

MAHESHWAR PRASAD SRIVASTAVA & ANR. A

v.

SURESH SINGH AND ORS.

March 22, 1976

[Y. V. CHANDRACHUD AND V. R. KRISHNA IYER, JJ.] B

Drugs (and Cosmetics) Rules 1945—Section 49—Prescribing qualifications of Inspectors—“has atleast one Year's post graduate training in a laboratory under a Government Analyst appointed under the Act or a Chemical Examiner—Meaning of “Post graduate training” occurring in Rule 49(c)—Difference between “post graduate training” and post graduate course qualification.”

The appellants, all science graduates with laboratory training were the successful candidates for twelve vacancies of Drug Inspectors advertised by the Bihar Public Service Commission. Respondent No. 1, a Pharmacy graduate whose application was rejected on the ground of his unsuitability for being appointed to the post challenged the selection by a writ on the ground that that the appellants were unqualified under Rule 49(c) of the Drugs (and Cosmetics) Rules 1945 in as much as they did not have a systematic training in a post graduate institution. The High Court accepted the contention and set aside the selection. C

On appeal by special leave the Court, D

HELD : (1) The expression “post graduate training” is used in Rule 49(c) in the sense of training received by a person holding a degree in medicine or science and not in the sense that such training ought to be received in or through a post graduate institution imparting instruction or education in the particular discipline. The object of clause (c) is to ensure that to be eligible for the post of a Drugs Inspector the person concerned must have received training under any of the authorities mentioned therein after graduation in medicine or science. Pre-graduation training is often not as efficacious as post graduate training, for a person holding a higher educational qualifications is in a better position to imbibe the training which he receives. The expression “post graduate training” is used in order to signify the point of time after which the training ought to be received and not to limit the eligibility to those who have received training after enrolment in an institution imparting post graduate training. [772D—F] E

(ii) Clause (c) of Rule 49 specifies that the training has to be received in a laboratory under a Government Analyst or a Chemical Examiner amongst others. It is difficult to conceive in the present educational set up that a student who has enrolled himself in a post-graduate institution would receive training in a laboratory under a Government Analyst or a Chemical Examiner. A fair indication of the true intentment of Rule 49(c) is also furnished by the requirement that one year's post graduate training is enough to confer eligibility on a candidate applying for the post of a Drugs Inspector. It could not have been intended that it would be enough to make a candidate eligible for the post of a Drugs Inspector if, after graduation in medicine or science he enrolled himself for a post graduate course and just took one year's training as part of that course. If enrolment in an institution imparting post-graduate instruction was the object of rule (c), the minimum qualification prescribed would at least have been the successful completion of the post graduate course. [772F—H] F

Rule 44(a) throws useful light on the interpretation of Rule 49. Post graduate experience stipulated in Rule 44(a) and “post graduate training” cannot basically and for practical purposes identical qualifications. For both posts, what is required in addition to other qualifications mentioned in the respective rules is post graduate experience or training in the sense, namely that the experience or training has to be gained or received after obtaining graduation. [773—B-C] G

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A In matters involving considerations of questions regarding adequacy or sufficiency of "training" the Public Service Commission having the benefit of expert opinion, is better situated to judge whether the particular candidate is qualified for a particular post and courts should hesitate to interfere with the discretion of the appointing authority so long as it is exercised *bona fide*. [773 G-H]

B [Their Lordships considered that, in view of the conclusion that the appellants were duly qualified it was unnecessary to go into the question of "Locus Standi" of respondent No. 1 a rejected candidate on the ground of his unsuitability to file the writ petition.]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 602 and 603 of 1975.

C Appeal by Special Leave from the Judgment and Order/decreedated the 30-1-1975 of the Patna High Court in C. W. J. C. No 502 of 1973.

V. S. Desai and S. N. Prasad for Appellants in C.A. 602/75.

Bishan Narain, S. N. Misra, S. S. Jauhar and A. K. Sinha for Appellants in C. A. 603/75.

D S. C. Misra and U. S. Prasad for respondent No. 1 (In both appeals).

B. P. Singh and U. P. Singh for Respondent No. 2 (In C. A. 603) and Respondents 2 and 3 (In C. A. 602).

The Judgment of the Court was delivered by

E CHANDRACHUD, J.—These appeals by special leave arise out of a judgment of the Patna High Court in a writ petition filed by the 1st respondent under articles 226 and 227 of the Constitution challenging the appointment of the appellants as Drugs Inspectors. Civil Appeal No. 602 of 1975 is filed by original respondent 7 while Civil Appeal 603 of 1975 is filed by original respondents 4 to 6 to the Writ Petition. The High Court allowed the writ petition and quashed the appointments of the appellants on the ground that they did not have the requisite qualification for appointment as Drugs Inspectors.

