

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5058 of 2024

Mannu Kumar Son of Sanjay Kumar, Resident of Mohalla - Ashok Vihar Colony, near Kidzee School, Opposite Urmila Beauty Parlour, by-pass Gaya, P.S. Vishnupad, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health Department, Government of Bihar, Patna.
2. The Bihar Public Service Commission, Patna through its Chairman.
3. The Examination Controller, Bihar Public Service Commission, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate Mr. Rishi Raj Raman, Advocate Ms. Ruchi Mandal, Advocate Mr. Kunal, Advocate
For the State	:	Mr. Dhurjati Kumar Prasad, GP-14
For the BPSC	:	Mr. Lalit Kishore, Sr. Advocate Mr. Ayush Kumar, Advocate Mr. K. Shankar, Advocate Mr. Rajni Kant Jha, Advocate Mr. Sanjay Pandey, Advocate Mrs. P. Shahil, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 20.07.2024

The present writ petition has been filed for quashing of the important notice dated 13.03.2024, issued by the Examination Controller, Bihar Public Service Commission (hereinafter referred to as the “respondent-Commission”) in



connection with the Drug Inspector Competition Examination (Advertisement No.09 of 2022), whereby and whereunder the petitioner has been declared ineligible for the post of Drug Inspector on the ground of not holding qualification as per the advertisement and has been directed to submit his objection on the issue of ineligibility. The petitioner has also prayed for declaring that the requisite qualification for being appointed as Drug Inspector, in terms of clause 5(1) of the Bihar Drugs Controller Cadre Regulation, 2014 (hereinafter referred to as “the Cadre Regulation, 2014”) is the same as provided for in Rule 49 of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as “the Rules, 1945”), which provides that a person who is appointed as 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 established in India by law as also that the respondent authorities are bound to consider the eligibility of the petitioner in terms of the Gazette Notification dated 16.07.2019, issued by the Government of India, which prescribes that a person holding Pharm D qualification shall automatically become eligible for appointment to various posts where a person holding



qualification of Diploma in Pharmacy or Bachelor of Pharmacy or Master of Pharmacy qualification is eligible to be appointed. Lastly, the petitioner has prayed for quashing the decision of the respondent-Commission dated 05.04.2024 whereby and whereunder it has been communicated that a three-member Departmental Expert Committee had examined the objection filed by the petitioner whereupon it has found the candidature of the petitioner to be ineligible.

2. The brief facts of the case, according to the petitioner, are that the petitioner took admission in Pharm D (Doctorate of Pharmacy) Course in Teerthankar Mahaveer University, Moradabad, after passing +2 examination with science and was awarded a degree of Doctor of Pharmacy by the said university on 12.09.2022 in the academic session 2021-22. The respondent-Commission published an advertisement bearing Advertisement No.09 of 2022, dated 22.11.2022 for filling the posts of Drug Inspectors and in clause 3 thereof the educational qualifications have been prescribed which reads as follows:-

“A person who is appointed as 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 established in India by law.”

It is submitted by the learned counsel for the petitioner that the respondent-Commission has interpreted the term “degree in pharmacy” as mentioned in Rule 49 of the Rules, 1945 as only Bachelor’s Degree in Pharmacy resulting in the candidates, who have directly obtained qualification of degree of Pharm D, without obtaining the qualification of B. Pharm, being rendered ineligible to apply against the aforesaid Advertisement No. 09 of 2022.

3. It is pointed out that in the meantime, one Ronit Kumar Arvind had filed a writ petition bearing CWJC No.4751 of 2023, involving more or less the same issue and by an order dated 19.05.2023, passed by a co-ordinate Bench of this Court, the respondent-Commission was directed to provisionally accept his application form in case the same is filed by 29.05.2023. Thereafter, the respondent-Commission had issued one important notice dated 23.05.2023, permitting the candidates possessing the qualification of Pharm D to apply for the post of Drug Inspector, subject to outcome of the said writ petition bearing CWJC No.4751 of 2023, leading to the petitioner also applying for the post of Drug Inspector in the unreserved category, whereupon he was allotted Roll No. 901580. The



petitioner had then appeared in the written test held from 07.07.2023 to 10.07.2023, result whereof was declared on 23.01.2024. The respondent-Commission had then, vide important notice dated 31.01.2024, directed the candidates to upload the documents from 01.02.2024 to 07.02.2024 and to come for document verification on 12.02.2024 and 13.02.2024. As far as the petitioner is concerned, he was asked to come for document verification on 12.02.2024 and in fact, he had also appeared for document verification on the given date. Since the aforesaid Rohit Kumar Arvind did not qualify in the written test, he had withdrawn the aforesaid writ petition on 07.03.2024, whereafter, the Examination Controller of the respondent-Commission vide the impugned important notice dt. 13.03.2024, communicated that the petitioner does not fulfill the educational qualification stipulated in the advertisement, hence he has been kept in the category of “ineligible candidate”. Nonetheless, the petitioner was granted time till 19.03.2024 to file his objections, on the issue of his ineligibility, on the email ID of the respondent-Commission. The petitioner had then submitted his objection through email on 15.03.2024 but to no avail. This is how the petitioner is before this Court.

