

IN THE HIGH COURT OF JUDICATURE AT PATNA

Abhishek Kumar & Anr.

Vs.

The State of Bihar & Ors.

Civil Writ Jurisdiction Number- 72 of 2025

10th April, 2025

(Hon'ble the Acting Chief Justice & Hon'ble Mr. Justice Partha Sarthy)

Issue for Consideration

- Whether a rule made under Article 309 of the Constitution of India by the Governor, viz., the impugned Rules of 2014 could prescribe the basic/essential qualification for Pharmacists to be only Diploma in Pharmacy, even when under the Pharmacy Act of 1948 and the regulations framed thereunder, namely, the Pharmacy Practice Regulations of 2015, the basic qualification for the profession of Pharmacy is Diploma/Bachelor Degree in Pharmacy;
- Whether the rules in question entrench upon the occupied field of the Central Government;
- Whether B. Pharma/M. Pharma is a higher qualification than D. Pharma and;
- Whether B. Pharma/M. Pharma is in the same channel of learning, subsuming in itself the minimum/inferior qualification of Diploma in Pharmacy.

Headnotes

Pharmacy Act, 1948—Section 10—Bihar Pharmacists Cadre Rules, 2014—Rule 6(1)—Pharmacy Practice Regulations, 2015—petitioners are holders of Bachelor of Pharmacy Degree and also registered with the Bihar State Pharmacy Registration Council—diploma holders generally work in various Health Departments, whereas graduates and post-graduates in Pharmacy are ordinarily engaged in industrial side where drugs and cosmetics are manufactured—diplomates and graduates are trained differently in different subjects.

Held: Diploma holders have no other avenue of appointments and that they have undergone the intensive training in hospital-care, are some of the indices on which

the rules are is said to have been made—no exclusion of graduate degree holders provided they possess the basic qualification of Diploma in Pharmacy—impugned cadre rules had not saddled graduates/post-graduates in Pharmacy to any disproportionate harm—fixation of minimum qualification for recruitment of Pharmacist and the “note” in the cadre rules providing that holders of higher degree could apply but subject to their having obtained the minimum qualification of diploma is neither arbitrary or exclusionary per se—request made to the Bihar Technical Service Commission by the Pharmacy Council of India (PCI) to be totally unwarranted—writ petitions disposed off. **(Paras 96, 110, 113, 114, 116)**

Principle of Proportionality—any action of the State which allegedly violates the constitutionally protected right is required to be tested on three parameters namely:

- (a) the action must be sanctioned by law;
- (b) the proposed action is necessary in a democratic society for a legitimate aim and;
- (c) the extent to which such interference is permissible must be such as to be proportionate to the need for such interference. **(Para 35)**

Profession—meaning—an occupation carried on by a person by virtue of his personal and specialized qualifications, training or skill.

Occupation—meaning—as regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. **(Para 41)**

Supreme Court enumerated various tests adopted and applied to test the validity of any Act Central or State, viz.,

- i. that a law may be constitutional even though it relates to a single individual who may be treated as a class by himself;
- ii. that there is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
- iii. that it must be presumed that the legislature understands and correctly appreciates the need of its own people and that its laws are directed to problems, made manifest by experience and that its discriminations are based on adequate grounds;
- iv. that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
- v. that in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation and;
- vi. that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of law or the

surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based. (Para 45)

Case Law Cited

State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga (1952) 1 SCC 528; Md. Hanif Qureshi Vs. State of Bihar AIR 1958 SC 731; Mahanth Moti Das Vs. S.P. Shahi AIR 1959 SC 942; B.R. Enterprises Vs. State of U.P. (1999) 9 SCC 700; State of Bihar Vs. Bihar Distillery Ltd. (1997) 2 SCC 453; Hamdard Dawakhana (Waqf) v. Union of India; AIR 1960 SC 554; R.K. Garg Vs. Union of India; (1981) 4 SCC 675; Union of India & Anr. Vs. Hemraj Singh Chauhan & Ors. (2010) 4 SCC 290—Relied Upon.

Nair Service Society Vs. Dr. T. Beermasthan & Ors. (2009) 5 SCC 545; K.S. Puttaswamy Vs. Union of India (2019) 1 SCC 1; Sodan Singh & Ors. Vs. New Delhi Municipal Committee & Ors (1989) 4SCC 155; Munn Vs. Illinois (1994) U.S. 113, 154 (1876); Olga Tellis Vs. Bombay Municipal Corporation (1985) 3 SCC 545; Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors. (1991) Supp. 1 SCC 600; Shri R.K. Dalmia Vs. Shri Justice S.R. Tendolkar & Ors. AIR 1958 SC 538; Chandrashekhar Singh and Ors. Vs. State of Jharkhand and Ors. 2025 LiveLaw (SC) 336/2025 SCC OnLine SC 595; State of Punjab Vs. Davinder Singh (2025) 1 SCC 1/2024 SCC OnLine SC 1860; Pharmacy Council of India Vs. Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and Ors. (2021) 10 SCC 657; D.S. Nakara & Ors. vs. Union of India AIR 1983 SC 130; [Bihar State Power (Holding) Company Ltd. through its Chairman & Ors. Vs. Md. Asif Hussain & Ors. L.P.A. No. 1416 of 2018; Jyoti K.K. & Ors. Vs. Kerala Public Service Commission & Ors. (2010) 15 SCC 596; State of Haryana & Anr. Vs. Abdul Gaffar Khan & Anr. (2006) 11 SCC 153; State of Punjab & Ors. Vs. Anita & Ors. (2015) 2 SCC 170; P.M. Latha & Anr. Vs. State of Kerala & Ors. (2003) 3 SCC 541; Yogesh Kumar & Ors. Vs. Govt. (NCT of Delhi) (2003) 3 SCC 548; The Bihar State Power Holding Company Ltd. through its Chairman and two others. Vs. Md. Asif Hussain and five others S.L.P. No. 1187 of 2019; The State of Bihar & Anr. Vs. Arvind Kumar & Ors. L.P.A. No. 158 of 2020; P.M. Latha Vs. State of Kerala (2003) 3 SCC 541; Zahoor Ahmad Rather vs. Imtiyaz Ahmad (2019) 2 SCC 404; Ashok Kumar Thakur Vs. Union of India & Ors. (2008) 6 SCC 1; K.T. Plantation (Pvt. Limited) & Anr.Vs. State of Karnataka (2011) 9 SCC 1; V.K. Sood Vs. Secretary, Civil Aviation & Ors. 1993 SCC (LNS) 907/1993 Supp. (3) SCC 9; B.S. Vadera Vs. Union of India & Ors. AIR 1969 SC 118; 1968 SCC OnLine SC 39—Referred to.

List of Acts

Pharmacy Act, 1948; Bihar Pharmacists Cadre Rules, 2014; Bihar Pharmacist Cadre (Amendment) Rules, 2024; Pharmacy Practice Regulations, 2015; B. Pharma Course Regulation, 2014;

List of Keywords

Degree, Bachelor of Pharmacy Degree, Pharmacist, fixation of minimum qualification for recruitment of Pharmacist,

Case Arising From

Validity of Acts, Rules & Regulations etc. of Bihar Pharmacists Cadre Rules, 2014.

Appearances for Parties

For the Petitioner/s : Mr. Prashant Sinha, Advocate; Mr. Rishi Raj Raman, Advocate; Mrs. Ruchi Mandal, Advocate; Mr. Aniket Rai, Advocate; Mr. Kunal Kumar, Advocate.

For the U.O.I. : Mr. Arjun Kumar, CGC

For the State : Mr. P.K. Shahi, Advocate General; Mr. Vikas Kumar, Advocate; Mr. Amish Kumar, Advocate; Mr. Vivek Prasad, GP-7; Ms. Supragya, AC to GP-7.

For the P.C.I. : Mr. Jitendra Singh, Sr. Advocate; Mrs. Parul Prasad, Advocate.

For the BTSC : Mr. Nikesh Kumar, Advocate; Mr. Akshansh Shanker, Advocate.

For the Respondent : Mr. Lalit Kishore, Sr. Advocate; Mr. Santosh Kumar, Sr. Advocate; Mr. Shashi Bhushan Singh, Advocate; Mr. P.K. Jha, Advocate; Mr. Kanishka Shankar, Advocate; Mr. Prafulla Ranjan Tiwary, Advocate; Mr. Rajeev Ranjan Mishra, Advocate; Mr. Utsav, Advocate.

Headnotes Prepared by: Abhas Chandra

Judgement/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.313 of 2025

Sanjeev Kumar Mishra Son of Narsingh Mishra Resident of Bharpurwa, P.S.-
Vijayipur, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Government of Bihar, Patna.
3. The Union of India, through Secretary, Ministry of Health and Family Welfare, New Delhi.
4. The Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No.- 02, Community Centre, Maa Anandamai Marg, Okhla Phase- 1, New Delhi.
5. The Registrar, Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No.- 02, Community Centre, Maa Anandamai Marg, Okhla Phase- 1, New Delhi.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 72 of 2025

1. Abhishek Kumar son of Ramjanm Sharma, resident of Loharpatti Phulguni, P.S.-Thawe, District-Gopalganj.
2. Vimal Kumar, son of Dayanand Prasad, resident of Birpur, Belao, P.S.-Barbigaha, District-Shekhpora.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Govt. of Bihar, Patna.
3. The Director in Chief, Health Services, Govt. of Bihar, Patna.
4. The Union of India through the Secretary, Ministry of Health and Family Welfare, Govt. of India, New Delhi.
5. The Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No. 2, Community Centre, Maa Anandmani Marg, Okhla Phase-1, New Delhi-110020 through its Registrar Cum Secretary.
6. The Bihar Technical Service Commission through its Secretary.



... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 193 of 2025

1. Puja Daughter of Late Anil Kumar, resident of Jakkanpur, P.O- GPO, P.S- Gardanibagh, District - Patna, Bihar, Pin Code 800001.
2. Gaurav Kumar Son of Prem Shankar Pal resident of Vill - Kudra, P.O - Kudra, P.S - Kudra, District - Kaimur, Bihar, Pin Code-821108.
3. Mritunjoy Kumar Singh Son of Chandrama Singh resident of Vill- Mishripur, P.O- Sasaram, P.S- Sasaram, District- Rohtas, Bihar, Pin Code- 821115.
4. Jawaid Eqbal Son of Md Eqbal resident of Vill- Maghota, P.O- Narayanpur, P.S Barahat, District - Banka, Bihar, Pin Code-813103.
5. Kaushal Kishor Kumar Son of Vijay Sharma resident of Vill - Surkhi, P.O - Obra, P.S - Obra, District - Aurangabad, Bihar, Pin Code-824124.
6. Nitin Pandey Son of Awadhesh Pandey resident of Vill - Parnawa, P.O- Gopalbad, P.S - Sarmers, District -Nalanda, Bihar, Pin Code-811104.
7. Vimal Kumar Yadav Son of Ram Vilash Yadav resident of Vill - Sihaul, P.O - Sihaul, P.S- Biraul, District- Darbhanga, Bihar, Pin Code 847202.
8. Md Izharul Haque Son of Minhajul Haque resident Sarai satteer khan, P.O.- Laheriasarai, P.S- Laheriasarai, District- Darbhanga, Bihar, Pin Code - 846001.
9. Manish Kumar Son of Late Raman Kumar Bhagat resident of Simri bakthiyar pur, P.O Simri bakthiyar pur, P.S - Simri bakthiyar pur, District Saharsa, Bihar, Pin Code-852127.
10. Kumar Prasun Son of Krishna Murari Singh resident of Panchgachia, P.O - Panchgachia, P.S - Bihra, District - Saharsa, Bihar, Pin Code - 852124.
11. Rakesh Ranjan Son of Ram Chandra Mandal resident of Vill - Shripur bhikhamchak, P.O- Shripur majarahiya, P.S Hathauri, District Samastipur, Bihar, Pin Code-847105.
12. Sumarjeet Choudhary Son of Devnarayan Choudhary resident of Vill Bela, P.O Barahsher, P.S - Bihra, District - Saharsa, Bihar, Pin Code 852124.
13. Kumar Ashutosh Son of Sudhir Jha resident of Vill - Bhatraghat, P.O Bhatraghat, P.S - Bisfi, District - Madhubani, Bihar, Pin Code-847122.
14. Suman Kumar Gupta Son of Late Shankar Prasad Gupta resident of Bikrampur, P.O- Kajra, P.S - Kajra, District - Lakhisarai, Bihar, Pin Code- 811309.
15. Rakesh Ranjan Son of Uma Shankar Singh resident of Ilahibagh, P.O Bairiya, P.S Gopalpur, District - Patna, Bihar, Pin Code - 800007.
16. Rahul Kumar Jyoti Son of Uday Sharma resident of Vill - Neema, P.O-



Nadwan, P.S- Dhanarua, District- Patna, Bihar, Pin Code 804453.

