
(2014) 03 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 21191 of 2011

Jaswinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Punjab State Faculty of Ayurvedic and Unani System of Medicines Act, 1963 — Section 12, 14, 14(4), 15, 15(2)

Citation : (2014) LabIC 1792

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Dinesh Kumar, B.S. Kakar, S.C. Patial, Vikram Sheoran, Ashok Singla, Y.P. Singla, Ms. Pallavi Singh and Akshay Bhan, Advocate for the Appellant; Manoj Bajaj, Addl. A.G., Sandeep Singh, AAG, Puneet Gupta, B.S. Walia, Mrignak Sharma and Dr. Puneet Kaur Sekhon, Advocate for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Present is a bunch of writ petitions i.e. Civil Writ Petition Nos. 20674, 20709, 21060, 22240 of 2011, 23147, 23625, 25480, 25658 of 2012 and 7697 of 2013, where the petitioners are impugning the merit list published by the Subordinate Service Selection Board, Punjab (hereinafter referred to as "the Selection Board") on its website on 2.11.2011 (Annexure P-12) for the post of Up-Vaid on the ground that the candidates who were holding Diploma in Ayurvedic Pharmacy from the Punjab State Board of Technical Education and Industrial Training (for short, "the Technical Board") with three months internship, have not been considered for appointment to the posts on the ground that the diplomas have not been issued by the Punjab State Faculty of Ayurvedic and Unani Systems of Medicine (hereinafter referred to as "the Faculty"). Since common question is involved in all these writ petitions, the same are disposed of through this common judgment.

2. In pursuance of the advertisement No. 2 of 2011, dated 8.7.2011 issued by

the Selection Board, vide which 82 posts of Up-Vaid were advertised by the Directorate of Ayurveda, Punjab, petitioners, being eligible as per the qualifications prescribed therein, applied for the said posts. The merit was to be determined on the basis of percentage of marks obtained in the technical qualification prescribed. Petitioners, being higher in merit, were called for counselling but were surprised to see that their names were not mentioned in the merit list displayed on the website of the Selection Board on 2.11.2011. On enquiry, they came to know that they have not been treated as eligible for appointment to the posts on the ground that they have obtained a Diploma in Ayurvedic Pharmacy, which was issued to them by the Technical Board, which is not recognized by the Faculty. Another ground projected was that the Diploma in Ayurvedic Pharmacy awarded to the petitioners are not the specified qualification for the post of Up-Vaid as per Sr. No. 16, Appendix A, Rule 8 of the Punjab Ayurvedic Department (Class III Technical) Service Rules, 1963 (for short, "the 1963 Service Rules").

3. Petitioners contend that merely because the nomenclature of the diplomas awarded to them is not the same, as has been mentioned in the advertisement, would not render them ineligible for consideration to the post as it is provided therein that candidate possessing equivalent qualification will also be eligible and as the course studied by the petitioners is the same, they could not have been ignored from consideration. Reliance in this regard has been placed upon the letter dated 31.10.2011 issued by the Technical Board to the Chairman of the Selection Board in response to its letter dated 24.10.2011, seeking clarification. Petitioners have also asserted that in pursuance to an advertisement earlier issued by the respondents for appointment on contract basis on the posts of Up-Vaid under the National Rural Health Mission, for which the qualifications prescribed were the same as now for appointment on regular basis, they were selected and appointed and were working as such. The earlier advertisement was also issued by the Director, Ayurveda Punjab. Prayer, thus, is for setting-aside the merit list and redrawing the same by considering the petitioners' eligible for appointment to the posts advertised.

