

(2012) 04 GAU CK 0052

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 94of 2011

Lorind Lalthannguri & Ors.

APPELLANT

Vs

State of Mizoram & Ors.

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : (2012) 4 GLT 362

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioners: Mr. C. Laramzauva, Sr. Advocate , Mr. T. J. Lalnuntluanga??Advocates appeared for the Respondents: Mr. A. K. Rokhum, Addl. AG, Mr. N. Sailo , Mrs. Dinar T. Azyu, Advocates appearing for Parties

Judgement

Ujjal Bhuyan, J.—This writ petition raises an interesting question of some importance. The question is as to whether a candidate having the degree of Bachelor of Pharmacy i.e. B. Pharma, which is a higher qualification, is not eligible to compete for the post of Pharmacist, for which the qualification prescribed is a Diploma in Pharmacy (D. Pharma). The State respondents think that such a candidate is not eligible. Hence the writ petition.

2. The facts of the case may be briefly noted.

3. The petitioners, who are 16 in number, have obtained the degree of Bachelor of Pharmacy (B. Pharma), which is a course of 4(four) years duration, from recognized institutions. Thereafter, they got themselves registered under the Mizoram State Pharmacy Council constituted under the Pharmacy Act, 1948. Therefore, they are registered pharmacists.

4. The Govt. of Mizoram in the Health and Family Welfare Department issued advertisement on 09.09.2011 inviting applications for filling up 15 vacant posts of Pharmacist under the said Department. The qualification prescribed is, amongst others, two years course Diploma in Pharmacy from a recognised

institution. The petitioners applied for the said posts. But the State respondents put up a list of applications which were rejected. The names of the petitioners figure in the said list. The reason given for rejection of the applications is non production of 2 years course Diploma Certificate. The Mizoram State Pharmacy Council moved the Government by way of a representation with the request that the degree holders should also be permitted to appear in the selection for the post of Pharmacist. As the same did not elicit any response, the petitioners moved this Court by filing the present writ petition.

5. This Court by order dated 31.10.2011 while issuing notice, directed the respondents as an interim measure to allow the petitioners to appear in the written test but not to publish the result of the written test without the leave of this Court.

6. The State respondents have filed their counter affidavit. They have averred that under the relevant recruitment rules, the prescribed qualification for the post of Pharmacist is a Diploma in Pharmacy, which is also reflected in the advertisement. Since the petitioners do not possess the prescribed qualification, their applications were rightly rejected.

7. A batch of diploma holders on being permitted by this Court have entered appearance as interveners in the present proceeding. They have also filed their counter affidavit wherein they have supported the contention of the State respondents, They have stated that the minimum qualification prescribed for the post of Pharmacist is Diploma in Pharmacy and a candidate to be eligible for appointment to the said post must have the said minimum qualification even if he possesses a higher qualification.

8. The petitioners in their separate rejoinder affidavits have reiterated the contentions made in the writ petition. In addition they have asserted that since they are holding the degree of Bachelor in Pharmacy which is a higher qualification for the post of Pharmacist than the minimum qualification prescribed, they are entitled to be considered for appointment to the post of Pharmacist. Referring to the duties and responsibilities of Pharmacist under the Pharmacy Practice Regulations, 2010, the petitioners have contended that the degree holders are better qualified than the diploma holders for appointment to the post of Pharmacist.

9. I have heard Mr. C. Lalramzauva, learned Sr. advocate appearing for the petitioners. Also heard Mr. A. K. Rokhum, learned Addl. Advocate General, Mizoram for the State respondents as well as Mr. N. Sailo, learned Sr. Advocate for the interveners.

10. Learned counsel for the petitioners submits that the decision of the State respondents to disqualify the petitioners from competing for the post of Pharmacist is palpably wrong inasmuch as the petitioners are degree holders, which is a higher qualification than the minimum prescribed qualification of Diploma in Pharmacy. According to the learned counsel, allowing the petitioners

to compete would be in the public interest as the authorities would have a larger pool of candidates to make the selection. He also submits that when the petitioners are registered as Pharmacist by the State Pharmacy Council, depriving them from competing for the post of Pharmacist is without any justification. He further submits that under the National Rural Health Mission, which though is a Central Government scheme but operates under the State Health Department, a number of degree holders have been appointed as Pharmacist. Therefore, there is no justification to close the door on the petitioners for the selection in question, contends Mr. Lalramzauva. In support of his submissions, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the Case of State of Haryana & Anr. Vs. Abdul Gaff or Khan & Anr.; reported in (2006) 11 SCC 153. He finally submits that as this Court has permitted the petitioners to appear in the written test in which they had appeared, in the interest of justice, their cases should now be considered for appointment to the post of Pharmacist.

11. Resisting the submissions made on behalf of the petitioners, the learned Addl. Advocate General submits that the petitioners may have a higher qualification but they do not possess the minimum qualification prescribed and, therefore, they are not eligible for the post of Pharmacist. The said stand taken by the State respondents is supported by Mr. N. Sailo, learned Sr. counsel for the interveners. In addition, he submits that allowing the petitioners to compete would result in a situation where the principle of level playing field would be vitiated. He submits that the post of Pharmacist is the only post where the diploma holders are eligible to apply whereas for the higher post of Drug Inspector, the qualification prescribed is Degree in Pharmacy.

