

(2010) 11 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (C) 4769 of 2010

GNCT of Delhi and Others

APPELLANT

Vs

Naresh Kumar

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 14, 226, 227, 309
Pharmacy Act, 1948 — Section 10
University Grants Commission Act, 1956 — Section 26

Citation : (2010) 11 DEL CK 0041

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Jayant Bhushan and Anurag Dubey, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Since common question of law arises for consideration in the two captioned writ petitions the same are being decided together.

2. It may be noted at the outset that learned Counsel concede that the reasoning of the Tribunal and the decisions cited by the Tribunal may be ignored inasmuch as the Tribunal has proceeded on a tangent. Further, counsel concede that issues arising out of The Pharmacy Act, 1948 have not been discussed by the Tribunal and that this Court may do the needful.

3. The Pharmacy Act, 1948 provides for the constitution of a Pharmacy Council of India for the purposes of regulating the subject of pharmacy including its profession. Apart from other functions, a function of The Pharmacy Council is contained in Section 10 of Pharmacy Act, 1948. Relevant portion whereof is being noted herein 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 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;

(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.

4. In exercise of powers conferred upon it by Section 10 of Pharmacy Act, 1948, Pharmacy Council framed Education Regulations 1991 pertaining to the Diploma Course in Pharmacy, relevant portion whereof is being noted herein under:

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.

(Emphasis Supplied)

5. Respondent Sandeep Chikkara in W.P.(C). No. 4809/2010 and respondent Naresh Kumar in W.P.(C) No. 4769/2010 who had studied Physics, Chemistry and Mathematics at Senior School level (10+2 level) participated in the Common Entrance conducted by Board of Technical Education, Department of Training and Technical Education, Government of NCT of Delhi for admission to diploma course in pharmacy in various polytechnic institutes in Delhi in the years 2000 and 2002 respectively. The relevant extract of the information bulletin issued by Department of Training and Technical Education in respect of Common Entrance Test-2000 is being noted herein under:

...4.1 Educational Qualifications

I A candidate passing any one of the following examinations is eligible for admission to the first semester/year Diploma Course in Computer Engineering/

Modern Office Practice or Pharmacy.

Senior School Certificate examination (class XII) of the Central Board of Secondary Education (CBSE), Delhi or any other examination recognized as equivalent to the senior school certificate examination of the CBSE.

10.2 Syllabus for Common Entrance Test

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TEST-2: (For Diploma in Pharmacy)

Physics, Chemistry and Mathematics or Biology as per CBSE syllabus for class XI examination, held in 1999 and CBSE syllabus for Senior School Certificate Examination held in 2000. Candidates have to appear either in Mathematics or in Biology. Physics and chemistry papers are compulsory.

...

The relevant extract of the information bulletin issued by Department of Training and Technical Education in respect of Common Entrance Test-2002 is being noted herein under:

...

4 About The Courses

4.27 Pharmacy (Offered at: MP, SH, AI, GR, SB)

Diploma course in Pharmacy imparts knowledge of manufacturing, synthesis, mode of action, uses and toxic effects of medicine. It deals with study of medicinally important drugs from important sources. A practical training of 500 hrs. in different hospitals and dispensaries is given to students after completion of two years course. Then they are registered as PHARMACIST. The trained diploma holders are absorbed in pharmaceutical companies as marketing personnel or as pharmacists in hospitals, dispensaries health centres and different pharmaceutical organizations.

...

5. Eligibility For Admission

...

5.1 Educational Qualification

Test Programme Qualification Number/Code 3 Computer Passed Senior School Engineering/Pharmacy Certificate Examination (class XII) of the Central Board of Secondary Education (CBSE), Delhi or any other examination recognized as equivalent to the senior school certificate examination of the CBSE with English, Physics, Chemistry and Mathematics (for Computer Engg.) and either Mathematics or Biology (for Pharmacy) with minimum 45% marks

in aggregate of five compulsory subjects with a pass in each of English, Maths/ Biology, Physics and Chemistry separately in Theory and Practical examination, wherever applicable.

6. Respondents Naresh Kumar and Sandeep Chikkara successfully cleared the respective Common Entrance Test and obtained admission in the diploma course for pharmacy in the institutes under Government of NCT of Delhi. On successful completion of the course, Board of Technical Education awarded diploma in pharmacy to respondents Sandeep Chikkara and Naresh Kumar in the years 2002 and 2006 respectively.

