

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.689/2015.**

**(D.B.)**

Pravin Haridas Raut,  
Aged about 36 years,  
R/o Flat No.8, 2<sup>nd</sup> floor,  
Harmansingh Complex, Chapan Wadi,  
Yavatmal.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Medical Education & Drugs,  
Mantralaya, Mumbai.
2. The Deputy Secretary,  
Department of Medical Education & Drugs,  
Mantralaya, Mumbai.
3. The Commissioner,  
Food & Drugs Administration (M.S.),  
Mumbai.

**Respondents**

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Shri S.R. Mendiretta, the Ld. counsel for the applicant.  
Shri A.M. Ghogre, the Ld. P.O. for the respondents.

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**Coram:-Shri J.D. Kulkarni, Vice-Chairman (J)**  
**and**  
**Shri Shree Bhagwan, Member (A)**

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**JUDGMENT**

(Delivered on this 13<sup>th</sup> day of July 2018.)

**Per:-Vice-Chairman (J)**

Heard Shri S.R. Mendiretta, the learned counsel for the applicant and Shri A.M. Ghogre the learned P.O. for the respondents.

2. From the admitted facts on record, it seems that in response to the advertisement dated 21.12.2007 (Annexure A-1), the applicant applied for the post of Drug Inspector. Admittedly, the applicant was recommended by the M.P.S.C. for the said post and he joined the post as Drug Inspector on 17.1.2012. However, vide impugned order dated 13.10.2015 issued by Govt. of Maharashtra, his appointment has been cancelled with immediate effect. It is stated that the applicant does not possess the requisite experience of three years as mentioned in the rules regulating recruitment to the post of Joint Commissioner (Drugs), Group-A, Assistant Commissioner (Drugs), Group-A, Drug Inspector, Group-B under the Food and Drug Administration under Medical Education and Drugs Recruitment Rules, 2002 for the purpose of convenience, this rule may hereinafter referred to as "Rules of 2002". It is also mentioned in the impugned order dated 13.10.2015 that the applicant was not eligible for the post and in getting appointment, he has submitted false information or false certificate and, therefore, it was decided not

to continue him on the post and, therefore, applicant's services came to an end.

3. The learned counsel for the applicant submits that the applicant was working as Pharmacy Inspector and was having requisite qualification and, therefore, was duly recommended by MPSC and accordingly appointment order was issued in his favour. He has also worked as Drug Inspector from 17.1.2012 till his services came to an end vide order dated 31.10.2015, since the order dated 13.10.2015 was served on the applicant on 31.10.2015 as per Exh. A-11 (Page 15). No show cause notice was issued to the applicant before he was terminated or his services came to an end and, therefore, principles of natural justice are not followed.

4. The learned counsel for the applicant further submits that the material rules of 2002 framed by the State Government are contrary to the rules framed by the Central Government, i.e. to the provisions of Rule 49 of the Drugs and Cosmetics Rules, 1945. It is stated that even though, the State Government as well as the Central Government has right to make rules, under the Drugs and Cosmetics Rules, 1945, the State cannot make rules contrary to the rules framed by the Central Government. He has also submitted that, Rule 49 of the Drugs and Cosmetics

Rules, 1945 nowhere prescribes the criteria of experience and, therefore, the State rules are contrary to the provisions of Rule 49 of the Drugs and Cosmetics Rules, 1945 and material question that will have to be considered is whether the State is competent to frame rules which are contrary to the Central Rules framed under the Drugs and Cosmetics Rules, 1945 ? In the alternative, it is submitted that the applicant was having requisite qualification and, therefore, his name was recommended properly by MPSC and not only that he was appointed. By virtue of the stay granted by the Hon'ble High Court, which was thereafter continued by this Tribunal, the applicant is serving on the post of Drug Inspector since 17.1.2012 till today and, therefore, his services cannot be brought to an end, all of a sudden without giving him an opportunity.

