

Kuldeep Singh and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-10-2014

Judge : The Honourable Chief Justice Dr. Dhananjaya Yeshwant Chandrachud, Devendra Pratap Singh & Dilip Gupta

Appeal No. : Civil Misc. Writ Petition Nos. 46079 & 51406 of 2010, Civil Misc. Writ Petition No. 8568 of 2011 & Special Appeal No. 593 of 2010

Appellant : Kuldeep Singh and Others

Respondent : State of U.P. and Others

Judgement :

1. On 11 February 2011, a Division Bench of this Court made a reference to the Full Bench of the following questions:

(1) Whether the experience required in the proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945 is only a bar of authorization to inspect the manufacture of substances, or is an essential qualification under Rule 49 for direct appointment as Drug Inspector under Rule 5 (4) of the U.P. State Drug Control Gazetted Officers' Service Rules, 1995.

(2) Whether the Division Bench judgment in State of U.P. Vs. Zunab Ali and Ors.1 has been correctly decided.

2. This reference requires an interpretation of the provisions of the Drugs and Cosmetics Act, 1940 and of Rule 49 of the Drugs and Cosmetics Rules, 1945.

3. For direct recruitment of Drug Inspectors under the U.P. State Drug Control Gazetted Officers' Service Rules, 1995, the essential qualifications prescribed in the advertisement dated 10 October 2009 were a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. On 9 July 2010, the Uttar Pradesh Public Service Commission issued a corrigendum on the directions of the State Government and stipulated that as part of the essential qualifications required for the post, at least eighteen months' experience of testing of at least one of the substances mentioned in Schedule C to the Rules or at least eighteen months' experience in the manufacture of one of the substances specified in Schedule C or three years' experience in the inspection of firms manufacturing any of the substances specified in Schedule C licensed for the manufacture of drugs. Following the publication of this corrigendum on 11 July 2010 in the newspapers, three writ petitions were filed to challenge it and to seek a mandamus that the applications submitted by the petitioners should not be rejected.

4. Rule 49 of the Drugs and Cosmetics Rules, 1945 provides for the qualifications of Inspectors:

"49. Qualifications of Inspectors.- A person who is appointed an Inspector under the Act shall be a person who has a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law:

Provided that only those Inspectors -

(i) who have not less than 18 months' experience in the manufacture of at least one of the substances specified in Schedule C, or

(ii) who have not less than 18 months' experience in testing of at least one of the substances in Schedule C in a laboratory approved for this purpose by the licensing authority, or

(iii) who have gained experience of not less than three years in the inspection of firm manufacturing any of the substances specified in Schedule C during the tenure of their services as Drugs Inspectors;

shall be authorized to inspect the manufacture of the substances mentioned in Schedule C:

Provided further that the requirement as to the academic qualification shall not apply to persons appointed as Inspectors on or before the 18th day of October, 1993."

5. A learned Judge of this Court (Hon'ble Mr. Justice Arun Tandon) while dealing with the interpretation of Rule 49 in Vinod Kumar Gupta Vs. State of U.P. and Ors.² held in a judgment dated 22 February 2010 that the essential educational qualifications for holding the post of an Inspector is a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. In the view of the learned Judge, the first proviso to Rule 49 prescribes the experience for an Inspector to be authorized to inspect the manufacture of the substances mentioned in Schedule C. This, however, was held not to constitute an essential qualification for a person to be eligible for being appointed as an Inspector. The learned Judge held as follows:

"From a simple reading of Rule 49, it is apparently clear that essential educational qualification prescribed is degree in Pharmacy or Pharmaceutical Sciences of Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. Proviso to said Rule, lays down the requirement of experience of an Inspector for being authorized to inspect the manufacture of the substances mentioned in Schedule C. Schedule C to the Rules, 1945 provides for the list of substances.

I am of the considered opinion that the selection of the candidates who have no experience covered by the proviso as Inspectors will not be rendered illegal as being contended by the learned counsel for the petitioner. Experience provided under proviso to Rule 49 of Rules, 1945 is only for authorising the appointed

Inspector concerned to inspect the manufacture of the substances mentioned in Schedule C. Schedule C consists of biological and special products referable to Rules 23, 61 and 76 and Part X. There are other duties also, which are required to be discharged by the Inspector under the Act and Rules framed thereunder.

Petitioner wants to read the experience required for an Inspector is authorized to inspect manufacture of substances mentioned in Schedule "C" as one of the essential qualifications for appointment as Drug Inspector itself. Such interpretation does not follow from the simple reading of the Rule 49. Therefore, learned counsel for the petitioner is not justified in contending that in absence of possession of necessary experience as contemplated by proviso to Rule 49 of Rules, 1945, selections made are rendered illegal."

