

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.835/2016.

(D.B.)

Avinash Sheshrao Jiddewar,
Aged about 42 years,
Occ-Pvt. service,
R/o "Gurusmruti", 2, Gurukripanagari,
Wadgaon, Yavatmal.

Applicant.

-Versus-

The State of Maharashtra,
Through its Secretary,
Department of Medical Education & Drugs,
G.T. Hospital Complex, 9th floor,
Lokmanya Tilak Road,
Mantralaya, Mumbai-2.

Respondents

Shri R.V. Shiralkar , the Ld. counsel for the applicant.
Shri A.M. Ghogre, the Ld. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 13th of July 2018.)

Per:-Vice-Chairman (J)

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

2. In response to the advertisement dated 21.12.2007 for the post of Drug Inspector, the applicant participated in the process of recruitment. Written examination was held on 5.10.2008 and final result was declared on 2nd/3rd of December 2010. However, final list was quashed by this Tribunal at Principal Seat at Mumbai in O.A.No.191/2011. Against the said order, W.P. No. 5216/2011 was filed and on that Writ Petition, order passed by this Tribunal was modified.

3. In the meantime, one Yogendra Hanmantrao Pol filed another petition before this Tribunal vide O.A. No. 394/2014. The said petition was allowed by this Tribunal vide order dated 26.8.2015. The applicant vide letter dated 11.12.2015 was intimated that his name has been recommended for the post by MPSC. However, the applicant did not receive the appointment order. The applicant filed representations on 15.10.2016, 23.10.2016 and 7.11.2016. However, he did not receive the appointment order and, therefore, he was constrained to file this O.A. In the O.A., the applicant claimed the following reliefs :-

“(A) Hold and declare that the action of the respondents in not issuing the appointment order to

the applicant on the post of Drug Inspector from OBC category, is illegal, arbitrary.

(B) Direct the respondents to consider the case of the applicant for the post of Drug Inspector which was reserved for OBC category and to issue him order of appointment to the said post, in the interest of justice.”

4. Subsequently, the applicant amended the O.A. and claimed amended relief which is as under:-

“Hold and declare that condition put by the respondents of having experience in manufacturing and testing of drugs for appointment to the post of Drug Inspector is illegal and arbitrary.”

5. The respondent resisted the claim and admitted the fact that, the applicant’s name was recommended for appointment. According to the respondents, the applicant vide letters dated 10.2.2016 and 16.4.2016, forwarded experience certificate to the MPSC and four Member Scrutiny Committee was set up by the Government and Food and Drugs Administration under the chairmanship of Joint Commissioner (Headquarters) to verify the authenticity of the said experience certificate submitted by the

candidates including the applicant. It was found that the applicant had possessed two experience certificates. One from M/s Pushpak Agro Based Products, Wadgaon (Aml), District Ahmednagar and second from M/s Vaidik Remedies (Factory), Wadi, Nagpur. However, the applicant has intentionally not filed the first certificate issued by M/s Pushpak Agro Based Products, Wadgaon (Aml), District Ahmednagar. The certificates were verified by the Joint Commissioner, Food and Drugs Administration, Nasik and Nagpur. It was found that M/s Pushpak Agro Based Products, Wadgaon (Aml), District Ahmednagar does not hold any valid license issued by the Food and Drugs Administration, Maharashtra State for manufacturing or testing of any allopathic, ayurvedic or Homoeopathic medicine or cosmetics and authenticated signature of M/s Pushpak Agro Based Products, Wadgaon (Aml), District Ahmednagar was not on the certificate. The said certificate submitted by the applicant was not, therefore, valid.

6. According to the respondents, it also came to the knowledge of the respondents from investigation that the certificate submitted by the applicant was bogus or forged and he has misled the MPSC.

7. So far as second certificate is concerned, it was found that the same was issued by M/s Vaidik Remedies (Factory), Wadi, Nagpur, though, this factory holds a valid license for manufacturing Ayurvedic drugs only and, therefore, the applicant cannot be said to have experience in manufacturing other products i.e., other than Ayurvedic drugs and, therefore, the said experience was not valid. According to the respondents, Drug Inspectors are appointed as per the provisions of Section 27 Drugs and Cosmetics Rules and Section 40 and 49 of Drugs and Cosmetics Rules, 1945 and as per that Rules of 1949, experience in manufacturing or testing of drugs under Schedule-C of Drugs and Cosmetics Rules, 1940 is required, which includes Allopathic drugs only. In view of this, the applicant cannot be considered for appointment.

8. By way of amendment, the applicant challenged the clause in the advertisement whereby practical experience of three years in a particular subject / branch from the date of passing of B. Farm. degree is provided. It is stated such rule is against the provisions of Central Drugs and Cosmetics Act and Rule thereunder and, therefore, prayer clause was amended.

9. The learned P.O. invited our attention to the provisions of Rules called “

Joint Commissioner (Drugs), Assistant Commissioner (Drugs), Drug Inspector under the Food and Drug Administration, Maharashtra State (Recruitment) Rules, 2002” (hereinafter referred to as the “Rules of 2002”).