5. It is material to note that, the applicant in response to the advertisement, has applied for the post of Drug Inspector. The said advertisement clearly mentions the qualifying clause and the said qualifying clause reads as under:-

**Rule 5.** Appointment to the post of Drug Inspector, in the Food and Drugs Administration shall be made :-

by nomination from amongst the candidates who,--

- (a) unless already in the service of Govt. are not more than 35 years of age ;
- (b) a degree in Pharmacy or Pharmaceutical Chemistry or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law;
- (c) possess practical experience gained after acquiring above qualification in the manufacture or testing of drugs or enforcement of the provisions of the Act for a period of not less than three years.

Provided further that, preference may be given to candidates having a post-graduate degree in the subject mentioned in sub-clause ((B) of this rule or research experience in the synthesis and testing of drugs or practical experience in the manufacture of drugs :

Provided further that, the age limit may be relaxed in the case of candidates who possess exceptional qualification or experience or both.”

6. The aforesaid qualification clause, therefore, clearly shows that a person who applies for the post of Drug Inspector must

have the qualification as per clause 5 (b) and must possess the practical experience for not less than three years gained after acquiring the said qualification in a specific faculty. The applicant in the present case is from enforcement faculty and, therefore, it was obligatory upon the applicant to prove that he was possessing practical experience for not less than three years gained after acquiring the qualification and the said experience must be regarding enforcement of the provisions of the Act. Once the applicant has submitted to the procedure of recruitment and once he has participated in the process of recruitment, knowing full well that he must possess requisite experience, all of a sudden, the applicant cannot challenge the rules itself or the advertisement prescribing the particular criteria of experience. The applicant is, therefore, estopped from challenging the criteria of experience mentioned in the advertisement or under the rules framed by the State and, therefore, on this count only, the contention of learned counsel for the applicant that the State cannot frame rules contrary to the rules framed under the Central Act, has no substance. However, this point is also considered on merit.

7. The learned counsel for the applicant has invited our attention to Rule 49 of the Drugs and Cosmetics Rules, 1945 which reads as under:-

**“Rule 49: Qualification 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 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 experience of not less than three years in the inspection of firm manufacturing any of the substances

specified in Schedule C during the tenure of their services as Drug Inspectors,

shall be authorized 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 18<sup>th</sup> day of October 1993.”

8. The learned counsel for the applicant submits that the rules framed by the Central Government nowhere prescribe the qualification as regards experience and whatever experience mentioned in Rule 49 as above has to be considered from the date of appointment of persons as Drug Inspector. In support of his contention, the learned counsel for the applicant has placed reliance on the judgment delivered by the Allahabad High Court in case of **Kuldeep Singh and other V/s State of Uttar Pradesh and another reported in AIR 2014 ALL-200.** In the said case, it has been observed by the Allahabad High Court as under:-



“From a single reading, of Rule 49, it is apparently clear that essential educational prescribed is degree in Pharmacy or Pharmaceutical Sciences of Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. Proviso to said Rules, lays down the requirement of experience of an Inspector for being authorized to inspect the manufacture of the substances mentioned in Schedule C. Schedule C to the Rule, 1945 provides for the list of substances.

I am of the considered opinion that the selection of the candidates who have no experience covered by the proviso as Inspectors will not be rendered illegal as being contended by the learned counsel for the petitioner. Experience provided under proviso to Rule 49 of Rules, 1945 is only for authorizing the appointed Inspector concerned to inspect the manufacture of the substances mentioned in Schedule C. Schedule C consists of biological and special products referred to Rule 23, 61 and 76 and Part X. There are other duties also, which are required to be discharged by the Inspector under the Act and Rules framed thereunder.”

9. In the said judgment in para 6, it has also been observed as under:-

“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 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.”

10. Facts of the said case show that in the advertisement published by Uttar Pradesh State Drug Control Gazetted Department, there was no clause of experience. But subsequently, the Uttar Pradesh Public Service Commission (UPPSC) issued a corrigendum on the directions of the State Government and stipulated that as a part of essential qualification required for the post, at least 18 months' experience was required. In para 26 of the said judgment, the High Court has made it clear that the State was at liberty to amend the legislature or rules, as may be seen from the observations from para 26 as under:-

“Finally, as we have noted earlier, we may clarify that it is always open to the legislature or its delegate to suitably amend a statutory provision, or, as in the present case, subordinate legislation to make the holding of the requisite experience as a condition of eligibility or a qualification for appointment, but, that would have to be by an amendment, of the subordinate legislation.”

