

(2010) 12 GAU CK 0038

In the Gauhati High Court

Case No : W. P. (C) No"s. 125, 153 and 171 of 2007

Surat Sarkar and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 15(1), 16, 16(1), 16(2)

Educational Rules — Rule 2

Pharmacy Act, 1948 — Section 10, 10(1), 10(2), 31, 32

Citation : (2011) 2 GLR 810 : (2011) 1 GLT 192

Hon'ble Judges : I.A. Ansari, J;A.C. Upadhyay, J

Bench : Division Bench

Advocate : S. Talapatra, B. Banerjee and D. Bhattacharjee, for the Appellant; N. Adhikary, A.G. and A.S. Lodh, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—A fore noted writ petitions, which raised common questions of law structured on almost identical factual matrix, are taken up for analogous hearing, and are being disposed of by this common judgment.

2. The facts leading to filing of these writ petitions may be stated in brief as follows:

The Petitioners, who have passed 2 (two) years diploma course in Pharmacy from the recognized Institutes, are also having the basic qualification of Madhyamik or its equivalent examination. On the basis of the aforesaid qualifications the Petitioners have claimed vested right to be considered for appointment to the post of Pharmacist (Allopathy), under the Health & Family Welfare Department, Government of Tripura, in terms of the Recruitment Rules, as notified vide Notification No. F. 2 (3-22)-MS/Estt./89 dated 04.02.91 (Annexure 2 to the Writ Petition No. 125/07).

The Petitioners have also prayed to issue writ declaring that the Recruitment Rule

for the Post of Pharmacist (Allopathy), Health & Family Welfare Department, published by notification No. F. 2 (1-151)-MS/Estt./2002 dated 30.02.04, are ultra-vires, unreasonable, illegal and violative of Articles 14 and 16 of the Constitution of India.

3. The aforesaid recruitment rules dated 04.02.1991, framed in terms of the proviso to Article 309 of the Constitution of India, laid down essential educational and other qualifications, for appointment to the post of Pharmacist (Allopathy), under the Health and Family Welfare Department Govt. of Tripura. It would be pertinent to reproduce herein below the previous Recruitment Rules of 1991, which specified different qualification for recruitment to the post of Pharmacists (Allopathy), under Health and Family Welfare Department, prior to coming into force of the 2004 Rules. The recruitment Rule of 1991 reads as follows:

No. F.2 (3-22)-MS/Estt/89

Govt. of Tripura

Health and Family Welfare Department

Dated Agartala 4.2.1991

NOTIFICATION

In exercise of powers conferred by the proviso to Article 309 of the Constitution of India, The Governor of Tripura has been pleased to make rules in the schedule hereto annexed, regarding the method of recruitment and qualifications necessary for appointment to the post of Pharmacist (Allopathy) under the Health and Family Welfare Department, Government of Tripura.

By order of the Governor

Sd/(N.G. Sinha)

Dy. Secretary to the Govt. of Tripura,

Agartala.

To

1. The Superintendent, Printing and Stationary Department, Govt. of Tripura, Agartala (Arundhutinagar) for publication in the Tripura Gazette in the next issue. He is requested to send 5 copies of the Gazette to this Directorate (Estt. Section) after publication.

2. The Under Secretary, Appointment and Services Department, Government of Tripura for information.

SCHEDULE

Recruitment Rules for the post of Pharmacist (Allopathy), under the Health and Family Welfare Department, Government of Tripura.

