phase I, New Delhi.

... .. Respondent/s

with

Letters Patent Appeal No. 1708 of 2019

In
Civil Writ Jurisdiction Case No.22551 of 2019

Arvind Kumar Son of Bijay Chaudhary, Resident of Village Bari Ashikpur, P.S.-East Colony, Nayan Gaon, District-Munger.

... .. Appellant/s

Versus

1. Sanjeev Kumar Mishra Son of Narsingh Mishra, Resident of Village-Bharpurwa, P.S. Vijaypur, District-Gopalganj.
2. The State of Bihar through the Principal Secretary, Health and Family Department, Bihar, Patna.
3. The State Health Society, Bihar through Executive Director, Bihar, Patna.
4. The Chairman, Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No.2, Community Centre, Maa Anandmai Marg, Okhla Phase I, New Delhi.
5. The Registrar, Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No.2, Community Centre, Maa Anandmai Marg, Okhla Phase I, New Delhi.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 158 of 2020)

For the Appellant/State : Mr. S.D. Yadav, AAG-9
Mr. Nagindra Pathak, AC to AAG-9



For the U.O.I. : Mr. Sriram Krishna, Advocate
(Pharmacy council of India)
For State Health Society: Mr. K.K. Sinha, Advocate
Mr. Shashi Shekhar, Advocate
For the Respondent/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Shashi Bhushan Singh, Advocate
Mr. Prince Kumar Mishra, Advocate
(In Letters Patent Appeal No. 1708 of 2019)
For the Appellant/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Shashi Bhushan Singh, Advocate
For Respondent No. 3 : Mr. K.K. Sinha, Advocate
(State Health Society) Mr. Shashi Shekhar, Advocate
For Private Respondent/s: Mr. Prince Kumar Mishra, Advocate
For the State : Mr. S.D. Yadav, AAG-9
Mr. Nagindra Pathak, AC to AAG-9
For the U.O.I. : Mr. Sriram Krishna, Advocate
(Pharmacy council of India)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-01-2023

Re:- I.A. No. 01 of 2020 & I.A. No. 04 of 2022 (arising out of L.P.A. No. 158 of 2020)

Heard Interlocutory Applications for condonation of delay in filing present L.P.As.

For the reasons stated in the application and affidavit, delay of about 40 days is condoned.

Accordingly I.A. No. 01 of 2020 and I.A. No. 04 of 2022 for condonation of delay and rectification of I.A. No. 01 of 2020 are allowed.

With the consent of the learned counsels for respective parties matter is taken up for final disposal.

These two L.P.As. are filed by the State of Bihar and



Arvind Kumar. They are aggrieved by the order of the learned Single Judge dated 10.12.2019 passed in C.W.J.C. No. 22551 of 2019 (Sanjeev Kumar Mishra Vs. State of Bihar & Ors.).

Appellant- Arvind Kumar is holder of Diploma in Pharmacy. On the other hand, Respondents- Sanjeev Kumar Mishra & Ors. were holders of M.Pharma/B. Pharma. Sanjeev Kumar Mishra in his C.W.J.C. No. 22551 of 2019 has prayed for following reliefs:-

"(a) For issuance of writ in the nature of Mandamus, directing and commanding upon the respondent authorities, to immediately remove the technical glitch in the functioning of Website of – www.statehealthsocietybihar.org, which is not having necessary option for registration for applicants/ Petitioner having Bachelors in Pharmacy degree for Advertisement No. 07/2019 dated 25/10/19 issued by the Executive Director, State Health Society, Bihar for the post of Pharmacist and provide option for registration for candidates/Petitioner having Bachelors in Pharmacy degree.

(b) For issuance of an appropriate writ, directing and commanding upon the respondent authorities to provide necessary option for registration for candidates/Petitioner having Bachelors in Pharmacy degree for Advertisement No. 07/2019 dated 25/10/19 issued by the Executive Director, State Health Society, Bihar for the post of Pharmacist.

(c) For any other relief/reliefs which this Hon'ble Court deems fit."

The learned Single Judge allowed the writ application of Sanjeev Kumar Mishra with following directions (para 39):-



"39. The respondents are accordingly directed to allow the petitioner and other similarly circumstanced persons, holding B. Pharma/M. Pharma qualification, to apply against the said post. It has been stated at the bar that last date for submission of application form has expired on 21.11.2019. The Bihar State Health Society is, therefore, directed to make necessary arrangement/changes in its software and extend the last date of submission of application forms at least by a fortnight from today for candidates holding B.Pharma/M.Pharma qualification."