- 17. Sarfaraz uddin Son of Md Shakil Ahmad resident of Haroon Colony Sec 1, P.O- Phulwari sharif, P.S- Phulwari sharif, District - Patna, Bihar, Pin Code- 801505.
- 18. Md Gufran Son of Md Mustaq resident of Vill - Paighamberpur, P.O- Darima, P.S- Keoti, District - Darbhanga, Bihar, Pin Code – 847121.

... .. Petitioner/s

Versus

- 1. Union of India through the Secretary, Ministry of Health and Family Welfare, New Delhi
- 2. The State of Bihar through the Additional Chief Secretary, Health Department, Bihar, Patna
- 3. Director in Chief, Health Department, Bihar, Patna
- 4. Registrar cum Secretary, Pharmacy Council of India, New Delhi
- 5. Principal Secretary, General Administration Department, Government of Bihar, Patna
- 6. Chairman, Bihar Technical Service Commission, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 428 of 2025

- 1. Md. Firoz Mansuri Son of Md Sirajuddin Resident of Village -Baijnathpur, P.O.-Batsar, P.S.-Dhoraiya, District-Banka, Bihar.
- 2. Rakesh Roushan Son of Rameshwar Prasad Resident of Village -Patel Nager, P.O.- Basudeopur, P.S. Kotwali, District-Munger, Bihar
- 3. Md.Shahnawaz Alam Son of Md. Shamim Ahmad Resident of Village -Chaknathu, P.O.- Chaknathu, P.S.Sanhoula, District-Bhagalpur, Bihar.
- 4. Vishwajit kumar gunjan Son of Krishna Deo Jha Resident of Village -Jagdishpur, P.O.- Adharpur, P.S.Karpurigram, District- Samastipur, Bihar, Pincode-848130.
- 5. Niranjan kumar Son of Premlal Resident of Village- Janki complex Kashipur, P.O. Samstipur, P.S.-Samstipur town, District-Samastipur, Bihar.
- 6. Desh Deepak Tiwari Son of Mukteshwar Tiwari Resident of Village-Asha Parari, P.O. - Asha Parari, P.S.Simri, District- Buxar, Bihar.
- 7. Agnivesh kumar singh Son of Virendra Pratap Singh Resident of Professor Colony Budhanpurwa, P.O. Buxur, P.S.-Model Thana, District- Buxur, Bihar.
- 8. Md. Manazir Ahsan Son of Md. Akbar Ali Resident of Village- Puraini, P.O.-



- Puraini, P.S. Jagdishpur, District- Bhagalpur, Bihar.
9. Desh Ratna Son of Rajendra Prasad Resident of Village-Dhanhar, P.O.- Ekengarsarai, P.S.- Ekangarsarai, District Nalanda, Bihar.
 10. Ramanand Sharma Son of Shyam Nandan Sharma Resident of Village - Sahbajpur Mahnaiya, P.O.- Kamraw, P.S.- Dalsinghsarai, District-Samstipur, Bihar.
 11. Kumar Rohan Son of Raghunath Singh Resident of Village Budha Colony Adalbari, P.O. Anjanpir, P.S.- Hajipur Town, District - Vishali, Bihar.
 12. Mujtaba Hasan Son of Mutuza Hasan Resident of Village Tharma police Station Gayaghat, P.O.- Therma Police Station Gayaghat, P.S.-Gaighat, District Muzaffarpur, Bihar.
 13. Nikhil Gaurav Son of Kamleshwari Prasad Yadav Resident of Village Mahe Kataiya, P.O.-Mahe Kataiya, P.S. Pipra, District-Supaul, Bihar.
 14. Zeeshan ali Son of Md. Mansoor Alam Resident of Village- Gewal bigha, koili pokhar, P.O.- Rampur, P.S.Rampur, District - Gaya, Bihar.
 15. Amit Ranjan Son of Harinandan Sah Resident of Village Madhopur Digharua, P.O.- Madhopur Digharua, P.S. Tajpur, District- Samstipur, Bihar.
 16. Waquar Ahmad Son of Abdul Hai Resident of Village Shikarpur, P.O.- Mahinagar, P.S. Baliabelon, District - Katihar, Bihar.
 17. Manish Kumar Son of Madan Prasad Resident of Kali bagh Joda Inar Ward no 03, P.O.- Bettiah, P.S.- Bettiah, District- West champaran, Bihar.
 18. Ravi Ranjan Son of Birendra Pandey Resident of House no 09 Road No 10, Indrapuri, P.O.- Keshrinagar, P.S.- Patliputra, District- Patna, Bihar.
 19. Harsh Sahay Son of Dilip Kumar Sinha Resident of Aghoria Bazar, Behind Girdhari Cold Storage, P.O.- Ramna, P.S.- Kazimohammadpur, District-Muzaffarpur, Bihar.
 20. Irshad alam Son of Md.Idrish Resident of village ramnagar, P.o.-Ramnagar Dhunsi, P.S. Manigachi, District- Darbhanga, Bihar, Pincode-847233.
 21. Pramod Kumar Son of Narendra Prasad Resident of Village -Bhagwanpur, P.O.- Ashadhi, P.S.-Mufassil, District-Nawada, Bihar.
 22. Khushbu Raja Son of Durga Prasad Singh Resident of Village -Udaypur, P.O. -Jagai, P.S.-Ekangarsarai, District- Nalanda, Bihar.
 23. Shashi Bhusan Son of Lt Mahesh Prasad Singh Resident of Thakurwadi Road, P.O.- Jahanabad, P.S.-Jahanabad, District- Jahanabad, Bihar
 24. Ajeet kumar Son of Krishna Deo Thakur Resident of Village -Karpurinagar, P.O. -Fathepur, P.S.-Industrial Zero mile, District- Bhagalpur, Bihar.
 25. Mithlesh kumar Son of shiv ji rai Resident of Village -rasulpur kala, P.O. -rasulpur kala, P.S.-Darbhanga, District- Darbhanga, Bihar.
 26. Ajay kumar Son of Jai deo singh Resident of Village -Nagwan, P.O.- Nagwan, P.S. - Simri. Pincode-802133, Buxar.
 27. Pankaj Srivastava Son of Upendra Kumar Srivastava Resident of Viond



- Kunj, Flat no 304. P.O-Bhagwat nagar, P.S.- Bhagwat nagar, District - Patna, Bihar, Pincode-800026.
28. Kamlesh kumar Prajapati Son of Amir Chand Prajapati Resident of Village-Sarangpur, P.O.- Barka Dumra, P.S. Ara Miffasil, District - Bhojpur, Pincode-802312.
 29. Preyes kumar singh Son of Baldeo Singh resident of Village Karari, P.O.- Dhobhan bazar, P.S.-Dhobhan, District- Bhojpur, Pincode-802156.
 30. Manish kumar Shudhanshu Son of Sri Awadhesh prasad Resident of Village-Mohsimpur, P.O.-Panhesha, P.S-Shkehopursarai, District-Sheikhpura, Pin code -811103.
 31. Kumud Ranjan Son of Indradeo Singh Resident of Village -Amduja, P.O. Amduja, P.S.- Phulparas, District- Madhubani, Pincode-847402, Bihar.
 32. Md.Rahmate Alam Son of Md.Azyzur Rahman Resident of Village -Sadar Tola, P.O. -Marghia, P.S.Marghia, District- Katihar, Pincode-854104, Bihar.
 33. Mukesh Kumar Singh Son of Late Nandkishore Singh Resident of Village -Mohanpur, P.O. - Dharhara, P.S.-Dharhara, District- Munger, Pincode 811212, Bihar.
 34. Md.Rizwan Anwer Son of Md. Mahboob Alam Resident of Village -Bairagpur, P.O. Sontha, P.S.Kochadhaman, District-Kishanganj, Bihar.
 35. Dhananjay kumar Sudhanshu Son of Jai Prakash Yadav Resident of Village-Dhapodangi ,P.O. -Patharia, P.S.- Galgalia, District- Kishanganj, Bihar.
 36. Md. Ishtiaque Hussain Son of Shafayat Hussain Resident of Village -Haldikhora, P.O. Haldikhora, P.S.- Kochadhaman, District- Kishanganj, Bihar.
 37. Abhishek Kumar Singh @ Abhishek Kumar Son of Lt. Raj Kishore Singh Resident of Village - Bhawal, P.O.- Bhawal, P.S. Ramnagar, District- West Champaran, Bihar.
 38. Chandan kumar Son of - Satyanarayan Prasad Resident of Village- Laukahi, P.O.- Laukahi, P.S. - Laukahi, District-Madhubani, Bihar.
 39. Ajay kumar Pandit @ Ajay Kumar Son of-Tripti Narayan Pandit Resident of Village- Baika ward no 05, P.O. Bishnupur, P.S. Phulparas District-Madhubani, Bihar.
 40. Sanyog kumar Son of Ganga Ram Paswan Resident of Village- Chouri, P.O.- Birsayar, P.S.-Sakari, District- Madhubani, Bihar.
 41. Md.Inamul Haque Son of Md. Idris Resident of Village - Gorgama, P.O.- Phulparas, P.S. - Phulparas, District- Madhubani, Bihar.
 42. Ajay kumar Son of Surendra Prasad Resident of Village- Kanjas, P.O.- Telhara, P.S.- Telhara, District- Nalanda, Pincode -801306.
 43. Abhineet Amar Son of Jay lal sahu Resident of Village -Pathrahi, P.O. -Pathrahi, P.S.- Ladaniya, District- Madhubani, Bihar.
 44. Subhash kumar singh @ Subhash Kumar Son of Kishore Singh Resident of



