

Before Hon'ble R. S. Mongia, J.

ARUN KUMAR MISHRA AND OTHERS,—*Petitioners.*

versus

THE MAHARSHI DAYANAND UNIVERSITY, ROHTAK THROUGH

ITS REGISTRAR AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2160 of 1991

July 9, 1992.

Constitution of India, 1950—Art. 226—Education Regulations 1981—Regulation 10—Pharmacy Act, 1948—S. 10—Whether examination to be held by University is to be approved by the Pharmacy Council of India as to whether said examination is in conformity with Education Regulations.

Held, that I find the examination which is to be held by the University, has to be approved by the Pharmacy Council of India under Section 12 (2) of the Pharmacy Act, and the pharmacy council of India has to be satisfied that the said examination is in conformity with the Education Regulations. When the examination of the University was approved by the Pharmacy Council of India, it is deemed to be aware of the conditions which were laid down by the University for holding the examination. The examination was approved by the Pharmacy Council of India only after it was satisfied that all the conditions were in conformity with the Education Regulations.

(Para 8)

Amrit Paul, Advocate, for the Petitioner.

Vikrant Sharma, Advocate for Respondent No. 1.

J. V. Yadav, DAG, Haryana for Respondent No. 2 & 3.

G. B. S. Sodhi, Standing Counsel for Respondent No. 4.

JUDGMENT

R. S. Mongia, J. (Oral)

(1) The petitioners' case in this writ petition is that there is an obvious conflict between Regulation 10 of the *Education Regulations, 1981*, framed by the Pharmacy Council of India, under Section 10 of the Pharmacy Act, 1948 (Central) Act No. 8 of 1948 and Clause 3 of the Ordinances of the University pertaining to Diploma in Pharmacy, framed by the Maharshi Dayanand University, Rohtak. The

Regulations framed by the Pharmacy Council of India shall be referred to as the 'Council Regulation' and the Ordinance framed by the University as 'University Ordinance'. Regulation 10 of the Council Regulations' and Clause 5 of the University Ordinances are reproduced below :—

COUNCIL REGULATIONS

"10. *Eligibility for appearing at the examination for Diploma in Pharmacy (Part-IIA).*—Only such student who produces certificate from the head of the Institution concerned in proof of his having regularly and satisfactorily followed the second year course of study by attending not less than 75 per cent classes held (Both in theory and in practical separately of each subject) and having successfully passed the examination for Diploma in Pharmacy (Part-I) shall be eligible for appearing at the examination for Diploma in Pharmacy (Part-IIA) as given in the Table below. If, however, the student has completed the first year course and appeared in all subjects in the Diploma in Pharmacy (Part-I) examination, his failure in not more than two theory papers and two practicals shall not debar him from attending the second year course :

Provided that the result of Diploma in Pharmacy (Part-IIA) examination of such candidate shall be declared only after he passes all the subjects of examination for Diploma in Pharmacy (Part-I).

(Relevant extract)."

University Ordinance

5. A person who has passed Diploma in Pharmacy (Part-I) Examination of this University or an examination recognised as equivalent thereto shall be eligible to join the second year Diploma in Pharmacy class.

A candidate, who appears in all the subjects in the Diploma in Pharmacy Part-I annual examination and fails in not more than two theory paper (s) and two practical (s), shall also be eligible to join provisionally the second year Diploma in Pharmacy class. However, such students shall not be

eligible to appear in the Part-IIA examination unless they pass the Part-I examination in all the subjects.

(Relevant Extract).

(2) The duration of the course leading to Diploma in Pharmacy is of two years. The examination has been divided into two parts, which are known as Part-I and Part-IIA, followed by training for a period of four months and is known as Part-IIB. Part-I examination, is held after one year's study and Part-II-A after completion of another one year's study. Section 12 of the Pharmacy Act provides as to which is the approved course of study and examinations for being registered as Pharmacist. Section 12 is quoted below :—

“Any authority in a state which conducts a course of study for pharmacist may apply to the Central Council for approval of the course, and the Central Council, if satisfied after such enquiry as it thinks fit to make, that the said course of study is in conformity with the Education Regulations, shall declare the said course of study to be an approved course of study for the purpose of admission to an approved examination for Pharmacists.