6. The judgment of the learned Single Judge in Vinod Kumar Gupta (supra) was followed by another learned Judge (Hon'ble Mr. Justice S.S. Chauhan) in Zunab Ali and Ors. Vs. State of U.P. and Ors.³. In a special appeal filed by the State against the judgment of the learned Single Judge, a Division Bench of this Court in State of U.P. Vs. Zunab Ali and Ors. (supra), held as follows:

"...for being eligible for being considered for appointment as Drug Inspector, neither the State Government can require any additional essential qualification to be prescribed for the purpose nor any such advertisement can be issued nor the Commission would be at liberty to issue any advertisement prescribing the essential qualification, which are not in conformity with the aforesaid rules. If any such advertisement is issued or has been issued, which is contrary or so to say not in accordance with the aforesaid rules, the same is necessarily to be corrected and for that purpose, corrigendum has to be issued. A bare reading of the aforesaid rules shows that the essential qualification for appointment on the post of Drug Inspector is of having a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. This is the essential qualification for being appointed on the post of Inspector. The proviso attached to the aforesaid Rule is only the prescription of experience of 18 months to the Inspectors already appointed for being entrusted the job of inspection.

The proviso does not lay down any essential qualification for being appointed as Inspector, but only speaks about the period of experience, when such an Inspector may be authorized for inspection. Unless a person is appointed as Inspector, as envisaged in Clause (i), there would be no occasion for him to entrust the work of inspection and for making such authorization, 18 months' experience is necessary. In case the government wanted to introduce some period of experience for appointment on the post of Inspector, it could be done only by making or amending the rules, as may be permissible under law."

All these judgments have adopted the view that the substantive part of Rule 49 prescribes qualifications for appointment as an Inspector under the Act and the proviso which stipulates that an Inspector shall be authorized to inspect the manufacture of substances mentioned in Schedule C to the Rules upon the acquisition of certain experience cannot be regarded by the State as an essential qualification. Noticing these judgments, the Division Bench in the referring order dated 11 February 2011 has adverted to the duties of Inspectors in Rule 51 of 1945 Rules to inspect premises licensed for the sale of drugs and in Rule 52 of Inspectors authorized to inspect the manufacture of drugs. According to the Division Bench, there may be a situation where a Drug Inspector will not be able to inspect the manufacture of drugs and cosmetics, having no experience of testing any of the substances mentioned in Schedule C and hence an inspection report may become illegal and inadmissible in evidence for prosecution. The Division Bench opined that in order to harmonize the object and purpose of the qualification for Inspectors, the requirement of experience specified in the first proviso to Rule 49 has to be laid as an essential qualification. The Division Bench has differed with the view of the earlier Division Bench in *Zunab Ali* on the ground that the experience of 18 months in the manufacture of Schedule C substances in clause (i) of the first proviso; of 18 months in testing of a Schedule C substance in an approved laboratory under clause (ii) of the proviso or of three years in the inspection of a firm manufacturing a Schedule C substance in clause (iii) cannot be gained after an Inspector is appointed, since there is nothing in their service Rules for imparting to them training in a drug testing or manufacturing facility.

7. The submissions which have been urged on behalf of the petitioners are as follows:

(i) The mandatory qualification for the post of a Drug Inspector is a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law;

(ii) The proviso to Rule 49 of the Rules of 1945 does not specify an essential qualification for appointment as an Inspector but only refers to the period of experience which an Inspector, who is already appointed, must possess before he or she can be authorized to inspect the manufacture of a substance specified in Schedule C;

(iii) Under the first proviso to Rule 49 only those Inspectors who possess the experience specified in clauses (i) or (ii) or (iii) can be authorized to inspect the manufacture of substances mentioned in Schedule C. The plain and literal meaning of the proviso is that only those Inspectors who possess the required experience can be authorized to inspect the manufacture of substances mentioned in Schedule C to the Rules. The opening words of the proviso would make it abundantly clear that they apply to the experience which is gained by an Inspector after appointment;

(iv) Ex facie, clause (iii) of the first proviso to Rule 49 refers to experience which is gained during the tenure of service as a Drug Inspector. The Division Bench in the referring order has, therefore, erred in not noticing that clause (iii) of the proviso, on its own terms, adverts to the experience which is gained during service as a Drug Inspector;

(v) A proviso is in the nature of an exception to the main provision. What the State has purported to do is to treat the exception as a substantive part of the essential qualifications which is impermissible and contrary to principles of statutory interpretation. It is well settled that a proviso engrafts an exception to the operation of the main provision. The proviso, in the present case, specifies that a person who is appointed as a Drug Inspector can be authorized to inspect the manufacture of a Schedule C substance only upon possessing the experience

which is specified in the proviso. Holding of such an experience is not an essential qualification which must be fulfilled before a person is appointed as a Drug Inspector.

