
(2014) 08 MAN CK 0003
In the Manipur High Court
Case No : Writ Petition (C) No. 820 of 2013

Amir Singh	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Pharmacy Act, 1948 — Section 10, 31, 32, 33

Citation : (2014) 08 MAN CK 0003

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Rarry M, Advocate for the Appellant; Amarjit Naorem, CGSC, Advocate for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—Heard Mr. Rarry M, learned counsel for the petitioners and also heard Mr. C. Kamal, learned CGSC for the respondents.

2. The present writ petition has been filed by the petitioners who are serving as Havildar/Registered Pharmacists in the Assam Rifles. By this writ petition they have questioned the validity of the new Recruitment Rules for the post of Havildar (Pharmacist) issued by the authorities and notified vide notification dated 21.02.2013, more particularly, with reference to the educational qualifications and pay scale provided under the Recruitment Rules, which according to the petitioners are discriminatory and illegal.

3. Shorn of the detail facts, only the following bare facts are mentioned to decide the issues raised by the petitioners in the present writ petition.

According to the petitioners, there has been a series of litigations between some of the Assam Rifles personnel/petitioners serving as Pharmacists with the authorities regarding the revision of pay as well as the Recruitment Rules. While these issues were pending settlement to the satisfaction of the petitioners, the authorities notified the impugned Recruitment Rules for the post of Havildar

(Pharmacist) in the Assam Rifles, in the Ministry of Home Affairs, vide notification dated 21.02.2013. In the said Recruitment Rules, the educational qualifications required for direct recruitment as Havildar (Pharmacist) have been mentioned as follows:

"(a) Educational Qualifications:

(i) 10th pass from a recognised Board or equivalent;

(ii) Diploma in Pharmacy of two years duration from a recognised University of Institute and having registration with State Pharmacy Council.

.....

....."

Further, in the said Recruitment Rules, the pay scale has been specified as follows.

Petitioners contended that the educational qualification mentioned under clause a (i) of the Recruitment Rules is contrary to the educational qualification for appointment as a pharmacist as prescribed under the rules framed under the Pharmacy Act, 1948 which govern the field as regards the qualification for the post of pharmacist.

4. According to Mr. Rarry, learned counsel for the petitioners, the Pharmacy Council of India, constituted under the Pharmacy Act, 1948, in terms of Section 10 of the said act, prescribed the minimum standard of education required for qualification as pharmacist by framing the Education Regulations which have been approved by the Central Government. As per the said Regulations (Annexure-R/1), the minimum qualification prescribed for admission to Diploma course in Pharmacy has been provided as follows.

"Chapter 2

Diploma in Pharmacy (Part-I and Part-II):

"5. Minimum qualification for admission to Diploma in Pharmacy Part-I course-A pass in any of the following examinations with Physics, Chemistry and Biology or Mathematics.

(1) Intermediate examination in Science;

(2) The first year of the three year degree course in Science,

(3) 10+2 examination (academic stream) in Science:

(4) Pre degree examination;

(5) Any other qualification approved by the Pharmacy Council of India as equivalent to any of the above examination....."

Thus, for being eligible for admission to Diploma course in Pharmacy one must

have completed the 10+2 examination or equivalent course in Science. In other words, if the person had not possessed 10+2 examination or equivalent in Science he cannot qualify for admission to Diploma course for Pharmacy. A fortiori, if a person possesses the Diploma certificate in Pharmacy, he must have passed the 10+2 examination. However, contrary to the aforesaid minimum educational requirement set by the Regulations, the impugned Recruitment Rules for the post of Havildar (Pharmacist) provide that the minimum educational qualification will be 10th pass from a recognised Board or equivalent. According to the learned counsel for the petitioners, laying down of minimum educational qualification of 10th pass from a recognised Board or equivalent falls short of the minimum requirement for appointment as pharmacist, if the pharmacist has to have a diploma course. The impugned Recruitment Rules provide that one must have Diploma in Pharmacy of two years duration from a recognised university for being eligible for appointment as a pharmacist. Therefore, according to the learned counsel for the petitioners, these two provisions cannot go hand in hand inasmuch as if one has to possess Diploma in Pharmacy he must have had completed 10+2 examination before obtaining Diploma in Pharmacy. Therefore, the provision of minimum educational qualification of 10th pass from a recognised Board or equivalent in the Recruitment Rules is not only contrary to the applicable Regulations but also redundant.

Mr. Rarry, learned counsel for the petitioners accordingly, has submitted that the aforesaid provision under the Recruitment Rules stipulating the minimum educational qualification as 10th pass from recognised Board or equivalent is liable to be struck down as inconsistent with the provisions of Education Regulations framed in terms of Section 10 of the Pharmacy Act, 1948 which holds the field on the issue of qualifications.