7. On 18.10.2004 an Office Order No. F.10(42)/PHC/TRC/ Pharmacist/2004/11203 was issued by Health and Family Welfare Department, Government of NCT of Delhi regarding the recruitment to the post of Pharmacist in medical institutions under the Government of NCT of Delhi, which reads as under:

In exercise of the powers conferred by proviso to Article 309 of the Constitution, read with the Government of India, Ministry of Home Affairs Notification No. F.27/59-(Him) amendment in the Schedule annexed to the Administration Notification No. F.2/15/66-Sec (C) dated 3-8-1967 containing the rules regarding the method of recruitment and educational qualifications necessary for appointment to post of Pharmacist in the Medical Institutions under the Government of NCT of Delhi, namely:

Amendment

In the said schedule, for the existing entries under Column 2 (No. of Posts), Column 4 (Scale of Pay), Column 6 (Age limit for direct recruitment to bring it at par with the instructions on the subject as mentioned in the Government of India's RR) and Column 7 (Educational and other Qualifications required for direct recruits), following shall be substituted namely:

Column 2 770 (2004) Subject to variation depending upon workload. Column 4 Rs. 4500-7000 (due to the implementation of the Recommendations of 5th Pay Commission Report) Column 6 18-30 years (To bring it at par with the instructions on the subject as mentioned in the Government of India's RR) Column 7 (a) B. Pharmacy from a recognized Institute

Or

(i) 10+2 with Science Stream (Physics/Chemistry/Biology) from a recognized Board-Technical Qualification:

(ii) Approved Diploma in Pharmacy from the Institute recognized by the Pharmacy Council in India and registered as Pharmacist under the Pharmacy Act, 1948.

(Emphasis Supplied)

8. At this juncture, it is most significant to note here that prior to issuance of afore-noted Office Order dated 18.10.2004 the diploma-holders who had studied Mathematics in Senior School level (10+2 level) were also eligible to apply for appointment to the post of Pharmacist in the medical institutions under Government of NCT of Delhi.

9. In January 2007 Delhi Subordinate Services Selection Board, Government of NCT of Delhi, issued advertisement No. 9/2007 for appointment to various posts including the post of Pharmacist (Allopathy) under Health and Family Welfare Department, Government of NCT of Delhi. The relevant extract of the said advertisement is being noted herein under:

Pharmacist (Allopathy) Post Code -

180/07

...

Essential Qualifications:

(a) B. Pharmacy from a recognized Institute,

Or

(i) 10+2 with science stream (Physics/Chemistry/Biology) from a recognized Board.

Technical qualification

(ii) Approved Diploma in Pharmacy from the Institute recognized by the Pharmacy Council of India and registered as Pharmacist under the Pharmacy Act, 1948....

(Emphasis Supplied)

10. Aggrieved by the condition prescribed in the afore-noted advertisement that only such diploma-holders who had studied Biology at Senior School level (10+2 level) shall be eligible to apply for appointment to the post of pharmacist, respondent Naresh Kumar filed a petition bearing No. 723/2008 under Articles 226 and 227 of Constitution of India before a Single Judge of this Court seeking quashing of the said condition. Vide interim order dated 28.04.2008 learned Single Judge permitted respondent Naresh Kumar to participate in the process of selection for the post of pharmacist. It was however clarified that the selection of the respondent shall be dependent upon the final outcome of the petition filed by him.

11. Subsequent thereto, respondent Sandeep Chikkara also filed a petition bearing No. 6451/2008 under Articles 226 and 227 of Constitution of India before a Single Judge of this Court seeking quashing of the afore-noted eligibility condition contained in the advertisement No. 9/2007.

12. In view of the fact that the afore-noted eligibility condition impugned by the respondents was based upon the Recruitment Rules for the post of pharmacist in medical institutions under Government of NCT of Delhi amended vide Office Order dated 18.10.2004, respondent Naresh Kumar withdrew petition No. 723/2008 filed by him and filed a fresh petition No. 8181/2008 before a Division Bench of this Court challenging the vires of the said amended Recruitment Rules. In that view of the matter, the petition No. 6451/2008 filed by respondent Sandeep Chikkara was also transferred to the Division Bench for adjudication.