8. On the other hand, the submissions which have been urged on behalf of the State are as follows:

(i) While construing the provisions of Rule 49, it is necessary for the Court to bear in mind the reason for enacting the provision, the evils which it intended to eradicate and the object which was sought to be subserved. The Drugs and Cosmetics Act, 1940 broadly deals with (i) Ayurvedic, Siddha and Unani drugs; and (ii) other drugs or cosmetics. The Act prescribes different qualifications for both these categories. Section 12 empowers the Central Government to make rules for giving effect to the provisions of Chapter III which deals with import of drugs and cosmetics. Section 33 empowers the Central Government to make rules to give effect to the provisions of Chapter IV which deals with the manufacture, sale and distribution of drugs and cosmetics. Section 33N empowers the Central Government to make rules to give effect to the provisions of Chapter IVA which deals with provisions for Ayurvedic, Siddha and Unani drugs;

(ii) The Drugs Act was initially enacted to provide comprehensive measures for the uniform control of the manufacture and distribution of drugs and the import of drugs which was thought desirable. The Act was amended by Amending Act 21 of 1962 which brought the import, manufacture, sale, stocking and exhibition for sale and distribution of cosmetics within the purview of the Act;

(iii) The experience of inspection under clause (iii) of the first proviso to Rule 49 has to be attained by an Inspector during his service. On the other hand, the experience required in clauses (i) and (ii) of the proviso is not only a bar on authorized Inspectors to inspect manufacture of Schedule C substances but is an essential qualification for exercising the powers of a Drug Inspector under the Act. There is no provision in the Uttar Pradesh State Drug Control Gazetted Officers Service Rules, 1995 for imparting any kind of training to newly recruited Drug Inspectors;

(iv) A proviso may not only qualify certain provisions of the main enactment but, in a given case, may entirely change the concept or intendment of the enactment by insisting on certain mandatory conditions to make the enactment workable. Rule 49 is so embedded in the main statutory provision that it has acquired the tenor and colour of the substantive provisions of the Rule itself;

(v) Under the U.P. State Drug Control Gazetted Officers Service Rules, 1995, there is only one cadre of Inspectors and if the interpretation of the petitioners is accepted, Drug Inspectors with the prescribed experience would not be available to enforce the duty to inspect the manufacture of substances mentioned in Schedule C of the Rules of 1945. Consequently, Rule 49 embodies qualifications which must be acquired by a candidate prior to his appointment as an Inspector.

9. The Drugs and Cosmetics Act, 1940 was enacted to give effect to the recommendations of the Drugs Inquiry Committee which had suggested a comprehensive measure to provide a uniform control for the manufacture and distribution of drugs and of imports. The Statement of object and reasons, besides referring to this recommendation of the Drugs Inquiry Committee, stated that the Government of India called upon the Provincial Legislatures to pass resolutions under Section 103 of the Government of India Act, 1935 to empower the Central Legislature to pass an Act for regulating the control of drugs which fell within the Provincial Legislatures. Upon the resolutions passed by the Provincial Legislatures, a Bill was introduced. Chapter II of the Bill provided for a Board of Technical Experts to advise the Central and Provincial Governments on technical matters. Chapter III provided for the control of the import of drugs into British India. Chapter IV related to the control of manufacture, sale and distribution of drugs. The First Schedule prescribed standards to be complied with by imported drugs while the Second Schedule prescribed standards to be complied with for drugs manufactured, sold or distributed in India. The Act has thereafter been amended on several occasions by amending legislation⁴. Section 3 (e) of the Act of 1940 defines the expression "Inspector" as follows:

"3(e) "Inspector" means -

(i) in relation to Ayurvedic, Siddha or Unani drug, an Inspector appointed by the Central Government or a State Government under section 33G; and

(ii) in relation to any other drug or cosmetic, an Inspector appointed by the Central Government or a State Government under section 21."

10. The reference to the Full Bench is based on clause (ii) of the definition which refers to those Inspectors who are appointed by the State Government under Section 21 of the Act of 1940 in relation to a drug or cosmetic. Section 21 provides for the appointment Inspectors by the Central Government or a State Government with the prescribed qualifications. Section 21 provides as follows:

"21. Inspectors.

(1) The Central Government or a State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him, the drugs or classes of drugs or cosmetics or classes of cosmetics in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest in the import, manufacture or sale of drugs or cosmetics shall be appointed to be an Inspector under this section.