5. Other contention of the petitioners relates to the pay structure. The Assam Rifles is a para military force which is under the Ministry of Home Affairs, though for operational reasons it may be under the Ministry of Defence. According to the petitioners pursuant to implementation of the "Fast Track Committee Recommendation" by approving the report of the 6th Central Pay Commission, the pay of the entry grade of Pharmacist in the Central Government has been fixed at Rs. 2,800/- in Pay Band-I which has been increased to Rs. 4,200/- in the Pay Band-II for the upgraded post of non functional Pharmacist-II. According to the petitioners the Pharmacists in other para military forces/Central Police Forces under the Ministry of Home Affairs, e.g. the Border Security Force, SSB, CRPF etc, enjoy the said Pay Bands and pay scales after implementation of the recommendation of the Fast Track Committee for the post of pharmacist in CGHS. According to the petitioners, even though there have been several representations from some of the pharmacists serving in the Assam Rifles for revision of pay in tune with the pharmacists serving in other Central Police Forces/Paramilitary Forces, the authorities have not acceded to their request. Mr. Rarry, learned counsel for the petitioners submits that since the petitioners also perform similar duties as pharmacists in other Central Police Forces and rest of

them are enjoying same pay scale in terms of the recommendation of the 6th Central Pay Commission Report, this discrepancy in pay scale who are serving in the same Ministry is quite discriminatory and accordingly has sought for intervention from this Court.

6. The respondent Nos. 1, 5 and 6 have by filing affidavit-in-opposition contested the claims of the petitioners. As regards the Recruitment Rules it has been contended that the new Recruitment Rules for all para medical staff serving in armed forces including Assam Rifles is under consideration with the Additional Director General, Medical, at the Ministry of Home Affairs for approval and on such approval the competent authority will notify and will be implemented.

As regards the pay, it has been stated that the Band and grade pay in the Assam Rifles have been prescribed to maintain relativity in the prevailing rank structure in the organisation and any disturbance in the said pay structure may create anomalies in the hierarchal structure of the Assam Rifles. It has also been contended that the issues regarding up-gradation of post of pharmacist in Assam Rifles had been examined and since it was observed that the technical qualifications in other forces/organisations are higher than that of the Assam Rifles, the up-gradation of pay scale of pharmacist serving in the Assam Rifles on the analogy of other central police forces has not been agreed to by the authorities as per communication dated 5.3.2008 vide Annexure R/5 to the affidavit-in-opposition of the respondents.

Annexure-R/5 reads as follows:

"MINISTRY OF HOME AFFAIRS (PF. IV Desk)

Sub: Regarding up-gradation of post of Pharmacists in Assam Rifles.

The undersigned is directed to refer to Assam Rifles" proposal dated 07.11.2007 on the subject cited above and to say that the proposal has been examined in consultation with IFC and it has been observed that technical qualification in other forces/organizations are higher than that in Assam Rifles. Hence, request of Assam Rifles for up-gradation of pay scale of Pharmacist on the analogy of other CPFs has not been agreed to.

Sd/- Satish Chander, Section Officer.

DG, Assam Rifles, Shillong through LOAR, New Delhi. MHA UO No. 27013/31.12.2004/2007-PF. IV (AR) Dated the, 05th March 2008"

7. Having heard the learned counsel for the parties and also on consideration of the materials on record, this Court is of the view that the submissions made on behalf of the petitioners carry weight and deserves consideration by this Court for appropriate orders.

We have perused the relevant provisions of the Pharmacy Act, 1948, and Educational Regulations 1991 framed by the Pharmacy Council of India relating to the educational qualification required for obtaining Diploma in Pharmacy.

Section 10 of the Pharmacy Act 1948 reads as under.

"10. Education Regulations. (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 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;

(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.....

4.....

5....."

As per the aforesaid provisions of Section 10 of the Act as well as the Educational Regulations as quoted above in preceding paragraph No. 4, it is evidently clear that in order to undertake the course of Diploma in Pharmacist one must have had completed 10+2 examination in Science. As a corollary, anyone who has completed Diploma course in Pharmacy, must have already passed 10+2 examination or its equivalent. Therefore the question of providing lower qualification of 10th pass from recognised Board as mentioned in the impugned Recruitment Rules cannot be sustained as the Recruitment Rules could not have prescribed a lower education qualification than the minimum educational qualification as provided under the Education Regulations, 1991 framed under the Pharmacy Act, 1948 which holds the field. The Recruitment Rules framed by the Assam Rifles authorities must yield to the Regulations framed under a Parliamentary enactment covering the same field.

Therefore, to that extent, the contention of the learned counsel for the petitioners has to be accepted. The stipulation of education qualification as 10th pass from recognised Board or equivalent as provided under the impugned Recruitment Rules is liable to be set aside as repugnant to the provisions of the Regulations and the Act which have the force of law. Till such appropriate amendment is made by the authorities to that effect, the minimum educational qualification in the Recruitment Rules has to be read as 10+2 Examination pass from a recognised Board or equivalent as required under the Regulations and the Act.

