

(2011) 02 AHC CK 0244

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 46079 of 2010 and Special Appeal No. 593 of 2010

Kuldeep Singh and Others

APPELLANT

Vs

State of U.P. and Another
Vinod Kumar Gupta Vs State
of U.P. and Others

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 21, 22

Drugs and Cosmetics Rules, 1945 — Rule 49, 49A, 51, 52

Uttar Pradesh State Drug Control Gazetted Officers Service Rules, 1995 — Rule 5(4)

Citation : (2011) 02 AHC CK 0244

Hon'ble Judges : Sunil Ambwani, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri Manu Khare, Shri Gopal Misra, Shri A.P. Srivastava and Shri N.K. Pandey for the petitioners and Appellant. Shri J.K. Tiwari, learned Standing Counsel appears for the State.

2. In all the three writ petitions the petitioners have prayed for quashing the corrigendum dated 9.7.2010 published on 11.7.2010 in the newspaper "Dainik Jagran". They have also prayed for writ of mandamus directing the Respondents not to reject their application form.

3. All the petitioners in the three writ petitions claimed to be qualified as per the Advertisement No. 4 of 2009-10 for selection on the post of Drug Inspectors under the U.P. State Drug Control Gazetted Officers Service Rules, 1995. The advertisement prescribed essential qualifications; Degree in Pharmacy or Pharmaceutical Science or Medicine with specialisation in Clinical Pharmacology or Microbiology from a University established in India by law. By the impugned corrigendum, the Commission on the directions of the State Government has included 18 months" experience in testing of atleast one of the substances in

Schedule-C and 3 years experience in the inspection of firms manufacturing any of the substances specified in Schedule-C in the licensed firms engaged in the manufacture of drugs, as essential qualification for the post.

4. Learned Standing Counsel was required to seek instructions in the matter. He informs the Court that earlier Writ Petition No. 8978 of 2010, Vinod Kumar Gupta v. State of U.P. and Ors. (was decided on 22.2.2010 holding that experience is only for the purposes of inspection and not essential qualification. Special Appeal No. 593 of 2010 against the judgment is pending. Learned Standing Counsel informed that at Lucknow Writ Petition No. 5606 (SS) of 2010, Zunab Ali and Ors. (Vs. State of U.P. and Ors. (was allowed following the judgment in Vinod Kumar Gupta's case on 27.8.2010. Special Appeal No. 804 of 2010 was filed by the State of U.P. and was dismissed on 29.11.2010 on following reasoning:

Thus, for being eligible for being considered for appointment as Drug Inspector, neither the State Government can require any additional essential qualification to be prescribed for the purpose nor any such advertisement can be issued nor the Commission would be at liberty to issue any advertisement prescribing the essential qualification, which are not in conformity with the aforesaid rules. If any such advertisement is issued or has been issued, which is contrary or so to say not in accordance with the aforesaid rules, the same is necessarily to be corrected and for that purpose, corrigendum has to be issued.

A bare reading of the aforesaid rules shows that the essential qualification for appointment on the post of Drug Inspector is of having a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. This is the essential qualification for being appointed on the post of Inspector.

The proviso attached to the aforesaid Rule is only the prescription of experience of 18 months to the Inspectors already appointed for being entrusted the job of inspection.

The proviso does not lay down any essential qualification for being appointed as Inspector, but only speaks about the period of experience, when such an Inspector may be authorized for inspection.

Unless a person is appointed as Inspector, as envisaged in Clause (i), there would be no occasion for him to entrust the work of inspection and for making such authorization, 18 months' experience is necessary.

In case the government wanted to introduce some period of experience for appointment on the post of Inspector, it could be done only by making or amending the rules, as may be permissible under law.

The U.P. Public Service Commission since had incorrectly issued the advertisement laying down sub- Clause (ii) of Rule 49 as an essential qualification for recruitment to the post of Inspector, which was governed by Sub-rule (i), it has clarified the aforesaid position by issuing the corrigendum for

correcting the mistake committed by it, there cannot be any exception nor it can be said that the Commission lacked competence.

We thus, do not find any ground to interfere with the orders passed by the learned Single Judge. The special appeal is dismissed.

5. It is submitted by learned Counsel for the petitioner that the question is covered by the decision of single judge and thereafter Division Bench of this Court in Special Appeal No. 804 of 2010, and thus the corrigendum issued by the Commission is liable to be quashed.