(4) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority having the prescribed qualifications, as the Government appointing him may specify in this behalf."

Section 22 of the Act specifies the powers of Inspectors:

"22. Powers of Inspectors.

(1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed, -

(a) inspect, -

(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardising and testing the drug or cosmetic;

(ii) any premises wherein any drug or cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed;

(b) take samples of any drug or cosmetic, -

(i) which is being manufactured or being sold or is stocked or exhibited or offered for sale, or is being distributed;

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;

(c) at all reasonable times, with such assistance, if any, as he considers necessary, -

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe that an offence under this Chapter has been, or is being, committed; or

(iii) stop and search any vehicle, vessel or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed, and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or

cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence;

(cc) examine any record, register, document or any other material object found with any person, or in any place, vehicle, vessel or other conveyance referred to in clause (c), and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder;

(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed;

(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder."

11. Section 33 (1) of the Act of 1940 empowers the Central Government to make rules for the purposes of giving effect to the provisions of Chapter IV which deals with the manufacture, sale and distribution of drugs and cosmetics. Under Section 33 (2) (b), the rules may "prescribe the qualifications .. of Inspectors". Clause (2)(n) of Section 33 prescribes that the rules may provide for the powers and duties of Inspectors, the qualifications of the authority to which such Inspectors shall be subordinate and "specify the drugs or classes of drugs or cosmetics or classes of cosmetics in relation to which and the conditions, limitations or restrictions subject to which such powers and duties may be exercised or performed". Rule 49 of the Drugs and Cosmetics Rules 1945, which has been extracted above, is a constituent part of Part V of the Rules which deals with Government Analysts, Inspectors, Licensing Authorities and Controlling Authorities. Rule 51 specifies the duties of Inspectors to inspect premises licensed for the sale of products. Rule 52 specifies the duties of Inspectors who are authorized to inspect the manufacture of drugs or cosmetics. Rules 51 and 52 are as follows:

"51. Duties of Inspectors of premises licensed for sale.- Subject to the instructions of the controlling authority, it shall be the duty of an Inspector authorized to inspect premises licensed for the sale of drugs -

(1) to inspect not less than once a year all establishments licensed for the sale of drugs within the area assigned to him;

(2) to satisfy himself that the conditions of the licences are being observed;

(3) to procure and send for test or analysis, if necessary, imported packages which he has reason to suspect contain drugs being sold or stocked or exhibited for sale in contravention of the provisions of the Act or Rules thereunder;

(4) to investigate any complaint in writing which may be made to him;

(5) to institute prosecutions in respect of breaches of the Act and Rules thereunder;

(6) to maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such record to the controlling authority;

(7) to make such enquiries and inspections as may be necessary to detect the sale of drugs in contravention of the Act;

(8) when so authorized by the State Government, to detain imported packages which he has reason to suspect contain drugs, the import of which is prohibited.

52. Duties of Inspectors specially authorized to inspect the manufacture of drugs or cosmetics. Subject to the instructions of the controlling authority it shall be the duty of an Inspector authorized to inspect the manufacture of drugs -

(1) to inspect not less than once a year, all premises licensed for manufacture of drugs or cosmetics within the area allotted to him to satisfy himself that the conditions of the licence and provisions of the Act and Rules thereunder are being observed;

(2) in the case of establishments licensed to manufacture products specified in Schedules C and C(1) to inspect the plant and the process of manufacture, the means employed for standardizing and testing the drugs or cosmetics, the methods and place of storage, the technical qualifications of the staff employed and all details of location, construction and administration of the establishment likely to affect the potency or purity of the product;

(3) to send forthwith to the controlling authority after each inspection a detailed report indicating the conditions of the licence and provisions of the Act and rules thereunder which are being observed and the conditions and provisions, if any, which are not being observed;

(4) to take samples of the drugs manufactured on the premises and send them for test or analysis in accordance with these Rules;

(5) to institute prosecutions in respect of breaches of the Act and Rules thereunder."

12. The Uttar Pradesh Inspectors of Drugs Service Rules, 1980 were notified by the Governor under Article 309 of the Constitution. Rule 3 (i) defines the expression "service' to mean the Uttar Pradesh Inspectors of Drugs Service. Rule 9, as it was originally framed, dealt with the qualifications and experience of candidates for direct recruitment to the service and was as follows:

"9. A candidate for direct recruitment to the Service must possess the following qualifications and experience:

(i) A degree in Pharmacy or Pharmaceutical Chemistry or a post-graduate degree in Chemistry with pharmaceuticals as a special subject from a recognized University 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 subject;

or

Pharmaceutical Chemists Diploma granted by the Pharmaceutical Society of Great Britain ;

or

a graduate in Medicine or Science (excluding veterinary Science) of a University recognized for this purpose by the appointing authority and has had 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), and (iv) the Head of an institution specially approved for the purpose by the appointing authority.

