

S. Gupta

Before Tejinder Singh Dhindsa, J.

ASHU GARG AND ANOTHER—Petitioners

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 16672 of 2010

October 19, 2012

(A) Constitution of India, 1950 - Art. 226/227 - Drugs and Cosmetics Act, 1940 - S.33 - Drugs and Cosmetics Rules, 1945 - Punjab Health and Family Welfare (Group B) Service Rules, 2001 - Rl. 6 - Petitioners challenged recruitment process/short-listing of candidates for the purpose of appointment to the post of Drug Inspector - Recruitment process is contrary to the terms and conditions of advertisement and statutory rules and no relaxation is permissible by the State Government - Writ Petition dismissed.

Held, that Rule 49 of the 1945 Rules/Appendix 'B' of the 2001 Rules lay down the essential qualifications for being appointed to the post of Inspector/Drug Inspection. The proviso attached to Rule 49 as also prescribed in Appendix 'B' of Rule 6 of the 2001 Rules is in relation of

prescribing experience to the Inspectors already appointed so as to be authorized for inspection of a particular substance. As such, the submission raised on behalf of the petitioners to contend that the shortlisted candidates at Annexure P-7 for appointment to the post of Drug Inspector were, in fact, ineligible on account of lacking the requisite experience is rejected as the same is founded on a clear mis-reading of the relevant statutory provision.

(Para 11)

(B) Constitution of India, 1950 - Art. 226/227 - Punjab Health and Family Welfare (Group B) Service Rules, 2001 - Rule 8, Punjab Civil Services (General & Common Conditions of Service) Rules, 1994 - Rls 17 & 19 - Petitioners have been shown as ineligible on the ground that they have not qualified the matriculation examination with Punjabi.

Held, that a bare reading of the statutory provisions reproduced hereinabove would clearly reveal that in terms of Rule 17 of the 1994 Rules, which would govern appointment to any post in any service by direct appointment, qualification of Matriculation Examination with Punjab language is a must. That apart, under Rule 19, there is no power as regards relaxation of educational qualifications. Accordingly, the 2001 Rules would have to be read along with Rule 17 of the 1994 Rules and wherefrom it would clearly emerge that passing matriculation examination with Punjabi would be essential qualification for purposes of appointment to the post of Drug Inspector.

(Para 17)

Jatin Salwan, Advocate, *for the petitioners.*

BS Chahal, Deputy Advocate General, Punjab.

RS Bajaj, Advocate for respondents 5 to 10.

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(1) With the consent of the parties, all these writ petitions have been taken up for consideration together and are being decided by this common order. Facts are, however, being noticed from Civil Writ Petition No. 16672 of 2010 (Ashu Garg and another v. State of Punjab and others).

(2) Challenge in these petitions is to the recruitment process/shortlisting of candidates for purposes of appointment to the posts of Drug Inspectors under the Department of Health and Family Welfare, State of Punjab. Briefly noticed, advertisement dated 2.5.2010 was issued by the respondent-Department inviting applications for recruitment to the various posts including 37 posts of Drug Inspectors. The educational and other qualifications for the post of Drug Inspector have been specifically stipulated in such advertisement and the same read in the following terms:

“Educational and other qualifications for Drug Inspector:

Should possess a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or Institution.

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” of the Drugs and Cosmetic Rules, 1945; or

(ii) Who have not less than 18 months experience in the testing of at least one of the substances in Schedule “C” of the Drugs and Cosmetic Rules, 1945; in a laboratory approved for this purpose by the licensing authority; or

(iii) Who have gained experience of not less than 3 years in the inspection of firms manufacturing any of the substances in Schedule “C” of the Drugs and Cosmetic Rules 1945 during the tenure of their services as Drugs Inspectors; shall be authorized to inspect the manufacture of the substances mentioned in Schedule “C” of the Drugs and Cosmetic Rules 1945.

(iv) Candidates must have passed Punjabi up to matriculation standard.”

