

Reserved on 08.08.2025
Delivered on 25.08.2025

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2511 of 2024 (S/S)

Om Prakash and othersPetitioners

Versus

State of Uttarakhand and othersRespondents

Present:
Mr. Abhishek Bahuguna, Advocate for the petitioners.
Mr. Ganesh Kandpal, Deputy Advocate General with Mr. Mohit Maulekhi, Brief Holder for the State.
Mr. Ramji Srivastava, Advocate for the Uttarakhand Medical Service Selection Board.
Mr. Bhagwat Mehra, Advocate for the intervener.

Writ Petition No. 2452 of 2024 (S/S)

Vinod KumarPetitioner

Versus

State of Uttarakhand and othersRespondents

Present:
Mr. Susheel Kumar, Advocate for the petitioner.
Mr. Ganesh Kandpal, Deputy Advocate General with Mr. Mohit Maulekhi, Brief Holder for the State.
Mr. Ramji Srivastava, Advocate for the Uttarakhand Medical Service Selection Board.
Ms. Seema Sah, Advocate for the Uttarakhand Pharmacy Council.
Mr. Bhagwat Mehra, Advocate for the intervener.

Writ Petition No. 2130 of 2024 (S/S)

Pankaj Mohan Dhyani and anotherPetitioners

Versus

State of Uttarakhand and othersRespondents

Present:
Mr. Pawan Sanwal, Advocate for the petitioners.
Mr. Ganesh Kandpal, Deputy Advocate General with Mr. Mohit Maulekhi, Brief Holder for the State.

Mr. Ramji Srivastava, Advocate for the Uttarakhand Medical Service Selection Board.

Mr. Bhagwat Mehra, Advocate for the intervener.

JUDGMENT

Hon'ble Ravindra Maithani, J.

Since common questions of law and fact are involved in these writ petitions, they are heard together and being decided by this common judgment. However, the facts of WP (S/S) No. 2511 of 2024 are being referred to, for the sake of convenience.

2. The short question which falls for determination in these writ petitions is as to whether the petitioners, who are Bachelor in Pharmacy ("B.Pharma.") are eligible for their appointment to the post of Pharmacist, for which the educational qualification is Diploma in Pharmacy ("D. Pharma.") from a recognized institution and registration with the State Pharmacy Council.

3. The facts necessary to appreciate the controversy, briefly stated, are as follows. The respondent no. 3, Uttarakhand Medical Service Selection Board ("the Board") by its advertisements dated 16.10.2024 and 19.10.2024 invited applications for the post of Pharmacists (Allopathic) in Labour Department and Pharmacist (Bhesaj) in Medical Department, respectively. As per the advertisement, the educational qualification for the post is that a candidate must possess D.Pharma. from a recognized institution and must also be registered with the Uttarakhand Pharmacy Council. In the case of Pharmacists (Bhesaj), along with D.Pharma, registration was necessary either in Uttarakhand Pharmacy Council or Uttarakhand Pharmacist Registration Tribunal. It is

the case of the petitioners that they are B.Pharma. holders, but they have been denied permission to participate in the recruitment process on the ground that only the D.Pharma. holders are entitled to appear in the examination. It is also the case of the petitioners that in the earlier litigation, the State had given an assurance that they would include the qualification of B.Pharma. also for appointment to the post of Pharmacist and the proposal, in fact, has been sent by the Director General, Medical Health and Family Welfare of the State Government. It is further the case of the petitioners, that qualification as given in the advertisement is minimum qualification and since the petitioners are higher in qualification, they may not be denied permission for applying to the post of Pharmacists. Therefore, in all these petitions, the petitioners seek direction that the petitioners may be declared qualified and be permitted to appear and fill form in response to the advertisements dated 16.10.2024 and 19.10.2024 issued by the Board.

4. The respondent State has filed its counter affidavit and in para 5 of the counter affidavit, it is stated that the Medical Health and Family Welfare Department has no jurisdiction in respect of the vacancies, requisition, direct recruitment, etc. on the posts under the Medical Education Department.

5. The Board has also filed its counter affidavit and in para 5, it is stated that all the petitioners are having Degree in Pharmacy and admittedly not having Diploma in Pharmacy, which is a required condition as per Clause 5 of the advertisement, therefore, candidature of the petitioners has rightly been rejected.