F The Government of Bihar in its Health Department advertised through the Bihar Public Service Commission 12 vacancies of Inspectors of Drugs. Twenty candidates applied for the posts out of whom 13, including respondent 1, were Pharmacy Graduates while 7 including the appellants, were Science Graduates. The Public Service Commission held interviews in April, 1972 and selected the appellants amongst others. Respondent 1 was rejected on the ground that he was not suitable for the post.

G The appointments of the appellants were challenged by respondent 1 on the sole ground that they were not qualified to be appointed as Drugs Inspectors. Rule 49 of the Drugs (and Cosmetics) Rules, 1945 framed by the Government of India in the Ministry of Health, prescribes qualifications for the post of a Drugs Inspector. It reads as follows :—

H "49. Qualifications of Inspectors.—A person who is

appointed an Inspector under the Act shall be a person who—

- (a) has a degree in Pharmacy or Pharmaceutical Chemistry or a post-graduate degree in Chemistry with Pharmaceutics as a special subject of a University recognised for this purpose by the appointing authority or the associateship Diploma of the Institution of Chemists (India) obtained by passing the examination with 'Analysis of Drugs and Pharmaceuticals' as one of the subjects; or
- (aa) holds the Pharmaceutical Chemists Diploma granted by the Pharmaceutical Society of Great Britain; or
- (b) x x x
- (c) is a graduate in medicine or science of a University recognised for this purpose by the appointing authority and has at least one year's post-graduate training in a laboratory under (i) a Government Analyst appointed under the Act or (ii) a Chemical Examiner, or (iii) a Fellow of the Royal Institute of Chemistry of Great Britain (Branch E), or (iv) the head of an institution specially approved for the purpose by the appointing authority;

Provided that only those inspectors who have not less than three years' experience in the manufacture and testing of substances specified in Schedule C in a laboratory approved for this purpose by the licensing authority, shall be authorised to inspect the manufacture of items mentioned in Schedule C;

Provided further that only Inspectors who are graduates in veterinary science or medicine or general science or pharmacy and have had not less than three years' experience in the manufacture or testing of biological products shall be authorised to inspect the manufacture of veterinary biological products;

Provided further that for a period of four years from the date on which Chapter IV of the Act takes effect in the States, persons whose qualifications, training and experience are regarded by the appointing authority as affording subject to such further training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as Inspectors and authorised under the preceding proviso :

Provided further that for the purposes of inspection of shops in any specified area any officer of the medical or Public Health Department who is a registered medical practitioner or a graduate in science may be appointed as an *ex officio* Inspector.

- A Appellants do not fall within the class described in clause (a) above but respondent 1 who is a Pharmacy Graduate does. The fact that respondent 1 is qualified to hold the post of a Drugs Inspector is undisputed and his application was rejected by the Public Service Commission not on the ground that he did not hold the necessary qualification for the post but on the ground that he was unsuitable for being appointed to the post.
- B The appellants being Science graduates fall within clause (c) of Rule 49 and there can be no doubt that in addition to being Science graduates of a recognised University, they have to possess at least "one year's post-graduate training" in a laboratory under the authorities mentioned in clause (c). It is not disputed that the appellants and worked for a fairly large number of years in laboratories under one or the other authorities mentioned in clause (c), but the question for decision is whether they had received
- C any "training" and if so, the training which they had received was "post-graduate training" within the meaning of clause (c).