(3) It was also stipulated that incomplete applications as also the candidates with incomplete educational qualifications will not be considered/entertained. The last date for submission of application forms from the

eligible candidates was fixed as on or before 12.6.2010. A written examination for purposes of selection was fixed for 25.7.2010, which was subsequently postponed to 8.8.2010. The petitioners assert that they were eligible for the post of Drug Inspector and had, accordingly, submitted their applications prior to the last date for submission of application forms and had also appeared in the written examination held on 8.8.2010. In pursuance to the written test having been held, a list at Annexure P7 had been issued by the respondent-Department reflecting the names of 70 candidates to be called for interview pertaining to the General Category.

(4) It is at the stage of shortlisting itself that the present writ petitions have been filed. The primary grievance of the petitioners is that the respondent-authorities have proceeded to shortlist candidates and are proceeding with the process of recruitment in terms of calling such candidates for the interview by not adhering to the qualifications and other eligibility conditions prescribed in the advertisement as also the statutory provisions regulating appointment to the post of Drug Inspectors inasmuch as ineligible candidates who do not even possess the prescribed experience for the post have been shortlisted. As such, the basic argument raised on behalf of the petitioners is that the recruitment process being undertaken and in the process of being finalized by the respondent-authorities is contrary to the statutory rules governing the subject. It has further been argued that once the qualifications have been enumerated under any central enactment, the same cannot be relaxed by the State Government. Reliance has been placed upon a Division Bench judgment of this Court in *Parkash Vir versus State of Haryana (1)*, to urge that the authorities were bound by the eligibility conditions as laid down in the advertisement and no deviation therefrom was permissible. It was argued that the selection to the post of Drug Inspector had to be made strictly in terms of the conditions of eligibility contained in the advertisement and no relaxation thereof was permissible. Further reliance has been made upon a judgment of the Hon'ble Supreme Court of India in *K.Manjusree versus State of A.P. and another (2)*, to contend that once the selection process had been embarked upon, no deviation in respect

(1) (1992) 1 SCT 700

(2) (2008) 2 SCT 6

of the eligibility criteria was permissible as it would amount to changing the rules of the game after the game had already been played.

(5) Per contra, the State in terms of filing a counteraffidavit of the Director, Health and Family Welfare has taken a categorical stand that the recruitment process has been conducted strictly in terms of the statutory rules governing appointment to the post of Drug Inspector as also in terms of the eligibility conditions contained in the advertisement. It has been stated that out of the 37 posts of Drug Inspectors advertised, 18 fell to the share of the General Category and, accordingly, three times of the eligible candidates had been shortlisted and called for the interview. A further stand has been taken that only such candidates who were eligible in the light of the statutory provisions/conditions of eligibility provided in the advertisement as also strictly in order of merit have been shortlisted. It may be noticed that the private respondents have chosen to adopt the written statement filed on behalf of the State.

(6) Having heard the rival contentions on behalf of the parties and having perused the records, it would be apposite to refer to the statutory provisions governing appointment of the post of Drug Inspector.

(7) Section 21 contained in Chapter IV governing the Manufacture Sale and Distribution of Drugs and Cosmetics under the Drugs and Cosmetics Act, 1940 (hereinafter to be referred as 'Act 1940') envisages the appointment to the post of Inspector. Section 33 contained in Chapter IV vests with the Central Government to make rules for the purposes of giving effect to the provisions of this Chapter. In exercise of the powers conferred by Section 33, the Drugs and Cosmetics Rules, 1945 (hereinafter to be referred as '1945 Rules') were framed. Rule 49 prescribes the qualification of Inspectors. Under the Department of Health and Family Welfare, Government of Punjab, the post of Drug Inspector is governed by the Punjab Health and Family Welfare (Group 'B') Service Rules, 2001 (hereinafter to be referred as '2001 Rules'). Rule 6 lays down the method of appointment and qualification and sub-clause (1) mandates that the appointment to the service shall be made in the manner specified in Appendix 'B'. Rule 6, sub-clause (2) stipulates that no person shall be appointed to any post in the service, unless he possesses the qualification and experience specified against that post in Appendix 'B'. The relevant extract from