6. It may be noted that by the interim orders of this Court, the application form of the petitioners were directed to be provisionally accepted, but the Court had directed that the result shall not be declared till the disposal of the writ petitions.

7. Heard learned counsel for the parties and perused the record.

8. Learned counsel for the petitioners would submit that in earlier in WP (S/B) No. 486 of 2021, Kiritika Verma v. State of Uttarakhand and others ("the first petition"), the State Government had given an assurance to the Court that they would change the rules by including B.Pharm. as one of the essential qualifications for appointment to the post of Pharmacists, but till date the rules have not been amended; therefore, now the petitioners cannot be denied the opportunity to apply for the post of Pharmacists pursuant to the advertisements in question.

9. In the first petition, the Division Bench had taken note of para 4 of the counter affidavit of the Joint Secretary, Labour Department, Government of Uttarakhand and noted it in its order dated 13.05.2025, which reads as follows:-

"4. A counter affidavit dated 07.03.2022 is filed by Virendra Pal Singh, Joint Secretary, Labour Department, Government of Uttarakhand. Para 4 of the said counter is extracted below:-

"4. That the contents of paragraph No. 2 of the said petition are only admitted in so far as they are

matter of record. However, it is imperative to clarify that in light of the Government of India Notification dated 16.07.2019, the answering respondent is taking necessary steps to amend Rule 8 of 2025 the Uttarakhand Employees State Insurance Scheme Pharmacist Cadre (Allopathic) Service Rules, 2021 in order to include B. Pharma degree in addition to D. Pharma as a qualification for the post of Pharmacist (Allopathic).”

10. Thereafter, the Court noted the arguments of the petitioner in that writ petition and proceeded to pass the following orders:-

“5. Learned counsel for the petitioner submits that although an assurance was given, more than three years ago that necessary steps are being taken to amend Rule 8 of the applicable Service Rules; however, no progress has been made thereafter and the matter is where it was, before filing the writ petition.

6. Learned State Counsel also submits that in the absence of any clear instructions, he is not in a position to make any definite statement in the matter.

7. Having regard to the stand taken by the State Government in para 4 of its counter affidavit, we dispose of the writ petition with a direction to the State Government to finalise the matter and issue necessary notification, within four months from the date of production of presentation of certified copy of this order before respondent no. 1.”

11. It is also argued on behalf of the petitioners that in view of Section 31 of the Pharmacy Act, 1948 (“the Pharmacy Act”), both B.Pharma. and D.Pharma are registered pharmacists, therefore, by

virtue of not including B.Pharm. as eligibility qualification for appointment to the post of Pharmacist, discrimination has been done with such candidates, who has acquired B.Pharm. and such classification is not reasonable. It is also argued that the rules have not been made as per the Pharmacy Act.

12. In addition to it, it has also been argued that the Pharmacy Council of India has also decided that **“a person holding the Pharm. D. qualification being higher qualification shall automatically become eligible for appointment to various posts where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Masters of Pharmacy qualification is eligible to be appointed.”**

13. Learned counsel for the State submits that the qualification as prescribed in the rules for appointment on the post of Pharmacists is D.Pharm. and only such candidates are eligible to participate, who are D.Pharm. and any other candidate, even if he has higher qualification, is not eligible for appointment to the post of Pharmacist. He submits that this Court cannot relax the eligibility criteria.

14. On behalf of the Board, it is argued that the qualification as prescribed under the rules cannot be relaxed in any manner, either by the recruiting body or by the Court. In support of his contention, reliance has been made on the judgment in the case of Zahoor Ahmed Rather and others v. Sheikh Imtiyaz Ahmad and others, (2019) 2 SCC 307.

15. In the case of Zahoor Ahmed Rather (*supra*), an advertisement in the State of Jammu and Kashmir was issued inviting application for Technician-III in the Power Development Corporation, for which prescribed qualification was “Matric with ITI in the relevant trade”. The process for recruitment was taken. Candidates having Diploma in Civil Engineering were also permitted to participate, but midway a decision was taken that the candidates having Diploma in Civil Engineering may not be eligible for this position, because the only qualification for the post is “Matric with ITI in relevant trade”. This was challenged in a writ petition. The writ court at the first instance, allowed the writ petition of the Diploma holders, but in the intra-Court appeal, the judgment of the writ court was reversed and it was held that the advertisement mandates ITI in relevant trade as a condition of eligibility. The Hon’ble Supreme Court dismissed the challenge made to the decision of the Division Bench of the High Court. The Hon’ble Supreme Court observed as follows:-

“27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in *Jyoti K.K. [Jyoti*

K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned.”