1. Name of post: Pharmacist (Allopathy)
2. Number of post: 293 plus post created from time to
3. Classification: Group-"C" Non Gazetted.
4. Scale of pay: Rs. 1300-3220/-
5. Whether selection post or non-selection post: Selection post.
6. Age limit for direct recruitment: 35 years. Relaxable by 5 years in case of S. T. and S. C. candidates.
7. Educational and: other qualification prescribed for direct recruits. (i) Madhyamik or its equivalent examination passed. (ii) Diploma In Pharmacy (2 years) Course from any recognized Institute.
8. Whether age and educational qualifications prescribed for direct recruits will apply in case of promotions. Not applicable.
9. Period of probation, if any. 2 (two) years.
10. Method of recruitment whether by direct recruitment or by promotion or by transfer and percentage of vacancies to be filled up by various methods.: Cent percent by direct recruitment
11. In case of recruitment by promotion/transfer, grade from which promotion to be made.: Does not arise.
12. If D.P.C. exists, what is its composition Class III D. P. C.
13. Circumstances: in which TPSC is to be consulted in making recruitment Not applicable.
14. Saving: Nothing in these rules shall effect reservations and other concessions required to be provided for Schedule Caste/Schedule Tribes and other special Categories of persons in accordance with order issued by the Central/State Government from time to time in this regard."
4. In exercise of power u/s 10 of the Pharmacy Act, 1948, the Central Council may, subject to the approval of the Central Government, make the Education Regulations prescribing the minimum standard of education required for qualification as a pharmacist. The Diploma course in Pharmacy all over the country, is governed by the Educational Regulations, as prescribed by the Pharmacy Council of India.

It has been asserted on behalf of the Petitioners that the diploma in Pharmacy as conferred by the Pharmacy Council are equivalent and without any distinction and, therefore, no changes in additional qualifications in a particular subject would diminish the value of the 2 years diploma in Pharmacy and therefore, in the circumstances and in view of the fact that the Petitioners are having the diploma in Pharmacy (2 years course), which is the primary and only

qualifications to act as the Pharmacist, either under the public authorities or under the private entrepreneurs, as per the Pharmacy Act, 1948 or Drugs and Cosmetic Act, the action of the Respondent No. 1 in framing a new Recruitment Rule, in the year 2004, known as Pharmacist (Allopathy), Health & Family Welfare Department Recruitment Rules vide Notification No. F. 2 (1-151)-MS/Estt/2002(xiii) dated 30.03.2004 (Annexure-4), is violative of Articles 14 and 16 of the Constitution of India.

5. The new recruitment rules known as Recruitment Rule for the post of Pharmacist (Allopathy), Health and Family Welfare Department, made by the State Respondent notified on 30.03.2004, specified the requisite qualification for the purpose of recruitment to the post of Pharmacist (Allopathy). The relevant extract of which reads as follows:

Recruitment Rule for the Post of Pharmacist (Allopathy)

Health & Family Welfare Department

SCHEDULE

1. Name of the post Pharmacist (Allopathy).
2. Number of posts: 327 (Three Hundred twenty seven) posts plus additional post as and when created.
3. Classification: Group C (Non-Gazetted)
4. Scale of pay: Rs. 4200-120-6000-130-7300-150-8650 subject to revision by the Government from time to time.
5. Method or recruitment whether by direct recruitment or by promotion or by deputation and percentage of the vacancies to be filled by the various method.: 100% by direct recruitment.
6. Age limit for direct recruitment 18 to 37 years. Upper age limit is relaxable by 5 (five) years in case of SC/ST/PH candidate and Government servant.
7. Educational and: other qualification required for direct recruitment.: 1) H.S. (+2 stage) with Science passed from a recognized Institution. 2) Diploma in Pharmacy from a recognized Institution.
8. Whether age and educational qualifications prescribed for the direct recruitment will apply in Case of promotes.: Not applicable.
9. Whether selection post or non-selection post.: Not applicable.
10. Period of probation: 2 (two) years.
11. In case of recruitment by promotion/deputation/transfer grade from which promotion promotion/deputation/transfer to be made.: Not applicable
12. If a D.P.C. exists, what is its composition? Not applicable

13. Circumstances in which T.P.S.C. is to be consulted in making recruitment.:
Not applicable.

By order and name of the Governor,

Sd/S.K. Roy)

Commissioner & Secretary to the Government of Tripura.