4. The learned counsel for the petitioner, Sri Prashant Sinha



has referred to Pharm D Regulations, 2008 (hereinafter referred to as the “Regulations, 2008”), framed by the Pharmacy Council of India under Section 10 of the Pharmacy Act, 1948 on 10.05.2008. Regulation 3 of the Regulations, 2008 provides for duration of the course and as far as Pharm-D course is concerned, the duration of course has been fixed to be six academic years (five years of study and one year of internship or residency) full time with each academic year spread over a period of not less than two hundred working days, while the duration of the course of Pharm-D (Post Baccalaureate) has been prescribed as 3 academic years (two years of study and one year internship or residency) full time with each academic year spread over a period of not less than two hundred working days. The minimum qualification required for admission to Pharm D Part-I course, is pass in 10+2 examination with physics and chemistry as compulsory subjects along with either mathematics or biology and/or pass in D. Pharm Course from an institution approved by the Pharmacy Council of India, under Section 12 of the Pharmacy Act. The minimum qualification required for admission to Pharm D (Post Baccalaureate) is pass in B. Pharm from an institution approved by the Pharmacy Council of India under Section 12 of the Pharmacy Act.



5. The learned counsel for the petitioner has also referred to Bihar Drugs Control Cadre Regulation, 2014 (hereinafter referred to as “Cadre regulations, 2014”), framed by the Health Department, Government of Bihar, under Article 309 of the Constitution of India, vide notification dt. 8.10.2014. Regulation 2(12) of the Cadre regulations, 2014 defines “Drug Inspector” to be a person appointed on basic cadre post of cadre of Bihar Drugs Controller under the provisions contained in Section 21 of the Drugs and Cosmetics Act, 1940. Regulation 5 of the Regulation, 2014 prescribes the minimum qualification required for direct recruitment on the basic cadre post of Drug Inspector to be in accordance with Rule 49 of the Rules, 1945. Rule 49 of the Rules, 1945 is being reproduced herein below:-

“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 experiences 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.]”

6. In fact, Rule 49 A of the Rules, 1945 has also been referred to by the learned counsel for the petitioner for demonstrating that the qualification of a Licensing authority is graduate in *Pharmacy or Pharmaceutical Chemistry or in Medicine with specialisation in Clinical Pharmacology or Microbiology from a University established in India by law*, meaning thereby that it has nowhere been stated in Rule 49 that the prescribed qualification for Inspector is graduate/bachelor degree in pharmacy. Thus it is submitted that the legislature has made it clear that the qualification required for being appointed as Drug Inspector is not limited only to graduate degree in pharmacy, hence the interpretation of the respondents that the



expression “degree in pharmacy”, limits the qualification only to graduate degree or bachelor degree amounts to addition of bachelor or graduate prior to the expression “degree in pharmacy”, by the respondents, which is contrary to the principles of statutory interpretation recognized by the Hon’ble Apex Court wherein it has been held that addition or subtraction of words should be avoided. In this connection, the Ld. counsel for the petitioner has referred to a judgment rendered by the Hon’ble Apex Court in the case of *Union of India vs. Namit Sharma*, reported in *(2013) 10 SCC 359*, para nos. 32 and 33 whereof are reproduced herein below:-

“32. Moreover, Sections 12(5) and 15(5) of the Act while providing that the Chief Information Commissioner and Information Commissioners shall be persons with eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance, also does not prescribe any basic qualification which such persons must have in the respective fields in which they work. In the judgment under review, however, this Court has “read into” Sections 12(5) and 15(5) of the Act missing words and held that such persons must have a basic degree in the respective field as otherwise Sections 12(5) and 15(5) of the Act are bound to offend the doctrine of equality. This “reading into” the provisions of Sections 12(5) and 15(5)



of the Act, words which Parliament has not intended is contrary to the principles of statutory interpretation recognised by this Court.

33. In Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323] this Court has held that the court could not correct or make up for any deficiencies or omissions in the language of the statute. V. Ramaswami, J. writing the judgment on behalf of the three-Judge Bench says: (SCC p. 332, para 14)

“14. ... It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony & comity of instrumentalities.”

Reference has also been made to a judgment rendered by



the Hon'ble Apex Court in the case of ***Union of India & Ors.***
vs. Prizer Limited & others, reported in ***2018 (2) SCC 39***,
paragraph nos. 24 to 26 whereof are reproduced herein below:-

“24. If the power under Section 26-A is exercised on the basis of irrelevant material or on the basis of no material, the satisfaction itself that is contemplated by Section 26-A would not be there and the exercise of the power would be struck down on this ground. Further, it is argued that the provision may be read down to make it constitutionally valid, but in so doing, words cannot be added as a matter of constitutional doctrine.

25. In Cellular Operators Assn. of India v. TRAI [Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703], this Court held as under: (SCC pp. 740-41, paras 50-52)

“50. But it was said that the aforesaid Regulation should be read down to mean that it would apply only when the fault is that of the service provider. We are afraid that such a course is not open to us in law, for it is well settled that the doctrine of reading down would apply only when general words used in a statute or regulation can be confined in a particular manner so as not to infringe a constitutional right. This was best exemplified in one of the earliest judgments dealing with the doctrine of reading down, namely, the judgment of the Federal Court in Hindu Women's Rights to Property Act, 1937, In re [Hindu Women's Rights to Property Act, 1937, In re, 1941 SCC OnLine FC 3 : AIR 1941 FC



72]. In that judgment, the word “property” in Section 3 of the Hindu Women's Rights to Property Act was read down so as not to include agricultural land, which would be outside the Central Legislature's powers under the Government of India Act, 1935. This is done because it is presumed that the legislature did not intend to transgress constitutional limitations. While so reading down the word “property”, the Federal Court held:

‘... If the restriction of the general words to purposes within the power of the legislature would be to leave an Act with nothing or next to nothing in it, or an Act different in kind, and not merely in degree, from an Act in which the general words were given the wider meaning, then it is plain that the Act as a whole must be held invalid, because in such circumstances it is impossible to assert with any confidence that the legislature intended the general words which it has used to be construed only in the narrower sense: Owners of SS Kalibia v. Wilson [Owners of SS Kalibia v. Wilson, (1910) 11 CLR 689 (Aust)], Vacuum Oil Co. Pty. Ltd. v. Queensland [Vacuum Oil Co. Pty. Ltd. v. Queensland, (1934) 51 CLR 677 (Aust)], R. v. Commonwealth Court of Conciliation & Arbitration, ex p Whybrow & Co. [R. v. Commonwealth Court of Conciliation and Arbitration, ex p Whybrow & Co., (1910) 11 CLR 1 (Aust)] and British Imperial Oil Co. Ltd. v. Federal Commr. of Taxation [British



Imperial Oil Co. Ltd. v. Federal Commr. of Taxation, (1925) 35 CLR 422 (Aust)].’

51. This judgment was followed by a Constitution Bench of this Court in *DTC v. Mazdoor Congress* [*DTC v. Mazdoor Congress, 1991 Supp (1) SCC 600*]. In that case, a question arose as to whether a particular regulation which conferred power on an authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating his services, or by making payment in lieu of such notice without assigning any reasons and without any opportunity of hearing to the employee, could be said to be violative of the appellants' fundamental rights. Four of the learned Judges who heard the case, the Chief Justice alone dissenting on this aspect, decided that the regulation cannot be read down, and must, therefore, be held to be unconstitutional. In the lead judgment on this aspect by Sawant, J., this Court stated:

‘255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible — one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to



enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous, and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so.'

52. Applying the aforesaid test to the impugned Regulation, it is clear that the language of the Regulation is definite and unambiguous — every service provider has to credit the account of the calling consumer by one rupee for every single call drop which occurs within its network. The



Explanatory Memorandum to the aforesaid Regulation further makes it clear, in Para 19 thereof, that the Authority has come to the conclusion that call drops are instances of deficiency in service delivery on the part of the service provider. It is thus unambiguously clear that the impugned Regulation is based on the fact that the service provider is alone at fault and must pay for that fault. In these circumstances, to read a proviso into the Regulation that it will not apply to consumers who are at fault themselves is not to restrict general words to a particular meaning, but to add something to the provision which does not exist, which would be nothing short of the court itself legislating. For this reason, it is not possible to accept the learned Attorney General's contention that the impugned Regulation be read down in the manner suggested by him.”

(emphasis in original)

26. *Also, as a matter of statutory interpretation, words can only be added if the literal interpretation of the section leads to an absurd result. As has been stated by us, the construction of Section 26-A on a literal reading thereof does not lead to any such result. Dr Singhvi's argument to read in words to save Section 26-A must, therefore, be rejected.”*

7. The learned counsel for the petitioner has next referred to Section 22 (3) of the University Grants Commission Act, 1956,



which reads as follows:-

22. Right to confer degrees:-

(I) xxx xxx xxx

(II) xxx xxx xxx

(III) *For the purpose of this section, “degree” means any such degree as may be with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.”*

8. The learned counsel for the petitioner has next contended that the Hon’ble Apex Court has defined the word degree but the said definition does not limit the definition of the word “degree” to only “graduate degree” or “bachelor degree”. In this connection, reference has been made to a judgment rendered by the Hon’ble Apex Court in the case of ***Professor Yashpal & Anr. vs. State of Chhattisgarh & Ors***, reported in ***(2005) 5 SCC 420***, paragraph nos. 36 to 38 whereof are reproduced herein below:-

“36. The preamble of the UGC Act says — an Act to make provision for the coordination and determination of standards in universities and for that purpose to establish a University Grants Commission. Section 2(f) of this Act defines a university and it means a university established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as



may, in consultation with the university concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act. Section 12 provides that it shall be the general duty of the Commission to take, in consultation with the universities or other bodies concerned, all such steps as it may think fit for the promotion and coordination of university education and determination and maintenance of standards of teaching, examination and research in universities, and for the purpose of its functions under the Act, the Commission may do all such acts enumerated in clauses (a) to (j) thereof. Sections 22 and 23 are important and are being reproduced below:

“22. Right to confer degrees.—(1) The right of conferring or granting degree shall be exercised only by a university established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, ‘degree’ means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

23. Prohibition of the use of the word ‘University’ in



certain cases.—No institution, whether a corporate body or not, other than a university established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word ‘University’ associated with its name in any manner whatsoever:

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which, immediately before such commencement, had the word ‘University’ associated with its name.”

37. It is important to note that in view of Section 22 of the UGC Act, the right of conferring or granting degree can be exercised only by a university or an institution deemed to be university under Section 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees. What is a “degree” and what it connotes is not given in the UGC Act but the meaning of the word as given in dictionaries and standard books is as under:

Webster's Third New International Dictionary:

- 1. “a title conferred upon students by a college, university, or professional school upon completion of a unified programme of study carrying a specified minimum of credits, passing of certain examinations, and often completion of a thesis or other independent research project.”*
- 2. “a grade or class of membership attained in a*



ritualistic order or society denoting a stage of proficiency often after a set ordeal or examination.”

Wharton's Law Lexicon:

“the state of a person, as to be a barrister-at-law, or to be a Bachelor or Master of Arts of a university.”