6. Prima facie we find that once the question is covered by the Division Bench judgment of this Court, the petitioners are entitled to provisional permission to appear in the interviews and we accordingly so direct.

7. The Commission will allow those petitioners, who have essential qualifications namely degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialisation in Clinical Pharmacology or Microbiology from a University established in India by law to appear provisionally in the selections. Their result, however, shall not be declared until further orders of the Court.

8. We have summoned the record of the Special Appeal No. 593 of 2010 challenging the judgment dated 27.8.2010 in Vinod Kumar Gupta's case.

9. After hearing the parties and examining the provisions of Section 21 and 22 of the Drugs and Cosmetics Act, 1940 and Rules 49, 49A, 51 and 52 of the Drugs and Cosmetics Rules, 1945, we are of the opinion that the judgment delivered by the Lucknow Bench of this Court in Special Appeal No. 804 of 2010 in the matter of qualifications of the Drug Inspectors require consideration.

10. The services of the Drug Inspectors are regulated by the U.P. State Drug Control Gazetted Officers Service Rules, 1995. The academic qualifications of the Drug Inspectors to be appointed by direct recruitment through the Commission under Rule 5 (4) are provided in Rule 8, are the same as prescribed under Rules made by the Central Government in accordance with the provisions contained in Section 21 of the Drugs and Cosmetics Act, 1940. Rule 49, 51 and 52 of the Drugs and Cosmetics Rules, 1945 are quoted as below:

49. Qualifications of Inspectors- A person who is appointed an Inspector under the Act shall be a person who has a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialisation in Clinical Pharmacology or Microbiology from a University established in India by law:

Provided that only those Inspectors:

(i) who have not less than 18 months" experience in the manufacture of at least one of the substances specified in Schedule C; or

(ii) who have not less than 18 months" experience in testing of at least one of the substances in Schedule C in a Laboratory approved for this purpose by the

licensing authority; or

(iii) who have gained experience of not less than three years in the inspection of firms manufacturing any of the substances specified in Schedule C during the tenure of their services as Drugs Inspectors:

shall be authorised to inspect the manufacture of the substances mentioned in Schedule C;

Provided further that the requirement as to the academic qualification shall not apply to persons appointed as Inspectors on or before the 18th day of October, 1993.

51. Duties of Inspectors of premises licensed for sale.- Subject to the instructions of the controlling authority, it shall be the duty of an Inspector authorized to inspect premises licensed for the sale of drugs-

(1) to inspect not less than (once) a year all establishments licensed for the sale of drugs within the area assigned to him;

(2) to satisfy himself that the conditions of the licences are being observed;

(3) to procure and send for test or analysis, if necessary, imported packages which he has reason to suspect contain drugs being sold or stocked or exhibited for sale in contravention of the provisions of the Act or Rules thereunder;

(4) to investigate any complaint in writing which may be made to him;

(5) to institute prosecutions in respect of breaches of the Act and Rules thereunder;

(6) to maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such record to the controlling authority;

(7) to make such enquiries and inspections as may be necessary to detect the sale of drugs in contravention of the Act;

(8) when so authorized by the State Government, to detain imported packages which he has reason to suspect contain drugs, the import of which is prohibited.

52. Duties of Inspectors specially authorised to inspect the manufacture of drugs 1 (or cosmetics)-Subject to the instructions of the controlling authority it shall be the duty of an Inspector authorized to inspect the manufacture of drugs (or cosmetics)-

(1) to inspect not less than (once) a year, all premises licensed for manufacture of drugs within the area allotted to him and to satisfy himself that the conditions of the licence and provisions of the Act and Rules, thereunder are being observed;

(2) in the case of establishments licensed to manufacture products specified in Schedules C and C(1) to inspect the plant and the process of manufacture, the

means employed for standardizing and testing the drug (or cosmetics), the methods and place of storage, the technical qualifications of the staff employed and all details of location, construction and administration of the establishment likely to affect the potency or purity of the product;

(3) to send forthwith to the controlling authority after each inspection a detailed report indicating the conditions of the licence and provisions of the Act and Rules thereunder which are being observed and the conditions and provisions, if any, which are not being observed;

(4) to take samples of the drugs (or cosmetics) manufactured on the premises and send them for test or analysis in accordance with these Rules;

(5) to institute prosecutions in respect of breaches of the Act and Rules thereunder.