6. For direct recruitment to the post of Pharmacist (Allopathy), under the Health & Family Welfare Department, the prerequisite educational qualifications, modified by the new recruitment Rules of 2004, as aforesaid, excludes from consideration any candidate, who has not passed (I) High School (+ 2 stage) with science from a recognized Institution and does not have (II) Diploma in Pharmacy from a recognized Institution. The Petitioners have contended that by introducing a dissimilar qualification for admission into the Diploma in Pharmacy and another qualification for recruitment and appointment as Pharmacist, the Respondents created 2 (two) classes of posts, contrary to the direction of the Pharmacy Council of India, which regulates the educational qualification and other recommendations for the Pharmacist in India. Learned Counsel for the Petitioners submitted that introduction of the above in the recruitment Rules, for the post of Pharmacist (Allopathy), would create Pharmacist, with diploma in Pharmacy having qualification of H.S.(+2 stage) with science and another group of Pharmacist with diploma in Pharmacy having pass certificates of Madhyamik or it's equivalent examination from the recognized institution, which is without any intelligible difference. Learned Counsel for the Petitioners contended that for the purpose of appointing a Pharmacist (Allopathy) the qualification of H.S.(+2 stage) with science is redundant and such a requirement sought for in the recruitment rules is violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution.

7. Mr. Talapatra, learned Sr. Counsel representing the Petitioners submitted that the post of Pharmacist (Allopathy) has been saddled with some duties and responsibilities which can be easily managed by any person having diploma in Pharmacy (Allopathy) and other qualifications such as Madhyamik or equivalent and H.S.(+2 stage) with science passed from a recognized Institution have no bearing for the job of a Pharmacist. Learned Counsel pointed out that the initial qualifications may have bearing in getting admission into any diploma course in Pharmacy (Allopathy), which may be required in terms of the Educational Regulations made in exercise of power u/s 10 of the Pharmacy Act, 1948, but stretching requirement of such initial qualifications for recruitment to the post of Pharmacists is superfluous and redundant.

8. Mr. Talapatra further pointed out that by introducing educational qualifications of + 2 H.S. Science with diploma in Pharmacy, in the new recruitment rules of 2004, the State Respondents, apart from creating 2 classes of Pharmacists (Allopathy), without having reasonable nexus, have left out a large number of unemployed Pharmacists (Allopathy), who have Madhyamik or equivalent pass

qualifications at the time of their admission in 2 years diploma course in Pharmacy. As per the Educational Regulation for prosecution of the Diploma in Pharmacy (Allopathy), the Petitioners have completed the said course as approved by the Pharmacy Council of India and on completion of the aforesaid course, they were registered as a Pharmacist in terms of the provision of Section 32 read with Section 31 of the Pharmacy Act, 1948.

9. For filling up the post of Pharmacist (Allopathy), on fixed pay basis under the Health & Family Welfare Department, Govt. of Tripura issued Notification dated 13.04.2007, for walk-in-interview,, in terms of the new Recruitment Rules of 2004.

10. The Petitioners contended that the Respondents in violation of Articles 14 and 16 of the Constitution of India have structured the Recruitment Rules of Pharmacists on 30.03.2004. Learned Counsel for the Petitioners pointed out that the above recruitment rules is ultra vires to the Constitution, for having created 2 classes of Pharmacist having diploma as recognized by the Pharmacy Council of India on the basis of some qualification, which has no nexus with the purpose of appointment to be made to the post of Pharmacist (Allopathy), under the Department of Health & Family Welfare, Department of Govt. of Tripura. It has been submitted on behalf of the Petitioners that the aforesaid Recruitment Rules as published vide Notification dated 30.3.04, is liable to be declared ultra vires, unreasonable and violative of Articles 14 and 16 of the Constitution of India. It is further submitted on behalf of the Petitioners that the employment Notification dated 13.4.2007, is also liable to be quashed as the said Notification has been issued solely on the basis of impugned Recruitment Rules by excluding the Petitioners, from applying to the post of Pharmacist (Allopathy) in the State Govt. Department.