4. In reply, which has been filed by the respondents, it has been stated that the petitioners do not fulfill the eligibility conditions as prescribed under the advertisement and the statutory rules. Diploma in Ayurvedic Pharmacy issued by the Technical Board is not mentioned as a valid one under the 1963 Service Rules as notified on 29.8.1984. The Colleges/Institutions from which the petitioners have persuaded their studies are not affiliated with the Faculty, which is mandatory under the Punjab State Faculty of Ayurvedic and Unani System of Medicine Act, 1963 (for short, "the 1963 Act"). Section 2(e) defines recognized Institutions, which means a teaching Institution recognized by the Faculty of Indian Medicines, Punjab or teaching institute recognized u/s 14(4) of the 1963 Act. Section 12 deals with the powers and functions of the Faculty, which is constituted u/s 3 of the 1963 Act. u/s 12, it is the Faculty, which holds qualifying examinations and other examinations to grant degrees, diplomas and

certificates, to recommend recognition of teaching institutions for the purpose of giving instructions in Ayurvedic or Unani System or to recommend cancellation of their recognition. The College/Institution, from where the petitioners have obtained their Diplomas being not affiliated to the Faculty, dis-entitles them to consideration for appointment to the post as they do not possess the requisite qualifications. u/s 14 of the 1963 Act, a teaching Institute, seeking recognition under this Act has to submit an application, giving full particulars, as required. Under sub-section (3) of Section 14, after a report is received on enquiry, as has been called for by the Secretary of the Faculty, it shall forward the application together with the report to the State Government along with its opinion. Under sub-section (4), it is the Government, which may thereafter grant or refuse recognition or may grant conditional recognition as it deems fit. u/s 15, the Faculty is empowered to hold the qualifying examination for the purpose of granting degree, diploma or certificate in Ayurvedic System or Unani System or such other examinations for that purpose as the Government may by notification direct. u/s 16, except for the Faculty, no person or Institute shall confer, grant or issue or hold out himself or itself as entitled to confer, grant or issue any degree, diploma or certificate. Rule making authority is with the Government and u/s 20, the control of the Faculty is with the State Government and the State Government can take action as it deems fit in case of any misuse, abuse, neglect on the part of the Faculty to exercise any powers conferred on it under the Act. On the basis of these provisions, it has been asserted that the diploma possessed by the petitioners cannot be said to be one which would fulfill the qualifications as prescribed under the statutory rules. Rejection of the candidature of the petitioners is, thus, sought to be justified.

5. Counsel for the petitioners contend that as per the stand of the respondents, the Punjab Government vide order dated 5.4.2000 decided to close the Faculty due to coming into existence of Baba Farid University of Health Sciences, Faridkot. A communication to this effect addressed to the Secretary of the Faculty dated 18.4.2000 by the Director, Research and Medical Education, Punjab, who is ex-officio President of the Faculty, conveyed the said decision of the Government. A notification dated 6.4.2004 was issued by Government of Punjab in the Department of Technical Education and Industrial Training, authorising the Selection Board of Technical Education to be the authority competent to conduct the joint entrance test, 2004. It gives the powers and authority to the Technical Board to recommend and authorise admissions to various diploma level courses to the Institutions, Polytechnics etc. located in the State of Punjab and Union Territory of Chandigarh, which were affiliated to the Technical Board for the Session 2004-05. Names of the Institutions from which the petitioners have persuaded their courses were mentioned as the recognized Institutions. Petitioners, in the light of the Punjab Government notification, applied for the course of diploma in Ayurvedic Pharmacist and were admitted as per the recommendation and authorisation given by the Technical Board. The Institutions from which the petitioners have persuaded their studies were

granted affiliation (in some cases provisional) with the Technical Board. On completion of Courses in the year 2006/07, exams were held by the Technical Board and the diplomas were accordingly issued by the said Board. Therefore, they cannot be denied the benefit of the qualifications possessed by them, which have been imparted to them through a duly affiliated College with a Government organisation/Selection Board. Petitioners, who were students, took due care and caution but keeping in view the fact and believing notification issued by the Government pursued their studies and obtained the diplomas. In any case, at the time when the petitioners had sought admission, the Faculty did not exist as it had been closed down and it had only been revived vide notification dated 26/27.9.2005. Even after revival of the Faculty, admissions, affiliations, holding of exams and issuance of Diplomas continued to be with the Technical Board till a final decision was taken by the Department of Research and Medical Education dated 10.4.2008 that admission from Session 2008-09 for Diploma Pharmacy Up-Vaid (Ayurvedic) course will be under the Secretary of the Faculty. In this letter, it was further requested that the Department of Technical Education, Selection Board/University may stop admissions and a notification to that effect was also issued. The counsel, therefore, on this basis, contend that the petitioners, who have, during this period, taken admissions and even completed the course, cannot be penalized for the circumstances which were created by the acts and omissions on the part of the Government. They bona fide believed the notification of the Government and proceeded to pursue their course and at this stage cannot be deprived of the fruit of their hard work.