- Village- Mahna kuli, P.O.-Chanpatia, P.S.-Chanpatia, District-West Champaran, Bihar.
45. Sonu Kumar Verma @ Sonu Kumar Son of Lt. Adaya Ram Resident of Piuni Bag Baswariya ward no 22, P.O.-Bettiah, P.S. Bettiah, District- West Champaran, Bihar.
 46. Dhiraj kumar Son of Kapil deo prasad Resident of Village- Parwatia Tola, P.O.-Belbagh, P.S.-Mufassil thana betiah, District-West Champaran, Bihar
 47. Md. Zafar iquebal Son of Md. Ansar Resident of Village jale, P.O.-Jale, P.S. Jale, District Darbhanga, Bihar.
 48. Shakil Anwer Son of Abdul Khalique Resident of Village Lakhaura Bichla Tola Ward no 7, P.O. Lakhaura P.S- Lakhaura, District-East Champaran, Bihar.
 49. Rajiv Raushan Son of Baikunth Prasad Gupta Resident of Village Sitarampur, P.O.- Sultanganj, P.S.Sultanganj, District- Bhagalpur, Bihar, Pincode -813213.
 50. Ramesh kumar Son of Rajendra Prasad Yadav Resident of Village -Kyotapatti, P.O.- Abhuar, P.S. -Kishanpur, District-Supaul, Bihar.
 51. Ranjeet kumar raman Son of Sadanand Prasad Yadav Resident of Village Bairo tola Jhakrahi, P.O.-Kataiya, P.S. -Supaul distt., District-Supaul, Bihar.
 52. Rajnish kumar Choudhary @ Rajnish Kumar Son of Bhikhari Choudhary Resident of Village-Bhugruaa, P.O.-Jagauli, P.S.-Jagauli, District- Purnea, Pincode-854304.
 53. Kumar Pushkar Anand Son of Pankaj Kumar Singh Resident of Village- Bahadura, P.O.- Bhadura, P.S.- Rupauli, District -Purnea, Pincode-854204.
 54. Shankar kumar Son of Indradeo yadav Resident of 122, Sondiha, P.O.- Chutiya, P.S.- Shambhuganj, District- Banka, Bihar.
 55. Barun kumar Son of Chhatthu Prasad Resident of Village Sonvarsha, P.O.- Arajtur, P.S.- Chausa, District-Madhepura, Bihar. Pincode-853204.
 56. Aatif Reyazi Son of Zahid Hassan Resident of Village- Khutauna, P.O.- Khutauna, P.S.-Khutauna, District-Madhubani, Bihar, Pincode- 847227.
 57. Ashwani kumar azad Son of Devendra Prasad Yadav Resident of Village Kathootiya, P.O.- Kathootiya, P.S.- Bihariganj, District- Madhepura, Bihar, Pincode-852101.
 58. Vikash Anand Son of Chandeshwari prasad Yadav Resident of Village Pariharpur, P.O.-Khajuri, P.S.Sorbazar, District-Saharsa, Pincode-852221
 59. Santosh Kumar Son of Ramanand Gupta Resident of Village- Belaon, Post- Kharenda, District- Kaimur, Bhabua
 60. Anaagat Son of Gulzar Ram Resident of - Bhagwanpur, post- Bhagwanpur, P.S sadar, District- Muzaffarpur
 61. Raman Kumar Son of Krishan Kant Jha Resident of- Refugee Colony, laxminath nagar, ward No. 06, District- Saharsha.



- 62. Sumit Kumar Suman Son of - Janardhan Prasad Mehta Resident of Damagra, P.O.- Damgara, P.S. Damgari, District- Purnia.
- 63. Ajay Kumar Ranjan Son of Mahendra Prasad Gupta, Resident of- Ward No. 12, Madhaili Bazar, Jirwa, P.S Shankarpur District- Madhepura.

... .. Petitioner/s

Versus

- 1. The State of Bihar Through The Chief Secretary, Government of Bihar, Patna
- 2. The Additional Chief Secretary, Health Department, Government of Bihar, Patna
- 3. The Union Of India, Through Secretary, Ministry of health and Family Welfare, New Delhi.
- 4. The Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No. 02, Community Centre, Okhla Phase I, New Delhi.
- 5. The Registrar, Pharmacy Council Of India, NBCC Centre, 3rd Floor, Plot No. 02, Community Centre, Okhla Phase 1, New Delhi.
- 6. The Bihar Technical Service Commission, Patna Through its Secretary, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4980 of 2025

Pharmay Council of India I-300, 3rd floor, Tower-I, World Trade Centre, Nauroji Nagar, New Delhi through its Registrar-cum-Secretary.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
- 2. The Additional Chief Secretary, Health Department, Government of Bihar, Patna.
- 3. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
- 4. The Director-in-Chief, Health Services, Government of Bihar, Patna.
- 5. The Bihar Technical Service Commission through its Secretary-In-Charge, 19 Harding, Road, Patna.

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 4987 of 2025

1. Md Shahabuddin Ansari S/O-Late Md Zilani Ansari Village-Madhepur, P.S-Madhepur, Dist-Madhubani, Pincode-847408.
2. Niraj Kumar, S/O Vinod Kumar, Village- Kundal , P.O- Mahindwara , P.S-Mahindwara, Dist- Sitamarhi, State-Bihar, Pincode-843117.
3. Dhananjay Kumar Tiwari, S/O Shrikant Tiwari Village-Janerwa, P.O-Areraj, P.S-Govindganj, Dist-East Champaran, State- Bihar.
4. Md Shameem, S/O Md Khalilullah, Village-Karsahiya, P.O-Karsahiya, P.S-Dhaka, Dist-East Champaran, State-Bihar Pincode-845418.
5. Md Farooque Ashraf, S/O Md Amir Ashraf, Village-Ejorbara, P.O-Ejorbara, P.S-Phenhara, Dist-East Champaran, State-Bihar Pincode-845430.
6. Amresh Kumar, S/O Rajkumar Sah, Village-Parsauni Kapur, P.S-Patahi Dist-East Champaran State- Bihar Pincode-845457.
7. Md Ataur Rahman, S/O Anwar Alam Ansari, Village-Mirpur , P.S-Chiraiya, Dist-East Champaran, State- Bihar Pin Code-845415.
8. Mohan Kumar, S/O Shiv Chandra Prasad Village-Ghorasahan, Post-Ghorasahan, P.S-Ghorasahan, Dist-East Champaran, State- Bihar, Pincode-845303.
9. Md Shamim Akhtar, S/O Abul Quaish Village-Jhitkahiya Post-Jhitkahiya P.S-Lakhaura, Dist-East Champaran, State-Bihar, Pincode- 845431.
10. Markanday Kumar Singh, S/O Phanindra Nath Singh Resident Of Ward No.24, New Chandmari, P.S-Motihari Sadar, Dist-East Champaran, State-Bihar Pincode-845401.
11. Anju Kumari, D/O Ajay Prasad, Village-Raghunathpur, Post-Mirpur, P.S-Chiraiya Dist-East Champaran, State-Bihar, Pincode-845415.
12. Tarique Anwar, S/O Manzurul Haque Village-Purushottam Pur, P.S-Chauradano, Dist- East Champaran, State- Bihar, Pincode-845302.
13. Md Quamar Iqubal S/O Md Mahfuzur Rahman, Village-Ganeshpur, Post-Ganeshpur, P.S- Marauna, Dist- Supaul, State- Bihar, Pin Code-852133.
14. Shakil Anwer, S/O Abdul Khalique, Village-Lakhaura Bichla Tola Post-Lakhaura Bichla Tola P.S- Lakhaura, Dist- East Champaran, State-Bihar, Pincode-845302.
15. Md Neyaz Ahmad, S/O Seraj Ahmad, Village-Bheriherwa, P.S- Ramgarhwa, Dist- East Champaran, State-Bihar, Pincode-845433.
16. Tanveer Khan, S/O Sadruddin Khan, Village-Majhariya, P.S-Adapur, Dist-East Champaran, State-Bihar, Pincode-845433.
17. Amit Kumar Singh, S/O Harendra Prasad Singh, Village-Madhuban Tola Mohanwa, Post-Gulwara Madhuban, P.S- Madhuban, Dist-East Champaran,



State-Bihar, Pincode-845420.

18. Md Asif Anwer, S/O Late Md Saim Khan Urdu Bazar, Jabbarchak Lane, Tatarpur, Dist-Bhagalpur, State-Bihar, Pincode-812002.
19. Tauqueer Naim, S/O Late Naim Uddin, Village-Baturbari, Post-Baturbari, P.S-Tarabari, Dist-Araria, State- Bihar, Pincode-854311.
20. Manmohan Kumar, S/O Shayam Bihari Tiwari, Village-Chhapra Bahas, Post-Chhapra Bahas, P.S- Sugauli, Dist-East Champaran, State-Bihar, Pincode-845435.
21. Faiyazuddin Ahmad, S/O Salahuddin Ahmad, Village-Jangalia, Post-Gopalganj, P.S-Gopalganj, Dist-Gopalganj, State-Bihar, Pincode-841428.
22. Vijay Shankar Prasad, S/O Late Shiv Prasad, Village-Gangaur, Post-Gangaur, P.S- Harlakhi, Dist-Madhubani, State-Bihar, Pincode-847308.
23. Rakesh Kumar Yadav, S/O Yogi Yadav, Village-Usrahi, Post-Usrahi, P.S-Deodha, Dist-Madhubani, State-Bihar, Pincode-847226.
24. Md Mahfooz Alam, S/O Md Sami Uddin Badluchak, Jagdishpur, Dist-Bhagalpur, State-Bihar, Pincode-813105.
25. Vijaya Laxmi, W/O Tapomay Kumar Deo , 88, Anand Bag, Karpi, P.S-Karpi, Dist-Arwal, State-Bihar, Pincode-804419.
26. Tapomay Kumar Deo, S/O-Indu Bhushan Kumar, Vill- Anand Bag, P.O-Karpi, P.S-Karpi, Dist- Arwal, State-Bihar, Pincode-804419.
27. Kamlesh Kumar, S/O Bhogendra Gohiwar, Vill-Usrahi, P.S-Deodha, Dist-Madhubani, State-Bihar, Pincode-847226.
28. Ravi Prakash, S/O Chandra Bhushan Prasad, Village- Laxmipur, Madhepur, Dist-Madhubani, State-Bihar, Pincode-847408.
29. Md Adil Hussain Tahir, S/O Late Mojibur Rahman, Vill-Datta Gwal Toli, P.S.-BARSOI, Dist-Katihar, State-Bihar, Pincode-855102.
30. Abhishek Kumar, S/O Brijesh Kumar Singh, At-Club Road Arah, P.S-Nawada Dist-Bhojpur, State-Bihar, Pincode-802301.
31. Manoj Kumar Singh, S/O Kameshwar Singh, Village-, Deo, P.S-Deo, Dist-Bhojpur, State-Bihar, Pincode-802209.
32. Yogesh Kumar, S/O Ram Binay Yadav, Village-Nehalpur, P.S-Mabbi Op, Dist-Darbhangha State-Bihar, Pincode-846005.
33. Md Iqbal, S/O Md Gafur Sah, Village-Milky Anaith, P.S-Nawada, Dist-Bhojpur, State-Bihar, Pincode-802302.
34. Maneesh Kumar, S/O Suresh Prasad Sharma, At-Shivji Colony Ward No-8, P.S-K Hat, Dist-Purnia, State-Bihar, Pincode-844301
35. Nitin Sagar, S/O Ram Sagar Prasad, Village-Majhulia, P.S-Sakra, Dist-Muzaffarpur, State-Bihar, Pincode-843104.
36. Md Hamid, S/O Md Khursheed Alam, Village-Ghordour, P.S-Salkhua, Dist-Saharsa, State-Bihar, Pincode-852127.