Chambers Twentieth Century Dictionary:

“a mark of distinction conferred by universities, whether earned by examination or granted as a mark of honour.”

P. Ramanatha Aiyar's Law Lexicon (2nd Edn.):

“a mark of distinction conferred upon a student for proficiency in some art or science; university diploma of specified proficiency.”

Encyclopedia Americana

“Degree” — the title conferred by a college or university, signifying that a certain step or grade has been attained in an area of learning. The award of a diploma conferring the bachelor's degree marks completion of undergraduate study. The master's and doctor's degrees reward graduate study. Other degrees constitute evidence of preparation for professional work — the MD (doctor of medicine) for example.

In the 20th century, however, the MA is granted in American universities and in those of England and the Commonwealth of Nations (apart from Oxford and Cambridge) on the basis of study beyond the BA



and the presentation (usually) of a thesis. An exception is Scotland, where the MA has been the first degree conferred in all six universities ever since their founding. The bachelor of philosophy and bachelor of letters degrees are given for work beyond the MA.

The New Encyclopaedia Britannica

“Degree” — in education, any of several titles conferred by colleges and universities to indicate the extent of academic achievement. The hierarchy of degrees, dating from the 13th century, once resembled the medieval guild system. In the United States and Great Britain, the modern gradation of academic degrees is usually bachelor (or baccalaureate), master, and doctor. With some exceptions, intermediate degrees, such as those of bachelor and master, have been abandoned in the universities of continental Europe.

38. A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the subject concerned by doing some original research work. A university degree confers a kind of status upon a person like a graduate or a postgraduate. Those who have done research work and have obtained a PhD, DLitt or DSc degree become



entitled to write the word “Doctor” before their names and command certain amount of respect in society as educated and knowledgeable persons. That apart, the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a graduate, postgraduate or a professional degree from a recognised institute is prescribed. Even for those who do not want to take up a job and want to remain in a private profession like a doctor or lawyer, registration with the Medical Council or the Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognised by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.”

9. The Ld. Counsel for the petitioner has contended that as far as the field of pharmacy is concerned, which is regulated by the provisions contained in the Pharmacy Act, 1948, the Hon’ble Apex Court has held that the Pharmacy Act is a complete code in itself in the subject of pharmacy. It is stated that Pharmacy Council of India has been constituted as a body empowered to regulate education and profession of pharmacy in India and the Pharmacy Act exclusively covers all areas to carry out the objects and the purpose for which the Pharmacy Act has



been enacted. In fact the legislature has established, under the statute, an autonomous statutory authority, i.e. the Pharmacy Council of India, hence Pharmacy Council of India is given power to regulate the field of pharmacy. In this connection, reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of ***Pharmacy Council of India vs. Dr. S. K. Toshniwal Educational Trusts, Vidarbha Institute of Pharmacy & Ors.***, reported in ***(2021) 10 SCC 657***. Reference has also been made by the learned counsel for the petitioner to a notification dated 16.07.2019, issued by the Ministry of Health and Family Welfare (Department of Health and Family Welfare), published in the Gazette of India on 16.07.2019, whereby and whereunder it has been notified as follows:-

“The Central Government, on the recommendations of the Pharmacy Council of India constituted under Section 3 of Pharmacy Act, 1948, decided that a person holding the Pharm. D qualification being higher qualification shall automatically become eligible for appointment to various posts where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Master of Pharmacy qualification is eligible to be appointed.”

10. Thus, it is submitted that the petitioner is fully possessing the requisite educational qualification for being appointed on the post of Drug Inspector. It is also submitted that if a person takes



admission, after passing the intermediate examination, in Pharm D course, then the duration of the course is six academic years, as per Pharm D Regulations, 2008, whereas in case of a person taking admission in the Pharm D. (Post Baccalaureate) Course, after passing the B. Pharm course, the duration of course is only three academic years, hence, the Regulation, 2008 pre-supposes that a person undertaking study of Pharm. D Course for a duration of six years is having a qualification of B. Pharm as well and for this reason, the Government of India, vide notification dt. 16.07.2019, has made the persons possessing the qualification of Pharm. D to be eligible for various posts where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Master of Pharmacy qualification is eligible to be appointed.

11. It is next contended by the learned counsel for the petitioner that the respondent-Commission has committed a mischief while prescribing the educational qualification in Hindi under Clause 3 of the advertisement dated 22.11.2022, which is translated version of the educational qualification stipulated in Rule 49 of the Rules, 1945 in English. In this regard, it is contended that in case of conflict/ variance in the prescription made in the advertisement and in the statutory rules, it is the statutory rules which shall take precedence. Reference has been



made to a judgment rendered by the Hon'ble Apex Court in the case of *Employees' State Insurance Corporation vs. Union of India & Ors.*, reported in *(2022) 11 SCC 392*. Thus, it is the contention of the learned counsel for the petitioner that the petitioner has been wrongly declared to be ineligible by the impugned decision of the respondent-Commission dated 05.04.2024 and in fact, he is fully possessing the educational qualification, required for being appointed to the post of Drug Inspector.