6. On the other hand, counsel for the respondents vehemently argued that the only authority under the 1963 Act is the Faculty, who can hold the examination and issue the diplomas. Neither the examinations have been held by the Faculty nor the diplomas have been issued by it. In the light of the provisions of the 1963 Act and the Rules framed thereunder, any diploma issued in violation of Sections 15 and 16 of the 1963 Act, cannot be said to be legal and valid and, thus, would not confer any right/eligibility upon a candidate. The Selection Board has rightly proceeded to reject the candidature of the petitioners. It has further been contended that the notification dated 6.4.2005, on the basis of which the petitioners had sought admissions to the diploma course and the provisional affiliation, which was given to them by the Technical Board, envisaged the requirement of approval of the Registering Authority before the batch admitted to the session passes out from the Institution. No steps were taken by the Institutions for getting such approval of the Registering Authority before passing out of the batch. Therefore, no benefit can be claimed by the petitioners on that score. In any case, it has been contended that the Faculty being the only authority which could hold the examination and issue diplomas, the diplomas obtained or conferred on the petitioners cannot be said to be in accordance with law and, thus, unsustainable, which would not be valid diplomas, entitling them to any benefit. It has further been argued that after the revival of the Faculty vide notification dated 26/27.9.2005, the examinations, whichever were

conducted, even by the Technical Board, cannot be said to be in accordance with law, what to say of diplomas which have been issued to the petitioners by the Technical Board, which could not be said to be having any legal sanctity.

7. Counsel for the private respondents, Mr. Puneet Gupta, has argued that the advertisement required a specific qualification to be possessed by the candidates to be eligible for appointment to the post of Up-Vaid. In the absence of the specified qualification, the petitioners cannot be treated to be eligible for appointment. In support of this contention, he has relied upon a Full Bench decision of this Court in *Som Dutt Vs. The State of Haryana and Another*, . Referring to the provisions of the 1963 Act, counsel has contended that no other Board/Organisation or even University can confer a diploma and the qualification, which is exclusively within the domain of the Faculty as per the 1963 Act. In this regard, reliance has been placed upon the judgment of the Supreme Court in *Medical Council of India Vs. Rama Medical College Hospital and Research Centre, Kanpur and Another*, . Counsel has also referred to the Punjab Ayurvedic and Unani Practitioners Act, 1963 (for short, "the Practitioners Act 1963") to contend that no person, who has been registered under this Act, can practice the Ayurvedic and Unani System and in this regard he refers to Section 15 of the said Act. He contends that when the petitioners cannot be registered under the Practitioners Act 1963, they cannot be treated as eligible for appointment to the posts in question. A further argument has been raised that no equivalence certificate has been produced by the petitioners, which would entitle them to the benefit of a qualification other than, which is specified under the advertisement.

8. Another submission made is that as per the Punjab State Board of Technical Education and Industrial Training Act, 1992 (for short, "the 1992 Act"), u/s 3 of which the Technical Board has been constituted, the said Board cannot affiliate Institutions imparting programmes of Education Research and Training, which would not fall within the definition of "Technical Education" as provided for in Section 2(r) of the 1992 Act nor could it, therefore, grant certificates or diplomas as provided for u/s 17 of the said Act. In view of the above, it is contended that the writ petitions deserve to be dismissed.