11. In reply to the above contentions raised on behalf of the Petitioners, the State Respondents filed affidavit in opposition contending therein that the writ petitions filed by the Petitioners are liable to be dismissed, since the Respondents have not done anything which can be termed as violation of fundamental right or statutory right of the Petitioners. Mr. A. K. Adhikary, learned Advocate General, Tripura submitted that the recruitment rules are framed by the Government in exercise of powers under Article 309 of the Constitution, to cater the varying need of its Departments, therefore, such creation of post with specific educational qualification for recruitment of personnel from diverse educational background cannot be said to be illegal and unconstitutional. The State Govt. did not dispute the authority of the Pharmacy Council, in issuing the registration certificate to the candidates on fulfillment of minimum requisite qualification for such registration. However, as a matter of fact registration of the Petitioners as Pharmacist by the Council ipso facto cannot be construed to have integrated all other additional qualifications, essential in terms of the recruitment rules, for certain category of posts of Pharmacists. A post in the Government Department is created in terms of the policy decision of the Government. For appointment as

Pharmacist in any of the Government Department has to be in terms of the recruitment Rules so framed for the purpose. Since a Govt. Department recruits an incumbent in the post to cater to its own needs, so that the appointee can suitably discharge the responsibilities entrusted on to him, in terms of work specification meant for the post. Therefore the Government may require higher educational qualification to suit some specific purpose, which in itself cannot be said to be beyond legislative competence and violative of any of the fundamental rights.

12. The State Respondents have also indicated in the affidavit that major changes were introduced in Educational Regulation, 1991, in suppression of earlier Regulation of 1981 in the Selection of students for admission into D. Pharma Course. Apart from introducing a new feature subjects, the minimum educational qualification was made as H.S. (+2 stage), with science passed for pursuing Diploma course in Pharmacy.

13. As rightly contended by the learned Advocate General that power to modify and/or amend recruitment rules by the Government is no longer res-integra and the recruitment rules can be altered/modified unilaterally by the State Respondents and therefore, the modification of the educational qualification in a recruitment rules in terms of job requirement of the post is not violative of Articles 14 and 16 of the Constitution of India.

14. Though the Petitioners are having pass certificates in Madhyamik or equivalent examination together with diploma in Pharmacy, but they did not have requisite qualification of H.S (+2 stage), with science pass certificate with diploma in Pharmacy, for appointment as Pharmacist in Health and Family Welfare Department, Government of Tripura, in terms of recruitment Rules, 2004.

15. Since the Petitioners have challenged the legality of the Recruitment Rule, for the Post of Pharmacist (Allopathy), Health & Family Welfare Department, 2004, it would be pertinent herein to discuss the powers of the authority concerned as per provision of the Pharmacy Act., 1948. Section 10 of the Pharmacy Act, 1948, empowers the Central Council to make regulation order called the "Education Regulations", subject to the approval of the Central Government, as more particularly set out therein. Section 10(1) and Section 10(2) of the said Act read as under:

10.(1) Subject to the provisions of this section, the Central Council may, subject to the approval of the Central Government, make regulations, to be called the Education Regulations prescribing the minimum standard of education required 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 examination.

16. The Pharmacy Council of India, Education Regulations, 1991, notified that the minimum qualification required for registration, as a Pharmacist shall be a pass in Diploma in Pharmacy (Part I & II) and satisfactory completion of Diploma in Pharmacy (Part-III). The notification of 1991 reads as follows:

Pharmacy Council of India Education Regulations. 1991 for the Diploma Course in Pharmacy

(Regulations framed u/s 10 of the Pharmacy Act, 1948).

(As approved by the Government of India, Ministry of Health vide, letter No. V. 13016/1/89-PMS dt. 2.8.1991 and notified by Pharmacy Council of India.)