13. While hearing the afore-noted petitions filed by the respondents, Division Bench was of the view that the grievance raised by the respondents pertains to service matters and therefore needs to be raised before Central Administrative Tribunal in the first instance. Vide order dated 18.04.2009 the Division Bench granted permission to the respondents to withdraw the petitions filed by them with liberty to approach the Tribunal.

14. Subsequent thereto, the respondents filed applications u/s 19, Administrative Tribunals Act, 1985 before Principal Bench, Central Administrative Tribunal, New Delhi challenging vires of amended Recruitment Rules to the extent it prescribes that only diploma holders who had studied Biology at senior school level shall be eligible for appointment to the post of pharmacist as also seeking quashing of the similar eligibility condition contained in the advertisement No. 9/2007 on the grounds that: (i) on taking admission in diploma course of pharmacy in the institutes under Government of NCT of Delhi, the respondents had a legitimate expectation that they would be eligible for the appointed to the post of Pharmacist in medical institutions under Government of NCT of Delhi after completion of their course and thus the amendment to the Recruitment Rules insofar it renders the diploma-holders who had Mathematics and not Biology at senior school level, including the respondents, ineligible for appointment to the post of pharmacist is illegal as it is opposed to their legitimate expectation; (ii) the amendment in question in the Recruitment Rules is violative of Article 14 of Constitution of India for the classification made by the amendment between the diploma - holders who had studied Mathematics at senior school level and those who had studied Biology has no rationale as Biology is taught in diploma course of pharmacy and thus it would make no difference whether a diploma-holder studied Biology at senior school level or not and (iii) the amendment in question in the Recruitment Rules is arbitrary and unreasonable for the diploma-holders who had studied Mathematics and not Biology at senior school level are eligible for appointment to the post of Pharmacist in number of medical institutions under Central Government and other State Governments.

15. Relevant would it be to note that no pleadings were urged with respect to the Pharmacy Act 1948 and the question whether at all the Government could prescribe essential qualifications at the Senior Secondary level for Pharmacists contrary to the one's recognized by the Pharmacy Council.

16. Per contra, the stand taken by the Government of NCT of Delhi before the

Tribunal was that the Recruitment Rules have been amended after due deliberation and seeking guidance from the experts; the requirement of having studied Biology at senior school level is necessary in view of nature of duties of Pharmacist and thus prescription of Biology at senior school level has a rational and that the Recruitment Rules have been amended on the pattern of Recruitment Rules prescribed by the Central Government for the post of Pharmacist in Central Government Health Scheme wherein also only the diploma holders who had studied Biology at senior school level could apply for appointment to the post of pharmacist.

17. At this juncture, relevant would it be note that the following stand was taken by Board of Technical Education, Department of Training and Technical Education, Government of NCT of Delhi before the Tribunal:

Pharmacy Diplomats of the Board of Technical Education, trained as per the norms of the Pharmacy Council of India, can work as pharmacists anywhere in India - both in public and private sectors.

18. Vide judgment dated 11.03.2010, the Tribunal has allowed the applications filed by the respondents. It was held by the Tribunal that: (i) the amendment in question by making a distinction between diploma holders who had studied Biology at senior school level and those who had studied Mathematics creates a class within class, which is forbidden by Article 14 of Constitution of India; (ii) the fact that by virtue of amendment in question the diploma holders who had studied Mathematics at senior school level have been rendered ineligible to apply for the post of Pharmacist in medical institutions under government of NCT of Delhi, whereas they are eligible to apply for same post in the medical institutions under the government of other states as evident from the stand taken by Board of Technical Education shows that the aforesaid amendment is arbitrary, unreasonable and discriminatory and (iii) classification made by the amendment between the diploma holders who had studied Mathematics at senior school level and those who had studied Biology has no rationale as Biology is taught in diploma course of pharmacy and thus it would make no difference whether a diploma-holder studied Biology at senior school level or not.

19. Aggrieved by the impugned judgment dated 11.03.2010 passed by the Tribunal, the petitioners have filed the present petition(s) under Articles 226 and 227 of Constitution of India.

20. What is the doctrine of "legitimate expectation"?

21. After a survey of leading decisions on the point, the legal position with respect to legitimate expectation can be summarized as under:

I Mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weightage to it may render the decision arbitrary.