8. This leads to the next issue relating to pay. Apparently, the claim of the

pharmacists serving in the Assam Rifles was rejected by the authorities on the ground that the technical qualification of other forces/organisations are higher than that in the Assam Rifles as mentioned in Annexure R/5 to the affidavit in opposition filed by the respondents. The other ground pleaded in the affidavit-in-opposition is that such a revision would disturb the relativity of pay structure in the organisation.

The authorities, perhaps, took this decision by considering the fact that the educational qualification of the Pharmacist in the Border Security Force (BSF), has been prescribed as 10+2 or equivalent, as evident from the advertisement issued by the Director General, BSF (Annexure R/13 to the affidavit in opposition of the respondents.) There is another qualification mentioned in the advertisement for the post of Pharmacist in the BSF, in addition to the requirement of Diploma in Pharmacy, i.e. possession of qualification as required under Sections 31, 32 and registration u/s 33 of the Pharmacy Act, 1948. However, a reading of the said provisions of Sections 31, 32 and 33 of the Act would reveal that these do not provide for any additional educational or technical qualification but merely lay down the requirements for registration on completion of the Diploma course or equivalent qualification on attaining the age of 18 years, payment of the prescribed fees. Section 31 requires that a person who has attained the age of 18 years shall be entitled to have his name entered in the register if he holds degree or diploma in pharmacy or pharmaceutical chemistry or a chemist etc or holds a degree of an Indian University other than a degree of pharmacy, pharmaceutical chemistry and has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners or has passed an examination recognised as adequate by the State Government for commoners or dispensers, or has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners etc.

Section 32 provides the conditions for subsequent registration and does not mention of any additional technical qualifications. Similarly, Section 33 talks of scrutiny of applications for registration.

In other words, the requirements of Sections 31, 32 and 33 of the Act pertain to any person who has obtained Diploma in Pharmacy or equivalent qualification. These provisions do not provide for any additional or higher technical qualification but of equivalent nature. Therefore, merely because of the fact that in the Border Security Force (BSF) a person is required to have passed 10+2 or equivalent and also has to possess qualifications under Sections 31, 32 and 33 of the Act for appointment as pharmacist in the BSF in addition to the possession of the Diploma in Pharmacy does not make the said post requiring higher qualification than what is required for appointment as pharmacist in Assam Rifles. No additional educational qualification or technical experience has been prescribed for appointment as a Pharmacist in the BSF.

Therefore, we are of the view that these do not provide any higher technical qualification as claimed by the respondents. Further, since this Court has already held that the minimum requirement for appointment as pharmacist in the Assam Rifles is to be also 10+2 or equivalent course, it cannot be said any more that the technical qualifications in other force/organisation are higher than that in the Assam Rifles. In that view of the matter, since the qualifications required for appointment as Pharmacist in the Assam Rifles are more or less same as required for appointment in other CPFs, denial of up-gradation of pay as in the scale of pharmacist claimed by the petitioners on the ground that technical qualification other forces are higher than that in Assam Rifles as reflected in their official note dated 5.3.2008 (Annexure-R/5) cannot be sustained.

Apart from the case of Pharmacist in the BSF, (Annexure R/13) about which we have already dealt with, the respondents have not brought to the notice of this Court any other additional qualification required or higher qualification required in respect of other pharmacists serving in other CMPs.

As regards the contention that revision of pay for Pharmacists would disturb the relativity of pay structure in the Assam Rifles, the same has not been demonstrated before us. This contention, in our view, cannot be a ground to deny a legitimate claim, if they are otherwise entitled to as per the recommendation of the Fast Track Committee based on the 6th Central Pay Commission, which had been implemented in respect of other CPFs.

In the result, we hold that the petitioners are equally entitled to be considered for fixation of the pay scale in the post of Pharmacist on the analogy of other CPFs.

9. Accordingly, we allow this writ petition.

Resultantly, the Recruitment Rules for the post of Havildar (Pharmacist) in the Assam Rifles as notified vide notification dated 28.2.2013 (Annexure-A/15) are interfered and set aside to the extent of stipulation of educational qualification only as 10th pass or equivalent, for appointment as Havildar (Pharmacist) in the Assam Rifles, which according to us should be 10+2 Examination pass from a recognised Board or equivalent and accordingly has to be read as such till appropriate amendment is made by the competent authority.

Secondly, coming to the issue of revision of pay, as the respondents have failed to prove that the education qualification required for appointment as Pharmacist in the other central police forces is higher than the Pharmacists in the Assam Rifles, and there is no other valid reasons to deny pay parity, the case of the petitioners for up-gradation of the pay on the analogy of CPFs has to be re-examined by the authorities, which we direct to do so now, which exercise shall be completed within a period of six months from today.