(ii) At least three years experience in the manufacturing and testing of substance specified in Schedule C in laboratory approved for the purpose by the licensing authority:

Provided that if sufficient number of candidate having the prescribed experience are not available the Governor may in consultation with the Commission, relax the qualifications contained in the said sub-rule."

13. Rule 21 of the Service Rules of 1980 provided for the appointment to a post in the service against a substantive vacancy on probation. Under Rule 22, the services of a probationer who was on probation for two years could be confirmed at the end of the period of probation or the extended period of probation upon the work and conduct being reported to be satisfactory, certification of integrity and subject to the satisfaction of the appointing authority that the probationer was otherwise fit for confirmation.

14. On 22 July 1987, the Uttar Pradesh Inspectors of Drugs Service (Amendment) Rules, 1987 were notified and in place of clause (ii) of Rule 9 of 1980 Rules, as it originally stood, the following clause was inserted:

"(ii) Not less than 18 months experience in the manufacture of at least one of the substances specified in Schedule "C"

or

Not less than 18 months experience in testing of at least one of the substances specified in Schedule "C" in a laboratory approved for this purpose by the licensing authority;

or

Not less than three years experience in the inspection of firm manufacturing any of the substances specified in Schedule "C".

15. The Uttar Pradesh State Drug Control Gazetted Officers Service Rules, 1995 were made by the Governor in supersession of all the existing rules and orders to regulate the recruitment and conditions of service of persons appointed to the gazetted service of State Drug Control Officers in Uttar Pradesh. Rule 8 prescribes the academic qualifications of candidates appointed by direct recruitment to the post of Inspectors of Drugs as follows:

"8. Academic qualification.- A candidate for direct recruitment to the post of Inspector of Drugs must possess such qualifications as have been prescribed under the rules made by Central Government in accordance with the provisions contained in Section 21 of Drugs and Cosmetics Act, 1940."

Rule 20 provides for the substantive appointment of a person to a post in the service on probation for two years. Rule 21 provides for confirmation in service. Rule 21 (1) reads as follows:

"21. Confirmation.

(1) Subject to the provisions of sub-rule (2) a probationer shall be confirmed in his appointment at the end of the period of probation or the extended period of probation if -

(a) he has acquired not less than 18 months experience in testing of at least one of the substances specified in Schedule 'C' of the Drugs and Cosmetics Rules, 1945, framed under the Drugs and Cosmetics Act, 1940, in a laboratory approved for this purpose by the licensing authority; or has acquired not less than 18 months experience in the manufacture of at least one of the substances specified in

Schedule 'C' of the Drugs and Cosmetics Rules, 1945, framed under the Drugs and Cosmetics Act, 1940;

(b) his work and conduct are reported to be satisfactory;

(c) his integrity is certified ; and

(d) the appointing authority is satisfied that he is otherwise fit for confirmation."

Rule 28 empowers the State Government, notwithstanding anything contained in the Rules, to dispense with or relax the requirements of a rule where the Government is satisfied that the operation of any rule regulating the conditions of service of persons appointed to the service causes undue hardship in a particular case.

16. Now, we proceed to interpret the provisions of Rule 49 of the Drugs and Cosmetics Rules, 1945. The substantive part of Rule 49 specifies that in order to be appointed as an Inspector under the Act, a person must have (i) a degree in Pharmacy; or (ii) a degree in Pharmaceutical Sciences; or (iii) a degree in Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. The first proviso, however, specifies that only those Inspectors who fulfill the experience referred to in clause (i) or (ii) or (iii) shall be authorized to inspect the manufacture of substances mentioned in Schedule C to the Rules. When a Court interprets a statutory provision, or a provision which is made by the delegate of the legislature while framing subordinate legislation, it must give effect to the plain, literal or grammatical meaning of the provision. Under the substantive part of Rule 49, the qualifications which are required to be held by an Inspector have been specified. These are mandatory requirements and before a person can be appointed as an Inspector, he must necessarily hold the educational qualifications which are prescribed in the substantive part. The proviso, however, specifies that "only those Inspectors" shall "be authorized to inspect the manufacture of substances mentioned in Schedule C" who possess the experience as set out in one of the three clauses thereto. In other words, the proviso carves out an exception. A person who holds the qualifications which are referred to in the substantive part of Rule 49, is eligible to

