



2024:DHC:8536-DB



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

+ **W.P.(C) 2264/2024, CM APPL. 9461/2024**

**EMPLOYEES STATE INSURANCE
CORPORATION**

.....Petitioner

Through: Dr. Swati Jindal Garg, Adv.

versus

USHA SINGH

.....Respondent

Through: Mr. Yashpal Rangi and Mr.
Harshit Joshi, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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18.10.2024

C. HARI SHANKAR, J.

1. The respondent is the holder of a Bachelor's Degree in Pharmacy¹ from the Gautam Budh Technical University, Lucknow, which is recognized by the University Grants Commission².

2. The petitioner Employees State Insurance Corporation³ issued an advertisement in 2018 for recruitment of various posts, one of which was ECG (Technician). The candidate was required not to exceed 32 years of age and to be a "Science graduate preferably with one year experience of handling ECG Machine in a recognized institution. OR Sr. Secondary/10+2 or equivalent qualification from a

¹ "B. Pharma" hereinafter

² "UGC" hereinafter



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recognized Board with three years experience of handling ECG Machine in a recognized institution.”

3. The respondent secured the first rank in the examination for recruitment to the post of ECG (Technician), conducted at an all India Level. Subsequently, however, by notice/order dated 20 August 2019, she was declared unfit for appointment. The reason adduced was as under:

“Candidate have Bachelor degree in Pharmacy whereas the candidate should have Science Graduate with one year experience in handling ECG Machine is required.”

The petitioner, therefore, was of the opinion that a candidate having Bachelor’s degree in pharmacy could not be regarded as “a science graduate”.

4. Aggrieved thereby, the respondent approached the learned Central Administrative Tribunal, Principal Bench⁴ by way of OA 2748/2019 (*Usha Singh v ESIC*).

Rival Submissions

5. Before the learned Tribunal, the respondent argued that a candidate holding a Bachelor’s degree in pharmacy was entitled to be regarded as a science graduate, as pharmacy is also a scientific discipline. It was also contended that the Bachelor’s degree in

³ “ESIC” hereinafter

⁴ “the learned Tribunal” hereinafter



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pharmacy is alternatively known as “Bachelor of Pharmaceutical Science”. Reliance was also placed on the dictionary definition “pharmacy” as “science and technique of preparing, dispensing and reviewing drugs and providing clinical services”. World over, it was submitted, a Bachelor’s degree in pharmacy was regarded as a degree in science.

6. It was further contended, by the respondent, that the requirements for admission to a Bachelor degree course in pharmacy were the same as those for entry into any other Bachelor degree course in science, and required 10+2 with Physics, Chemistry, Math and/or Biology. It was also pointed out that, in the B. Pharmacy Course, the subjects taught included Anatomy, Physiology of human beings, Chemistry and Mathematics. It was further submitted that, before declaring her to be unfit for appointment, the respondent had not been afforded any opportunity to demonstrate that the B. Pharmacy course was eligible to be regarded as a graduate course in science.

7. Reliance was also placed, by the respondent, on the decision of the Patna High Court in *State Bank of India v Sumit Verma*⁵, specifically to the following extract from the said decision:

"11. In the opinion of this court, the authorities of the Bank have adopted a rather myopic view. If such interpretation of science degree is accepted than even a Bachelor of Technology (B. Tech.) or Bachelor in Medicine and Bachelor in Surgery (MBBS) of Bachelor of Pharmacy (B. Pharma) would not be qualifying within the constricted interpretation of degree in science. The discipline of Science, Arts and Commerce in fact are in the form of genus and

⁵ Order dated 15 April 2010 in LPA 1421/2009



various degrees in different subject of science are its species and therefore the concept of the officials of the Bank that unless there was a degree of Bachelor in Science (B. Sc.) or Bachelor in Arts (B. A.) or Bachelor in Commerce (B. Com) the candidate would not be held to be qualified in terms of the advertisement seems to be wholly illogical, if not absurd. In the present scenario where the concept of education course by way of speciality and super speciality has become an established fact, such degrees B. Tech, B. Pharma, M.B.B.S and like wife B.C.A. cannot be held to be beyond the discipline of Science, Arts or Commerce."

8. There being no dispute about the fact that the respondent had, to her credit, more than one year's experience of handling any ECG machine in a recognized institution, it was submitted that the denial of appointment to the respondent was unfair and arbitrary.