9. In response to the arguments raised by counsel for the respondents, petitioners" counsel submit that the definition of technical education u/s 2(r) of the 1992 Act includes "pharmacy" and such other programmes or areas as the Government may, by notification in the official gazette, declare from time to time. A conscious decision was taken by the Government, especially in the light of the fact that the Faculty had been closed to confer the said powers upon the Technical Board, which is apparent from the notification dated 6.4.2004. With this, the power to issue the diploma also stands conferred on the Technical Board. As regards the contention that except for the qualifications as prescribed under the advertisement, the candidate possessing any other qualification cannot be treated to be eligible, he submits that even in the advertisement, the language used is that the candidate should have passed two years diploma

course of Up-Vaid from the Faculty or from any recognized Board/University. Petitioners possess the requisite qualification from the Technical Board. He has referred to the sub-heading 13 in the advertisement "terms and conditions", which states that any dispute relating to equivalence of qualifications shall be referred to High Powered Expert Committee to be constituted by the Selection Board, whose decision would be final. In fact, the Selection Board itself had sought clarification from the Technical Board, which vide its letter dated 31.10.2011 clarified that the syllabus of Ayurvedic Pharmacy taught in Diploma Pharmacy (Ayurveda) is of Up-Vaid. Copy of syllabus was also enclosed. The Selection Board, therefore, should have proceeded to constitute a Committee to decide about the equivalence of the qualifications possessed by the petitioners as per terms and conditions No. 13 of the advertisement. The counsel, therefore, contend that the action of the respondents deserves to be set-aside.

10. Counsel for the Technical Board has stated that the Selection Board has sought information from it vide letter dated 24.10.2011, to which response was sent through communication dated 31.10.2011, clarifying the syllabus of the Ayurvedic Pharmacy taught in Diploma Pharmacy Ayurveda. He further submits that the Technical Board in principle decided to issue Diplomas by specifically mentioning it as Diploma of Pharmacy Ayurveda (Up-Vaid) to all those candidates who have already passed the diploma Pharmacy Ayurveda from the Technical Board. This is being done so that there may not be any ambiguity or confusion between the Diploma of Pharmacy Ayurveda (Up-Vaid) awarded by the Faculty and by the Technical Board. The petitioners have been re-issued the diplomas as Diploma in Ayurvedic Pharmacy (Up-Vaid).

11. I have considered the submissions made by counsel for the parties and have gone through the records of the case.

12. The 1963 Act came into force on 26.1.1964 for establishment of a faculty in order to impart instructions, regulate the conduct of examinations, confer degrees, diplomas and certificates in Ayurveda System and Unani System of Medicine. As per Section 12 of the 1963 Act, the powers and functions of the Faculty were enumerated, which include prescription of course for training, the standard and subject of qualifying examination, holding the examination, grant degrees, diplomas or certificates, to recommend recognition to teaching Institutions for the purpose of giving instructions in Ayurvedic System or Unani System and to recommend cancellation of their recognition, to provide for inspection of Institutions, giving instructions in Ayurvedic and Unani System, apart from others, "the Faculty" is to be constituted by the State Government by notification, which is a body corporate.

13. Section 4 confers power on the State Government to remove the members of the Faculty from office in certain cases. Section 14 provides for the procedure for recognition of the Institutions and the recognized Institutions are defined u/s 2(e) to mean a teaching Institute recognized by the Faculty. u/s 14, the procedure is prescribed for recognition of the Institutions, according to which, an

application to the Secretary has to be submitted by a teaching Institution, seeking recognition and providing for the requisite information. The Secretary of the Faculty shall then place the same before the Faculty, which may direct the Secretary to call for further information or to hold an enquiry to be made by a competent person or persons authorised by the Faculty in this behalf. On receipt of said information, Faculty shall forward the application with its report to the State Government, stating its opinion whether the recognition asked for should or should not be granted. The final decision is for the State Government to take on the said report with regard to refusal or grant or while granting impose certain conditions as it deems fit, which decision shall be final.