16. Learned counsel for the Board has also brought to the notice of the Court one very important fact. He would submit that Vinod Kumar, the petitioner in WP (S/S) No. 2452 of 2024 had earlier filed a similar kind of writ petition i.e. WP (S/S) No. 152 of 2015 (“the second petition”). At that time also, for the post of Pharmacist, the prescribed qualification was D.Pharma. The petitioner Vinod Kumar had challenged it on the ground that he holds B.Pharma., therefore, he should be permitted to participate and by the order dated 13.05.2015, the second petition was allowed and he was permitted to participate in the recruitment process. But, it is argued that the order passed in the second petition on 13.05.2015 was challenged in Special Appeal No. 309 of 2015, Nandan Ban Goswami and others v. Vinod Kumar and others, which was decided on 26.08.2016 and the special appeal was allowed. The Court held that the educational qualification prescribed under the rules has to be followed. In the case of Nandan Ban Goswami (*supra*), the Hon’ble Division Bench has observed as follows:-

“10. The writ petitioner may be registered with the State Pharmacy Council, but admittedly he does not possess diploma in Pharmacy; instead he has degree. The learned Single Judge may be correct in saying that he is having a higher qualification; but, once the law-giver has provided clearly and unambiguously the qualification, which must be possessed, and there is no law pointed out to us which entitles the writ petitioner to rely on the higher qualification, which he possesses, the learned Single Judge was unjustified in directing his candidature to be considered. The said Rule has not been challenged by the writ petitioner. He only sought a mandamus on the basis that he possesses a higher qualification. Bereft of any legal foundation, the argument of the writ petitioner could not have been accepted.

11. Accordingly, the appeal is allowed; the judgment passed by the learned Single Judge will stand set aside; and the writ petition will stand dismissed without any order as to cost.

12. However, we make it clear that in regard to any other recruitment for the post of Pharmacist, this judgment will not stand in the way of the writ petitioner seeking appropriate reliefs after mounting a challenge, if advised, to the Rule in question.”

17. The service rules, which prescribe qualification for the post of Pharmacist have not been challenged. Rule position remains same after Nandan Ban Goswami (*supra*) judgment of the Court in special appeal. Admittedly, the petitioners are B.Pharm. holders. They are not Diploma holders in Pharmacy. It is admitted that qualification as per service rules for the post of Pharmacist is D.Pharm. from a recognized institution and registration in State Pharmacy Council. The advertisement also invites application from the candidates possessing this qualification. The petitioners are B.Pharm. holders. They do not meet the requirement of the rules or the advertisement. This Court need not restrain any further on this issue, because in Special Appeal No. 309 of 2015, Nandan Ban Goswami and others v. Vinod Kumar and others, the issue has already been decided and this Court has held that unless the rules are changed, a candidate holding B.Pharm. may not be eligible for the post of Pharmacist, as per the existing rules.

18. It is argued that in the first petition, an assurance was given by the Joint Secretary, Labour Department, Government of Uttarakhand that they would change the rules. Mere assurance cannot change the rules, unless they are changed. It is also settled law that there cannot be any estoppel against the Legislature. Based on any assurance given in the first petition, it cannot be said that

now the petitioners are eligible for appointment to the post of Pharmacist, without change in rules, including B.Pharm. also as a qualification for the post.

19. An argument has been made that Pharmacy Council of India has also decided that B.Pharm. and D.Pharm. are one and the same. It also does not make out any case for the petitioners. The service rules prescribe the educational qualification for appointment to the post of Pharmacists, which is that a candidate must possess Diploma in Pharmacy. Unless rules are changed, the petitioners cannot claim that they are eligible for appointment to the post of Pharmacists.

20. In view of the above discussion, this Court does not find merit in the writ petitions. The writ petitions deserve to be dismissed.

21. All the writ petitions are dismissed.

(Ravindra Maithani, J.)
25.08.2025

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