II Legitimate expectation may arise (a) if there is an express promise given by a

public authority; or (b) because of acceptance of a regular practice, a claimant can reasonably expect it to continue; and (c) such expectation may be reasonable.

III For a legitimate expectation to arise, the decision of administrative authority must affect the person by depriving him of some benefit or advantage which he had in the past been permitted, by the decision maker, to enjoy and which he can legitimately expect to be permitted to continue, until some rational grounds for withdrawing it have been communicated to him.

IV If the authority proposes to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter.

V The doctrine of legitimate expectation permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

22. Having noted the general principles pertaining to doctrine of legitimate expectation, let us proceed to note judicial decisions where applicability of said doctrine was examined by the Courts in similar facts situation.

23. In the decision reported as University Grants Commission Vs. Sadhana Chaudhary and Others, in exercise of powers conferred by Section 26(1)(e) of University Grants Commission Act, 1956 University Grants Commission (hereinafter referred to as "UGC") framed University Grants Commission (Qualifications Required of a Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations 1982 (hereinafter referred to as "1982 Regulations"). Under 1982 Regulations the minimum qualifications prescribed for appointment to the post of University lectures were (i) a Doctorate's Degree or Research Work of equally high standard; and (ii) a good academic record with at least second class (C I the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign University. For college lectures the minimum qualifications prescribed were: - (i) an M. Phil. degree or recognized degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work; and (ii) good academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign University. Thereafter UGC framed University Grants Commission (Qualifications Required of a Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations 1991 (hereinafter referred to as "1991 Regulations"). The 1991 Regulations superseded the 1982 Regulations and prescribed the following minimum qualifications for the post of lectures in universities and colleges: (i) Good academic record with at least 55% marks or an equivalent grade at Master's level in the relevant subject from an Indian University or an equivalent degree from a foreign University and (ii) Candidates besides fulfilling the above qualifications should have cleared the eligibility test for lectures conducted by

UGC, CSIR or similar tests accredited by UGC. Vide circular dated 10.02.1993 UGC granted exemption to the candidates who would submit their Ph.D. thesis upto 31st December, 1993 and the candidates who were awarded M. Phil degree upto 31.03.1991 from appearing in the eligibility test. Vide notification dated 21.06.1995 1991 Regulations were amended and a proviso was added to the provision regarding the requirement of clearing the eligibility test for appointment to the post of lecturer to the effect that candidates who would submit Ph.D thesis or passed M. Phil. examination by 31st December 1993. The act of UGC of granting exemption to the candidates from appearing in the eligibility test was challenged in Supreme Court, which challenge was repelled by the Court in the following terms:

22. We may now come to the validity of the exemption from the requirement regarding clearing the eligibility test that has been granted under the Circulars dated 10-2-1993 and 15-6-1995 and the notification dated 21-6-1995. Shri S.B. Sanyal, learned Senior Counsel appearing for the appellants in civil appeal arising out of SLP (C) No. 2/375 of 1995, has submitted that having regard to the report of the National Commission on Teachers II and the report of the Mehrotra Committee, which form the basis for introducing this requirement by the UGC in the 1991 Regulations, there is no rational basis for granting exemption from the eligibility test to candidates who had submitted Ph.D. thesis or passed the M. Phil, examination by 31-12-1993. We find no merit in this contention. Prior to the making of the 1991 Regulations there was no statutory requirement regarding clearing the eligibility test for the purpose or appointment on the post of Lecturer-Such a requirement was introduced for the first time by the 1991 Regulations. At the time when the 1991 Regulations were made the provisions contained in the 1982 Regulations had given rise to a legitimate expectation that a person having a Ph.D. or M. Phil, degree and having good academic record as prescribed under the 1982 Regulations would be eligible for appointment on the post or Lecturer without anything more. While introducing the requirement of clearing the eligibility test in the 1991 Regulations, the UGC did not intend to deprive the persons who had obtained M. Phil. degree or Ph.D. degree prior to the making of the 1991 Regulations of their legitimate expectation in the matter of appointment on the post of Lecturer In universities or colleges. It was also felt that the said requirement in the 1991 Regulations should not operate to the prejudice of persons who, having regard to the qualifications prescribed in the 1982 Regulations, had registered for the Ph.D. degree or had joined study for M. Phil. degree course prior to making of the 1991 Regulations and, therefore, provision was made for granting exemption to such candidates with the condition that they should have passed M. Phil. examination or should have submitted Ph.D. thesis by a particular date.... We are, therefore, unable to hold that the exemption that has been granted by the amendment introduced in the 1991 Regulations by notification dated 21-6-1995 is violative of the right to equality guaranteed under Article 14 of the Constitution.