14. Section 15 confers upon the Faculty powers to prescribe courses of training and qualifying examination under the bye-laws. The qualifying examination shall be held by the Faculty for the purpose of granting degree, diploma or certificate as the State Government may, by notification, direct. Proviso to it is that the students of recognized Institutions only shall be competent to appear in the examination. u/s 16, penalty is provided for if a person or an Institution other than the Faculty confer, grant or issue or hold itself or himself out as entitled to confer grant or issue any degree, diploma or certificate, as referred to in Section 15(2). Bye-laws can be framed by the Faculty with the previous approval of the State Government for the matters prescribed u/s 17.

15. u/s 18, the State Government may, by notification and after previous publication make rules as to carry out the purposes of this Act. As per Section 19, the Faculty, with previous approval of the Government, can make regulation not inconsistent with the Act and the rules made thereunder for the matters mentioned therein. Section 20 gives the control of the Faculty with the State Government. For the reasons mentioned therein, the State Government may, for the purpose of remedying, neglect, excess or abuse, cause any powers and duties of the Faculty to be exercised and performed by such agency and for such period as the State Government may think fit.

16. From the above provisions of the 1963 Act, it can be concluded that the Faculty, as far as the present cases are concerned, has a major role to play with regard to the Institutions seeking recognition and after recognition, to hold the qualifying examinations and to grant/issue degrees, diplomas or certificates. In fact, it is the only agency, which can, after recognition by the Government, hold examination, confer degrees, diplomas and certificates, when the students of the recognized Institutions clear the examination held by the Faculty. However, Section 20 of the 1963 Act shows that the State Government is the final authority which controls the working of the Faculty and in case of certain circumstances is empowered to take remedial steps, which include handing over the powers and duties of the Faculty to be exercised and performed by such agency and for such period as the State Government may think fit. At this stage, Section 20 requires to be reproduced herein:--

20. Control of State Government.--If at any time it appears to the State

Government that the Faculty has neglected to exercise or has exceeded or abused, any power conferred upon it under this Act or has neglected to perform any duty imposed upon it by this Act, the State Government may, communicate the particulars of such neglect, excess or abuse to the Faculty; and if the Faculty fails to remedy such neglect, excess or abuse, within such time as may be fixed by the State Government in this behalf, the State Government may for the purpose of remedying such neglect, excess or abuse, cause any of the powers and duties of the Faculty to be exercised and performed by such agency and for such period as the State Government may think fit.

17. With coming into force of the 1963 Act on 26.1.1964, Faculty was constituted and was performing its duties and responsibilities under the said Act. However, in the year 2000, when Baba Farid University of Health Sciences came into existence, a decision was taken by the Government of Punjab and communicated its decision dated 5.4.2000 to close down the Faculty as the University had come into existence, which would be carrying out the functions of the Faculty as well. This decision was communicated vide communication dated 18.4.2000 by the Director, Research and Medical Education, Punjab, who is ex-officio President of the Faculty. The Government also decided that the record of the Faculty be handed over to the Registrar, Board of Ayurvedic and Unani System of Punjab. On the dissolution of the Faculty, it appears that Baba Farid University intimated that the diploma courses are not being conducted by the University and it is only the degree courses, which are being conducted. After interdepartmental communication, the stand of the University in this regard was found to be correct by the Government and looking into that situation, decided and authorised the Technical Board to conduct entrance test recommend candidates, affiliate Colleges and institutions, hold examinations and confer diplomas/certificates. Notification dated 6.4.2004 issued by the Government of Punjab indicates the same, conferring the powers and authority in the Department of Technical Education and Industrial Training, authorising the Technical Board to be the competent authority to conduct the Joint Entrance Test, 2004 and to affiliate the Colleges. That would mean conferring the powers and responsibilities of the Faculty on the Technical Board by the State Government in exercise of its powers u/s 20 of the 1963 Act. In pursuance thereto, the Technical Board proceeded to hold the joint Entrance Test and recommended candidates to the Colleges/ Institutes provisionally or permanently affiliated to the Technical Board. Arider was, however, put that the Colleges would obtain approval from the Registering Authority before the first batch admitted to the Session 2004-05 passed from the institution, failing which the affiliation would be withdrawn but this option has admittedly not been exercised by the Technical Board, rather it supports the cause of the petitioners.