No. 14-55/87 (Part)-PCI/2484-2887-In exercise of the powers conferred by Section 10 of the Pharmacy Act, 1948 (8 of 1948), the Pharmacy Council of India, with the approval of the Central Government, hereby makes the following regulations namely:

CHAPTER-I

1. Short title and commencement.-

(1) These regulations may be called the Education Regulations. 1991.

(2) They shall come into force on the date of their publication in the official Gazette.

2. Qualification for Pharmacist. -- The minimum qualification required for registration as a pharmacist shall be a pass in Diploma in Pharmacy (Part I & Part II and satisfactory completion of Diploma in Pharmacy (Part-III).

or

Any other qualification approved by the Pharmacy Council of India as equivalent to the above.

3. Diploma in Pharmacy Part-I and Part-II shall consist of a certificate of having passed the course of study prescribed in Chapter--II of these regulations.

4. Diploma in Pharmacy Part-III shall consist of a certificate of having satisfactorily completed course of practical training as prescribed in Chapter-III of these regulations.

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

- (1) Intermediate examination in Science;
- (2) The first year of the three year degree course in Science,
- (3) 10+2 examination (academic stream) in Science;
- (4) Pre-degree examination;
- (5) Any other qualification approved by the Pharmacy Council of India as equivalent to any of the above examination.

Provided that there shall be reservation of seats for Scheduled Caste and Scheduled Tribes candidates in accordance with the instructions issued by the Central Govt./State Govts. /Union Territory Admns. as the case may be from time to time]

6. Duration of the course.--The duration of the course shall be for two academic years with each academic year spread over a period of not less than one hundred and eighty working days in addition to 500 hours practical training spread over a period of not less than 3 months.

17. The Education Regulations aforesaid issued by Pharmacy Council of India in terms of the provision of Section 10 of the Pharmacy Act 1948, reflects initial requirement for registration as a Pharmacist and minimum qualification for admission to Diploma in Pharmacy Part-I course. Pharmacy Council of India has not imposed any limitation or restriction on additional qualification on recruitment in any posts that may be created by the Government. The Government has, however, framed recruitment rules inconsonance with the job requirement in the Government Departments. Therefore, apparently, a pharmacist registered by the Pharmacy Council cannot be equated to have all such the job specific qualification, for holding a particular post, specified or indicated by the Government, in terms of Recruitment Rules. Therefore, there may be variance and difference in respect of pre-requisite qualifications for admission in an educational Institute in respect of particular course of study and the qualifications that may be required for recruitment to a particular post in any Government Department.

18. However, in the nature of things, there cannot be different criterion for selection of the candidates for the post of Pharmacist who acquired the requisite qualification of Diploma in Pharmacy, at different time on different pattern of system at the time of admission. The diploma course all over the country is governed by the Educational Regulation, as notified by the Pharmacy Council of India, in exercise of power conferred by u/s 10 of the Pharmacy Act, 1948. On the other hand, required qualification for the post of Pharmacists in the Department of Health and Family Welfare, Government of Tripura, have been made, keeping in mind the nature of works, degree of responsibility, areas of performance to be undertaken and work to be assigned, to the employees holding such posts in the Government.

19. The following observations made by the Constitution Bench of the Apex Court in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, may be apposite in the present context:

45. Merit is not a fixed absolute concept. Amartya Sen, in a book *Meritocracy and Economic Inequality*, edited by Kenneth Arrow, points out that merit is a dependent idea and its meaning depends on how a society defines a desirable act. An act of merit in one society may not be the same in another. The difficulty is that there is no natural order of "merit" independent of our value system. The content of merit is context-specific. It derives its meaning from particular conditions and purposes. The impact of any affirmative action policy on "merit" depends on how that policy is designed. Unfortunately, in the present case, the debate before us on this point has taken place in an empirical vacuum. The basic presumption, however, remains that it is the State who is in the best position to define and measure merit in whatever ways it consider it to be relevant to public employment because ultimately it has to bear the costs arising from errors in defining and measuring merit. Similarly, the concept of "extent of reservation" is not an absolute concept and like merit it is context-specific. (Emphasis supplied)

Therefore, in absence of any apparent irrationality or illegality or intention in replacing Madhyamik or equivalent pass by H.S.+2 or equivalent pass in the recruitment Rules 2004 and in the absence of discrimination and injustice, we are of the considered view that the impugned recruitment Rules of 2004 is neither discriminatory nor in violation of the letter and spirit of Articles 14 and 16 of the Constitution.