(2) Any authority in a State which holds an examination in pharmacy may apply to the Central Council for approval of the examination, and the Central Council, if satisfied, after such enquiry as it thinks fit to make, that the said examinations in conformity with the Education Regulations, shall declare the said examination to be an approved examination for the purpose of qualifying for registration as a pharmacist under this Act.

(3) Every authority in the States which conducts an approved course of study or holds an approved examination shall furnish such information as the Central Council may, from time to time, require as to the courses of study and training and examination to be undergone, as to the ages at which such courses of study and examination are required to be undergone and generally as to the requisities for such courses of study and examination.”

(3) In the present case, the examination held by the Maharshi Dayanand University, Rohtak, leading to the Diploma in Pharmacy is an approved examination by the Pharmacy Council of India under Section 12 (2) *ibid.*

(4) The perusal of the Council Regulation 10 *ibid* would show that a candidate who fails in not more than two theory papers and two practicals in Pharmacy Part-I examination, is allowed to continue his studies in Part-IIA and is also allowed to appear simultaneously in the examination of Part-IIA alongwith the papers in which the candidate might have failed in Part-I. The only rider is that the result of Part-IIA examination would only be declared after the candidate has passed all the papers of Part-I. However, under the University Ordinance, quoted above, a candidate who fails in not more than two theory papers and two practicals in Part-I, though allowed to continue his studies in Part-IIA is not simultaneously allowed to appear in the examination of Part-IIA along with the papers of Part-I, in which a candidate might have failed. He is allowed to appear in Part-IIA examination only after he has passed in all the papers of Part-I. Thus, according to the petitioners there is a direct conflict between the Council Regulation' and the University Ordinance and since the Council Regulations have been made under the Central Act, the University Ordinances must give way to them. In other words, in case of conflict, the Council Regulations must prevail over the University Ordinances.

(5) On the face of it, the argument of the counsel for the petitioners seems very attractive as there seems to be obvious conflict between the Council Regulation and the University Ordinance, quoted above. However, when the matter is scrutinised in little detail, I find that in fact there is no conflict and the University Ordinance' under which the petitioners took the examination must prevail.

(6) Section 10 of the Pharmacy Act, under which the Pharmacy Council of India has made the Education Regulations, runs as under :—

"10. (1) Subject to the provisions of this section, the Central Council may, subject to the approval of the Central Government, make regulations, to be called the Education Regulations, prescribing the minimum standard of education required for qualification as a pharmacist.

(2) In particular and without prejudice to the generality of the foregoing power, the Education Regulations may prescribe :—

(a) the nature and period of study and of practical training to be undertaken before admission to an examination ;

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- (b) the equipment and facilities to be provided for students undergoing approved courses of study ;
- (c) the subjects of examination and the standards therein to be attained ;
- (d) any other conditions of admission to examinations.
- (3) Copies of the draft of the Education Regulations and of all subsequent amendments there of shall be furnished by the Central Council to all State Governments, and the Central Council shall before submitting the Education Regulations or any amendment thereof, as the case may be, to be the Central Government for approval under subsection (1) take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.
- (4) The Education Regulations shall be published in the official Gazette and in such other manner as the Central Council may direct.
- (5) The Executive Committee shall from time to time report to the Central Council on the efficacy of the Education Regulations and may recommend to the Central Council such amendments thereof as it may think fit."

(7) The opening lines of Section 10 (1), quoted above, clearly go to show that the power given to the Pharmacy Council of India, is to frame regulations prescribing the minimum standard of education required for qualification as a pharmacist. Section 10 (2) (d) gives powers to the Pharmacy Council to lay down any other conditions of admission to examinations. It is under this Section that Education Regulations were framed by the Pharmacy Council of India and Regulation 10 lays down some conditions for admission to examinations. The arguments of the counsel for the respondent University, as also counsel for the Pharmacy Council of India, is that the Regulations framed under Section 10 of the Pharmacy Act having prescribed only the minimum standard, the University which is the examining body can lay down higher or more strict regulations or conditions for passing the examination. So, according to them, there is no conflict between Regulation 10 and Clause 5 of the Ordinance, inasmuch as Ordinance 5 is just more strict condition than the one prescribed by Regulation 10 which is the minimum standard, and, consequently, no fault can be found with such a condition having been laid down by the University.