(Emphasis Supplied)

24. In the decision reported as Dr. M. Sathiyapriya Vs. The Secretary to Government, Health and Family Welfare Department, The Director of Medical Education, The Secretary, Selection Committee and Dr. B. Karthikeyan, the appellants were doctors who were appointed in various Primary Health Centers under Government of Tamil Nadu in the year 2001. The relevant rule prevailing at the time of their appointment was that they can seek admission to the Post Graduate/Diploma in Medicine Course only after completion of their two years service in Government Primary Health Centers. In February 2004 a prospectus was issued by the government for admission to Post Graduate Medicine Course for the academic year 2004-2005 introducing a new Clause 23 providing eligibility criteria for admission to Post Graduate Degree/Diploma in Medicine Courses increasing the two years period of service in Primary Health Center to three year. On being aggrieved over the increase of the service from two years to three years as eligibility criteria for admission to Post Graduate Degree/Diploma in Medicine Courses, the appellants filed writ petitions before a Single Judge of Madras High Court assailing the validity of Clause 23 of the Prospectus, which petitions were dismissed. Aggrieved by the dismissal of their writ petitions, the appellants filed appeals before a Division Bench of Madras High Court. One of the contentions advanced by the appellants was predicated upon the doctrine of legitimate expectation, which contention was accepted by the Court in the following terms:

According to the writ appellants that they joined service in Primary Health Centers only on the assurance through the then service conditions and eligibility criteria prescribing the minimum qualifying service, namely two years to apply for Post Graduate course. The writ appellants have acted upon such promise and applied for the Post Graduate Course on completion of two years. At that stage, curiously, the respondents introduced the impugned Clause 23 for the first time in the Prospectus for the academic year 2004-2005. While they joined the service in Primary Health Centers in the year 2001, they were made to believe by the then existing clause that they were to undergo only two years of service in the Primary Health Centers and they can apply for Post Graduate Course in which 50% of the seats were earmarked for the service candidates.

It is not debated that the then existing rule at the time of appointment giving the said promise stipulating two years period was made only to attract the Doctors to make them join service in Primary Health Centers to serve the rural masses so that they may readily go to join service and then pursue their studies in the Post Graduate Course by joining the same after serving two years. Had they known at the time of appointment in the year 2001 the initial period for service in Primary Health Centers would be increased from two years to three years or more, they would not have joined the service. On the other hand, they would have opted to seek the chance of joining the Post Graduate Course directly through open category. This was not allowed to be done.

...

When there is express promise given by the public authority relating to the compulsory service of two years in the Primary Health Centers assuring that they would be allowed to join Post Graduate Service after completion of two years making the writ appellants to believe that it may happen after completion of two years and when the expectation of their entry into Post Graduate Course is reasonable in the light of the promise given earlier, the sudden introduction of the clause making as three years without any reason and without giving any opportunity to make the representation with reference to their grievance would certainly defeat a person's legitimate expectation.

If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary and unfair or violation of principles of natural justice, the same can be questioned by this Court. The court must lift the veil and see whether the decision is violative of these principles warranting interference. In determining whether there is any unfairness involved, the nature of the right infringed, the underlying purpose of the restriction imposed, the extent of the evil sought to be remedied, the prevailing condition at the relevant time have to be analyzed before the court enters into judicial verdict.

In light of the principles laid down by the Supreme Court, the Court is well within its rights to find out whether the introduction of the new clause under the garb of change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or unreasonable.

In that view of the matter, we are constrained to hold that the introduction of Clause 23 is opposed to legitimate expectation and consequently, this Court has to accept the contention of the writ appellants with reference to the same.

...

25. In the light of the ratio laid down in the afore-noted two judicial decisions, we proceed to examine the present case(s).