The contention of respondent 1 which found favour with the High Court is that "post-graduate training" means systematic training in a post-graduate institution and since the appellants had not received such training through any post-graduate institution, they were not qualified to hold the particular post. The High Court, in our opinion, erred in accepting this contention. The expression "post-graduate training" is used in rule 49(c) in the sense of training received by a person holding a degree in medicine or science and not in the sense that such training ought to be received in or through a post-graduate institution imparting instruction or education in the particular discipline. The object of clause (c) is to ensure that to be eligible for the post of a Drugs Inspector the person concerned must have received training under any of the authorities mentioned therein after graduation in medicine or science. Pre-graduation training is often not as efficacious as post-graduate training, for a person holding a higher educational qualification is in a better position to imbibe the training which he receives. Thus, the expression "post-graduate training ought to be received and not to limit the eligibility to those who have received training after enrolment in an institution imparting post-graduate training. Clause (c) specifies that the training has to be received in a laboratory under a Government Analyst or a Chemical Examiner amongst others. It is difficult to conceive in the present educational set-up that a student who has enrolled himself in a post-graduate institution would receive training in a laboratory under a Government Analyst or a Chemical Examiner. A fair indication of the true intendment of Rule 49(c) is also furnished by the requirement that one year's post-graduate training is enough to confer eligibility on a candidate applying for the post of a Drugs Inspector. Post-graduate courses normally extend over a period exceeding one year after graduation. It could not have been intended that it would be enough to make a candidate eligible for the post of a Drugs Inspector if, after graduation in medicine or science he enrolled himself for a post-graduate course and just took one year's training as part of that course. If enrolment in an institution imparting post-graduate instruction was the object of rule (c), the minimum qualification prescribed would at least have been the successful completion of the post-graduate course.

Rule 44 which prescribed qualifications for the post of Government Analyst throws useful light on the interpretation of rule 49. Rule 44 provides that only those persons can be appointed as Government Analysts who are Graduates in medicine or science or pharmacy or pharmaceutical chemistry and who have had "not less than three years' post-graduate experience" in the analysis of drugs in a laboratory under the control of designated authorities. If a post-graduate course extends over a period of 2 years only, as it normally does, it is odd that in order that in order to qualify for the post of a Government Analyst a graduate in the specified discipline should be required to spend 3 years as a post-graduate student. Post-graduate experience stipulated in rule 44(a) and post-graduate training stipulated in rule 49(c) connote basically and for practical purposes an identical qualification. For both posts, what is required in addition to other qualifications mentioned in the respective rules is post-graduate experience or training in the sense described above, namely, that the experience or training has to be gained or received after obtaining graduation.

Maheshwar Prasad Srivastava the appellant in Civil Appeal No. 602 of 1975, passed his B.Sc. examination in 1960 and worked as a Demonstrator in the Pharmacy School, Patna under the Health Department, Government of Bihar from October, 1961 to December, 1966. He was appointed as a Senior Scientific Assistant in the Bihar Drugs Control Laboratory on December 23, 1966 where he worked under Dr. Sheo Bihari Lal, who was the Government Analyst in charge of the Bihar Drugs Control Laboratory. It appears that the Government of Bihar through the Health Department used to send science graduates for training under the Government Analyst. The certificate issued by Dr. S. B. Lal shows that Srivastava worked under him and had been "trained" for more than three years in the Bihar Drugs Control Laboratory. A letter written by Dr. Lal to the Deputy Director of the Health Services, Bihar, on December 22, 1970 shows that during his absence on leave, Srivastava was to hold charge of the Bihar Drugs Control Laboratory. These facts make it impossible to accept the contention that the appellant had not received any systematic training. In the ultimate analysis, the usefulness of any training depends as much on the ability and willingness of the student or trainee as on the academic specifications of the training itself. The appellants in Civil Appeal No. 603 of 1975 had worked as Demonstrators in Pharmacy School, Patna for a large number of years and in regard to them also it is difficult to accept the contention that the training which, they had received was not systematic. Dr. J. K. P. Sinha who was then the Deputy Director of Health Services, Bihar and who assisted the Public Service Commission as a Technical Expert when the interviews for the particular posts were held, obviously took the view that the appellants who were science graduates satisfied the further test of post-graduate training for not less than one year. In matters involving consideration of questions regarding adequacy or sufficiency of "training", the Public Service Commission, having the benefit of expert opinion, is better situated to judge whether the particular candidate is qualified for a particular post and courts should hesitate to interfere with the direction of the appointing authority, so long as it is exercised *bona fide*.

- A** Learned counsel for the appellant in Civil Appeal No. 602 of 1975 contended that respondent No. 1 had no *locus standi* to challenge the appointment of the appellant since he himself, as disclosed by the affidavit filed on behalf of the Public Service Commission in the High Court, was rejected on the ground that he "was not found suitable for appointment to the post" of Drugs Inspector. In view of our conclusion that the appellants were duly qualified for the post,
- B** it is unnecessary to go into this question.

For these reasons we allow the appeals, set aside the judgment of the High Court and hold that the appointments of the appellants as Drugs Inspectors were lawful and valid.

- C** The State of Bihar will pay the costs of these appeals to the appellants.

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Appeal allowed