Feeling aggrieved and dissatisfied with the aforesaid direction, appellant -Arvind Kumar and the State are in L.P.A.

Brief facts of the case are that both appellant- Arvind Kumar and Respondent- Sanjeev Kumar Mishra intend to participate in the process of selection and appointment to the post of Pharmacist pursuant to Advertisement No. 07/2019. The post of Pharmacist is governed by the rules called "***Bihar Pharmacist Cadre Rules, 2014***" (For short Rules, 2014) issued under Article 309 of Constitution. We passed the following order on 26.09.2022 and 09.11.2022 in C.W.J.C. No. 7120 of 2021 which was delinked on 09.11.2022.

Order dated 26.09.2022 reads as under:-

"Matter is heard for sometime.

Core issue involved in the present petition is whether Respondents/petitioners are entitled to participate in the process of selection and appointment to the post Pharmacist in the light of Rules called "***Bihar Pharmacist Cadre Rules,***



2014” (For short “Rules, 2014”).

Rule 6 of Rules, 2014 provides for qualification which reads as under:

“6. **Qualifications.** - (1) For appointment by direct recruitment to the basic category posts, minimum educational qualification shall be Intermediate/10+2 (Science) pass and passing in all parts (part I, II & III) of Diploma-in Pharmacy from the institution recognised by the Government and a certificate to that effect shall be necessary.

(2) It shall be necessary for the candidate to be registered with Bihar Pharmacy Council.

(3) For direct recruitment in the Pharmacist Cadre, minimum age limit shall be 21 years and maximum age limit shall be the same as may be determined reservation categorywise, from time to time, by the Government.

(4) 1st August of the concerned year shall be deemed to be the cut off date for determination of age.”

Rule 7 provides **Procedure of Recruitment** which reads as under:-

“7. **Procedure of Recruitment.** -

(1) The appointing authority, after calculating vacancy on the basis of position as on 1st April of the year and getting roster cleared, shall send reservation categorywise requisition to the Commission latest by 30th April.

(2) In light of requisition, the Commission shall invite applications after advertising vacancies and shall prepare merit list on the following basis:-

(a) For marks obtained in Intermediate/+2 (Science) examination - 25 marks

(b) For higher degree (B.Sc. / B. Pharma / M.Sc. / M. Pharma) - 10 marks

(c) For marks obtained in Diploma-in-Pharmacy examination - 25 marks

(d) For work experience in Government hospitals of Bihar State (5 marks per year, maximum 25 marks) - 25 marks



(e) For Interview - 15 marks
Total - 100 marks

Note:- The marks to be given to a candidate for marks obtained in the Intermediate/10+2 (Science) course examination shall be determined by multiplying percentage of total marks obtained in the aforesaid courses examination by multiple of 0.25. For example, if a candidate has obtained 50% marks, he will be given 50% x 0.25= 12.5 marks.

(3) Procedure for interview shall be determined by the Commission.

(4) After preparation of merit list on the basis of sub-rule (2), preliminary scrutiny of certificates and medical check up shall be conducted by the Commission with the co-operation of the Appointing Authority and, thereafter, reservation categorywise final recommendation, in accordance with the requisitioned vacancies, shall be sent to the Appointing Authority. At the level of Appointing Authority also, antecedents of candidates shall be caused to be verified after scrutiny of certificates.

(5) After recommendation of the Commission, compliance of instructions issued by the Government, from time to time, with respect to procedure of appointment, shall be necessary.”

Appendix-1 reads as under:-

Sl. No.	Category	Name of Posts	Direct Recruitment or Promotion	Requisite qualifications	Remarks
1.	Basic Category	Pharmacist	By Direct Recruitment	(i) Intermediate/+2 (Science) pass (ii) Pass in all parts (part I, II & III) of Diploma in Pharmacy. (iii) It shall be	



				necessary to be registered with the Bihar Pharmacy Council [Note – B. Pharma and M. Pharma pass may also apply]	
2.	First ladder	Senior Pharmacist	By Promotion	-	In all Hospitals having 20-beds or more and in all Hospitals having 50-beds or more.
3.	Second ladder	Chief Pharmacist	Do	-	In all District Hospitals
4.	Third ladder	Senior Chief Pharmacist	Do	-	In all Medical College Hospitals.

In the light of aforesaid rule position, question for consideration is whether B.Pharma and M. Pharma holder could apply for the post of Pharmacist ignoring Rule 6- qualification for Pharmacist post.