9. The petitioner, arguing *per contra* before the learned Tribunal, submitted that, in order to be eligible for appointment as an ECG (Technician), the candidate has to be a science graduate. It was submitted that the respondent had placed nothing on record to indicate that a candidate holding a B. Pharmacy degree could be treated as a science graduate. Specific reliance was placed on the list of Bachelors degree courses under the Choice Based Credit System⁶ in India, as stipulated by the UGC in which, against the head "Science", the disciplines which were covered were

- (i) B.Sc. Medical/Life Sciences,
- (ii) Chemistry,
- (iii) Physics,
- (iv) Botany,
- (v) Zoology,

⁶ "CBCS" hereinafter



- (vi) Biotechnology,
- (vii) Microbiology,
- (viii) Biochemistry,
- (ix) Computer Science,
- (x) Environmental Science,
- (xi) Food Technology,
- (xii) Electronic Science,
- (xiii) Information Technology,
- (xiv) Forensic Science,
- (xv) Biomedical Science,
- (xvi) Physical Science,
- (xvii) Operational Research,
- (xviii) Statistics and
- (xix) Anthropology

Pharmacy not being one of the science courses recognized by the UGC, which was the competent authority to determine the curriculum for various undergraduate courses, it was submitted that a holder of a Bachelor's degree in pharmacy could not be regarded as a science graduate.

10. The learned Tribunal has addressed the rival arguments thus, in the impugned order dated 24 May 2023:

“14. Before discussing the arguments and the pleadings, we would like to express that we are acutely conscious of our limitations and would like to remain within the confines of the same. It is not for us to determine the equivalence of degrees. Such a consideration and decision is best left to the appropriate academic/expert bodies.

15. Learned counsel for the applicant has tried to establish that



Bachelor of Pharmacy is as good as Bachelor in Science. There is a great deal of merit in what she states, considering the fact that the requirement for seeking admission in B. Pharmacy is similar to the requirement for admission in B.Sc. as both require study of all the subjects of Science up to 10+2 level. Further, there is also merit in the argument that the subjects studied in B. Pharmacy would in fact fall within the domain of Science.

16. We will leave it at that with this limited observation.

17. There is also merit in the contention of the learned counsel for the respondent that the qualifications set forth in the rules have to be accepted as they are and should not be interpreted beyond what they state. However, we note that in the instant case what we have to treat as the essential qualification for the post is what has been stated in the recruitment notice/advertisement. The recruitment rules are not on record and we are informed that probably such rules for this post do not exist.

18. Without going into this controversy, we go by what the advertisement states. It is curious to note that it merely says Science graduate. In our view, Science graduate is an omnibus term whose ambit could be expanded. We also notice that the action of the respondent has been unilateral and nowhere has it been shown that the applicant was put to any notice or any opportunity whatsoever was afforded to her before declaring her unfit for appointment, on a single ground that Bachelor Degree in Pharmacy is not to be treated as Graduation in Science.

19. It is not in dispute that the applicant possess one year experience in handling ECG machine as is one of the preferential requirements for this post. The applicant topped the all India selection examination on her own merit. Atleast she deserved an opportunity before issuing the impugned order.

20. We have no doubt in our mind that the respondent has taken a hyper technical view in the matter. There is nothing on record to show as to what documents or information was relied upon by the respondent while declaring the applicant unfit. No doubt, the respondent has tried to adequately justify their action in the counter reply, as ably argued by their learned counsel but all these are post impugned order events. After all, an all India topper was declared unfit on a very limited ground; from where these grounds were taken, what statutory or other instructions were before the competent authority to arrive at such a decision, remains unexplained. Further, the categorical opinion expressed by the Hon'ble High Court of Judicature at Patna, as quoted in one of the



preceding paragraphs above, leaves no further scope to sustain the action of the respondent. In fact, because of the striking similarity between the issue in the present OA and the issue which was before the Hon'ble High Court, we have to agree that the view taken by the respondent is rather myopic as also illogical and absurd.

21. In the light of the discussion detailed above, the OA is allowed and the applicant is held to be entitled for appointment to the post of ECG Technician in pursuance to the selection examination held with respect to the 2018 notification in which she successfully attained meritorious position.

22. Accordingly, the impugned notice/ order dated 20.08.2019 is quashed and set aside. The competent authority amongst the respondent shall, within a period of four weeks from the date of receipt of a certified copy of the order, issue an offer of appointment to the applicant to the post of ECG Technician.