... .. Petitioner/s

Versus

- 1. The State of Bihar Through The Chief Secretary, Government of Bihar, Patna.
- 2. The Additional Chief Secretary, Health Department, Government of Bihar, Patna.
- 3. The Union Of India, Through Secretary, Ministry of Health and Family Welfare, New Delhi.
- 4. The Pharmacy Council of India, NBCC Centre, 3rd Floor, Plot No. 02, Community Centre, Okhla Phase I, New Delhi.
- 5. The Registrar, Pharmacy Council Of India, NBCC Centre, 3Rd Floor, Plot No. 02, Community Centre, Okhla Phase I, New Delhi.
- 6. The Bihar Technical Service Commission, Patna Through its Secretary, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 313 of 2025)

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| For the Petitioner/s | : | Mr. Mrigank Mauli, Sr. Advocate
Mr. Prince Kumar Mishra, Advocate |
| For the State | : | Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, Advocate
Mr. Amish Kumar AC to AG
Mr. Vivek Prasad, GP-7
Ms. Supragya, AC to GP-7 |
| For the UOI | : | Ms. Shweta Verma, Advocate
Mr. Sameer Sawan, Advocate |
| For the Respondent | : | Mr. Lalit Kishore, Sr. Advocate
Mr. Santosh Kumar, Sr. Advocate
Mr. Shashi Bhushan Singh, Advocate
Mr. P.K. Jha, Advocate
Mr. Kanishka Shankar, Advocate
Mr. Prafulla Kumar Tiwary, Advocate
Mr. Utsav, Advocate |
| For the BTSC | : | Mr. Nikesh Kumar, Advocate
Mr. Akshansh Shanker, Advocate |
| For the P.C.I. | : | Mr. Jitendra Singh, Sr. Advocate
Mrs. Parul Prasad, Advocate |

(In Civil Writ Jurisdiction Case No. 72 of 2025)

- | | | |
|----------------------|---|--|
| For the Petitioner/s | : | Mr. Prashant Sinha, Advocate
Mr. Rishi Raj Raman, Advocate
Mrs. Ruchi Mandal, Advocate
Mr. Aniket Rai, Advocate |
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		Mr. Kunal Kumar, Advocate
For the U.O.I.	:	Mr. Arjun Kumar, CGC
For the State	:	Mr. P.K. Shahi, Advocate General
		Mr. Vikas Kumar, Advocate
		Mr. Amish Kumar, Advocate
		Mr. Vivek Prasad, GP-7
		Ms. Supragya, AC to GP-7
For the P.C.I.	:	Mr. Jitendra Singh, Sr. Advocate
		Mrs. Parul Prasad, Advocate
For the BTSC	:	Mr. Nikesh Kumar, Advocate
		Mr. Akshansh Shanker, Advocate
For the Respondent	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Santosh Kumar, Sr. Advocate
		Mr. Shashi Bhushan Singh, Advocate
		Mr. P.K. Jha, Advocate
		Mr. Kanishka Shankar, Advocate
		Mr. Prafulla Ranjan Tiwary, Advocate
		Mr. Rajeev Ranjan Mishra, Advocate
		Mr. Utsav, Advocate

(In Civil Writ Jurisdiction Case No. 193 of 2025)

For the Petitioner/s	:	Mr. Abhinav Srivastava, Sr. Advocate
		Mr. Pushkar Bharadwaj, Advocate
		Mr. Raushan, Advocate
		Mr. Shubham Priyadarshi, Advocate
		Ms. Shreyashi Raj, Advocate
For the UOI	:	Mr. Bindhyachal Rai, Advocate
For the BTSC	:	Mr. Nikesh Kumar, Advocate
		Mr. Akshansh Shanker, Advocate
For the State	:	Mr. P.K. Shahi, Advocate General
		Mr. Vikas Kumar, Advocate
		Mr. Amish Kumar, Advocate
		Mr. Vivek Prasad, GP-7
		Ms. Supragya, AC to GP-7
For the P.C.I.	:	Mr. Jitendra Singh, Sr. Advocate
		Mrs. Parul Prasad, Advocate
For the Respondent	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Santosh Kumar, Sr. Advocate
		Mr. Shashi Bhushan Singh, Advocate
		Mr. P.K. Jha, Advocate
		Mr. Kanishka Shankar, Advocate
		Mr. Prafulla Kumar Tiwary, Advocate
		Mr. Rajiv Ranjan Mishra, Advocate
		Mr. Utsav, Advocate

(In Civil Writ Jurisdiction Case No. 428 of 2025)

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate
		Mr. Ayush Kumar, Advocate
For the BTSC	:	Mr. Nikesh Kumar, Advocate
		Mr. Akshansh Shanker, Advocate



For the State : Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, Advocate
Mr. Amish Kumar, Advocate
Mr. Vivek Prasad, GP-7
Ms. Supragya, AC to GP-7
For the P.C.I. : Mr. Jitendra Singh, Sr. Advocate
Mrs. Parul Prasad, Advocate
For the Respondent : Mr. Lalit Kishore, Sr. Advocate
Mr. Santosh Kumar, Sr. Advocate
Mr. P.K. Jha, Advocate
Mr. Shashi Bhushan Singh, Advocate
Mr. Kanishka Shankar, Advocate
Mr. Prafulla Ranjan Tiwary, Advocate
Mr. Rajeev Ranjan Mishra, Advocate
Mr. Utsav, Advocate

(In Civil Writ Jurisdiction Case No. 4980 of 2025)

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Advocate
Mrs. Parul Prasad, Advocate
For the State : Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, Advocate
Mr. Amish Kumar, Advocate
Mr. Vivek Prasad, GP-7
Ms. Supragya, AC to GP-7
For the BTSC : Mr. Nikesh Kumar, Advocate
Mr. Akshansh Shanker, Advocate
For the Respondent : Mr. Lalit Kishore, Sr. Advocate
Mr. Santosh Kumar, Sr. Advocate
Mr. Shashi Bhushan Singh, Advocate
Mr. P.K. Jha, Advocate
Mr. Kanishka Shankar, Advocate
Mr. Prafulla Kumar Tiwary, Advocate
Mr. Utsav, Advocate

(In Civil Writ Jurisdiction Case No. 4987 of 2025)

For the Petitioner/s : Mr. Md. Mumtaz Uddin, Advocate
For the P.C.I. : Mr. Jitendra Singh, Sr. Advocate
Mrs. Parul Prasad, Advocate
For the State : Mr. P.K. Shahi, Advocate General
Mr. Vikas Kumar, Advocate
Mr. Amish Kumar, Advocate
Mr. Vivek Prasad, GP-7
Ms. Supragya, AC to GP-7
For the BTSC : Mr. Nikesh Kumar, Advocate
Mr. Akshansh Shanker, Advocate
For the UOI : Mr. Rana Vikram Singh, Dy. SGI
Dr. Iti Suman, CGC
For the Respondent : Mr. Lalit Kishore, Sr. Advocate
Mr. Santosh Kumar, Sr. Advocate
Mr. Shashi Bhushan Singh, Advocate



Mr. P.K. Jha, Advocate
Mr. Kanishka Shankar, Advocate
Mr. Prafulla Kumar Tiwary, Advocate
Mr. Utsav, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 10-04-2025

All the writ petitions have been heard together
and are being disposed off by this common judgment.

2. In C.W.J.C. Nos. 313 of 2025; 72 of 2025;
193 of 2025; 428 of 2025; 4980 of 2025; and 4987 of
2025, the petitioners have challenged the validity of Rule
6(1) of Bihar Pharmacists Cadre Rules, 2014 (as
amended) (*hereinafter referred to as “impugned Rules of
2014”*), in which, it has been stipulated that for
appointment by direct recruitment to the basic category
posts of Pharmacists, minimum educational qualification
shall be Intermediate/10+2 (Science) and passing in all
parts (Part-I, II & III) of Diploma in Pharmacy from the
Institutions recognized by the Government and a
certificate to that effect would be necessary, as being



violative of and repugnant to the Pharmacy Practice Regulations, 2015 (*hereinafter referred to as "Regulations of 2015"*) framed by the Pharmacy Council of India (*hereinafter referred to as "PCI"*) under Section 10 of the Pharmacy Act, 1948, which, *inter alia*, provides that the basic qualification of Diploma in Pharmacy and Bachelor Degree in Pharmacy would be necessary for the profession of Pharmacists.

3. Rule 6(1) of the impugned Rules of 2014 have also been questioned on it being arbitrary and irrational.

4. The prayer in these petitions are also for declaration of the note provided in Rule 4 of the Bihar Pharmacist Cadre (Amendment) Rules, 2024 in Appendix-I stipulating that B. Pharma and M. Pharma certificate holders would also be eligible for applying for the posts of Pharmacists, provided they possess the qualification of Diploma in Pharmacy.

5. In the alternative, a prayer has been made for



reading down Rule 6(1) of the impugned Rules of 2014, as amended, to mean and include that candidates holding degree qualification (B. Pharma and M. Pharma) would be eligible for the post of Pharmacists.

6. In C.W.J.C. No. 4980 of 2025, preferred on behalf of the PCI, the prayer is exactly the same, but along with the prayer for quashing of the Advertisement No. 22 of 2025, dated 10.03.2025, issued by the Bihar Technical Service Commission, inviting applications for the post of Pharmacists under the Health Department, Government of Bihar, whereby only such candidates who have Diploma in Pharmacy could apply and that the holders of B. Pharma and M. Pharma degrees would be eligible only if they have the basic qualification of Diploma in Pharmacy.

7. This prayer has been made on the ground that the PCI, which is the apex regulatory body for the Pharmacy profession in India, has the exclusive authority to regulate the qualification, qualification standards,



professional conduct and all other matters related to Pharmacy practice including the matters related to Pharmacists Cadre and that no State or local body could enact rules contrary to the provisions of the Pharmacy Act, 1948 and the regulations framed thereunder, especially the Regulations of 2015.

8. The central issue in all these petitions are: (a) whether a rule made under Article 309 of the Constitution of India by the Governor, *viz.*, the impugned Rules of 2014 could prescribe the basic/essential qualification for Pharmacists to be only Diploma in Pharmacy, even when under the Pharmacy Act of 1948 and the regulations framed thereunder, namely, the Pharmacy Practice Regulations of 2015, the basic qualification for the profession of Pharmacy is Diploma/Bachelor Degree in Pharmacy; (b) whether the rules in question entrench upon the occupied field of the Central Government; (c) whether B. Pharma/M. Pharma is a higher qualification than D. Pharma and; (d) whether B. Pharma/M. Pharma



is in the same channel of learning, subsuming in itself the minimum/inferior qualification of Diploma in Pharmacy.

9. The issues are not, by any chance, novel and have drawn judicial attention in a number of cases in different contexts.

10. Before coming to these core issues, it would be necessary to delve in some background facts.

11. All the writ petitioners are holders of Bachelor of Pharmacy Degree and are also registered with the Bihar State Pharmacy Registration Council.

12. The Government of Bihar notified the Bihar Pharmacist Cadre Rules of 2014 on 10.10.2014. Rule 6(1) of the impugned Rules of 2014 provided that the minimum qualification for the post of Pharmacists would be Intermediate/10+2 (Science) pass. However in Appendix-I to the Rules, a “note” was provided that B. Pharma and M. Pharma Degree holders may also apply.