11. Rule 49 is in two parts. The first part deals with the qualifications. The second part restricts authorisation of the inspectors to inspect the manufacture of substances mentioned in Schedule-C unless they have 18 months experience in the method of atleast one of the substances specified in Schedule-C in proviso (i); 18 months experience in testing of atleast one of the substance in Schedule C in a laboratory approved for this purpose by the licensing authority in proviso (ii) and those who have gained experience of not less than 3 years in the inspection of firms manufacturing any of the substances specified in Schedule-C during the tenure of their services as Drug Inspectors.

12. The duties of the Drug Inspectors are given in Rule 51 and 52, whereas Rule 51 provides for duties of inspection of premise licensed for the same, Rule 52 provides for duties of Inspectors specially authorised to inspect the manufacture of drugs or cosmetics.

13. There is only one cadre of Drug Inspectors, which is required to do duties u/s 51 and 52. In case we read the qualification to include only first part of Rule 49, the Drug Inspectors directly appointed will not be authorised to carry out duties under Rule 52 of the Rules. In that event there may be a situation, where Drug Inspectors will not be able to inspect the manufacture of drugs and cosmetics and that any inspection carried out, by Drug Inspectors having no experience of testing any of the substances in Schedule-C or manufacture, the inspection report may become illegal and inadmissible in evidence for prosecution.

14. The Standing Counsel informs that 72 posts of Drug Inspectors were sanctioned by Government Order dated 17.4.2009 a total number of 100 posts were sanctioned out of which 64 are serving. 11 Drug Inspectors serving in the department do not have experience as provided in the Proviso to Rule 49. There are at present 525 licensed drug manufacturing units in the State and many applications for licenses are pending.

15. In *Raj Kishan Vs. State*, Hon''ble M.C. Desai, J. pointed out the anomaly and acquitted the applicant Raj Kishan on the ground that the Drug Inspectors did

not have requisite experience as provided in Rule 49 for carrying out inspection.

16. The Drugs and Cosmetics Act, 1940 is a Central Act and can be amended only by the Central Government. In order to harmonise the object and purpose for qualification of the Inspectors, the experience in the proviso to Rule 49 has to be laid as essential qualifications for the Drug Inspectors. They are required to carry out itself both under Rule 51 and 52 of the Rules and thus the prescription of qualifications in First Part of Rule 49 alone will not be sufficient.

17. It is difficult to accept the reasoning given by the Division Bench in Zunab Ali's case. The Bench proceeded to accept the argument that unless a person is appointed as Inspector, there would be no occasion for him to be entrusted with the work of inspection and for making such authorisation 18 months experience is necessary. The Bench did not consider that the experience of 18 months in case of proviso (i) and (ii) and 3 years in Proviso (iii) cannot be gained after the Inspectors are appointed. There is nothing in their Service Rules for giving them any training in the drug testing or manufacturing facility.

18. We do not find that there is any need to amend the Rules as the experience prescribed in Rule 49, which lays down qualifications of Inspectors, to be read as the qualifications of Inspectors. Restriction that the Inspectors without experience cannot inspect the manufacture of substance has to be understood in the contest of the qualifications of Inspectors and not something which is outside the essential qualifications and may be provided by amending the Rules.

19. We, therefore, respectfully disagreeing with the view taken by the Division Bench in Special Appeal No. 804 of 2010, State of U.P. v. Zunab Ali and Ors., refer the following questions to be decided by Larger Bench.

(1) Whether the experience required in the Provisos to Rule 49 is only a bar of authorisation to inspect the manufacture of substances, or is essential qualifications to be possessed by the Drug Inspectors as prescribed under Rule 49 for direct appointment as Drug Inspectors under Rule 5(4) of the U.P. State Drug Control Gazetted Officer Service Rules, 1995?;

(2) Whether Division Bench judgment in State of U.P. v. Zunab Ali and Ors. Special Appeal No. 804 of 2010 has been correctly decided?

20. Let the papers be laid before Hon'ble the Chief Justice to constitute a Larger Bench to decide the questions framed as above.

21. A copy of the order be given to learned Counsel for the parties today.