12. The rival submissions made at the bar have been duly considered.

13. At the out set, the provisions of the relevant recruitment rules may be noted. For recruitment to the post of Pharmacist under the Health and Family Welfare Department, Govt. of Mizoram, the State of Mizoram has framed a set of rules called the Mizoram Health and Family Welfare Department (Group "C" Posts) Recruitment Rules, 2000. The qualifications prescribed for the post of Pharmacist under the aforesaid rules are as under:

- "(1) 10 + 2 with Science or equivalent from recognised Institution.
- (2) 2 years course Diploma in Pharmacy from recognised Institution.
- (3) Registered Pharmacist under Mizoram Pharmacy Council.
- (4) Working knowledge of Mizo language upto Middle School Standard."

14. No doubt, in the popular parlance, a degree is considered to be a higher qualification than a diploma. But in the context of the present case, would it mean that having the Degree of Pharmacy would impliedly mean having a diploma in the same subject. To understand the situation, let us take a hypothetical example. To be a post graduate, one must be a graduate. In other

words, without being a graduate one cannot be a post graduate. Therefore, in a case where the minimum prescribed qualification for a post is graduation, a post graduate degree holder, which is undoubtedly a higher qualification, would be eligible to apply inasmuch as he also possess the minimum prescribed qualification of graduation. But in the present case, can one say that to obtain a Degree in Pharmacy i.e. B. Pharma, one must possess a Diploma in Pharmacy i.e. D. Pharma. I am afraid nothing has been placed on record to indicate such a possibility. On the contrary, learned counsel for the petitioners fairly submits that there is no requirement of possessing a Diploma to obtain a Degree in Pharmacy. A Degree in Pharmacy may be a higher qualification but in the absence of the minimum prescribed qualification, i.e. Diploma in Pharmacy, the petitioners cannot be said to possess the requisite qualification. The matter would have been altogether different had the petitioners also been diploma holders in addition to having Degree in Pharmacy. The authorities have prescribed the qualification which is as per the relevant recruitment rules and they cannot go beyond what is prescribed under the relevant rules.

15. The case relied upon by the learned counsel for the petitioners i.e. State of Haryana (supra) stands on a different factual position. In that case, the respondents were denied appointment in the post of Unani Dispenser on the ground that they were not possessing Diploma in Unani Dispenser though they possessed the degree qualification i.e. Bachelor of Unani Dispenser and Surgery. The High Court had allowed the writ petitions of the respondents by directing the State to offer appointment to the respondents. Aggrieved by the said order, the State of Haryana appealed before the Apex Court. The Hon''ble Supreme Court on a scrutiny of the relevant recruitment rules found that they do not expressly exclude the Degree in Unani Dispenser and Surgery for the post of Unani Dispenser. Their lordships'' also found that the advertisement issued did not anywhere stipulate the diploma as the required qualification. In such situation, the Hon''ble Supreme Court dismissed the appeal of the State and affirmed the order passed by the High Court.

16. In the present case, the recruitment rules clearly prescribe the minimum qualification for the post of Pharmacist, which is a two years diploma course in pharmacy from a recognised institution, which the petitioners do not possess. There is nothing on record to show or indicate that the Degree of Bachelor of Pharmacy (B. Pharma) includes within it the Diploma in Pharmacy like post graduation includes within it graduation.

17. A Full Bench of the Hon''ble Karnataka High Court was confronted with a similar question in the case of the Karnataka Public Service Commission by its Chairman, Bangalore & Ors. Vs. N. C Hugar; reported in 1981 (I) SLR 469. One of the question which arose for consideration before the Full Bench was, if a candidate possesses a higher educational qualification than the minimum educational qualification prescribed for a post is he eligible for being appointed to that post. The Full Bench of the Hon''ble Karnataka High Court decided by

majority that eligibility for being appointed depends on the question whether the candidate possesses the minimum qualification prescribed for the post. If in addition to the minimum qualification prescribed for the post the candidate possesses any further qualification, he will not be ineligible for the post.

18. I am in full agreement with the view expressed by the Hon'ble Karnakata High Court. If the petitioners have the minimum qualification of Diploma in Pharmacy and in addition have the degree of Bachelor of Pharmacy, they would certainly be eligible for the post of Pharmacist. But in the absence of the basic minimum qualification, they cannot be held to be qualified for the post of Pharmacist. Therefore, the respondents were justified in rejecting their applications. The fact that certain degree holders have been appointed as Pharmacist under the National Rural Health Mission would not alter the situation as the present recruitment would be governed by the terms of the advertisement which is based on the relevant recruitment rules.

19. For all the aforesaid reasons, I find no merit in the writ petition and the same is accordingly dismissed. Though the petitioners were allowed to appear in the written test by this Court, in view of the decision arrived at, their cases would now stand excluded from the selection. Interim order passed earlier stands vacated.

20. No cost.