20. As a matter of fact change in minimum entry level qualifications in respect of certain course of study definitely has some value and bearing, as because the entry level qualification is fixed keeping in view the course material to be studied. It is required to be selected in such manner so that the student can understand, comprehend and follow the course of study and would acquire knowledge to practice the same in his profession, in future. Therefore, the qualification in the Recruitment Rules of Pharmacist (Allopathy), as Higher Secondary with Science, is now the entry-level qualifications, for the admission into the 2 years Diploma in Pharmacy course. The learned Counsel for the State Govt. has submitted that the Government has no objection in the Petitioners practicing as pharmacists on the strength of the existing registration as Pharmacist issued by the Pharmacy Council of India. However, such registration as Pharmacists obtained by the Petitioners from the Pharmacy Council of India or from any other institute, cannot be construed to be sufficient qualification, for recruitment to the post of Pharmacist (Allopathy), in the Govt. department inasmuch as a candidate is required to have requisite qualification in terms of the Recruitment Rules.

21. The Education Regulation of 1991 has made it crystal clear that minimum qualification required for registration as Pharmacist shall require a pass certificate in 2 years diploma course in pharmacy. The aforesaid Regulation of

1991, did not specify anything to regulate qualifications for selection or recruitment of a Pharmacists under the public authorities or in the Government department. On careful consideration of the rival contention made on behalf of the respective parties, it appears to us that the new Recruitment Rule of 2004 by specifying requirement of certain educational qualifications for direct recruitment to the post of Pharmacists has not violated the provisions of the Pharmacy Council of India Regulation, 1991, as adumbrated in Rule 2 of Chapter 1 of the Educational Regulation, 1991.

22. As a matter of fact a Recruitment Rule made by the Government in exercise of powers under Article 309 of the Constitution can be struck down by the Court on certain contingencies. In this context the Supreme Court in the case of State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., has pointed out as follows:

The power of Parliament or for that matter, the State Legislature is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by Courts in two grounds and two grounds alone, viz, (1) lack of Legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or any other constitutional provision. There is no third ground.

23. In the case of Jaisinghani v. Union of India, reported in AIR 1976 SC 1427 , the Hon'ble Supreme Court held as follows: "The relevant law on the subject is well settled. Under Article 16 of the Constitution there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office hereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article. 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicted only when the promotes are drawn from the same source. If the preferential treatment of one sources in relation to the other is based on the differences between the said two sources, and the said difference have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. Dealing with the extent of protection of Article 16(1) of the Constitution, this Court observed in The General Manager, Southern Railway Vs. Rangachari, It would be clear that matters relating to employment couldn't be confined only to the initial matters prior to the act of employment. The narrow construction would be confined the application of Article 16(1). What Article 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us. The three provisions Article 16(1), Article and Article 14, 15(1) form part of the same constitutional Code of guarantees and

supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment." The Court further observed in that case: "Article 16(2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Article 16(1). The words in respect of any employment used in Article 16(2) must, therefore, include all matters relating to employment as specified in Article 16(1). Therefore, we are satisfied that promotion to selection posts is included both under Article 16(1) and (2)."

24. Learned Counsel for the State Respondents contended that at the relevant period of time Madhyamik or equivalent qualification with 2 years Diploma in Pharmacy was regarded as essential qualification, for entry as Pharmacist, in terms 1991 Rules, however, with the passage of time and change in requirement called for certain modification in requisite qualification for recruitment to the posts of Pharmacist, therefore, there is no reason to dispute introduction of H.S. (+2) with science, in the newly framed Recruitment Rule in 2004, and it cannot be said to be illegal and unconstitutional.