13. Shortly, thereafter, the Pharmacy Council of India (PCI) also framed Pharmacy Practice Regulations,



2015, which was gazetted on 15.01.2015. These Regulations were framed under Sections 10 and 18 of the Pharmacy Act of 1948. In Appendix-III of the Regulations of 2015, referred to above, the details of position, title and job responsibilities of Pharmacists have been provided. The basic qualification, according to the Regulation of 2015, is Diploma in Pharmacy/Bachelor in Pharmacy.

14. After the gazetting of the Regulation of 2015, the Government of Bihar amended Bihar Pharmacist Cadre Rules by Bihar Pharmacist Cadre (Amendment) Rules, 2017, which was notified on 03.11.2017. In these amended Rules, the chain of promotional posts were provided, bringing it in terms with the Regulations of 2015.

15. No amendment, however, was made with respect to the minimum/threshold/essential qualification of Diploma in Pharmacy. Similarly, as in unamended impugned Rules of 2014, the “note” provided in the



Appendix remained the same, namely, that holders of B. Pharma and M. Pharma Degrees could also apply.

16. The impugned Rules of 2014, again, underwent a change in the year 2019, whereby Rule 7 was amended for providing selection process for Pharmacists, in which, the merit list was to be prepared on the basis of the marks awarded.

17. Some of the writ petitioners had challenged the validity of the Rules before this Court when a notification dated 05.04.2023 was issued for selection and appointment of persons as Pharmacists in the service of the State.

18. This Court *vide* order dated 17.05.2023 passed in the writ petitions, referred to above, the lead case being C.W.J.C. No. 7437 of 2023, noticed that earlier notification brought out with the same minimum/basic qualification of Diploma in Pharmacy, inviting applications for contractual appointment, had led to filing of several writ petitions before a learned Single



Judge, seeking permission of graduates and post-graduates in Pharmacy to also apply, which prayer was allowed by the learned Single Judge. However, a Division Bench of this Court, in a batch of appeals, the lead case being L.P.A. No. 158 of 2020, *vide* judgment dated 10.01.2023 had set aside the decision of the learned Single Judge and had held that mere acquisition of higher qualification directly and without basic qualification of Diploma in Pharmacy would not entitle the graduates and post-graduates in Pharmacy to become eligible for participating in the process of selection and appointment to the post of Pharmacists. The reasons given by the Division Bench was that the standard of education and the syllabus for acquiring Diploma in Pharmacy and B. Pharma/M. Pharma are entirely different. The diploma holders generally work in various Health Departments, whereas graduates and post-graduates in Pharmacy are ordinarily engaged in industrial side where drugs and cosmetics are manufactured. They also have an avenue



of employment as Inspectors or higher promotional posts in that line in the Drugs Wing of the Health Department.

19. While saying so, the Division Bench also relied upon the judgment of the Supreme Court in ***Nair Service Society Vs. Dr. T. Beermasthan & Ors. : (2009) 5 SCC 545***. In the afore-noted case, it was held that it is not for the Courts to decide on the wisdom or otherwise of the legislature. The Courts should exercise judicial restraint and not interfere with the same, unless there is clear illegality.

20. Against the afore-noted judgment of the Division Bench, referred to above, a Special Leave to Appeal had been filed, which, at that time, was pending consideration before the Supreme Court. Subsequently, as referred to above, the State Government had brought out a fresh notification dated 05.04.2023 on the very same qualifications as was stipulated in notification of 2019. The Supreme Court was of the view that the High Court would be required to consider the correctness or



otherwise of the eligibility criteria imposed in the notification dated 05.04.2023 based on the impugned Rules of 2014.

21. It was contended before the Supreme Court that even in the absence of a candidate having diploma, a candidate possessing B. Pharma or M. Pharma degrees ought to be entitled to apply.

22. Expressing no opinion on such contention, the matter was referred to the High Court.

23. As an interim measure, this Court *vide* order dated 17.05.2023 had permitted the persons holding a higher degree of B. Pharma/M. Pharma also to apply against such notification/advertisement dated 05.04.2023.

24. While hearing the slew of writ petitions, this Court on 05.10.2023 noticed the various provisions of the Pharmacy Act, 1948, Pharmacy Practice Regulations, 2015 and B. Pharma Course Regulation, 2014. It was also brought to the notice of this Court that a diplomate



gets lateral entry to the second year of the graduate course in B. Pharma, suggesting that B. Pharma was higher qualification in the same subject, enabling the holder thereof to gain employment as a Pharmacist with the Government. Initially, the Court was of the view that what is specified in the Cadre Rules is the minimum required qualification and, therefore, there would be no justification for not allowing persons with higher degrees in the same line of learning, from applying for the posts of Pharmacists.

25. Since there was a discordant line of reasoning from the judgment of the Division Bench in L.P.A. No. 158 of 2020, the issue was referred to a larger Bench for consideration.

26. Before the larger Bench of 3-Judges, of which one of us (Ashutosh Kumar, J.) was a part, it was submitted that the recruitment notification would be withdrawn as the Cadre Rules were, perhaps, to be amended. The larger Bench, thus, found that the writ



petitions had been rendered infructuous and, therefore, all the writ petitions were closed. However, it was clarified by order dated 06.11.2023 that if the Cadre Rules were not amended and the recruitment is initiated on the same very lines, the writ petitioners would be entitled to seek restoration of the writ petitions, but only in the circumstance of no amendment being made to the rules as it existed, dis-entitling the graduates to apply for the said post.

27. Though the rules were amended, leaving the provision contained in 6(1) of the original un-amended Rules of 2014 unaffected, but the “note” in the Appendix of Rule 4 was modified to the extent that B. Pharma/M. Pharma degree holders also would be eligible to apply for recruitment, if they also possess the qualification of Diploma in Pharmacy.

28. Some of the writ petitioners, therefore, contended that the situation remained the same and, therefore, the larger Bench which had already been



constituted for the purpose for testing the validity of such qualification be revived; the writ petitions be restored and the issue be heard by the larger Bench. The rationale was that only when the Division Bench later did not find itself in agreement with the line of reasoning of the earlier Division Bench judgment, the matter per force was required to be referred to the larger Bench.

29. The learned Advocate General and the intervenor/respondents, viz., the diploma holders opposing the writ petitioners, however, have submitted that with the amendment in the Rules, even though the qualification provision remained unamended, fresh writ petitions are required to be filed and heard by a Division Bench only. It was but expressed by them that they had no objection to a larger Bench also being constituted.

30. However, because of the clear intendment in the order dated 06.11.2023 that the writ petitions would be revived only in the event of there being no amendment in the Rules as it existed, there would be no necessity for



a referral to the larger Bench again and the matter is required to be heard afresh.

31. The graduate degree holders/writ petitioners have argued that when the Cadre Rules itself provides that B. Pharma and M. Pharma degree holders could apply for the post of Pharmacists, the intention of the rule making body is rendered apparent that it considers the graduates in Pharmacy to be holders of higher qualification, who would be entitled to be appointed to post of Pharmacists as it would be in accordance with the Regulations of 2015, which provides for the qualification of Diploma in Pharmacy and Bachelor in Pharmacy as the necessary qualification for the Pharmacists.

32. The writ petitioners have brought to the notice of the Court a gazette notification dated 16.07.2019, whereby the Government of India, on the recommendation of the PCI, had taken a decision that a person holding the qualification of Doctors in Pharmacy (Pharma D.) would be eligible for appointment to various

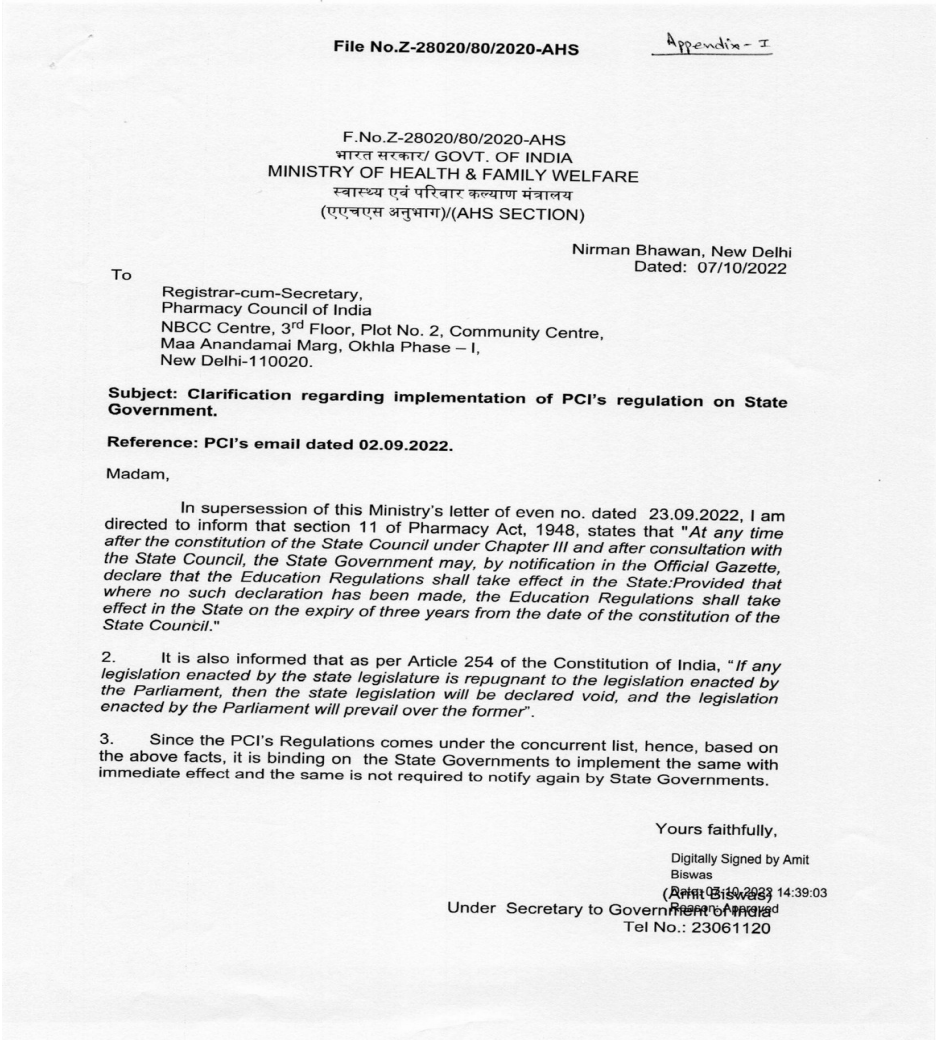


posts on which the holders of B. Pharma and M. Pharma would be eligible to be appointed. Obviously, such a decision was taken on a consideration of the fact that Pharma D. is a higher qualification than B. Pharma and M. Pharma. It was also argued that the Government of Bihar, in several of its Departments, has permitted the graduates in Pharmacy also to apply for the post of Pharmacists.

33. The Ministry of Health and Family Welfare, Government of India *vide* its letter dated 07.10.2022 has issued a clarification regarding the implementation of Pharmacy Council of India Regulations, 2015 by the State Governments. It would be profitable to extract the afore-noted clarification dated 07.10.2022, which reads as hereunder:



Patna High Court CWJC No.313 of 2025 dt.10-04-2025
28/72



34. The other line of arguments suggested by the writ petitioners are that when the Rules provide for minimum educational qualification of diploma, it cannot be construed inter-changeably as essential educational qualification. The expression “minimum” has to be construed contextually, meaning thereby that it ought to be understood as a cut-off filter which normally, *sans* the change in the note in Appendix-I, ought not to debar



recruitment of higher qualified candidates.