23. It is made clear that the respondent shall not be allowed to take shelter behind any impediment since by way of an interim order dated 16.09.2019, it was directed that one post shall be kept vacant. The effective date of appointment shall be 16.09.2019, the date on which the said interim order was passed.”

11. Aggrieved thereby, the ESIC has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, assailing the aforesaid judgment of the learned Tribunal.

12. We have heard Dr. Swati Jindal Garg, learned Counsel for the petitioner and Mr. Yashpal Rangi, learned Counsel for the respondent.

13. Learned counsel for the parties have broadly reiterated the contentions advanced before the learned Tribunal.

Analysis



14. We are required to constantly remind ourselves, while exercising jurisdiction in cases such as this, that we are not sitting in appeal over the judgment of the learned Tribunal. It may be possible that, in a given case, more than one view is possible. So long as the view adopted by the learned Tribunal is a plausible view, and not one which is legally unsustainable, we would be loath to interfere. The jurisdiction exercised by us is akin to certiorari jurisdiction, and abides by the boundaries drawn by the following passages from the judgment of the Supreme Court in *Syed Yakoob v K.S. Radhakrishnan*⁷:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. *A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as*

⁷ AIR 1964 SC 477



an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. *What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."*

(Emphasis supplied)



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15. It cannot, by any stretch of imagination, be said that the view adopted by the learned Tribunal in the present case is so illegal as to merit interference. The ESIC has itself left the field wide open to debate by employing, in its advertisement, an expression as nebulous and imprecise as “science graduate”. The expression “science” is all encompassing, and takes into its fold every possible discipline of science. That the respondent possesses a Bachelors degree is not in dispute. The only issue in controversy is whether pharmacy is a “science” for the purposes of the advertisement. In the absence of any stipulation, in the advertisement, regarding the specific field of science in which the degree in graduation was required to be possessed by the candidate, we see no reason why pharmacy should not be treated as a “science” for the purposes of eligibility of the candidate for recruitment as ECG technician.

16. We do not intend to burden this decision with any lengthy dissertation of what constitutes “science”. Suffice it to state that pharmacy, viewed any which way, is a science. The Encyclopaedia Britannica defines “pharmacy” as the “*science* and art concerned with the standardization of drugs”. A person holding a graduate degree in pharmacy is, in the absence of anything to the contrary in the advertisement, therefore, entitled to be treated as a “science graduate”.

17. The reliance, by Dr. Swati Jindal Garg, on the UGC curriculum, fails to impress. In the first place, the said curriculum has not been incorporated, either expressly or by reference, into the advertisement. The qualifications as stipulated in the advertisement are sacrosanct. It



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is nobody's case that there are in existence any recruitment rules or other rules governing the post of ECG technician which stipulate any other qualifications.

18. We, therefore, are of the view that the scope of the expression "science graduate" as employed in the advertisement cannot be narrowed down by reference to the UGC guidelines, which are essentially for prescribing curricula for various Bachelors degree course.

19. Indeed, if we were to accept the reliance on the UGC curriculum, an incongruous situation would arise. We have to bear in mind the fact that the recruitment was for the post of ECG Technician. If the petitioner's contention is to be accepted, and the expression "science graduate" is to be understood in terms of the UGC curriculum, it would mean that holders of Bachelors degrees in Computer Science, Environment Science, Food Technician, Electronic Science, Information Technology, Statistics and Anthropology would all be eligible for recruitment as ECG technician, whereas the holder of a Bachelors degree in Pharmacy would not. This is obviously an incongruous consequence, which cannot be legally countenanced. To say the least, the discipline of pharmacy is far more proximate to the duties to be performed by an ECG Technician than the afore-noted disciplines of science.

20. It is also well settled that, in the event of any ambiguity in the prescribed qualifications for recruitment, the benefit of the provision



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has to be in favour of the candidate rather than the establishment. One may refer, in this context, to *Parvaiz Ahmad Parry v State of Jammu & Kashmir*⁸.

21. In that view of the matter, we do not find that the decision of the learned Tribunal calls for any interference within the confines of our jurisdiction under Article 226 of the Constitution of India.

22. The writ petition is accordingly dismissed with no order as to costs.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 18, 2024/ar

Click here to check corrigendum, if any

⁸ (2015) 17 SCC 709