25. Introduction of H.S. (+2) course with science has been brought in as the entry level qualification of the Pharmacy course, as the study materials now conceived would be necessary in the practical field for working, as a Pharmacist. Apparently, the inclusion of new entry level educational qualification was made with a view to achieve up to date and effective service of the Pharmacists, to suit with the requirement. The recruitment rules are framed to cater the varying need of the Government and the same is not framed looking into the need of the job seekers. Under the old system of education many unemployed Pharmacists may be there and for this reasons Government cannot forbidden to act as per its Recruitment Rules and the requirement on the Government establishment. In essence, a particular kind of educational qualification is indicated in a Recruitment Rules on the basis of the need and any change of such requirement only reflect the change in policy decision of the Government. Unless such a move is beyond the Constitutional ambit, shift in policy decision is not amenable to the writ jurisdiction of the Court. It may not be out of context to mention that founding framers of the Constitution has deliberately excluded the right to job from fundamental right of the Constitution. So, the Petitioners cannot find fault that any of their right has been infringed.

26. Impugned notification dated 13.04.07 for "walk-in-interview was issued for filling up the post of Pharmacists (Allopathy), on fixed pay basis in terms of the existing Recruitment Rules and the Petitioners admitted that they had the knowledge of existence of amended Recruitment Rules of 30.3.2004, but admittedly the Petitioners did not challenge the amended Recruitment Rules of 2004, during the last 3 years.

27. Learned Counsel for the State pointed out that, the amendment made in the

year 2004 in the Recruitment Rules, by introducing HS+2 with Science as essential educational qualification for recruitment to the post of Pharmacist (Allopathy), was apparently necessary to keep parity with the Educational Regulation, 1991 by which, changes in the curriculum was also made, requiring minimum educational qualification of H.S. Science for admission into the Diploma Course of Pharmacy.

It is settled principle of law that the recruitment rules framed under the proviso to Article 309 of the Constitution can be amended/changed/modified from time to time, keeping in view the change in the educational system, for better utilization of the service, in terms of the job requirement, keeping in view the benefit of the general public. Therefore, in our considered view the employment Notification dated 13.4.2007 does not suffer from any irregularity to justify quashing it in exercise of powers of this Court under Article 226 of the Constitution.

28. The impugned Recruitment Rules, i.e. Pharmacist (Allopathy), Health & Family Welfare Department Recruitment Rules dated 30.03.2004 (Annexure-4), notified by the State Government also deals with the subject-matter of Minimum Qualifications for appointment in the post of Pharmacist.

29. The Regulation No. 5 forming part of Chapter II of Education Regulation 1991 stipulates the minimum standard of education required for qualification of a Pharmacist. The aforesaid Regulations also prescribed that the applicant, for admission in Pharmacy course, must have passed intermediate examination in Science and must also fulfil various other prescribed conditions before the applicant can seek admission to the said course of study.

In our opinion, there is no reasonable nexus between the prescription of minimum qualifications for admission to the Pharmacy course in any educational institute and the recommendation of minimum standards for educational qualification, for recruitment and appointment to posts of Pharmacist (Allopathy), in a Government department. It is the absolute discretion of the Government to decide the additional qualification, that is, apart from the minimum essential requirement to carry out the works assigned to the posts. In our opinion, minimum qualification for admission in the course of study may not be directly interconnected and entangled with the minimum qualification to be prescribed for recruitment to the post of Pharmacists (Allopathy). If the employees do not possess suitable qualifications at the stage of entry in the Government service, the quality of performance of the employee for the relevant posts is bound to suffer. The subject matter of the impugned rule is neither against any rule or law nor it is foreign or extraneous to the apparent objects targeted to be achieved by the State Respondents.