(8) Apart from above, I find that the examination which is to be held by the University, has to be approved by the Pharmacy Council of India under Section 12 (2) of the Pharmacy Act, which has already been quoted above, and the Pharmacy Council of India has to be satisfied that the said examination is in conformity with the Education Regulations. When the examination of the University was approved by the Pharmacy Council of India, it is deemed to be aware of the conditions which were laid down by the University for holding the examination. The examination was approved by the Pharmacy Council of India only after it was satisfied that all the conditions were in conformity with the Education Regulations. Mr. G. B. S. Sodhi, learned counsel appearing on behalf of the Pharmacy Council of India, has also brought to my notice the minutes of 51st meeting of the Executive Committee of the Pharmacy Council of India held, on 11th December, 1990, in which it is stated that the Council had taken note of the decision of the 120th meeting of the Executive Committee held on 17th/18th January, 1987 to the effect that the course and the examination conducted might prescribe higher/more strict conditions, if so desired, as the Education Regulations prescribe the minimum conditions to qualify for registration as a Pharmacist. This decision, to my mind, is in conformity with Section 10 (1) of the Pharmacy Act, 1948, which provides that by Regulations the Council can lay down the minimum standard of the examination.

(9) From the discussion referred to above, I am of the considered view that no fault can be found with Ordinance 5 of the University Ordinances and the same shall prevail over the Council Regulation 10.

(10) For the view I am taking in the matter, the petitioners would not have been entitled to appear in Part-IIA examination of the Diploma in Pharmacy held by the Maharshi Dayanand University, Rohtak before they had cleared all the papers of Part-I examination. However, by virtue of interim orders of this Court in the present writ petition, the petitioners were allowed to appear provisionally in Part-IIA examination along with papers of Part-I, which they had failed to clear. It is represented by the petitioners' counsel that Petitioners No. 3, 4 and 5 namely Vinay Gupta, Sanjay Kumar and Raj Kumar have passed all the papers of Part-I examination, and, in fact, by virtue of my order dated 30th April, 1992, their result of Part-IIA examination, in which they were allowed to appear provisionally, has also been declared provisionally, and those petitioners who had not cleared all the papers of Part-IIA have already

appeared again in Part-IIA examination in those papers. It is further represented by the petitioners' counsel that he is not pressing the case of petitioners No. 1 and 2, namely Arun Kumar Mishra and Bijender Singh at this stage and the writ petition *qua* them be dismissed.

(11) Taking into account the fact that petitioners No. 3, 4 and 5 have completed the course of Part-IIA and by virtue of the interim order of this Court they have also appeared in Part-IIA examination, I do not consider it appropriate to put the clock back in spite of the fact that on the law point I am not agreeing with counsel for the petitioners. On wholly equitable grounds it is held that the result of Petitioners No. 3, 4 and 5 of Part-IIA examination would be declared taking it as if they had validly taken Part-IIA examination.

(12) Subject to the observations made above *qua* Petitioners No. 3, 4 and 5, this writ petition is dismissed. However, there will be no order as to costs.

Before parting with the judgment, I may observe that the indulgence shown by this Court *qua* Petitioners No. 3, 4 and 5 shall not be cited as a precedent.

J.S.T

Before Hon'ble A. L. Bahri, J.

BALBIR SINGH,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Regular Second Appeal No. 540 of 1989

November 5, 1993

Constitution of India, 1950—Art. 226—Punjab State Class (IV) service Rules 1963 as amended by the Punjab State (Class IV) service (Haryana second Amendment) Rules 1973—Rl. 9(e)—Selection grade—grant thereof.

Held, that the instructions cannot be interpreted to mean that persons already stood transferred would lose their seniority of service in the previous department or office. If that had been the interpretation, these instructions would be clearly in violation of Rule 9(e) of the Rules reproduced above. However, these instructions, if