

Court No. - 37

Case :- WRIT - A No. - 3370 of 2019

Petitioner :- Abdul Said

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ashok Kumar Dwivedi, Sri Ashok Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Madan Mohan

Hon'ble Vikram D. Chauhan, J.

Heard Sri Ashok Kumar Dwivedi, learned counsel for the petitioner and Sri Madan Mohan, learned counsel for respondent no. 3.

It is submitted by learned counsel for the petitioner that an advertisement was issued in the year 2007 inviting applications for 766 posts of Pharmacists (Allopathy) in the State of U.P. It is submitted that the aforesaid advertisement in question was subject matter of challenge before this Court in **Special Appeal No. 377 of 2008 (Prem Chandra and others Vs. State of U.P. and others), decided on 4.5.2009**, wherein it was held that the recruitment in pursuance to the U.P. Procedure for Direct Recruitment of Group 'C' Posts (outside the Purview of Public Service Commission) Rules, 2002 (hereinafter referred to as the "Rules of 2002") as amended by U.P. Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003 (hereinafter referred to as the "Rules of 2003") would not apply in the selection proceedings and the process of selection on the post of Pharmacist, which is prescribed, cannot be given effect to unless the Rules are amended. Learned counsel for the petitioner further submits that in the aforesaid special appeal by judgment dated 4.5.2009, it was directed that the case of the appellants in the aforesaid special appeal would be considered in accordance with the pre-existing practice by considering the candidature on the basis of their merit taking batch-wise into consideration in case the appellants are found eligible otherwise.

Learned counsel for the petitioner further submits that the petitioner has also filed a writ petition bearing Writ Petition No. 7527 (S/S) of 2009, decided on 16.11.2009, challenging the aforesaid advertisement wherein the following order was passed:-

"In view of the above, there cannot be two source of recruitment

process insofar as the persons, who have approached this Hon'ble Court are to be recruited as per provisions of U.P. Pharmacists Service Rules, 1980, whereas those who have not approached had to undergo recruitment in accordance with U.P. Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) Rules, 2002 as amended by U.P. Procedure for Direct Recruitment of Group 'C' Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003. Thus, I am of the opinion that the benefit of the order dated 4.5.2009 passed in Special Appeal No. 377 of 2008 be also extended to the present petitioners also."

On the strength of the aforesaid order dated 16.11.2009, learned counsel for the petitioner submits that the petitioner is entitled to be recruited as per the provisions of the U.P. Pharmacists Service Rules, 1980 (hereinafter referred to as the "Rules of 1980"). Learned counsel for the petitioner further submits that the benefit of the order passed in the Special Appeal has been extended in the case of the petitioner by order dated 16.11.2009 and in effect the petitioner would be entitled for being selected on the post in question in accordance with the Rules of 1980. Learned counsel for the petitioner has drawn attention of this Court to Rule 8 of the Rules of 1980 to demonstrate that a candidate for direct recruitment to the posts in the service must possess diploma in Pharmacy from a recognized institution and must also be registered with the State Pharmacy Council, Uttar Pradesh. Learned counsel for the petitioner has further drawn attention of this Court to Rule 15 of the Rules of 1980 which prescribes the procedure for direct recruitment. According to learned counsel for the petitioner, the select list is required to be prepared on merits as per the marks possessed by a candidate in the diploma examination. Learned counsel for the petitioner further submits that in the past there is a practice for selecting candidates batch-wise and once the selection proceedings of one batch is completed, thereafter the another batch selection proceedings were initiated. Further, in the advertisement which was issued in the year 2007 on the strength of the Rules of 2002 and the Rules of 2003, the batch-wise system was dispensed with and the selection was held on the merit basis. Learned counsel for the petitioner submits that by the judgment in the special appeal the aforesaid procedure was dispensed with and it was directed that the persons who have approached the Court would be entitled to be selected on the basis of the Rules of 1980 and the other persons would be selected on the basis of the Rules of 2002. The submission of learned counsel for the petitioner is that the petitioner's name was included in the

existing list for the year 2007, however, the candidature of the petitioner has been rejected on the ground that the petitioner's diploma was not registered on the last date of filing of the application form with the U.P. Pharmacy Council. It is the submission of learned counsel for the petitioner that the petitioner had deposited the fees for registration on 30.11.2007, however, the registration certificate was issued on 24.1.2008. The submission of learned counsel for the petitioner is that the petitioner had possessed the diploma in the year 2000 and the registration certificate was issued in 24.1.2008 would have no consequence in accordance with the Rules of 1980. The selection proceedings were required to be held on merit batch-wise and once the petitioner on the date when the counselling was held was already registered with the U.P. Pharmacy Council as such the diploma of the petitioner for being selected has been wrongly denied by the respondents. The counselling of the petitioner was held on 27.11.2016.

Sri Madan Mohan, Advocate appearing on behalf of respondent no. 3 submits that the advertisement for selection to the post of Pharmacist (Allopathy) was issued in the year 2007. The advertisement contained a clause that the Pharmacist diploma is required to be registered with the Uttar Pradesh Pharmacy Council, Uttar Pradesh. Learned counsel for respondent no. 3 submits that the petitioner's counselling was cancelled on the ground that on the last date of submission of the form i.e. 5.12.2007 upto 5.00 p.m. the petitioner was not registered with the Uttar Pradesh Pharmacy Council and the registration certificate was issued later on i.e. 24.1.2008. Learned counsel for respondent no. 3 does not dispute the judgment passed by this Court in **Prem Chandra (supra)**. However, he submits that the aforesaid judgment is not applicable in the facts and circumstances of the case as the same was with regard to the manner in which the selection proceedings are to be carried out and has no bearing on the conditions of the advertisement which prescribes that the candidate should be registered with the U.P. Pharmacy Council on the last date of submission of the application form. Learned counsel for respondent no. 3 has further placed reliance on the judgment of the Apex Court in **Alka Ojha Vs. Rajasthan Public Service Commission and Ors., AIR 2011 SC 3547** to submit that a candidate who did not possess the requisite qualification on the last date fixed for submission of the application form shall not be eligible to be considered for selection. Learned counsel for respondent no. 3 has further drawn attention of this Court to Rule 8 of the Rules of 1980 to submit that even the aforesaid Rules

require that a candidate should be registered with the State Pharmacy Council, Uttar Pradesh. Learned counsel for respondent no. 3 further submits that in the present case the petitioner was not registered with the U.P. Pharmacy Council on the last date of submission of the form and as such candidature of the petitioner has been rightly rejected.

Learned counsel for respondent no. 3 further drawn attention of this Court to the direction issued in **Prem Chandra (supra)** to the effect that the process of batch-wise selection would be applicable only to the appellants in the aforesaid special appeal if they are otherwise found eligible. The petitioner was not found eligible as he was not registered with the U.P. Pharmacy Council on the last date of submission of the form and as such the candidature of the petitioner was rightly rejected by the respondent no.4.

At this stage, learned Standing Counsel for the State submits that some time may be granted to file reply on behalf of respondent nos. 2 and 4.

Since earlier also time has been granted, therefore, two weeks' time is granted to file counter affidavit to learned Standing Counsel for the State.

In the interest of justice, list on 25.4.2023.

Order Date :- 5.4.2023

VMA