Appendix 'B' pertaining to the post of Drug Inspector reads in the following terms:

Sr. No.	Designation of the post	Percentage for appointment by		Qualifications and experience for appointment by	
		Direct appointment	Promotion	Direct appointment	Promotion
	xxxxxx				
1	xx				
2	Drugs Inspector or	Hundred per cent		<p>Should possess a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or Institution:</p> <p>Provided that only those Inspectors,</p> <p>(i) who have not less than 18 months experience in the manufacture of at least one of the substances specified in Schedule 'C' of the Drugs and Cosmetics Rules, 1945;</p> <p>or</p> <p>(ii) who have not less than 18 months experience in testing of at least one of the substances in Schedule 'C' of Drugs and Cosmetics Rules, 1945 in a Laboratory approved for this purpose by the licensing authority; or</p> <p>(iii) who have gained experience of not less than three years in the inspection of firms manufacturing any of the substances specified in Schedule 'C' of the Drugs and Cosmetics Rules, 1945 during the tenure of their services as Drugs Inspectors; shall be authorised to inspect the manufacture of the substances mentioned in Schedule 'C' of the Drugs and Cosmetics Rule, 1945.</p>	

(8) A perusal of the statutory provisions re-produced hereinabove would make it apparent that the mode of appointment to the post of Drug Inspector is 100% by way of direct recruitment. That apart, the qualifications i.e. a candidate should possess a degree in Pharmacy or pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or Institution has been laid down. Still further, it has been stipulated in the proviso that only those Inspectors who possess the prescribed experience shall be authorized to inspect the manufacture of the substances mentioned in Schedule 'C' of the 1945 Rules.

(9) It would be apposite to notice that the qualifications prescribed for the post of Inspector under the 1945 Rules as also under the 2001 Rules are *para materia*. Still further, in the advertisement issued by the respondent-Department in response to which the petitioners as also the private respondents had applied the conditions of eligibility are identical to the ones stipulated in the statutory Rules. As such, the eligibility conditions in terms of qualifications prescribed for the posts of Drug Inspectors in the advertisement at Annexure P3 were the statutory qualifications prescribed under the 1945 Rules as also the 2001 Rules.

(10) It has been vehemently argued on behalf of the petitioners that the candidates shortlisted at Annexure P7 and called for the interview for purposes of appointment to the post of Drug Inspector do not possess the experience as envisaged both under the advertisement at Annexure P3 as also under the 1945 Rules/2001 Rules.

(11) A plain reading of the relevant Rule as contained in Appendix 'B' in reference to Rule 6 of the 2001 Rules which is *para materia* to Rule 49 of the 1945 Rules would make it apparent that qualifications have been prescribed for purposes of direct appointment to the post of Drug Inspector. These qualifications are in the nature of a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or Institution. The proviso wherein three kinds of experiences have been stipulated are in relation to such Inspectors who upon possession of the same would be authorized to inspect the manufacture of the substances mentioned in Schedule 'C' of the 1945 Rules. The contention on behalf of the petitioners is to read

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the experience required for an Inspector to be authorized to inspect manufacture of substances mentioned in Schedule 'C' as one of the essential qualifications for appointment as a Drug Inspector. Such an interpretation does not flow from a simple and bare reading of the statutory Rules governing the appointment to the post of Drug Inspector. Rule 49 of the 1945 Rules/Appendix 'B' of the 2001 Rules lay down the essential qualifications for being appointed to the post of Inspector/Drug Inspector. The proviso attached to Rule 49 as also prescribed in Appendix 'B' of Rule 6 of the 2001 Rules is in relation of prescribing experience to the Inspectors already appointed so as to be authorized for inspection of a particular substance. As such, the submission raised on behalf of the petitioners to contend that the shortlisted candidates at Annexure P7 for appointment to the post of Drug Inspector were, in fact, ineligible on account of lacking the requisite experience is rejected as the same is founded on a clear misreading of the relevant statutory provision.