Undisputedly, Respondents / petitioners do not possess qualification under Rule 6, like passing in all parts (Part I, II and III) of diploma for Pharmacy from the institution recognized by the Government and certificate to that effect. On the other hand, they possess qualification of B. Pharma and M. Pharma. Further, it is noted that in terms of Appendix-I, Respondents/petitioners were permitted to participate in the process of selection to the post of Pharmacist whereas Appendix-I is applicable to such of those Rules which have been cited just below Appendix-I, like Rules 2 (VIII), 4, 13, 16 and 17 whereas Rule 6 has been excluded. Therefore, *prima facie* one has to draw inference that Rule 6 – Qualification is mandatory to participate in the process of selection and appointment to the



post of Pharmacist.

At this stage, learned counsel for the Respondents- Petitioners seeks time to cite certain judicial pronouncements.

Re-list this matter on 28.09.2022 at 12.15 PM."

Order dated 09.11.2022 reads as under:-

"Heard learned counsels for the parties.

2. C.W.J.C. No. 7120 of 2021 and C.W.J.C. No. 23133 of 2019 are hereby delinked. With reference to L.P.A. No. 1708 of 2019 and L.P.A. No. 158 of 2020, for the reasons that validity of Rules are under challenge, matter requires to be heard independently.

3. Today, learned counsel for the contesting respondents in L.P.A. No. 1708 of 2019 and L.P.A. No. 158 of 2020, who are representing a class of persons, who are qualified with B.Pharma/M.Pharma and who do not possess the Diploma in Pharmacy has submitted that in terms of note to Appendix-I, Bihar Pharmacist Cadre Rules, 2016, which provides for submission of application of such of those persons who are also qualified with B.Pharma/M.Pharma, in this regard, he has pointed out notification issued by the Pharmacy Council of India dated 16th July, 2019. The aforesaid Notification is Patna High Court CWJC No.7120 of 2021(9) dt.09-11-2022 3/5 supported by definition in the Pharmacy Act, 1948 read with Appendix-III and Rule 3.1 relating to education vide the Pharmacy Practice Regulations, 2015. It is further submitted that in terms of Rule 20 and 21 of the Bihar Pharmacist Cadre Rules, 2014, the Principal Secretary, Health Department vide its order dated 24.11.2014 clarified that such of those persons, who are qualified with B.Pharma/M.Pharma were also eligible to apply for the post of Pharmacist



under the Rules, 2014. Rule 20 is in respect of Interpretation and Rule 21 is in respect of Removal of difficulties. These two provisions has been taken note of while issuing order on 24.11.2014. It is further submitted that definition of minimum has been defined in the **Black's Law Dictionary**, which reads as under:-

“Minimum. The least quantity assignable, admissible or possible in given case and is opposed to maximum. Board of Ed. of City of Rockford v. Page, 33Ill.2nd 372, 211 N.E.2nd 361, 363.”

4. Further, learned counsel for the contesting respondents cited the following decisions (i) **(2010) 15 SCC, 596 Jyoti K.K. and Ors Vs. Kerala Public Service Commission and others (Para-6 and 8)**. (ii) **A.I.R. 2021 SC 2221 Puneet Sharma Vs. State of Himachal Pradesh** (Para-3, 29, 30, 31 and 32 respectively).

5. *Per contra*, learned counsel for the appellant submitted that Rule 6(1) of Rule, 2016 & mandates that candidate, who is eligible for Pharmacist one must be the holder of minimum education qualification like Intermediate/+2 (Science) passing in all parts (Part-I, II and III) of diploma in pharmacy from the recognized institution. He is insisting upon the aforesaid clause in order to contend that the word used in Rule 6(1) “shall” therefore, it is a mandatory requirement in the result in the absence of diploma qualification and who possessed B.Pharm/M.Pharm are not eligible to make application for Pharmacist post. It is also submitted that under Rule 7(2)(b) read with note to Appendix-I of Rule, 2014. It is submitted that Rule 7 is in respect of Procedure of recruitment and not related qualification. In the event of Diploma holder in pharmacy he had acquired higher degree like B.Sc./B. Pharm / M.Sc/ M. Pharm in such circumstances, he is entitled to 10% marks in



addition to other marks under different heads. Learned counsel for the appellant further submitted that note to Appendix-I of Rule, 2014 is required to be read in addition to Diploma in pharmacy for the reasons that Note reads as under “*Note-B.Pharma/M.Pharma pass may also apply*” is required to be interpreted that in addition to Diploma qualification holder who has passed B.Pharma/M.Pharma could also apply. It is submitted that Diploma in pharmacy is one of the essential qualification in terms of Rule-6 of Rule, 2014.