18. The students, who had taken admission in the session 2004-05, appeared in the examination conducted in May 2005 for the first year and for the second year in May 2006, conducted by the Technical Board. The course is two years diploma course, followed by three months internship, which the petitioners admittedly

have completed successfully. It is after the exams were held in May 2006 that a decision was taken by the Government of Punjab to revive the Faculty for conducting non-degree examinations in Ayurvedic Stream and in pursuance thereof issued notification dated 26/27.9.2005. A perusal of this notification would show that only a limited power has been conferred upon the Faculty on its revival i.e. of conducting non-degree examinations in Ayurvedic Stream. With this, the Faculty although again came into existence but with limited powers. It is noteworthy here that the power to grant/issue degrees, diplomas and certificates and other powers under the 1963 Act were not conferred on the Faculty. However, the powers and the functions, which were conferred on the Technical Board were never withdrawn. It is also not in dispute that the admissions, examinations, issuance of Diploma/certificate and recognition of the Institutions continued to be both with the Technical Board as well as the Faculty (although as per notification of the Government dated 26/27.9.2005 is limited to holding of exams only) and it appears that these functions and responsibilities were actually being conducted/performed by the Technical Board.

19. It needs to be mentioned here that the Technical Board has been established u/s 3 of the 1992 Act. u/s 2(r) of the said Act, technical education has been defined, which reads as under:--

2. Definitions.--In this Act, unless the context otherwise requires:--

(a) to (q) xx xx xx xx

(r) "technical education", means programmes of education, research and training in engineering, technology, architecture, town-planning, management, pharmacy and applied arts and crafts and such other programmes or areas, as the Government may, by notification in the Official Gazette, declare from time to time.

(Emphasis is mine)

A perusal of the above would show that pharmacy is one of the areas which is specifically mentioned as a technical education and further it is mentioned that such other programmes and areas can also be included as the Government may, by notification in the official gazette, declare from time to time. While taking into consideration the powers of the Government as provided u/s 20 of the 1963 Act, which empowers the State Government to confer any of the powers and duties of the Faculty to be exercised and performed by such agency as it may deem fit, when read in conjunction with, the definition to technical education under the 1992 Act, the Government is empowered to include the qualification in Ayurvedic and Unani Pharmacy within the ambit and scope of the Technical Board. Similar powers and functions have been provided for the Board as have been conferred upon the Faculty under the 1963 Act. The Board can grant/refuse/withdraw affiliation to the Institutions, can hold examinations, publish results, grant certificates etc. under the 1992 Act. If such a power has been conferred by the State Government upon the Technical Board under the statute, the same cannot

be said to be without any authority of law.

20. The students, who had taken admission, pursued their studies, got their diplomas/certificates from the Technical Board with whom the powers have been conferred of the Faculty by the Government in exercise of its authority u/s 20 of the 1963 Act, cannot be said to be a mere piece of paper. Even if there may not be a specified notification under a particular provision mentioned in this regard but the power and source if can be inferred, drawn and traced from any statutory provision (in this case both under the 1963 Act and the 1992 Act), the validity of such action taken, in exercise of such power by the said authority, cannot be said to be without any legal sanctity.

21. It transpires that even after revival of the Faculty, the Technical Board also continued to perform its duties and responsibilities because no final decision in this regard was taken by the Government. Interdepartmental communications, which have been placed on record, indicate that a final decision was taken by the Department of Research and Medical Education and the same was conveyed on 10.4.2008, according to which, it was decided by the said Department that the admission from Session 2008-09 for diploma in Pharmacy Up-Vaid (Ayurvedic Course) will be under the Secretary of the Faculty and a notification to that effect was also issued. Reference can also be made to the letter addressed by the Government of Punjab, Department of Medical Education and Research dated 13.5.2008 to various Institutions with reference to the earlier approval granted by the Technical Board in the year 2003 that the said work has now been entrusted to the Department of Medical Education and Research from 2008-09. It was also mentioned therein that the Institutions shall have to be affiliated with the Faculty from 2008-09 Session. All this clearly indicate that till the decision by the Government in the year 2008, the powers, duties and responsibilities under the 1963 Act were being performed by the Technical Board also. The diplomas/certificates, thus, issued by the Technical Board, during this period, under the 1963 Act cannot be termed as not valid as they have the sanctity of law.