11. In the present case, advertisement has been issued as per the provisions of Rules of 2002 as already stated and Rule 5 (c) of the Rules clearly shows that in the Maharashtra State, the rules have been amended, whereby the candidate applying for the post of Drug Inspector must possess practical experience gained after

acquiring qualification of Degree in Pharmacy or Pharmaceutical Chemistry or Medicine with specialization in Clinical Pharmacology or Microbiology and such experience shall not be less than three years. The rules have been framed as per the provisions of Article 309 of the Constitution of India.

12. The learned counsel for the applicant submits that on the subject in the concurrent list, the State can frame rules, but not contrary to the Central Rules. There is nothing on record to show that the qualification prescribing particular experience of not less than particular years is contrary to the rule framed by the Central Government or against the provisions of the Drugs and Cosmetics Rules, 1945. As already stated, being a subject of concurrent list, the State Government has every right to amend the rules of recruitment. The said rules, however, cannot be amended by issuing any corrigendum by MPSC as observed by the Allahabad High Court and the said right to amend the rules by the State cannot be denied.

13. Considering the aforesaid discussion, it will be clear that on the first occasion, the applicant has no *locus standi* to challenge the Rules of 2002 or to challenge the advertisement of recruitment for which the applicant himself participated) and not only

that he was selected and appointed and is still working on the post of Drug Inspector.

14. The learned counsel for the applicant submits that the applicant has requisite qualification and experience. Admittedly, the applicant possesses a Degree in Pharmacy. The said degree is placed on record at page No.21, from which it seems that the applicant has acquired Bachelor of Pharmacy Degree from Amravati University on 2.3.2002. He has also placed on record the experience certificate which is at page No.22 dated 1.1.2008. It seems that the applicant has worked from 20.1.2003 to 20.1.2005 as Pharmaceutical Inspector, from 21.1.2005 to 20.1.2007 as Pharmaceutical Inspector on regular probationary basis and from 21.1.2007 till the date of his appointment as Pharmaceutical Inspector on permanent basis. Nature of his work was other regulatory. Thus, the applicant prima facie has an experience as mentioned in the advertisement and as prescribed under the Rules of 2002. The respondents, however, did not give any opportunity to the applicant to put his case before the competent authority and the competent authority came to the conclusion that he was having no requisite experience. Such conclusions drawn by the respondent authority without hearing the applicant are definitely not legal and proper. The termination order

or the order bringing the applicant's services to an end was issued on 13.10.2015 and the said order was served on 31.10.2015. Admittedly the applicant has worked as Drug Inspector, that too on the recommendation of MPSC from 17.1.2012 till 31.10.2015, i.e. for more than three years and, therefore, in such circumstances, at least a show cause notice should have been issued to the applicant as to why his services shall not be brought to an end on account of so-called disqualification. The impugned order dated 13.10.2015 which was served on the applicant on 31.10.2015 is thus illegal and is required to be quashed and set aside.

15. We have expressed our *prima facie* opinion that the applicant has acquired requisite qualification and experience from the documents placed on record. However, this is our *prima facie* opinion. The respondents will be at liberty to issue a show cause notice to the applicant, if they have any doubt about acquired qualification of the applicant, particularly as regards experience. However, for that purpose; the respondents must give a show cause notice to the applicant and opportunity of hearing before taking any action against the applicant.

16. In view of discussion in foregoing paras, we proceed to pass the following order:-

**ORDER**

- (i) The O.A. is partly allowed in terms of prayer clause 8.1.
- (ii) Applicant's prayer to hold and declare that Rule 50 of the Joint Commissioner (Drugs), Assistant Commissioner (Drugs), Drug Inspector in the Food and Drug Administration Maharashtra State (Recruitment) Rules, 2002 is unconstitutional in view of repugnancy with Rule 49 of the Drugs and Cosmetics Rules, 1945 is, however, rejected.
- (iii) No order as to costs.

(Shree Bhagwan)  
Member (A)

(J.D.Kulkarni)  
Vice-Chairman(J)

**Dt. 13.7.2018.**