12. *Per contra*, the learned counsel appearing for the respondent-State, i.e. the respondent no.1 has submitted that the Health Department, Government of Bihar, vide notification dated 08.10.2014 has notified the Bihar Drugs Controller Cadre Regulations, 2014 and clause 5 thereof prescribes the minimum qualification required to be possessed for direct recruitment on the basic cadre post of Drug Inspector, to be in accordance with Rule 49 of the Rules, 1945. Rule 49 of the Rules, 1945 postulates that a person, who is appointed as 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 established in India by law. Therefore, it is submitted that



though the educational qualification required for being appointed as Drug Inspector is a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law, however, the petitioner is trying to make out a case of being eligible to be appointed as a Drug Inspector, on the basis of him possessing qualification of Pharm D, taking shelter of a notification dated 16.07.2019, issued by the Ministry of Health and Family Welfare (Department of Health and Family Welfare), published in the Gazette of India on 16.07.2019, nonetheless the fact remains that no corresponding amendment has been made in Rule 49 of the Rules, 1945, as far as the qualification for appointment to the post of Drug Inspector is concerned. Hence, no benefit can be derived by the petitioner from the said gazette notification dated 16.07.2019. Therefore, it is the submission of the learned counsel for the respondent-State that since the petitioner does not possess Bachelor degree in pharmacy, he is not eligible to be appointed as Drug Inspector. Reference has been made to a judgment rendered by the Ld. Division Bench of this Court in the case of *Satyendra Singh & Ors. vs. Sanjay Kumar & Ors.*, reported in *2001 (1) PLJR 104* to contend that the rule



prescribing qualification for a particular post by the competent authority is a policy decision, hence the power of judicial review in such matter is limited, inasmuch as the Court does not sit as an appellate forum in disguise over the policy matter and if the rule prescribes the qualification for appointment to a particular post, the Court can only direct the appointing authority to consider it when a claim is raised that some other qualification is equivalent to qualification prescribed. However, the Court can neither add such qualification nor determine its equivalency nor take a final decision on the basis of affidavit and the opinion of the expert and decide the issue. In this connection, it would be relevant to reproduce hereinbelow paragraph nos. 12 to 15 of the aforesaid judgment rendered in the case of **Satyendra Singh** (supra).

“12. Prescribing qualification for a particular post by the competent authority is a policy decision. The Government frames a policy after taking into consideration the number of facts and circumstances, expert opinion and other relevant considerations. The power of judicial review in such matters is limited. The Court can interfere only when the authorities have acted arbitrarily or in violation of the statutory or constitutional provisions. The Court does not sit as an appellate forum in disguise over the policy matter. It has no power to re-frame the policy matter and in case the policy matter is found suffering from any legal



infirmities as indicated above, then the same is to be struck down and the matter is sent to the authority to consider the policy matter in accordance with the law laid down. If the rules have been framed prescribing the qualification for a particular post, the Court has no power to re-frame the rules or supplement the rule by adding additional qualification for the simple reason that is a function of the appointing authority and in the case of any legal lacuna the Court can only direct the appointing authority to consider the matter on the basis of the expert opinion and other relevant consideration. The Court cannot on the basis of the documents appended with the affidavit determine the equivalence or addition of qualification in the recruitment rules.

13. In the case of J. Rangaswamy v. Government of Andhra Pradesh [(1990) 1 SCC 288], the question for consideration was for appointment to the post of Professor in Radiological Physics. The appellant before the Supreme Court, possessed the diploma in Radiological Physics (as applied in Medicine) from the Bhabha Atomic Research Centre (BARC) & claimed that his qualification was better qualification which was prescribed as a qualification for the said post by the appointing authority. Dealing with the said matter, the Apex Court held that it is not for the Court to consider the relevance of qualifications prescribed for various posts or to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct as to what should be the qualifications to be prescribed for the post in question. It is



for the concerned authority to consider and take a final decision in the matter and on that basis the claim of the petitioner was negated by the Apex Court on the ground that he did not possess the requisite qualification.

14. In the case of Government of Orissa v. Hanichal Roy [(1998) 6 SCC 626], the recruitment rules vested power in the State Government to relax the provisions of the Recruitment Rules. The Orissa Administrative Tribunal instead of directing the State Government to consider the matter of relaxation, itself relax (sic—ed?) the provisions of law. The Apex Court dealing with the said matter held that the Tribunal cannot decide the question of relaxation of provisions of law. According to the rule, the State Government was competent authority to consider the relaxation as provided in the rules and accordingly, set aside the order and directed the State Government to consider the question of relaxation.

15. Thus the law is settled that when the recruitment rules provide for a requisite qualification and the question arises as to whether any other qualification is equivalent to the qualification prescribed in the recruitment rules or not, then that question has to be decided by the competent authority and the Court cannot amend the rule or reframe it and the Court can only direct the concerned authority to re-examine the matter specially in a technical matter; like this, after obtaining the expert's opinion. The Court cannot take a final decision on the basis of affidavit and the opinion of the expert and decide such matter. The power of judicial review in such a matter is very limited and in case



if the State Government decides the matter and the same is found to be arbitrary, mala fide, then the Court will consider the same keeping in view the scope of judicial review in such matter.”

13. The learned senior counsel, Sri Lalit Kishore, appearing for the respondent-Commission has raised a preliminary objection with regard to the maintainability of the present writ petition inasmuch as the petitioner had not filled the application form in pursuance to the aforesaid advertisement no. 09 of 2022, however, he has filled the application form only after interim order dated 19.05.2023 was passed by a co-ordinate Bench of this Court in CWJC No.4751 of 2023, leading to issuance of importance notice dated 23.05.2023. Nonetheless, the said writ petition has stood dismissed as withdrawn vide order dated 07.03.2024, passed by this Court, thus the interim order dated 19.05.2023 no longer survives, hence the leverage granted to the petitioner to apply after the last date of filling the application forms has now stood extinguished/ terminated, as such the application of the petitioner itself is no longer in existence, therefore, the present writ petition has been rendered otiose. Yet another issued raised by the learned senior counsel for the respondent-Commission is that by the interim order dated 19.05.2023, applicants were granted liberty to fill application



forms provisionally, however, with the stipulation that the candidature of such candidates would ultimately depend upon the outcome of the said writ petitioner, bearing CWJC No.4751 of 2023, but the fact remains that the said writ petition has now stood dismissed as withdrawn.