6. At this juncture, we noticed that the State has also filed L.P.A. No. 158 of 2020 against the order of the learned Single Judge order dated 10.12.2019 passed in C.W.J.C. No. 22551 of 2019. The State is a common party to the lis, therefore, the State is hereby directed to furnish list of dates and events before the next date of hearing. Learned State counsel is also hereby directed to apprise this Court how he is going to defend the State government's order dated 24.11.2014 read with Rule 20 – Interpretation and Rule 21 Removal of difficulties under Rules, 2014 on the next date of hearing.

7. Relist this matter on 16.11.2022.

8. In respect of C.W.J.C. No. 7120 of 2021 and C.W.J.C. No. 23133 of 2019 matter stands admitted for hearing. Relist C.W.J.C. No. 7120 of 2021 and C.W.J.C. No. 23133 of 2019 in the month of January, 2023."

In the light of the aforesaid orders of this Court State filed their supplementary affidavit. Para 6 to 15 reads as under:-

"6. That Pharmacy Act 1948 has been enacted to regulate the profession of pharmacy and similarly the same is also not related to regulate appointment and other service conditions in the pharmacist cadre



under the Health Department, Government of Bihar.

7. That it is relevant to mention here in exercise of powers conferred by provisions to Article 309 of the Constitution of India the Governor of Bihar is pleased to make the Pharmacist Cadre Rule 2014 to regulate the appointment and other service conditions in the pharmacist cadre under the Health Department, Government of Bihar.

8. That from the conjoint reading of Rule 6 & 7 of the aforesaid the Bihar Pharmacist Cadre Rule 2014 it is evident that Diploma in Pharmacy from the institution recognized by the government and certificate to that effect is necessary.

9. That from the fact as stated above in other words it is evident that the certificate of to diploma in Pharmacy is mandatory too participate in the process of selection and appointment to the post of Pharmacist.

10. That it is also stated that Appendix-I is applicable to such of those rules which have been cited just below Appendix-I, like Rules 2(VIII), 4, 13, 16 & 17 where as Rule 6 has been excluded.

11. That from perusal of the aforesaid statutory Rules particularly from Rule 6 it is evident that persons having the minimum prescribed qualification of Diploma in Pharmacy are only entitled to participate in the process of selection of pharmacist.

12. That Hon'ble Supreme Court in the case of Nair service society Vs. T. Beermasthan and others reported in (2009) 5 SCC 545 in para 48 it is held as under:

" Several decisions have been cited before us by the respondents, but it is well established that judgments in service Jurisprudence should be understood with reference to the particular service Rules in the state governing that field. Reservation provisions are enabling provisions, and



different state governments can have different methods of reservation there is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block"

13. That it is humbly stated that in the light of the Hon'ble Supreme Court decision weightage to be given to the statutory Rule governing the post.

14. That in the instant case the Bihar Pharmacist cadre Rule 2014 has not stipulated qualification of B. Pharma & M. Pharma Degree as minimum eligibility criteria.

15. That it is humbly submitted that the order as contained in Memo No.4 VIDHI-8- as VIDHI- 8- 88/2014-1028(4) dated 24.11.2014 (AnnexXure-15 to the supplementary affidavit filed on behalf of the petitioner in CWJC No. 22551 of 2019 arising out of "the order passed in the aforesaid case the present appeal has been preferred on behalf of the appellant) is not meant for removal of difficulty as provided under Rule 21 of of aforesaid Rule particularly in view Rule 20 of the aforesaid Rule which provides to the effect that:-

"Rule 20 – Interpretation - If any doubt arises with respect to interpretation of any be provision of these Rules, it shall be determined by the Department in consultation with the Law Department and in this respect decision of the department shall be final."

In the light of aforementioned facts and circumstances, learned counsel for the appellants- State and Arvind Kumar submitted that such of those candidates who have acquired qualification of B.Pharma and M.Pharma are not



eligible to participate in the process of selection and appointment to the post of Pharmacist in terms of Rules, 2014, since Rules 6 and 7 read with Appendix-I, they do not fulfill the qualification prescribed under Rule 6. In order to overcome, Memo No. 4/Vidhi-8-88/2014-1028(4) dated 24.11.2014 is concerned, the State has specifically clarified in para 15 of the their supplementary affidavit to the extent that the aforesaid Memo dated 24.11.2014 is not in compliance of Rule 20 of Rules, 2014 read with Rule 21 of Rules, 2014. It is further submitted that contention of the contesting respondent- Sanjeev Kumar Mishra that Central Government Laws are applicable and Sanjeev Kumar Mishra had better qualification than Diploma, therefore, he is entitled to participate in the process of selection and appointment to the post of Pharmacist pursuant to the Rules, 2014 is not permissible. The cited decisions on behalf of Sanjeev Kumar Mishra are not applicable to the case in hand. Appellants are relying on Apex Court's decision rendered in the case of *Nair Service Society Vs. Dr. T. Beermasthan & Ors.* reported in *(2009) 5 SCC 545* at para 48 held as under:

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation



provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

Heard learned counsels for respective parties.