10. 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, as per 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.

11. 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.”

12. 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 his application in response to the advertisement 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.

13. 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 18th day of October 1993."

14. 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.”

15. 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.”

16. 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.”

17. 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.

18. The learned counsel for the applicant submits that subject to the concurrent list, the State can frame rules which are 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 State's right to amend the rules, cannot be denied.

19. Considering the aforesaid discussion, it will be clear that on the first occasion, the applicant has no *locus standi* to challenge the rules fo 2002 or to challenge the advertisement of recruitment for which the applicant himself participated.

20. So far as the case of the applicant as regards his experience is concerned, it is an admitted fact that the applicant has submitted two certificates as regards his experience and out of these two certificates, one was found bogus by the Committee constituted by the respondent authorities. So far as the so-called experience of the applicant from M/s Pushpak Agro Based Products, Wadgaon (Amla), District Ahmednagar and second from M/s Vaidik Remedies (Factory), Wadi, Nagpur is concerned, the said experience is only about manufacturing of Ayurvedic medicine. In para Nos. 16,17,18 and 19, the respondent No.1 has stated as under:-

“16. Insofar as the second certificate submitted by the applicant is issued by M/s Vaidik Remedies (Factory), Wadi, Nagpur. The Joint Commissioner, Food and Drugs Administration, Nagpur vide letter dated 22.6.2016 has informed the respondent that, M/s Vaidik Remedies (Factory), Wadi, Nagpur holds

a valid license for manufacturing of Ayurvedic Drugs only and hence the applicant can be said to have experience in manufacturing of Ayurvedic Drugs only. A copy of the said letter dt. 22.6.2016 issued by the Joint Commissioner, Food and Drugs Administration, Nagpur is filed herewith as Annexure R.3. It is submitted that the said experience is not valid as per the provisions of the Drugs and Cosmetics Act and Rules.

17. Needless to mention here that, all Drug Inspectors appointed in the Food and Drugs Administration are to be appointed as per the provisions of Section 21 of the Drugs and Cosmetics Act, 1940 and Rules, 1949 of the Drugs and Cosmetics Rules, 1945. The basis requirement for appointment u/s 21 of the Drugs and Cosmetics Act is as per the qualification and experience stated in Rule 49 of the Drugs and Cosmetics Rules. The said Rule clearly stipulates that the experience in manufacturing or testing of Drugs under Schedule-C of the Drugs and Cosmetics Act, 1940 is required. The list in the Schedule-C of the Drugs and Cosmetics Act, 1940 includes Allopathic Drugs only.

18. The provisions regarding the qualification of Drugs Inspector in Rule 49 of Drugs and Cosmetics Rules, 1949 are as under:-

Rule 49-Qualification 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 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.

SCHEDULE-C

(Rule 23, 61 and 76 and Part X)**BIOLOGICAL AND SPECIAL PRODUCT**

- (1) Sera
- (2) Solution of serum proteins intended for injection.
- (3) Vaccines for parenteral injections.
- (4) Toxins.
- (5) Antigen.
- (6) Antitoxins.
- (7) Neo-arsphenamine and analogous substnaces used for the specific treatment of infective diseases.
- (8) Insulin.
- (9) Pituitary (Posterior Lobe) Extract.
- (10) Adrenaline and Solutions of Salts and Adrenaline.
- (11) Antibiotics and preparations thereof in a form to be administered parenterally.
- (12) Any other preparation which is meant for parenteral administration as such or after being made up with a solvent or medium or any other sterile product and which-
 - (a) requires to be stored in a refrigerator; or
 - (b) does not require to be stored in a refrigerator.
- (13) Sterilized surgical ligature and Sterilized surgical suture.
- (14) Bacteriophages.
- (15) Ophthalmic preparations.
- (16) Sterile Disposable Devices for single use only.

19. A bare perusal of the aforesaid provisions would reveal that, basic criteria for appointment as an Inspector under the Drugs and Cosmetics Act, 1940 is to possess a valid experience of manufacturing or testing of Allopathic Drugs and not the Ayurvedic Drugs. As Schedule-C contains only Allopathic Drugs.

21. The respondents have also placed on record the report of the Committee appointed for verifying certificates submitted by various candidates appearing for the post of Drug Inspector. The said report is at Annexure R-2 at page Nos. 209 to 224 (both inclusive) and Annexure R-3 at page Nos. 225 to 233. We do not find any reason to interfere in the report submitted by duly constituted Committee, which has verified not only the certificates of the applicant, but also of all candidates who were to be considered for appointment as Drug Inspector.

22. Merely because the applicant has been recommended by the MPSC, that itself will not mean that he is entitled to be appointed. The appointment to the post is always subject to scrutiny of documents including the certificate of experience and if the applicant does not possess requisite experience, the Government was absolutely justified in denying appointment to the applicant. We are, therefore, of the opinion that

the applicant has no case. Hence, we proceed to pass the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

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

Dt. 13.7.2018.

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