30. As for the controversy of alteration/modification of the requisite educational qualification in Recruitment Rules to the post of Pharmacist (Allopathy), it is noticed that in exercise of the powers conferred by the proviso to Article 309 of

the Constitution the Governor of the State of Tripura, vide Notification dated 30th March 2004 made the impugned Pharmacist (Allopathy) Health and Family Welfare Department Recruitment Rules 2004, in suppression of the existing recruitment rules, for the posts of Pharmacist (Allopathy). It would be futile to argue that the impugned Recruitment Rule of 2004 could not have modified the earlier recruitment rules. The new recruitment rule notified in suppression of the existing recruitment rules clearly marked a departure in the policy of Government to modify the pattern of selection of Pharmacist (Allopathy) in the Department of Health and Family Welfare. Such alteration of recruitment rules in exercise of powers under Article 309 of the Constitution has to be accepted to be along the policy decision of the Government, taken after due consideration of the relevant facts and circumstances, which cannot be subjected to judicial review. Therefore, in our opinion the argument that the Government had changed the recruitment rules for Pharmacist (Allopathy) by changing the criteria for selection is not acceptable proposition.

31. In *Basic Education Board, U.P. Vs. Upendra Rai and Others*, at page 437, Hon"ble Supreme Court of India held that:

grant of equivalence and/or revocation of equivalence is an administrative decision which is in the sole discretion of the authority concerned, and the Court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the Government, and the Court does not have expertise in such matters. Hence it should exercise judicial restraint and not interfere in it.

32. It is an admitted situation that the Madhyamik or equivalent examination pass certificate is not comparable to Higher Secondary +2 with Science. The decision of the Government to modify the requisite educational qualifications in the recruitment rules of the post of Pharmacist has to be accepted as a policy decision of the State Government and it is well settled position of law that the Court cannot interfere with policy decision of the Government unless it is in violation of some statutory or constitutional provision. Hence, we are of the opinion that the Petitioners, who are not having requisite qualifications, are not entitled to be selected and appointed as Pharmacist in the Health and Family Welfare Department, Government of Tripura and there is no scope to declare the provision of the Recruitment Rules of 2004 for the Pharmacist as ultra-vires.

33. For the purpose of maintaining standards of performance in Government run Hospitals, the Government, by introducing amendment in the recruitment rules may determine the requisite qualifications of persons for being recruited as Pharmacist (Allopathy) in any Hospital, Dispensary, by whatever name called, established, run, aided or recognized by the State Government or other public authority. Provided that such modification or amendment of requisite educational qualifications shall not adversely affect the continuance of any person recruited in any post as Pharmacist under any rule, regulation or order made by the State Government, or other authority prior to the amendments of the recruitment rules aforesaid, which, however, is not the issue in the instant case.

34. A candidate applying for selection and appointment in the post in a Government Department shall be governed by the recruitment rules meant for the post. He has no vested right in regard to the educational or other qualification beyond what has been approved in the Recruitment Rules. Qualifications required for appointment to a post in the Government Department are not determined or regulated as per the prospectus meant for the Course of study in the University or the educational institute, but by the statute or statutory rules framed under proviso to Article 309 of the Constitution. Such rules may be framed and altered unilaterally by the Government in terms of the policy decision.

35. Thus, it is clear from the above discussion that the Petitioners have no vested or indefeasible right to claim a particular kind of educational qualifications for selection to the posts of Pharmacist in terms of the old recruitment rules, which has been amended in the year 2004. More so, amendment of the old recruitment rule was carried out before issuing the impugned employment notification dated 13.04.2007, for filling up the post of Pharmacist for the year 2007. Since the amended rules came into effect from the date of their publication on 30.03.2004 and the employment notification has been issued subsequently to fill up the post on 13.04.2007, the authorities are entitled to consider only those candidates, who possesses the said higher educational qualification prescribed in the Recruitment Rules of 2004, and the Petitioners, who do not possess the said higher educational qualification in terms of the new rules are not eligible for consideration.

36. In view of what has been stated above, we find no merit in these writ petitions and accordingly all the aforesaid three writ petitions stand dismissed. However, we pass no order as to cost.