35. Mr. Y.V. Giri, Mr. Jitendra Singh, Mr. Mrigank Mauli and Mr. Abhinav Srivastava, the learned Senior Advocates and Mr. Prashant Sinha, the learned Advocate appearing for the petitioners have further questioned the validity of Rule 6(1) of the impugned Rules of 2014 on the grounds of proportionality, which doctrine has been used to test the validity of a statute. Under the principle of proportionality, any action of the State which allegedly violates the constitutionally protected right is required to be tested on three parameters namely: (a) the action must be sanctioned by law; (b) the proposed action is necessary in a democratic society for a legitimate aim and; (c) the extent to which such interference is permissible must be such as to be proportionate to the need for such interference.

36. It was argued that the Supreme Court in the case of ***K.S. Puttaswamy Vs. Union of India : (2019) 1 SCC 1*** has formulated a four sub-component of the



proportionality need to be satisfied for a law to be valid and the conditions formulated are cumulative. To list them: (1) a measure restricting a right must have a legitimate goal; (2) it must be a suitable means of furthering this goal; (3) there must not be any less restrictive but equally effective alternative and; (4) the measure must not have a disproportionate impact on the right holder.

37. What is to be seen, it has been argued, is whether there exists a legitimate State interest and a rational nexus between the measure adopted and the object that it professes to fulfill. When the Supreme Court referred to legitimate State interest, what it meant was that the measure adopted to impair the constitutionality must be towards preserving a larger public interest and not any private interest of the parties involved. It is in this test that distinguishes the test of rational nexus which is employed under Article 14 of the Constitution of India to test the intelligible differentia



category.

38. The Courts, in exercise of its power of judicial review, is required to see if the measure adopted to impair the constitutionally protected right, is actually necessary to achieve the legitimate State interest. The Courts are expected to see if there exists a range of alternative measures, which are less intrusive and that the alternative measures achieve the legitimate State interest in real and substantial manner.

39. The Courts, then, must look at the issue in that perspective, namely, that the measures adopted and the alternative measures available would not lead to any disproportionate impact on the rights of the individuals whose rights have been impaired or upon the legitimate State interest.

40. It was, thus, argued that it serves no legitimate State interest in excluding persons with higher qualification in the same line/channel of education, from the recruitment process without any basis. The only



rationale provided by the State and that also through inferential logic is that diploma holders are best suited for recruitment as Pharmacists in hospitals, whereas higher degree in Pharmacy would be more useful in the industrial side, namely, the manufacture of drugs etc. and that the avenues for appointment of diploma holders is limited and, therefore, their right should be protected. No empirical study has gone into this rationale as to the effectiveness of employing only diploma holders in Health Services as Pharmacists and that they have no other avenues of appointment. The disproportionate harm to the higher qualified aspirants has completely been ignored, thus making the rule arbitrary. It has directly and adversely affected the right to employment under Article 16 of the Constitution of India and the law of equality enshrined under Article 14 of the Constitution of India.

41. It was argued that in ***Sodan Singh & Ors.***
Vs. New Delhi Municipal Committee & Ors : (1989) 4



SCC 155, it was held that the guarantee under Article 19(1)(g) would extend to practicing any profession, or to carry on any occupation, trade or business. Profession means an occupation carried on by a person by virtue of his personal and specialized qualifications, training or skill. The word “occupation” has a wide meaning, such as regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged.

42. In this context, it was submitted that the Pharmacy Act of 1948 and the regulations framed thereunder, *i.e.*, Regulations of 2015, clearly provide the contours of the course of Diploma in Pharmacy and B. Pharma; the eligibility of the holders of such degrees to register themselves as Pharmacists and the responsibilities and ethical standards of the Pharmacists. If a degree qualifies a person to carry on his vocation as a Pharmacist, there is no reason why he should be excluded from participating in any recruitment process for



Government jobs. Exclusion, seen in this perspective, would clearly be violative of the graduate degree holders' right to be considered for appointment for Government jobs. This, in effect, impairs their right to life.

43. The right to life is a basic human right assured by Article 21 of the Constitution of India, which comprehends something more than mere animal existence, *i.e.*, dignity of an individual. *Feild, J.* in ***Munn Vs. Illionois : (1994) U.S. 113, 154 (1876)*** has held that by the term life, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. In ***Olga Tellis Vs. Bombay Municipal Corporation : (1985) 3 SCC 545***, the Supreme Court has further laid down that an equally important facet of right to life is the right to livelihood because no person can live without the means of livelihood.

44. Public employment opportunity is a national wealth in which all citizens are equally entitled to share.



The right to public employment and its concomitant right to livelihood is thus fortified under the canopy of the protective umbrella of Articles 14, 16, 19 and 21 of the Constitution of India [also refer to ***Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors. : (1991) Supp. 1 SCC 600***].

45. Developing the argument further, the learned Advocates have pointed out that in ***Shri R.K. Dalmia Vs. Shri Justice S.R. Tendolkar & Ors. : AIR 1958 SC 538***, the Supreme Court enumerated various tests adopted and applied to test the validity of any Act Central or State, viz., (a) that a law may be constitutional even though it relates to a single individual who may be treated as a class by himself; (b) that there is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles; (c) that it must be presumed that the legislature understands and correctly appreciates



the need of its own people and that its laws are directed to problems, made manifest by experience and that its discriminations are based on adequate grounds; (d) that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest; (e) that in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation and; (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based.

46. The presumption of constitutionality however cannot be carried to the extent of always holding that there must be some undisclosed and unknown



reasons for subjecting certain individuals of or corporations to hostile or discriminating legislation.

47. These principles, it has been argued, will have to be borne in mind by the Courts when it is called upon to adjudge the constitutionality of any particular law, attacked as discriminatory and violative of the equal protection of the laws.

48. It was, thus, contended that notwithstanding the presumption in favour of the constitutionality of an enactment, in the present case, in the absence of any empirical study or formulations that Diploma in Pharmacy is better suited for hospital administration and that the holders of diploma have lesser windows/opening for public employment for the post of Pharmacists in hospitals, it is necessary to exclude the higher degree holders from participation. This rationale belies the factual scenario existing today and is also not in consonance with the Pharmacy Act and the Regulations framed thereunder, which recognize the Diploma and B.



Pharma as degrees entitling the holders thereof to carry on the vocation/profession of Pharmacists. A Pharmacist would be required to do his job in Hospitals; in the industrial wing of the Health Department; in the Industry of manufacturing drugs as Drug Inspectors and at all places and positions where there is a requirement of a Pharmacist. It is only for this that the State Government in its Insurance Sector and other Departments have not made any such exclusion with respect to higher degree holders. It is also not in dispute that course curriculum for a Diploma and B. Pharma are the same so far as core subjects are concerned, which the Central Government also recognizes.

49. For any classification to survive the test of Article 14 of the Constitution of India, it must be based on intelligible differentia and it must have a rational nexus to the objects sought to be achieved. The classification ought not ever to be arbitrary, artificial or evasive. It must rest always upon real and substantial distinction,



bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any reasonable basis should be regarded as invalid. If classification is made on irrelevant factors or not recognizing relevant factors, such classification cannot withstand the challenge of Article 14 of the Constitution of India.

50. An administrative or a legislative measure must not be more drastic than it is necessary for attaining the desired result (the proportionality test). There is no proportionality in the impugned Rules of 2014, as it inflicts more harm to higher degree holders than compared to the benefits to the diploma holders only. The distinction sought to be made is absolutely vague, which serves no good purpose.

51. In further support of the petitioners, Mr. Y.V. Giri, the learned Senior Advocate and Mr. Prashant Sinha, the learned Advocate have submitted that all efforts should be made to reconcile the provisions



contained in the impugned Rules of 2014 and the central legislation in a harmonious manner so as to avoid the declaration of invalidity. It could be best done by deleting the “note” in the impugned Rules that only those B. Pharma and M. Pharma holders could apply to the recruitment process who essentially have acquired Diploma in Pharmacy.

52. In ***Chandrashekhar Singh and Ors. Vs. State of Jharkhand and Ors. : 2025 LiveLaw (SC) 336/2025 SCC OnLine SC 595***, the Supreme Court has held that candidates cannot be solely rejected on the ground of their having higher degrees than prescribed qualification.

53. Here, the selection pool for the purpose of appointment of Pharmacists is of registered Pharmacists. In this regard, the Pharmacy Act and the Regulations of 2015 are relevant, which provide the definition of Pharmacists to include the diploma holders and degree holders both. The State has framed the impugned Rules



of 2014, which is not in consonance, but in derogation of the Central Act. Even though, the impugned Rules occupies different field, yet the constitutional validity can be tested on the ground that the same is violative of Article 14 of the Constitution of India, whereby a class within a class has been carved out, tantamounting to class legislation, which not only offends Article 14 but also Articles 19 and 21 of the Constitution of India.

54. The micro-classification sought to be made by the State serves no purpose and has no substantial basis. The sub-categorization of the classification is patently unreasonable [also refer to ***State of Punjab Vs. Davinder Singh : (2025) 1 SCC 1/2024 SCC OnLine SC 1860***].

55. Mr. Prashant Sinha, the learned Advocate has referred to the judgment of the Supreme Court in ***Pharmacy Council of India Vs. Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and Ors. : (2021) 10 SCC 657***, where it has been held



that in exercise of powers vested in the Pharmacy Act, 1948, the PCI has framed a number of Regulations for prescribing minimum standards of education as well as regulating the subject of Pharmacy in India. As per the preamble of the Pharmacy Act of 1948, it has been enacted to make better provisions for the regulation of the profession and practice of Pharmacy and for that purpose to constitute Pharmacy Councils. The Act ensures that there is a seamless regulation of the profession.

56. In the field of Pharmacy, thus, the Pharmacy Act, 1948 is a special law. From the relevant provisions of the Pharmacy Act, 1948, more particularly, Sections 10, 12, 13, 16, 29, 32, 35, 36 and 42, it is clear that Pharmacy Act, 1948 exclusively covers all areas including the approval of courses; laying down course contents; eligibility conditions for students as well as teachers; evaluation standards of examination; grant of registration; entry of higher qualification in the same



discipline; taking action for infamous conduct, etc. It is a complete code in itself, which recognizes Diploma and B. Pharma, both, as the core qualification for a Pharmacist. The distinction sought to be made by the State is, thus, impermissible. The subject of Pharmacy is special and not general and, therefore, in all its perspectives, the Pharmacy Act, 1948 must prevail. It is not for the State to reject the declaration of the Pharmacy Act that both D. Pharma and B. Pharma degree holders have the entitlement to be a Pharmacist, subject to their registration with the respective State Councils.

57. The State cannot be allowed to make sub-classification amongst the registered Pharmacists on the basis of qualification [refer to ***D.S. Nakara & Ors. vs. Union of India : AIR 1983 SC 130***].

58. The respondent/State, it has been argued, though accepts the candidates who have obtained B. Pharma degree through lateral entry, but they reject those candidates who have taken admission directly after



10+2 with Science, which is nothing but micro-classification.

59. Supporting the stand of the petitioners, Mr. S.D. Sanjay, the learned Additional Solicitor General appearing for the Pharmacy Council of India has submitted that the Council has sent a letter dated 13.03.2025 to the Secretary of the Bihar Technical Service Commission, Patna, requesting to amend the advertisement in question to comply with the Pharmacy Act of 1948 and permit all the candidates to participate in the recruitment process who have passed B. Pharma or M. Pharma or Pharma D. from the PCI approved Institutions for the post of Pharmacists. It has been clarified in the afore-noted letter that as on date, Diploma in Pharmacy is the minimum qualification for registration as a Pharmacist.