22. Leaving aside the nittigrities of the provisions of the statute, the factual position which emerges is that the Government of Punjab took a decision on 05.04.2000 to close down the Faculty and its duties, responsibilities and functions under the 1963 Act were intended to be carried out by the Baba Farid University of Health Sciences, which had come into existence. Baba Farid University, with reference to the Act under which it was constituted, communicated that it was conducting the degree courses and not the Diploma courses. When this position was analyzed by the Government, a decision appears to have been taken to confer the powers and responsibilities of the Faculty under the 1963 Act upon the Technical Board. In pursuance thereof, the notifications were issued, authorising the Technical Board to be the competent authority to proceed with the holding of the Joint Entrance Test, recommend the candidates and granting provisional or permanent affiliation to the Institutions/Colleges imparting study in the Ayurvedic and Unani System of Medicines. The petitioners,

who were students, in pursuance of these notifications proceeded to take admission and pursue their studies under a bona fide belief that since the Government had issued the notification and thereafter the Diplomas were issued by the Technical Board on the basis of the examinations conducted by it, there cannot be any illegality or irregularity and, thus, cannot be made to suffer or be put to any disadvantage, especially when there was no other authority conferred with the powers, duties and responsibilities of the Faculty under the 1963 Act after its closure in 2000, except the Baba Farid University, on which such powers were intended to be conferred and the Technical Board. After the revival of the Faculty in September 2005 and that too with limited functions to holding of the examinations, there was total void with regard to other functions, responsibilities and duties of the Faculties under the 1963 Act, which obviously was being carried out by the Technical Board, as is apparent on the basis of pleadings of the parties and the communications on record. Even after the revival of the Faculty, the fluid situation continued till the final decision was taken by the Government and conveyed by the Department of Research and Medical Education on 10.04.2008, stating therein that the admission for the Session 2008-09 for the Diploma in Pharmacy Up-Vaid (Ayurvedic Course) will be under the Secretary of the Faculty. The further communication dated 13.5.2008 by the Department of Medical Education and Research to various Institutions depicting the entrustment of the work of approval to the Department of Medical Education and Research and also that the Institutions will have to be affiliated with the Faculty from the Session 2008-09. In the absence of any notification on the record, conferring further powers on the Faculty after its revival vide notification dated 26/27.9.2006 conferring only limited powers on it, if these decisions are given a liberal meaning to conclude that further powers were conferred on the Faculty under the 1963 Act, it would be assumed as prospective and all actions taken by the Technical Board prior thereto cannot be said to be illegal or invalid.

23. Even on equity, all such degrees/diplomas/certificates issued by the Baba Farid University and/or the Technical Board to the students from the year 2000 to 2008 have to be, in the light of the above, held to be in accordance with law and valid for all intents and purposes. Thus, the Diplomas issued to the petitioners are in accordance with law.

24. In view of the above, the arguments raised by the respondents negating the claim of the petitioners for consideration for appointment to the posts of Up-Vaid cannot sustain.

25. The statutory rules, governing the appointment to the post of Up-Vaid, are the 1963 Service Rules. Under the said Rules, definitions are given in Rule 2 and sub-rule (g) defines recognized Institution or University, which reads as follow:--

(2) In these rules unless the context otherwise requires:--

(a) to (f) xx xx xx xx

(g) recognised institution or university means-

- (i) any institution or university incorporated by law in any of the State of India; or
- (ii) in the case of degrees or diplomas obtained as a result of an examination held before the fifteenth August, 1947, the Punjab Sind or Dacca University: or
- (iii) any other institution or university which may be declared to be recognised institution or university for the purposes of these rules by the Government;
- (h) xx xx xx xx xx

26. Rule 6 prescribes the qualification for the post, according to which no person shall be recruited to the service by direct appointment, unless he possesses such qualifications as are shown in Column No. 4 of Appendix A. The post of Up-Vaid is mentioned at Sr. No. 16 and the qualifications prescribed for the said post under the statute are as follow:--

27. A perusal of the above would show that apart from the specified qualifications, equivalent qualifications are also acceptable. The qualifications prescribed in the advertisement are in consonance thereto, which are as follow:--

Technical Qualifications:

Candidates should have passed 2 years Diploma Course of Up-Vaid from Punjab State Faculty of Ayurvedic & Unani System of Medicine.