14. The learned senior counsel for the respondent-Commission has raised yet another issue regarding the present writ petition being not maintainable in absence of challenge to the decision of the Health Department, as is contained in order dated 04.08.2023 passed by the Secretary, Health Department, Bihar, Patna, whereby and whereunder it has been held that Pharm D (Doctor of Pharmacy) is a new degree in Pharmacy Education, which is not mentioned in the qualification stipulated in Rule 49 of the Rules, 1945, for appointment as Drug Inspector. It is thus submitted that the petitioner does not appear to be aggrieved by the said order dated 04.08.2023. The learned senior counsel for the respondent-Commission has further submitted that Rule 49 of the Rules, 1945 prescribes the qualification of Drug Inspectors and the qualification prescribed in Advertisement No.9 of 2022, by the respondent-Commission, is not only in consonance with the requisition sent by the Health Department but also in accordance with the provisions



contained in Rule 49 of the Rules 1945. As regards, the Gazette notification dated 16.07.2019, issued by the Central Government, it is submitted that in pursuance to the order dated 15.05.2023, passed by a co-ordinate Bench of this Court in CWJC No. 4751 of 2023, the Commission had sent a letter to the Health Department, requesting it to thoroughly deliberate over the issue of consideration of equivalence of Pharm D academic qualification with that of the prescribed qualification, in the light of the Gazette of Indian Notification dated 16th July 2019, in response whereof the Health Department has communicated its opinion vide letter dated 04.08.2023, very clearly stating therein that Pharm D (Doctorate of Pharmacy) is a new degree in Pharmacy Education, which is not mentioned in the qualification stipulated in Rule 49 of the Rules, 1945, for appointment as Drug Inspector and for incorporating new course/degree in Rule 49 of the Rules, 1945, amendment is required to be made in the said Rules, however, in absence of necessary amendment in the Rules, 1945, the eligibility criteria, as published in Advertisement No.09 of 2022 is in conformity with Rule 49 of the Rules, 1945.

15. The learned senior counsel for the respondent-Commission has next contended that the petitioner is holding a



higher degree i.e. Doctorate degree, whereas the qualification required for appointment on the post of Drug Inspector is degree in pharmacy, however, the fact is that it has nowhere been mentioned that Doctorate degree is equivalent to degree in pharmacy. The learned senior counsel for the respondent-Commission has relied on a judgment rendered by the Hon'ble Apex Court in the case of ***Maharashtra Public Service Commission vs. Sandeep Shriram Warade & Ors.*** and its analogous cases, reported in ***2019 (6) SCC 362***, to submit that it is for the employer to decide the essential qualification for appointment to a post and it is not for the Court to lay down the conditions of eligibility, much less delve into the issue with regard to desirable qualifications being at par with the essential eligibility, by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. In this connection, paragraph no.9 of the afore-said judgment rendered in the case of ***Sandeep Shriram Warade & Ors.*** (Supra) has been relied upon, which is being reproduced herein below:-

“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who



is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

16. The learned senior counsel for the respondent-Commission has next relied upon a judgment rendered by the Hon’ble Apex Court in the case of ***Puneet Sharma & Ors. vs. Himachal Pradesh State Electricity Board Limited & Anr.***, reported in ***(2021) 16 SCC 340***, paragraph nos. 29 and 30 whereof are reproduced herein below:-

“29. Thereafter, the Court discussed the previous rulings in P.M. Latha [P.M. Latha v. State of Kerala, (2003) 3 SCC 541], Jyoti K.K. [Jyoti K.K. v. Kerala Public Service



Commission, (2010) 15 SCC 596] and Anita [State of Punjab v. Anita, (2015) 2 SCC 170], then concluded that the candidature of the diploma-holders was correctly rejected and held as follows :

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596] in the subsequent decision in Anita [State of Punjab v. Anita, (2015) 2 SCC 170]. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596] turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596]



turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad v. Zahoor Ahmad Rather LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad v. Zahoor Ahmad Rather LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal



structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596] must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596] turned.”

30. It would be also useful to notice a later judgment of this Court in Punjab National Bank v. Anit Kumar Das [Punjab National Bank v. Anit Kumar Das, (2021) 12 SCC 80] where the issue was, whether for the post of peon in the appellant Bank, a degree-holder (graduate) could be appointed, given the conscious decision of the employer; that only those who held 10+2 pass qualifications would be considered and those with graduation qualification could not be considered. This Court held that the appointment of the respondent, who was a graduate, after he suppressed the fact that he held a degree, and did not disclose it, was unsupportable. In this context, it was observed that as to what qualifications are applicable to what class of posts, is a matter of discretion to be exercised by the employer, which the courts would be slow to interdict. This decision too supports the conclusions in the present case, since the employer, HPSEB asserts that it considers the degree-



holders eligible for appointment to the post of JE.”