be appointed as an Inspector. Once appointed as an Inspector, such a person would be empowered to exercise the powers which are conferred upon an Inspector under Section 21 (2) and Section 22 together with Rules 51 and 52 of the Rules of 1945. However, the effect of the proviso is that only those Inspectors who fulfill the experience which is prescribed in one of the three clauses of the first proviso to Rule 49 can be authorized to inspect the manufacture of substances mentioned in Schedule C. But for the provisions contained in the proviso to Rule 49, there would have been no embargo on an Inspector being authorized to inspect the manufacture of substances mentioned in Schedule C. The effect of the proviso is that even though a person is appointed as an Inspector, he can be authorized to inspect the manufacture of Schedule C substances only upon fulfilling the experience as prescribed in clauses (i) or (ii) or (iii) to the first proviso to Rule 49. Hence, the proviso engrafts an exception by entailing that before an Inspector can be authorized to inspect the manufacture of substances mentioned in Schedule C, he must fulfill the requisite experience as prescribed in the proviso. Clause (i) of the proviso stipulates an experience of 18 months in the manufacture of a Schedule C substance. Clause (ii) of the proviso stipulates 18 months' experience in the testing of a Schedule C substance in a laboratory approved by the licensing authority. Clause (iii) of the proviso stipulates experience which is gained of not less than three years in the inspection of firms manufacturing any of the substances specified in Schedule C during the tenure of their service as Drug Inspectors. Ex facie, clause (iii) of the proviso specifies experience which is gained during the tenure of service as a Drug Inspector and not before appointment. The second proviso to Rule 49 contains a stipulation that the requirement of academic qualifications shall not apply to those persons appointed as Inspectors on or before 18 October 1993. Rule 49 was substituted with effect from 19 October 1993. Hence, what the second proviso provides is that it protects the services of those Inspectors who had been appointed before the introduction of Rule 49 in its present form on 19 October 1993. Rule 51 specifies the duties of an Inspector to inspect premises licensed for the sale of drugs. Rule 52 specifies the duty of an Inspector "authorized to inspect the manufacture of drugs or cosmetics". Before an Inspector can be regarded as being authorized to inspect the manufacture of a Schedule C drug, he must possess the experience specified in the first proviso to

Rule 49 of 1945 Rules. Consequently, the experience specified in the first proviso to Rule 49 is not a condition of eligibility or a qualification for appointment as an Inspector within the meaning of Rule 49. Undoubtedly and as a matter of general principle, it is open to the appointing authority to prescribe the conditions of eligibility for the holding of a post. The conditions of eligibility may, in a given case, legitimately include the possession of an academic qualification and of experience even prior to appointment. But, once the field is governed by a rule which has been framed in exercise of a rule making power vested by statute, the statutory rules must govern. Where, as in the present case, the statutory rule does not incorporate a requirement of experience as a condition of appointment, a requirement of experience as a condition of eligibility can be introduced only by way of an amendment to the statutory rules. Neither the State in its administrative capacity nor, for that matter, the Court would have the power to rewrite subordinate legislation, in the present case Rule 49, by providing that the provisions contained in the first proviso to Rule 49 are an essential qualification or a condition of eligibility for appointment to the post of Inspector. What Rule 49 plainly postulates is that only those Inspectors who possess the experience specified in the first proviso can be authorized to inspect the manufacture of substances specified in Schedule C. This is in the nature of an exception, as explained earlier, since it permits only a certain category of Inspectors holding the required experience to inspect the manufacture of Schedule C substances. Plainly, the holding of experience is not a condition of eligibility or a condition for appointment.

17. The Service Rules of 1995 in the State of Uttar Pradesh, in fact, are a clear recognition of the acceptance by the State of this position. Rule 8 of the Service Rules of 1995 adopts, as qualifications for direct recruitment to the post of Inspector of Drugs, those which have been prescribed in the rules made by the Central Government in accordance with the provisions of Section 21 of the Drugs and Cosmetics Act, 1940. Hence, the qualifications which are prescribed in Rule 49 of the Central Rules are incorporated for the recruitment of candidates as Drug Inspectors in the state service. Rule 21(1)(a) of the Service Rules of 1995 which speaks of the confirmation of a probationer, provides that a probationer shall be confirmed at the end of the period of probation or the extended period of probation

if he has acquired 18 months' experience in testing of a Schedule C substance in an approved laboratory; or has acquired 18 months' experience in the manufacture of a Schedule C substance as specified in the Drugs and Cosmetics Rules, 1945. Rule 21 (1) (a) of the State Service Rules 1995 is a clear indicator of the position that the acquisition of experience in the testing or manufacture of a Schedule C substance of a period of 18 months can take place after the appointment of a person as an Inspector of Drugs but before an order of confirmation is issued under Rule 21. If, as the State now asserts, experience was a condition of eligibility, there would be no occasion to provide for the acquisition of experience as a condition for confirmation of the services of a probationer. On the contrary, Rule 21(1)(a) is indicative of the fact that a probationer may acquire the experience after appointment in service but before an order of confirmation can be issued.