(12) Identical issue even came up for consideration before a Division Bench of the Uttar Pradesh High Court in Special Appeal No.804 of 2010 (State of U.P. v. Zunab Ali and others), wherein the same view had been taken and it had been held in the following terms:

"For appointment on the post of Drug Inspector, statutory essential qualifications have been prescribed under Rule 49 of the Drugs and Cosmetics Rules, 1945.

Rule 49 prescribes as under:

"Qualifications of Inspectors- 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:

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)".

Thus, for being eligible for being considered for appointment as Drug Inspector, neither the State Government can require any additional essential qualification to be prescribed for the purpose nor any such advertisement can be issued nor the Commission would be at liberty to issue any advertisement prescribing the essential qualification, which are not in conformity with the aforesaid rules. If any such advertisement is issued or has been issued, which is contrary or so to say not in accordance with the aforesaid rules, the same is necessarily to be corrected and for that purpose, corrigendum has to be issued.

A bare reading of the aforesaid rules shows that the essential qualification for appointment on the post of Drug Inspector is of 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. This is the essential qualification for being appointed on the post of Inspector.

The proviso attached to the aforesaid Rule is only the prescription of experience of 18 months to the Inspectors already appointed for being entrusted the job of inspection.

The proviso does not lay down any essential qualification for being appointed as Inspector, but only speaks about the period of experience, when such an Inspector may be authorized for inspection.

Unless a person is appointed as Inspector, as envisaged in Clause (i), there would be no occasion for him to entrust the work of inspection and for making such authorization, 18 months' experience is necessary."

(13) The reliance placed on behalf of the petitioners on the judgments in **K. Manjusree and Parkash Vir** (supra) is also wholly mis-placed. As has been noticed hereinabove, the recruitment process as also shortlisting of candidates for purposes of appointment to the post of Drug Inspector has been carried out by the respondent-authorities strictly in terms of the conditions of eligibility prescribed in the advertisement itself which, in turn, were in the nature of the statutory conditions as laid down under the 1945 Rules as also the 2001 Rules. There has been no deviation from the conditions stipulated in the advertisement and neither has there been any change with regard to the conditions of eligibility after the initiation of the recruitment process.

(14) An additional issue would require examination in Civil Writ Petition No.17007 of 2010, titled as "**Sunil Kumar and another v. State of Punjab and another**". In such writ petition, it has been contended by the petitioners that in the initial advertisement dated 2.5.2010 issued by the Department of Health and Family Welfare, State of Punjab, apart from laying down other eligibility conditions for the post of Drug Inspector, the following stipulation had been laid down as regards knowledge of Punjabi language:

"Knowledge of Punjabi language upto Matriculation standard. Candidates who do not possess the qualification shall have to acquire this qualification within six months of their joining the service failing which their services shall be terminated."

(15) It was asserted that the last date for submission of application forms was 24.5.2010, even though thereafter extended to 12.6.2010. The petitioners had applied in response to the advertisement and has submitted

their application forms prior to the cut-off date prescribed. Having participated in the written examination, they have been shown as ineligible on the ground that they had not qualified the Matriculation Examination with Punjabi. Accordingly, the precise submission raised on behalf of the petitioners in Civil Writ Petition No.17007 of 2010 is that the eligibility condition pertaining to Punjabi language could not have been altered or modified subsequently and that the petitioners were vested with the right to be considered for appointment to the post of Drug Inspector in the light of the initial advertisement dated 2.5.2010.

Under the 2001 Rules, Rule 8 provides as under:

“8. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 – (1) In respect of the matters which are not specifically provided in these rules, the members of the service shall be governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time.”

(16) Rules 17 and 19 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 read as follows:

17. Knowledge of Punjabi language – No person shall be appointed to any post in any service by direct appointment unless he has passed Matriculation Examination with Punjabi as one of the Compulsory or Elective subject or any other equivalent examination in Punjabi language, which may be specified by the Government from time to time.

19. Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these Rules with respect to any clause or category of persons.

Provided that the provisions relating to educational qualifications and experience, if any, shall not be relaxed.”