60. For registration as a Pharmacist under the Pharmacy Act, a candidate must have passed the Diploma in Pharmacy or Degree in Pharmacy or Pharma D. from



an institution recognized under Section 12 of the Pharmacy Act, 1948.

61. Diploma in Pharmacy is a two-years course after 10+2, followed by 500 hours of practical training, spread over for a period of not less than three months, and Degree in Pharmacy is a four-years course after 10+2; whereas Pharma D. is a six-years course after 10+2. The registration of Pharmacists is done by the State Pharmacy Councils constituted by the State Governments under Section 19 of the Pharmacy Act. The registration is done under Section 33 read with 32(2) of the Pharmacy Act, 1948, according to which, the minimum statutory requirements for registration are that: (a) an applicant should have attained the age of 18 years and pay the prescribed fee; (b) the applicant should reside or carry on business or profession of Pharmacy in the State; (c) applicant should have passed an approved examination or he should possess a qualification approved under Section 14 of the Pharmacy Act or he is a



registered Pharmacist in an other State.

62. Any Pharmacist could act as an important member of the health care team. Their role have become very important as they are the common point of contact between the patients and the Doctors and are trained to play a key role, both in disease prevention and drug safety.

63. Thus, the PCI is of the view that even though the prescriptions in the Act and the Regulations, referred to above, do not particularly pertain to public employment, but if seen in the context of a post of a Pharmacist and the persons who could practice as Pharmacists, the rationale behind excluding persons of higher degree is non-existent and is hit by the vice of micro-classification, which *per se* is impermissible.

64. The countervailing arguments advanced by the learned Advocate General on behalf of the State is that the issue in question is no longer *res-integra* as it has been settled by a plethora of precedents.



65. In L.P.A. No. 1416 of 2018 [***Bihar State Power (Holding) Company Ltd. through its Chairman & Ors. Vs. Md. Asif Hussain & Ors.***], wherein the issue was whether the prescription of requisite qualification for recruitment as Junior Electric Engineer being Diploma in Electrical Engineer from a recognized institute/college duly recognized by the State/Central Government approved by the AICTE, could be questioned on the ground of such prescription confining the eligibility qualification to the diploma holders only, the Division Bench of this Court held that it was always open for the employer to prescribe the qualifications and if any alteration is made as against the earlier policy, the same cannot be said to be suffering from any arbitrariness or violation of law; which judgment was based on an analysis of the judgments of the Supreme Court in ***Jyoti K.K. & Ors. Vs. Kerala Public Service Commission & Ors. : (2010) 15 SCC 596; State of Haryana & Anr. Vs. Abdul Gaffar Khan & Anr. : (2006) 11 SCC 153; State***



of Punjab & Ors. Vs. Anita & Ors. : (2015) 2 SCC 170; P.M. Latha & Anr. Vs. State of Kerala & Ors. : (2003) 3 SCC 541; Yogesh Kumar & Ors. Vs. Govt. (NCT of Delhi) : (2003) 3 SCC 548. The view of the Division Bench was upheld by the Supreme Court in special leave to appeal, bearing S.L.P. No. 1187 of 2019 ***[The Bihar State Power Holding Company Ltd. through its Chairman and two others. Vs. Md. Asif Hussain and five others]***.

66. Identical view was taken by a Division Bench of this Court in L.P.A. No. 158 of 2020 ***[The State of Bihar & Anr. Vs. Arvind Kumar & Ors.]*** and connected appeals, wherein it was held that mere acquisition of higher qualification directly and without basic qualification of Diploma in Pharmacy would not enable any higher degree holder to participate in the process of selection where the minimum qualification fixed was diploma.

67. The same views have been expressed by the Kerala and Jammu & Kashmir High Courts.



68. Again, in a cluster of petitions, the lead case being C.W.J.C. No. 7714 of 2023 [***Appu Kumar Vs. The State of Bihar through the Chief Secretary, Govt. of Bihar***], this Court, in the same composition, had the occasion to deal with a similar issue. In that case, the petitioners had B.Tech Civil Degree from institutions recognized by AICTE, who had challenged the constitutionality of Rule 8 (i) (ii) and (iii) of the Bihar Water Resource Department Subordinate Engineering (Civil) Cadre Recruitment Rules, 2023, which prescribed diploma or equivalent in Civil/Mechanical/Electrical Engineering as the qualification for appointment to posts of Junior Engineer on the ground of same being arbitrary, irrational and unconstitutional. The challenge was primarily on the ground that the normal rule is that the candidates with higher education ought to be deemed to be fulfilling the lesser qualification prescribed for the post if the higher qualification is in the same channel/line. Reading the technical qualification prescribed in the rules



narrowly would lead to shutting out eligible candidates with higher Degree of Engineering in the same line as of Diploma in Civil Engineering.

69. Fixation of such eligibility qualification, it was contended, was arbitrary, irrational and unconstitutional because it excluded from consideration for appointment of such persons having higher degrees in the same line of reasoning. There was no rationale or objective, it was contended, behind such fixation of eligibility qualifications.

70. The contentions were sought to be fortified with reference to the judgments of the Supreme Court in ***Jyoti K.K. (supra)*** and ***Puneet Sharma & Ors. Vs. Himachal Pradesh Electricity Board Ltd. & Anr. : (2021) 16 SCC 340.***

71. In ***Jyoti K.K. (supra)*** while inviting applications for selection to the post of Sub-Engineers Electrical in the Kerala State Electricity Board, the Kerala Public Service Commission had issued notification



providing diploma in Electrical Engineering of a recognized institution after three years course of study as the qualification for the post. The B.Tech degree holders in Electrical Engineering and persons holding bachelor's degree in Electrical Engineering were ousted from the zone of consideration. The Kerala Public Service Commission had contended that graduates in engineering and persons possessing other qualification than what was prescribed in the advertisement could not have been taken as a higher qualification as those were not equivalent qualification prescribed for that post and the persons who possessed higher qualifications could only be considered in cases where they acquired such higher qualification after acquiring the prescribed qualification. However, a provision in the Kerala State and Subordinate Services Rules 1956 provided that notwithstanding anything contained in the rules, higher qualifications which pre-supposes the acquisition of the lower qualification prescribed for the post would also be



sufficient for the post. The Kerala High Court had rejected the contentions of the applicants but the Supreme Court had held that in the event of the Government holding the view that only diploma-holders should have applied for the post of Sub-Engineers but not all those who possessed higher qualification, either the rule in question should have excluded the candidates who possessed higher qualification or the position should have been made clear that degree-holders shall not be eligible to apply for such post. When that position is not clear but on the other hand, the rules do not disqualify *per se* the holders of the higher qualifications in the same faculty, it was clear that the rule was not understood in an appropriate manner. The order of the High Court, therefore, was not sustained and it was found that persons with higher qualification also would be eligible. However, since the diploma holders had already been selected by the Kerala Public Service Commission, the Supreme Court chose not to disturb such appointments



but directed the State to consider the case of eligible degree-holders against existing vacancies.

72. The aforesaid judgment was primarily based on a provision of the rules which provided that notwithstanding anything contained in any rules or special rules or qualifications recognized by executive orders or standing orders of the Govt. as equivalent to a qualification specified for a post in the special rules, such of those higher qualifications would pre-suppose the acquisition of the lower qualification prescribed for the post as that also shall be sufficient.

73. In ***Puneet Sharma*** (supra), the Supreme Court was confronted with the issue whether a degree in Electrical Engineering/Electrical and Electronics Engineering is a technically higher qualification than a diploma in that discipline and whether degree-holders would be eligible for appointment to the post of Junior Engineers (Electrical) under the relevant recruitment rules.



74. The minimum essential qualification provided for recruitment to the post of Junior Engineer (Electrical) there was matriculation with diploma in Electrical/Electronics/Electronics and Communication/Computer Science from the recognized Institutions /Board/University duly recognized by the Central or State Govt.

75. The degree-holders in the discipline had also applied for the post but their final results were not declared. They had approached the High Court of Himachal Pradesh in writ proceedings claiming that since they possessed higher educational qualification than the prescribed minimum (and advertised) qualifications, they could not be denied consideration.

76. The diploma-holders had opposed that claim and had argued that the qualifications possessed by the degree-holders was neither higher nor to be considered in view of the Recruitment Rules as also on the basis of the advertisement issued for the purpose by the Himachal



Pradesh Staff Selection Commission.

77. On behalf of the degree-holders, it was contended that in the event of minimum qualification being prescribed without any bar preventing appointment of degree holders to the post, diploma had to be considered as only a minimum requirement, especially in view of the rules for appointment to higher promotional post of Assistant Engineers Electrical providing for 5% quota for those who possessed degree at the time of their appointment as Junior Engineer Electrical and 5% separately for those who would acquire the degree during their service as Junior Engineer Electrical after their confirmation. The minimum qualification prescribed would definitely entitle an employer to choose a person with higher qualification as “minimum” provides a cut-off filter for the same and does not debar recruitment of candidates having higher qualification.

78. The Himachal Pradesh State Electricity Board had supported the case of the degree-holders and



had argued that the Rule in question ought to be interpreted and applied to permit degree-holders a chance at selection. Not doing so would amount to excluding better qualified persons and to rob the employer of the chance of choosing a better qualified candidate.

79. It was also contended on behalf of the State Electricity Board that it is the inherent right of the employer to seek out better qualified individuals for public appointment and equivalence of qualification is not a matter for the Courts to determine.

80. Thus, the decision of the High Court in allowing the claim of the diploma-holders holding that a degree is a not better qualification than a diploma without any expert view was contrary to the settled law.

81. The Supreme Court while deciding the issue, referred to the judgment in ***P.M. Latha Vs. State of Kerela : (2003) 3 SCC 541***. The issue in ***P.M. Latha*** (supra) was whether the prescribed and advertised qualification of Trained Teacher's Certificate (TTC)



included persons who were having B-Ed degrees. The Supreme Court had held that B-Ed qualification could not be considered as a higher qualification than TTC and that the TTC qualification was given to teachers especially trained to teach small children of primary classes, whereas those with B-Ed were trained to impart education to students of higher classes.

82. Similar view was expressed in ***Yogesh Kumar*** (supra).

83. The Supreme Court had also referred to ***Jyoti K.K.*** (supra) and had noted that the decision therein was based on a provision in the rule which clarified that those with higher qualification would be deemed to have acquired the lower qualification prescribed for the post and that would be sufficient for eligibility.

84. Another decision which was considered by the Supreme Court in ***Puneet Sharma*** (supra) was ***State of Punjab vs. Anita*** (supra). In that case also the minimum qualification prescribed for JBT teachers was



two years Junior Basic Teachers Training. It was held that those with M.Sc, B.Ed and M.A qualifications were ineligible, looking at the nature of the job which was of teaching primary classes.

85. In all these cases, a distinction had been made with the facts in ***Jyoti*** (supra), as in ***Jyoti*** the Appointing Authority had the option of considering appointment of persons with higher qualifications.