26. In case of respondent Sandeep Chikkara, the educational qualification prescribed by Board of Technical Education for admission in diploma courses in Pharmacy conducted by the institutes under government of NCT of Delhi was that the candidate should have passed Senior School Certificate Examination of CBSE or any other examination recognized as equivalent to the Senior School Certificate Examination of CBSE. Relevant would it be to note that no condition of having studied any particular subject at senior school level was prescribed. However, the syllabus for Common Entrance Test conducted in said regard was Physics, Chemistry and Mathematics or Biology syllabus of CBSE for class XI or XII as the case maybe. Whereas it was compulsory for a candidate to appear in Physics and Chemistry papers an option was given to him to choose between Mathematics and Biology papers. Therefore, by implication, the candidates who had studied Physics, Chemistry and Mathematics or Biology at senior school level were eligible for applying for admission in diploma course. Respondent Sandeep Chikkara took admission in the diploma course in the year 2000 and successfully

completed the same in the year 2002. At the time when respondent Sandeep Chikkara took admission in the course and successfully completed the same the relevant Recruitment Rules prescribed that the diploma holders who had studied Physics, Chemistry and Mathematics or Biology at senior school level shall be eligible for appointment to the post of Pharmacist. Since respondent Sandeep Chikkara had taken admission for diploma course in the institutes under government of NCT of Delhi and was eligible for being appointed to the post of Pharmacist in terms of the existing Recruitment Rules he could legitimately expect that he would be eligible for getting appointed to the post of Pharmacist in the medical institutions run by government of NCT of Delhi after successful completion of his course. In that view of the matter, the amendment made by the petitioners in the relevant Recruitment Rules changing the educational qualification required for being eligible to be appointed to the post of Pharmacist and thereby rendering respondent Sandeep Chikkara ineligible for applying to the said post is opposed to legitimate expectation of respondent Sandeep Chikkara and is thus liable to be quashed.

27. In case of respondent Naresh Kumar, the educational qualification prescribed by Board of Technical Education for admission in diploma courses in Pharmacy conducted by the institutes under government of NCT of Delhi was that the candidate should have passed Senior School Certificate Examination of CBSE or any other examination recognized as equivalent to the Senior School Certificate Examination of CBSE and should have studied Physics, Chemistry and Mathematics or Biology at the senior school level. Respondent Naresh Kumar took admission in the diploma course in the year 2004. At the time when respondent Naresh Kumar took admission in the course the relevant Recruitment Rules prescribed that the diploma holders who had studied Physics, Chemistry and Mathematics or Biology at senior school level shall be eligible for appointment to the post of Pharmacist. Since respondent Naresh Kumar had taken admission for diploma course in the institutes under government of NCT of Delhi and was eligible for being appointed to the post of Pharmacist in terms of existing Recruitment Rules he could legitimately expect that he would be eligible for getting appointed to the post of Pharmacist in the medical institutions run by government of NCT of Delhi after successful completion of his course. In fact, in the information bulletin issued by Board of Technical Education in respect of Common Entrance Test pertaining to respondent Naresh Kumar an assurance was given to the candidates that on successful completion of the course they would be eligible to work as pharmacists in hospitals, dispensaries and health centers. Since the assurance was being given by Board of Technical Education, a government department, the candidates could legitimately expect that the said assurance relates to the employment as pharmacists in the medical institutions under the government as well. In that view of the matter, the amendment made by the petitioners in the relevant Recruitment Rules, changing the educational qualification required for being eligible to be appointed to the post of Pharmacist and thereby rendering respondent Naresh Kumar ineligible for applying to the

said post is opposed to legitimate expectation of respondent Naresh Kumar and is thus liable to be quashed.

28. Since there were no pleadings with respect to the Pharmacy Act 1948 and parties did not urge contentions on the issue whether at all the Government can prescribe eligibility conditions at the Senior Secondary level for Pharmacists contrary to the eligibility conditions recognized by a statutory authority constituted under law i.e. the Pharmacy Council, we refrain from rendering any opinion on the vires of the amended recruitment regulation. But observe that on the reasoning of the Tribunal it would not be permissible to hold the same as arbitrary. Thus, leaving the question of vires open, we set aside the decision of the Tribunal that the amended Recruitment Rule is ultra-vires the constitution, but uphold the final direction issued by the Tribunal.

29. As a result of the above discussion, the above-captioned petitions are dismissed.