Or

From any recognized Board/University and have completed three months internship.

28. The advertisement, therefore, not only provides for a candidate with diploma course of Up-Vaid from the Faculty to be eligible for appointment to the post but a candidate who has got the qualification from any recognized Board/University and had completed three months internship is also eligible.

29. The advertisement, which has been issued by the Selection Board, is in consonance with the statutory qualifications prescribed under the 1963 Service Rules. The qualifications prescribed therein clearly indicate that the Department, which had sent its requisition, was aware and conscious of the fact that the diplomas have been and are being issued by the Technical Board and, therefore, apart from providing the diploma course of Up-Vaid from the Faculty in the advertisement also mentioned "or any recognized Board/University". The Technical Board, as has been held above, has been conferred with the power to issue diplomas, which had weighed in the mind of the Government while issuing the advertisement. The advertisement, in Clause (ii) at Sr. No. 13 under the sub-heading "terms and conditions" further stated that any dispute relating to equivalence of qualifications shall be referred to the High Powered Expert Committee to be constituted by the Selection Board. Had there been any confusion with regard to equivalence of the diploma possessed by the petitioners, the Selection Board should have resorted to the said clause referred to above, for

resolving the issue. The Selection Board had sought information from the Technical Board vide its communication dated 24-10-2011, which was replied to by the Technical Board, giving therein the syllabus, which was being taught in diploma Pharmacy Ayurveda course, on passing of which the diploma was being conferred upon the students. The candidature of the students on this ground also could not have been rejected by the Selection Board without completing the exercise, which has been initiated by it.

30. The contention of counsel for the respondents, while relying upon the Full Bench judgment of this Court in *Som Dutt Vs. The State of Haryana and Another*, that the qualifications for the posts prescribed by the statutory rules or by the employer and expressly advertised for inviting applications can be insisted upon for literal adherence, cannot be disputed on principle. However, in the advertisement itself as also under the statutory Rules, there is a provision for alternative qualifications, which are recognized by the Government. Merely because a diploma course of Up-Vaid issued by the Faculty has been mentioned separately as the one to be valid, cannot merely because the nomenclature of diplomas issued to the petitioners is different, be ignored, especially when in the advertisement itself equivalence of the qualifications is contemplated, which is obtained from any recognised Board/University and in case of dispute/doubt on the question of equivalence, a mechanism for resolution thereof is also provided therein.

31. It may be mentioned here that the Technical Board has to remove any ambiguity or confusion between the Diploma of Pharmacy Ayurveda (Up-Vaid) awarded by the Faculty and the Diploma in Ayurvedic Pharmacy awarded by the Technical Board has re-issued the diplomas to the students who cleared the examinations held by the Technical Board as Diploma in Ayurvedic Pharmacy (Up-Vaid), thus, removing this doubt on the nomenclature of the diploma.

32. The judgment in the case of *Medical Council of India Vs. Rama Medical College Hospital and Research Centre, Kanpur and Another*, would also not be applicable to the case in hand in the light of the conclusions drawn by this Court while referring to the powers exercised by the Government of Punjab u/s 20 of the 1963 Act and the provisions of the 1992 Act under which the Technical Board stands constituted. In view of the above, the present writ petitions are allowed. Direction is issued to the respondent-Selection Board to consider the candidature of the petitioners for appointment to the posts of Up-Vaid and proceed to prepare the merit list afresh as per the criteria laid down and publish the result within a period of two weeks from the date of receipt of copy of this order. Consequential action in accordance with law be taken by the respondents within a further period of one month.