18. The basic principle of statutory interpretation is that, normally speaking, a proviso is an exception or qualification to something which falls within the ambit of the main provision. What a proviso does is that it excludes from the operation of a statutory provision something that would have fallen within the ambit of the provision but for the exception which the proviso carves out. A proviso, therefore, cannot nullify or negate the main provision. Justice G.P. Singh in his seminal treatise on the Interpretation of Statutes has summarized the precedents on the subject thus:

"The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As stated by LUSH, J.: "When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso." In the words of LORD MACMILLAN: "The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case."

This principle was enunciated in a judgment of three Hon'ble Judges of the Supreme Court in *S. Sundaram Pillai etc. Vs. V.R. Pattabiraman*⁶ thus:

"... The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment."

The Supreme Court held that a proviso may serve four different purposes, namely,

"(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

19. In *Maulavi Hussein Haji Abraham Umarji Vs. State of Gujarat and Anr.*⁷, the Supreme Court in a judgment of two Hon'ble Judges explained the purpose of a proviso in the following observations:

"10. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins v. Treasurer of Survey*⁸ (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*⁹ and *Calcutta Tramways Co. Ltd. v. Corporation of Calcutta*¹⁰) when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the

preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in *West Derby Union v. Metropolitan Life Assurance Co.*¹¹. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See *A.N. Sehgal. v. Raje Ram Sheoram*¹², *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal*¹³ and *Kerala State Housing Board v. Ramapriya Hotels (P) Ltd.*¹⁴].

14. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (See *Jennings v. Kelly*¹⁵).

This principle has subsequently been reiterated in the judgments of the Supreme Court in *Union of India Vs. Sanjay Kumar Jain*¹⁶ and *Binani Industries Limited, Kerala Vs. Assistant Commissioner of Commercial Taxes, VI Circle, Bangalore and Ors.*¹⁷

20. In *Holani Auto Links Private Limited Vs. State of Madhya Pradesh*¹⁸, the Supreme Court held as follows:

"... the function of a proviso or an exception is that it qualifies the generality of the main enactment by providing an exception and taking out as it were from the main enactment a portion which but for the proviso would fall within the main enactment. Ordinarily, it is foreign to the proper function of the proviso to read it as providing something by way of an addendum. In *Madras and Southern Maharashtra Ry. Co. Ltd Vs. Bezwada Municipality*¹⁹, it was held. as under: -

"Except as to cases dealt with by it, a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment."

32. Further, as stated by Lord Watson, "if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso."

The same principle was reiterated in *Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti and Ors.*²⁰. While following the earlier decisions in regard to the construction of a proviso, the Supreme Court emphasized in the following observations that the duty of the Court is to give effect to the plain meaning of the words used by the legislature and that it would not be open to the Court to read words into the Statute unless the provision, as it stands, is meaningless or of doubtful meaning:

"...The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*²¹, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or amend, and by construction make up deficiencies which are left there. (See *State of Gujarat v. Dilipbhai Nathjibhai Patel*²². It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock v. Frank Jones (Tiptan) Ltd*²³]. Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."

21. In a more recent judgment of three learned Judges of the Supreme Court in *Union of India and Anr. Vs. National Federation of the Blind and Ors.*²⁴, the principle has been set out in the following observations:

"It is settled law that while interpreting any provision of a statute the plain meaning has to be given effect and if the language therein is simple and unambiguous, there is no need to traverse beyond the same. Likewise, if the language of the relevant section gives a simple meaning and message, it should be interpreted in such a way.."

22. But, in the present case, on behalf of the State, reliance has been placed on a judgment of a Constitution Bench of the Supreme Court in *Commissioner of Commercial Taxes vs. Ramkishan Shrikishan Jhaver and Ors.*²⁵ That was a case where Section 41 (2) of the Madras General Sales Tax Act, 1959 provided as follows:

"(2) All accounts, registers, records and other documents maintained by a dealer in the course of his business, the goods in his possession and his offices, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officer:

Provided that no residential accommodation (not being a place of business-cum-residence) shall be entered into and searched by such officer except on the authority of a search warrant issued by a Magistrate having jurisdiction over the area, and all searches under this sub-section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (Central Act V of 1898)."