17. Thus, it is the submission of the learned senior counsel for the respondent-Commission that in case rules prescribe certain educational qualification to be the requisite qualification for appointment to a particular post, not possessing the same but possessing higher qualification would definitely disentitle such a candidate from being appointed to the post in question. Consequently, in the present case, since the Rules, 1945 as also the Advertisement No.09 of 2022 prescribes the qualification for appointment on the post of Drug Inspector to be a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law, a person possessing a higher qualification, like the petitioner in the present case, whose qualification is Pharma D, i.e. Doctorate in Pharmacy, shall be ineligible for appointment to the post of Drug Inspector. Therefore, it is submitted by the learned senior counsel for the respondent-Commission that the present writ petition is devoid of any merit and is fit to be dismissed.

18. I have heard the learned counsel for the petitioner, the learned counsel for the respondent-State as also the learned senior counsel for the respondent-Commission and perused the



materials on record.

19. The issue under consideration lies in a narrow encompass, inasmuch the candidature of the petitioner has been kept in the category of “ineligible candidate” on the ground that he does not possess the educational qualification, required for being appointed on the post of Drug Inspector, i.e. a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law, rather he is having a higher qualification, i.e. Pharm D (Doctorate in Pharmacy). Thus it is to be adjudicated, as to whether holding a higher qualification pre-supposes acquisition of a lower qualification, occasioning eligibility of the petitioner for appointment to the post of Drug Inspector.

20. The learned counsel for the petitioner has, at length, canvassed that the qualification required for being appointed as Drug Inspector is not limited only to graduate degree in pharmacy, inasmuch as Rule 49 of the Rules, 1945, simply stipulates that a person holding a degree in Pharmacy or Pharmaceutical Sciences or Medicine shall be appointed as an Inspector under the Act. Reliance has been placed by the learned counsel for the petitioner on a judgment rendered by the



Hon'ble Apex Court in the case of ***Professor Yashpal & Anr.*** (supra), to contend that a degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level and as far as a doctorate degree is concerned, it certifies that the holder of the degree has attained a high level of knowledge and study in the subject concerned by doing some original research work. Thus, it is submitted that the interpretation of the respondents that the qualification stipulated in Rule 49 of the Rules, 1945 as "a degree in pharmacy" limits the qualification only to graduate degree or bachelor degree, amounts to addition of bachelor or graduate, prior to the expression "a degree in pharmacy", by the respondents, which is contrary to the principles laid down by the Hon'ble Apex Court in the case of ***Namit Sharma*** (supra), wherein it has been held that addition or subtraction of words should be avoided. Reliance has also been placed on a notification dated 16.07.2019, issued by the Ministry of Health and Family Welfare, Government of India, whereby the Central Government has decided that a person holding Pharm D qualification being higher qualification shall automatically become eligible for



appointment to various posts where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Master of Pharmacy qualification is eligible to be appointed. Thus, it is submitted that the petitioner is fully having the educational qualification, required for being appointed to the post of Drug Inspector.

21. This Court has been taken through the Cadre Regulations, 2014, framed by the Government of Bihar under Article 309 of the Constitution of India, vide notification dated 08.10.2014, Regulation 2 (12) whereof defines the Drug Inspector to be a person appointed on basic cadre post of cadre of Bihar Drug Controller under the provisions contained in Section 21 of the Drugs and Cosmetics Act, 1940, whereas Regulation 5 thereof, prescribes that the minimum qualification required for direct recruitment on the basic cadre post of Drug Inspector shall be in accordance with Rule 49 of the Rules, 1945 and Rule 49 of the Rules, 1945 stipulates that a person holding a degree in Pharmacy or Pharmaceutical Sciences or Medicine shall be appointed as an Inspector under the Act. Thus, admittedly the educational qualification prescribed in Rule 49 of the Rules, 1945 or for that matter in Regulation 5 of the Cadre Regulations, 2014, for appointment as a Drug Inspector, is having a degree in Pharmacy or Pharmaceutical Sciences or



Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. In fact, the Hon'ble Apex Court in a judgment rendered in the case of *Professor Yashpal & Anr.* (supra) has also distinguished between a "degree" and a "doctorate degree", hence there is no doubt that in terms of Rule 49 of the Rules, 1945 and regulation 5 of the Cadre Regulations, 2014, the qualification for appointment as a Drug Inspector is having "a degree" and not a "doctorate degree". Thus, the aforesaid contention put forth by the learned counsel for the petitioner, to the effect that the qualification required for being appointed as Drug Inspector is not limited only to graduate degree in pharmacy, is misplaced and fit to be rejected.

22. As regards the argument of the petitioner to the effect that the Central Government, vide Gazette Notification dated 16.07.2019, has decided that a person holding the Pharm. D qualification being higher qualification shall automatically become eligible for appointment to various posts where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Master of Pharmacy qualification is eligible to be appointed, this Court finds that the said notification dated 16.07.2019, has neither amended the statutory rules, i.e. The Drugs and



Cosmetics Rules, 1945 nor the Cadre Regulations, 2014, which has been framed under Article 309 of the Constitution of India, hence, the statutory prescription regarding the educational qualification required for the purposes of appointment on the post of Drug Inspector is required to be followed, which in undisputed terms is having a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology, thus, on this score as well the aforesaid contention, advanced by the learned counsel for the petitioner does not merit any consideration.