86. The next case referred to in ***Puneet Sharma*** (supra) was ***Zahoor Ahmad Rather vs. Imtiyaz Ahmad : (2019) 2 SCC 404***. In that case, the post in question was of Technician-III in the Power Development Department in the State of Jammu & Kashmir. The relevant stipulation regarding qualification was matriculation with ITI in the relevant trade. In that case, the appellants had held diploma in Electrical Engineering but they were disqualified. The Supreme Court adumbrated that while prescribing the qualifications for a post, the State as an employer bears in mind several



features including the nature of the job; the aptitudes requisite for the official discharge of duties; the functionality of a qualification and the content of the course of studies which leads up to the acquisition of qualification. The State is entrusted with the authority to assess the needs of the Public Services. Exigencies of administration falls within the domain of administrative decision-making. The State is perfectly entitled as a Public Employer to take into account social perspectives requiring creation of job opportunities across the societal structure, which would essentially fall in the domain of policy matters. Judicial review must tread warily.

87. It was in this context, that in ***Zahoor Ahmad Rather*** (supra), decision in ***Jyoti K.K.*** (supra) was understood especially in the context of a special statutory rule under which the holding of a higher qualification presupposed the acquisition of a lower qualification, which was considered to be sufficient for the post.

88. After having gone through all the afore-



noted judgments, the Supreme Court in ***Puneet Sharma and Others*** (supra), referred to above, examined the Rules, especially the sub-quotas for 5 percent of the candidates who would be diploma holders who would acquire degree qualification during service as Junior Engineers and 5 percent for those candidates, who would acquire degrees before joining as Junior Engineers.

89. It was thus, read that the rule making authority had in mind that degree holders too would compete for the position of Junior Engineers as individuals holding equivalent or higher qualification.

90. The Supreme Court noted that if such interpretation were not given, there would be no meaning in the 5 percent of sub-quota set apart for those who were degree holders before joining as Junior Engineers in terms of the extant Recruitment Rules.

91. The Supreme Court also took note of the latest amendment in the concerned rules clarifying that even for the post of Junior Engineers, those individuals



holding higher qualification would be eligible to compete. Though, the amending rules were brought into force prospectively but since they were only clarificatory, it was held that they would apply to the recruitment which was the subject matter of the controversy from before.

92. This Division Bench in C.W.J.C. No. 7714 of 2023 along with C.W.J.C. No. 8423 of 2023 [***Appu Kumar & Ors. Vs. The State of Bihar & Ors. And Arvind Kumar & Ors. Vs. The State of Bihar & Ors.***], therefore, concluded as hereunder:-

(a) the Rules in question are very specific with respect to the qualification prescribed for the post of Junior Engineer, which is diploma in Civil, Mechanical and Electrical Engineering;

(b) There is no rationale behind holding a degree in such discipline to be in-line/channel higher qualification which would subsume in itself the lesser qualification of diploma;

(c) The prescription of qualification for post is a matter of recruitment policy and the State as the employer is entitled to prescribe the qualifications as the condition of eligibility;

(d) It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications;

(e) Equivalence of a qualification is also not a



matter which could be determined in exercise of the power of judicial review, which squarely falls in the domain of the State/Recruiting Authority;

(f) It cannot be denied that while prescribing qualifications for a particular post, the employer may pitch in various factors especially dealing with functionality of the post as also the creation of the job opportunities across the societal structure;

*(g) It was with a conscious intent in the mind that the qualification prescribed in the Rules was not preceded with word “minimum”, leaving the qualification of diploma to be the only qualification determining eligibility unless a higher qualification were in the same line/channel; (h) For these reasons, the reference of the judgments in **Jyoti K.K. and Puneet Sharma** (supra) do not support the case of the petitioners.*

93. The learned Advocate General has thus summarized that there is no dispute about the competence of the Governor of Bihar to frame the Cadre Rules under Article 309 of the Constitution of India. The prescriptions of educational qualification for a pharmacist are in the Pharmacy Act of 1948 and the Regulations of 2015, which is limited only to education in the field of Pharmacy and it will not govern the State’s right to prescribe minimum/threshold qualification for



participating in the recruitment process. There is a rationale behind limiting the recruitment process and confining it to diploma holders only as they are best suited for health-care services as Pharmacists and they have no other avenue of appointment.

94. It was further contended that persons with higher degrees have not been prevented from participating in the process, but with the caveat that they must possess the basic and essential qualification of diploma. Such Legislation/Cadre Rules is neither hit by Articles 14 or 16 or 19 of the Constitution of India. There is an intelligible differentia and a rational nexus with the objects sought to be achieved. The five hundred hours' compulsory hospital training, which is mandatory for a diplomate, is not part of the course curriculum of B. Pharma. This provides for the empirical basis for making such classification, which cannot be called class-legislation or micro-classification.

95. It was also asserted by the learned Advocate



General that merely because there is a provision for lateral entry of diplomates in the second year of B. Pharma course, it will not make B. Pharma course or M. Pharma course in the same line/channel of education.

96. The diplomates and graduates are trained differently in different subjects.

97. Taking this line of reasoning further, Mr. Lalit Kishore and Mr. Santosh Kumar, the learned Senior Advocates for the intervenor/respondents, namely, the diplomates, have submitted that a legislation could be struck down only on grounds of lack of legislative competence and violation of any of the fundamental rights in Part-III of the Constitution of India. There is nothing on record whereby the validity of the legislation could be questioned on the ground of lack of legislative competence.

98. Apart from this, it has been submitted that no enactment as such could be struck down only on the ground of arbitrariness. For striking it down, arbitrariness



has to be read in conjunction with any other constitutional infirmity in order to invalidate a Rule which has come through the route of Article 309. The jurists have always critiqued that substantive due process only puts the Courts in the position of arbiters of the wisdom of the legislature in enacting particular piece of legislation [refer to ***Ashok Kumar Thakur Vs. Union of India & Ors. : (2008) 6 SCC 1; K.T. Plantation (Pvt. Limited) & Anr.Vs. State of Karnataka : (2011) 9 SCC 1***].

99. It has been argued that plea of unreasonableness, arbitrariness and proportionality etc. would always raise an element of subjectivity, on which a Court ought not to strike down a statute; otherwise the Court will be substituting its wisdom to that of the legislature.

100. In matters of appointment laying down and prescribing through rules, the minimum qualification is the prerogative and is in the domain of the administrative authorities, which cannot be impeached on the ground



that it has to be tailor-made to suit certain individuals [refer to ***V.K. Sood Vs. Secretary, Civil Aviation & Ors. : 1993 SCC (LNS) 907/1993 Supp. (3) SCC 9***].

101. The Rules made by the President or the Governor under *proviso* to Article 309 of the Constitution of India are subject to any law made by the Parliament or the State Legislature and the power includes Rules regulating the recruitment and conditions of service or post. They are statutory and legislative in character. The statutory rules thus made are subject to the law that may be made by the State Legislature. In ***B.S. Vadera Vs. Union of India & Ors. : AIR 1969 SC 118/1968 SCC OnLine SC 39***, it has been held that the rules made under the *proviso* to Article 309 of the Constitution shall have effect, subject to the provisions of the Act, *i.e.*, if the appropriate Legislature has passed any Act. In its absence, the Rules made by the President/Governor or by such person as he may direct, are to have full effect.

102. We have given thoughtful consideration



over the submissions advanced on behalf of the parties.

103. An American Jurist, *Alexander Bicken*, has observed that judicial review is a counter majoritarian force in a legal system. Whenever a legislative Act is declared unconstitutional, the will of the representatives of the people is thwarted. Invalidating a statute is a grave step and must therefore be taken in a very rare and exceptional circumstance. The power has to be exercised with great judicial restraint.

104. Professor *James Bradley Thayer* in his seminal work “*The origin and scope of the American doctrine of constitutional law*” says that Judges must take care not to intrude upon the domain of the legislative branch and full and fair play must be permitted to the wide margin of considerations which are addressed by the practical judgments of the legislative body. *Thayer*, therefore, has argued that a Court can declare a statute to be unconstitutional not merely because it is possible to do that or hold that view but only when that is the only



possible view, not open to rational questions and there is no manner of doubt that the legislation in question is flagrantly unconstitutional and there is no way of avoiding such decision.

105. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Every effort should be made to uphold the constitutional validity of a statute. It should not be the concern of the Court whether the legislation is in its opinion wise or unwise or sound or unsound. The Supreme Court in ***State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga : (1952) 1 SCC 528*** has very aptly summed up that the legislature is the best Judge of what is good for the community, by whose suffrage it comes into existence [also refer to ***Md. Hanif Qureshi Vs. State of Bihar : AIR 1958 SC 731***; ***Mahanth Moti Das Vs. S.P. Shahi : AIR 1959 SC 942***; ***B.R. Enterprises Vs. State of U.P. : (1999) 9 SCC 700***;



State of Bihar Vs. Bihar Distillery Ltd. : (1997) 2 SCC 453; and Hamdard Dawakhana (Waqf) v. Union of India; AIR 1960 SC 554].

106. In ***R.K. Garg Vs. Union of India; (1981) 4 SCC 675***, it was observed that the laws relating to economic activities should normally not be interfered with but laws touching civil rights such as freedom of speech, religion etc., require to be carefully scrutinized to ascertain whether the legislation on these subjects is violative of the rights and liberties of the citizens.

107. No doubt, the Courts must keep in mind, as has been observed by the Supreme Court in ***Union of India & Anr. Vs. Hemraj Singh Chauhan & Ors. : (2010) 4 SCC 290***, the constitutional obligation of the Governments to act as model employers, which is consistent with their role in a welfare State, but striking down a statute lightly is not what has been propounded.

108. The Government, in its wisdom, has found that course curriculum of Diploma in Pharmacy is



different from what it is for graduate degrees. The experience has shown that diplomates are better suited for health services.

109. Could this be questioned by the Courts?

110. As has rightly been pointed out by the learned Advocate General, the very fact that diplomates have no other avenue of appointments and that they have undergone the intensive training in hospital-care, are some of the indices on which the rules are said to have been made. There is no exclusion of graduate degree holders provided they possess the basic qualification of Diploma in Pharmacy.

111. Under such circumstances, it cannot be said that the impugned cadre rules has saddled graduates/post-graduates in Pharmacy to any disproportionate harm. It has also been decided on several occasions that B. Pharma and M. Pharma are not in the same channel of education as that of diplomates, notwithstanding the fact that the diplomates can take



lateral entry in B. Pharma course in its second year.

112. No doubt, graduate and post-graduate degrees in Pharmacy are higher qualification but when the essential/minimum qualification of Diploma in Pharmacy has been fixed in the cadre rules, it cannot be tinkered with only on the ground of the same not being wise or sound or as suggested, arbitrary. The prescriptions of course study for Pharmacist under the Pharmacy Act of 1948 and the Regulations of 2015, referred to above, are only with respect to the eligibility of such graduates, post-graduates and diplomates to practice Pharmacy, subject to their registration with the respective Pharmacy Councils of States but that does not pertain to the matters of recruitment, which are in the exclusive domain of the appropriate Governments.

113. Thus, finding that the fixation of minimum qualification for recruitment of Pharmacist and the “note” in the cadre rules providing that holders of higher degree could apply but subject to their having obtained the



minimum qualification of diploma is neither arbitrary or exclusionary *per se*.

114. In that connection, we have found the request made to the Bihar Technical Service Commission by the Pharmacy Council of India (PCI) to be totally unwarranted.

115. For the afore-noted reasons all the petitions fail.

116. All the writ petitions are disposed of accordingly.

117. I.A./s, if any, also stand disposed off in terms of this judgment.

(Ashutosh Kumar, ACJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Praveen-II/Krishna

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