Question for consideration in the present L.P.A. is whether such of those candidates who have acquired qualification of M.Pharm and B.Pharm in the absence of acquisition of Diploma in Pharmacy is/are entitled to participate in the process of selection and appointment to the post of Pharmacist in terms of Rules, 2014 or not? Whether Learned Single Judge has committed error in allowing the petition of the Respondent- Sanjeev Kumar Mishra or not?

We have already quoted the relevant provisions of Rules, 2014, in particular, Rule 6, 7 read with Appendix-1. Title of Rule 6 is relating to 'Qualification' for the post of Pharmacist, Rule 7 is relating to 'Procedure of recruitment'. In Rule 6 while prescribing qualification, Rule does not stipulate M. Pharm and B. Pharm qualification. On the other hand, only Diploma in Pharmacy from the institution recognized by the government and a certificate to that effect has been prescribed. Respondent- Sanjeev Kumar Mishra cannot take shelter with



reference to Rule 7 where the procedure of recruitment is stipulated, while awarding marks such of those candidates who are qualified with higher degree, like B.Sc/ B. Pharma/ M.Sc./M. Pharma are entitled to 10 marks and further Appendix-I (Rules have been mentioned while excluding Rule 6, i.e. qualification), therefore, requisite qualification against the post of Pharmacist in Appendix-1 (Note- B.Pharma and M.Pharma pass may also apply) has no application to the post of Pharmacist read with qualification.

Reading of the aforesaid note, it is in addition to Diploma in Pharmacy holder and not independently like such of those M.Pharma and B.Pharma holders who do not possess qualification of Diploma in Pharmacy in terms of Rule 6 of Rules, 2014. Therefore, Respondent- Sanjeev Kumar Mishra has not made out a case that he is eligible to be participated in the process of selection and appointment to the post of Pharmacist in terms of Rules, 2014 (Rules 6, 7 read with Appendix-1).

Learned counsel for Respondent- Sanjeev Kumar Mishra vehemently contended that Central Government policy decision is required to be taken into consideration. Central Government policy decision in respect of identifying qualification cannot be appreciated in the light of Apex Court's



decision (cited supra), namely, *Nair Service Society Vs. Dr. T. Beermasthan & Ors.* reported in (2009) 5 SCC 545. Moreover, he has not apprised this Court with reference to any regulation governing the post of Pharmacist in the Central Government.

Learned Single Judge has committed error in not taking note of the aforesaid provision, in particularly, Rule 6, Rule 7 read with Appendix-1. Rules, 2014 provides to such of those B.Pharm and M.Pharm holders and other higher qualified persons are entitled to ten marks in the process of recruitment. In other words, basic qualification is required to be taken note of with reference to Rule 6 and it stipulate only Diploma in Pharmacy. Merely acquisition of higher qualification directly and without basic qualification in the present case such of those possess M.Pharm and B.Pharm without there being a Diploma in Pharmacy qualification are not eligible to participate in the process of selection and appointment to the post of Pharmacist. In fact, standard of education syllabus to acquire Diploma in Pharmacy and M.Pharm and B.Pharm are entirely different. We have come across that such of those Diploma holders in Pharmacy they are entitled to work in various Health Departments. On the other hand, such of those persons who possess M.Pharm and



B.Pharma, they are normally engaged in Industrial side where drugs and cosmetics are manufactured. That apart, they have the benefit of employment with reference to Inspector and other higher post in the Drugs wing of Health Department.

In the light of these facts and circumstances, appellants- State and Arvind Kumar have made out a *prima facie* case so as to interfere with the order of the learned Single Judge dated 10.12.2019 passed in C.W.J.C. No. 22551 of 2019. Hence, order of the learned Single Judge dated 10.12.2019 passed in C.W.J.C. No. 22551 of 2019 stands set aside. In the result C.W.J.C. filed by Sri Sanjeev Kumar Mishra stands rejected.

Accordingly, present L.P.As. stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.01.2023
Transmission Date	NA