23. The only other issue, raised by the learned counsel for the petitioner is that since the petitioner is holding Pharm D qualification, being a higher qualification, the same would necessarily mean that he also possesses the lower qualification, hence he would definitely be eligible for appointment to the post of Drug Inspector for which the prescribed educational qualification is a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology. As far as the said contention of the learned counsel for the petitioner is concerned, this Court finds that it is a well-settled law that it is not permissible to draw an inference that a higher qualification necessarily



presupposes the acquisition of another, albeit lower, qualification, in absence of any rule to the said effect. The prescription of qualifications for a post is a matter of recruitment policy and the State as the employer is entitled to prescribe the qualifications as a condition of eligibility. Thus, it is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Reference, in this connection, be had to a judgment rendered in the case of ***Puneet Sharma & Ors.*** (supra). In fact, this aspect of the matter has also been succinctly dealt with by the order dated 04.08.2023, issued by the Secretary, Health Department, Bihar Patna whereby and whereunder it has been held that Pharm-D (Doctorate of Pharmacy) is a new degree in pharmacy education, which is not mentioned in the qualification stipulated in Rule 49 of the Rules, 1945 and for incorporating new course/degree in Rule 49 of the Rules, 1945, which prescribes the qualification for appointment as Drug Inspector, amendment is required to be made in the said rules, and in absence of necessary amendment in the Rules, 1945, eligibility criteria, as published in Advertisement No.09 of 2022, is in conformity with Rule 49 of the Rules, 1945. This Court finds that the said order dated 04.08.2023 has not been challenged by the



petitioner in the present proceedings, thus, on this score as well, no relief can be granted to the petitioner. At this juncture, this Court would gainfully refer to yet another judgment on the issue under consideration, rendered by the Hon'ble Apex Court in the case of **Chief Manager, Punjab National Bank & Anr. vs. Anit Kumar Das**, reported in (2021) 12 SCC 80, paragraphs no.17 to 17.3 whereof are reproduced herein below:-

“17. Even otherwise, prescribing the eligibility criteria/educational qualification that a graduate shall not be eligible to apply was a conscious decision taken by the Bank and the same was as per Circular Letter No. 25 of 2008 dated 6-11-2008. In J. Ranga Swamy [J. Ranga Swamy v. State of A.P., (1990) 1 SCC 288], it is observed and held by this Court that it is not for the court to consider the relevance of qualifications prescribed for various posts.

17.1. In Yogesh Kumar [Yogesh Kumar v. State (NCT of Delhi), (2003) 3 SCC 548], it is observed and held by this Court that recruitment to public service should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post.

17.2. In a recent decision of this Court in Zahoor Ahmad Rather [Zahoor Ahmad Rather v. Imtiyaz Ahmad, (2019)



2 SCC 404], this Court has distinguished another decision of this Court in *Jyoti K.K. v. Kerala Public Service Commission* [(2010) 15 SCC 596] taking the view that in a case where lower qualification is prescribed, if a person has acquired higher qualifications, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In the said decision, this Court also took note of another decision of this Court in *State of Punjab v. Anita* [(2015) 2 SCC 170], in which case, this Court on facts distinguished the decision in *Jyoti K.K.* While distinguishing the decision in *Jyoti K.K.*, it is observed in paras 25 and 26 as under:

“25. The decision in *Jyoti K.K.* has been considered in a judgment of two learned Judges in *State of Punjab v. Anita* [(2015) 2 SCC 170]. In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the prescribed qualification for a JBT teacher included a Matric with a two years' course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a “higher qualification”. Adverting to the decision in *Jyoti K.K.*, this Court noted that Rule 10(a)(ii) in that case clearly stipulated that the possession of a higher qualification can presuppose the acquisition of a lower qualification prescribed for the post. In the



absence of such a stipulation, it was held that such a hypothesis could not be deduced:

‘15. It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT Teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents, because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K. case, permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder:

“6. Rule 10(a)(ii) reads as follows:

10. (a)(ii) *Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or Standing Orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.”*

A perusal of the Rule clearly reveals that the



possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorising the appointment of persons with higher qualifications.'

26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. in the subsequent decision in Anita. The decision in Jyoti K.K. turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of



such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad v. Zahoor Ahmad Rather LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.”

(emphasis in original)

That thereafter it is observed in para 27 as under:

“27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of



policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. turned.”

17.3. Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the courts to consider and assess. A greater latitude is permitted by the courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an institution or an industry or an establishment as the case may be. The courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-original writ petitioner to



discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.”

24. It is equally a well settled law that recruitment to public service should be held strictly in accordance with the terms of advertisement and the recruitment rules, inasmuch as deviation from the rules allows entry to unentitled persons and deprives many others who could have competed for the post. Reference, in this connection, be had to a judgment rendered by the Hon’ble Apex Court in the case of ***Yogesh Kumar & Ors. vs. Govt. of NCT, Delhi & Ors***, reported in **(2003) 3 SCC 548**.

25. Now coming back to the present case, it is evident from Rule 49 of the Rules, 1945, Regulation 5 of the Cadre Regulations, 2014 and clause (3) of the Advertisement No. 09 of 2022 that the qualification stipulated for appointment to the post of Drug Inspector is having a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law, thus the petitioner, who does not possess the said qualification and instead has directly obtained Pharm D (Doctorate of Pharmacy) degree without obtaining B. Pharm degree, is ineligible for appointment to the post of Drug



Inspector, especially since neither the Rules, 1945 nor the Cadre Regulations, 2014, contain any provision by which holding a higher qualification would pre-suppose acquisition of lower qualification.

26. Having regards to the facts and circumstances of the case and for the foregoing reasons, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

Kanchan./-

AFR/NAFR	AFR
CAV DATE	22.04.2024
Uploading Date	20.07.2024
Transmission Date	NA