(17) A bare reading of the statutory provisions re-produced hereinabove would clearly reveal that in terms of Rule 17 of the 1994 Rules which would govern appointment to any post in any service by direct appointment, qualification of Matriculation Examination with Punjabi language is a must. That apart, under Rule 19, there is no power as regards relaxation of educational qualifications. Accordingly, the 2001 Rules would have to

be read along with Rule 17 of the 1994 Rules and wherefrom it would clearly emerge that passing Matriculation Examination with Punjabi would be essential qualification for purposes of appointment to the post of Drug Inspector.

(18) In taking such view, I would draw support from a Division Bench judgment dated 3.3.2011 passed by this Court in Civil Writ Petition No.16462 of 2010 (*Dr.Parul Dham v. State of Punjab and others*) as also other connected petitions wherein an identical question came up for consideration and it had been held in the following terms:

"Insofar as the issue with regard to the passing of Matriculation examination with Punjabi as one of the subjects is concerned, we have noticed that the same arises in CWP Nos. 16462, 17366, 17708, 17160 and 17621 of 2010. It has been argued that under the Punjab Civil Medical Group 'A' (Dental) Service Rules, 2009 (hereinafter referred to as 'the 2009 Rules'), qualifications and experience for joining the service have been specified by Rule 5(2) read with Appendix- B. It has been pointed out that Appendix-B does not prescribe the requirement of passing of the Matriculation examination with Punjabi as one of the subjects. Pointing to Rule 8 of the 2009 Rules, it has been contended that the 1994 Rules apply only in a situation where any matter is not specifically provided in the 2009 Rules. As the matter 'Educational Qualifications' has been provided for in the 2009 Rules, the requirement of passing the Matriculation examination with Punjabi as one of the subjects prescribed by the 1994 Rules will have no application. That apart, it has been pointed out that the corrigendum introducing the said requirement in departure to what has been prescribed in the advertisement cannot have any binding legal effect in as much as the candidates had participated in the selection process on the basis of the terms of the advertisement which must be held to be binding.

Rule 5(2) read with Appendix-B prescribes the educational qualifications and experience for being eligible to be appointed in the Dental service. Rule 17 of the 1994 Rules prescribing

Matriculation with Punjabi as one of the subjects is a general requirement that would apply to any and every post in Group 'A', 'B' and 'C' Services in the State of Punjab. Rule 17, by prescribing Matriculation with Punjabi as one of the subjects, does not really lay down an educational qualification. According to us, it lays down a general condition applicable to all services in the State of Punjab. Therefore, it is our considered view that Rule 5 of the 2009 Rules, prescribing the educational qualifications and experience, cannot stand in the way of the operation of Rule 17 of the 1994 Rules prescribing Matriculation with Punjabi as an additional requirement. The 1994 Rules being statutory in character, the terms of the advertisement, which runs contrary to the provisions of the statutory Rules, cannot be allowed to prevail over and above what has been prescribed by the statute. We, therefore, take the view that Rule 17 of the 1994 Rules must be allowed to have a free-play to determine the eligibility of the candidates and only those who have passed the Matriculation with Punjabi as one of the subjects would be eligible."

(19) *Even otherwise, in the facts of the present case, a corrigendum dated 22.5.2001 as has been annexed as Annexure R2 along with the reply filed on behalf of the State had been displayed on the Website of the Department laying down the requisite condition of having passed Punjabi upto Matriculation standard. The necessity of issuing such a corrigendum arose so as to regulate the recruitment to the post of Drug Inspector strictly in terms of the 2001 Rules read with the 1994 Rules. Still further, such corrigendum had been issued prior in point of time to the last date of submission of application forms i.e. 24.5.2010 as had been stipulated in the initial advertisement dated 2.5.2010. As such, there is no merit in the submission raised on behalf of the petitioners in Civil Writ Petition No.17007 of 2010 as regards the conditions of eligibility having been changed/alterd while the recruitment process was under way. Such submission clearly proceeds on a factually incorrect premise.*

(20) For the reasons recorded above, I find no merit in these petitions and the same are, accordingly, dismissed.