23. The main part of sub-section (2), quoted above, empowered an officer to inspect accounts, registers, records and other documents maintained by a dealer in the course of his business as well as his goods, offices, shops, godowns, vessels or vehicles. Under the proviso, there was an embargo on residential accommodation being entered into and searched except on the authority of a warrant of search issued by a Magistrate and it stipulated that all searches under "this sub-section" would be in accordance with the provisions of the Code of Criminal Procedure. The Supreme Court held that though the word 'search' has not been used in the substantive part of sub-section (2), the power of search was implicit therein. Since the latter part of the proviso showed that the main part of sub-section (2) contemplated searches by referring to all searches made under "this sub-section", it was clear that the main provision contemplated a search. It was in that context that the Supreme Court held as follows:

"...Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself. We may in this connection refer to *Rhondda Urban*

District Council v. Taff Vale Railway Co.²⁶, where section 51 of the Act there under consideration was framed as a proviso to preceding sections. The Lord Chancellor however pointed out that "though section 51 was framed as a proviso upon preceding sections, but it is true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that which goes before."

24. The statutory provision which we are interpreting in the present case has a different scheme altogether. The main part of Rule 49 of the Rules of 1945 provides the qualifications for appointment of an Inspector. The first proviso carves out an exception by stipulating that only certain categories of Inspectors would be authorized to inspect the manufacture of Schedule C substances. But for the proviso which places an embargo, a person who is appointed as an Inspector upon possessing the qualifications prescribed by the substantive part of Rule 49 would have been authorized to inspect the manufacture of substances mentioned in Schedule C. What the first proviso does is that it ensures that before an Inspector can be authorized to inspect the manufacture of a Schedule C substance, he or she must possess the experience stipulated in the first proviso to Rule 49. What needs to be noticed is that the proviso to Rule 49 of the Rules stipulates that only those Inspectors, who satisfy condition (i) or (ii) or (iii), shall be authorised to inspect the manufacture of the substances mentioned in Schedule 'C'. Schedule 'C' deals with only sixteen types of biological and special products. Schedule 'C(i)' deals with other special products. Schedule 'D' deals with certain other classes of drugs. For these reasons, we have come to the conclusion that the first proviso to Rule 49 does not provide an essential qualification for appointment as a Drug Inspector and the acquisition of the experience as set out in the first proviso would operate to authorize a Drug Inspector to inspect the manufacture of a Schedule C substance.

25. At this stage, we may also note that the same view, as we are inclined to take, has been adopted by a learned Single Judge of the Punjab and Haryana High Court in a judgment dated 19 October 2012 in Ashu Garg and Anr. Vs. State of Punjab and Ors.²⁷ In fact, the learned Single Judge of the Punjab and Haryana High Court has followed the judgment of the Division Bench of this Court in Zunab

Ali (supra).

26. Finally, as we have noted earlier, we may clarify that it is always open to the legislature or its delegate to suitably amend a statutory provision or, as in the present case, subordinate legislation to make the holding of the requisite experience as a condition of eligibility or a qualification for appointment but, that would have to be by an amendment of the subordinate legislation. As a matter of fact, the attention of the Court has been drawn to a notification dated 27 October 2010²⁸, of the Ministry of Health and Family Welfare, Government of India, amending the recruitment rules for the post of Drug Inspectors in the Central Drugs Standard Control Organization under the Directorate General of Health Services by making the holding of the requisite experience as an essential qualification for appointment. The relevant part of the notification reads as follows:

"Essential : -

(i) Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or equivalent;

(ii)(a) Eighteen months' experience in the manufacture of at least one of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945; or

(b) Eighteen months' experience in testing of at least one of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 in a laboratory approved for this purpose by the licensing authority; or

(c) Three years' experience in the inspection of firms manufacturing any of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 during the tenure of their services as Drugs Inspector."

No such amendment has been made in Rule 49 of the Drugs and Cosmetics Rules, 1945. The Rules, as we have interpreted them on their plain and natural meaning as they stand, do not make the experience, which is stipulated in the first proviso, as a condition of eligibility.

27. We, accordingly, answer the questions referred to the Full Bench as follows:

(i) The experience referred to in the first proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945 has not been made an essential qualification for appointment as a Drug Inspector. The effect of the first proviso is that only an Inspector who holds the experience as specified in it is authorized to inspect the manufacture of a substance specified in Schedule C to the Rules.

(ii) The judgment of the Division Bench in Zunab Ali (supra) has been correctly decided.

28. The reference is answered accordingly.

29. All the cases shall now be placed before the regular Bench for disposal in the light of this judgment.

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