

S.B. Civil Writ Petition No.226/2009
(Lohade Ram Meena **Vs.** State of Rajatshan & Ors.)
along with 30 Ors.

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

S.B. Civil Writ Petition No.226/2009
(Lohade Ram Meena **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.8190/2011
(Pratap Mewara & Ors. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.5966/2009
(Anand Mishra & Ors. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.8803/2009
(Vijay Kumar Bairwa **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.6762/2009
(Mubarik Ali **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.11601/2008
(Pratap Mewara **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.8581/2009
(Udaditya Joshi & Ors. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.5768/2009
(Murari Lal Sharma **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.226/2009
(Lohade Ram Meena **Vs.** State of Rajatshan & Ors.)
along with 30 Ors.

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S.B. Civil Writ Petition No.229/2009
(Daulat Ram **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.546/2012
(Kishore Lal Saini & Ors. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.547/2012
(Anil Kumar Sharma & Ors. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.15340/2011
(Heera Lal & Ors. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.8108/2011
(Suresh Kumar Rawat & Ors. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.1704/2011
(Anil Kumar Gupta & Ors. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.6070/2009
(Arjun Singh Meena **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.9202/2011
(Mukesh Kumar Joshi **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.9229/2011

S.B. Civil Writ Petition No.226/2009
(Lohade Ram Meena **Vs.** State of Rajatshan & Ors.)
along with 30 Ors.

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(Pushpendra Kirodiwal **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.9534/2011
(Arjun Kumar Meena **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.10976/2011
(Pratap Chitara **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.10977/2011
(Jagdish Kumar Khorwal **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.10978/2011
(Mahendra Singh Panwar **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.10981/2011
(Bhop Raj Sharma **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.11036/2011
(Asha Bai **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.16886/2011
(Rajendra Kumar **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.17172/2011
(Chandra Prakash Bairwa **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.226/2009
(Lohade Ram Meena **Vs.** State of Rajatshan & Ors.)
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S.B. Civil Writ Petition No.17174/2011
(Vikas Choudhary **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.860/2012
(Mohan Lal Saini **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.801/2012
(Gouri Shanker & Anr. **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.1887/2012
(Ashok Kumar Malav **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.1963/2012
(Laxmikant **Vs.** State of Rajatshan & Ors.)

AND

S.B. Civil Writ Petition No.2468/2012
(Matadeen Gurjar **Vs.** State of Rajatshan & Ors.)

Date of Order :: 30th March, 2012

HON'BLE MR. JUSTICE M.N. BHANDARI

Mr.Vigyan Shah]
Mr.R.D.Meena]
Mr.Shaiesh Prakash Sharma]	
Mr.Ram Pratap Saini]
Mr.Rajendar Prasad]
Mr.S.S.Hora]
Mr.B.B.L.Sharma]
Mr.H.R.Kumawat]
Mr.T.C.Sharma]
Mr.Shobhit Tiwari]

Mr.B.L.Dhakar]
Mr.Tanveer Ahmed]
Mr.S.S.Ola], for the petitioners.

Mr.R.P.Singh, Additional Advocate General
Dr.Vibhuti Bhushan Sharma, Addl.G.C – for the State
Mr.Prateek Singh for Mr.Bharat Vyas, for UGC
Mr.G.P.Kaushik, for IGNOU
Mr.R.C.Joshi, for Janardan Rai University.

REPORTABLE:

By the Court:

A set of writ petitions was decided by the Coordinate Bench earlier. Therein all the petitions were dismissed.

Aggrieved by the judgment of Single Bench, special appeals were preferred before the Division Bench wherein parties agreed for remand of cases as earlier judgment rest on the provisions of ***Rajasthan Para-medical Council Act, 2008 (for short “the Act of 2008”)***, though said act has not enforced by the State.

The majority of writ petitions arises out of remand of cases. The new writ petitions have also been connected as it is on one and the same issue though subsequent writ petitions were filed on issuance of new advertisement. The advertisement dated 25th May, 2011 is for the post of Lab

Technician under ***Rajasthan Medical & Health Subordinate Service Rules, 1965 (for short “the Rules of 1965”)***. The earlier writ petitions were for the post of Rural Lab Technician under ***Rajasthan Rural Medical & Health Subordinate Service Rules, 2008 (for short “the Rules of 2008”)***.

Since controversy pertains to eligibility of petitioners for the post of Lab Technician, all the writ petitions are heard and decided by this common judgment.

It is stated by learned counsel for petitioners that majority of petitioners did their diploma in Medical Laboratory Technology from Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur (for short “the JRN University”). It is deemed to be University under Section 3 of the University Grants Commission Act, 1956 (for short “the UGC Act of 1956”). The other candidates obtained same or similar qualification from different institutions having recognition from different bodies. All the petitioners made applications for their selection to the post of Lab Technician, however, they are not treated eligible for want of required qualification. The action of the

respondents not to recognize qualification of the petitioners is in ignorance of the provisions of law.

The petitioners having required qualification from recognized institution should have been treated eligible for appointment to the post of Lab Technician but for want of recognition of institution from State Government, they are not treated eligible. Referring to Section 3 of the UGC Act of 1956, it is urged that a deemed to be university needs no further recognition from the Government. The diploma/certificate provided by deemed to be university should have been treated as recognized for all practical purposes. This is moreso when, the Department of Education, Government of Rajasthan had earlier issued a Circular on 03rd November, 1999 providing that a degree from the University established under the Central/State Act needs no further recognition. Contrary to the aforesaid Circular, respondents are not treating diploma/certificate given by the respondent-University to be recognized. The same view has been taken for the qualification obtained by other petitioners from different institutions duly recognized. Referring to the case of those petitioners who have obtained diploma course of

Laboratory Technician from JRN University, it is stated that their course from distance mode was approved by a Joint Committee of University Grants Commission, the Distance Education Council (for short "the DEC") and All India Council for Technical Education (AICTE). It was after a visit of JRN University by the expert committee of DEC. The ex-post facto approval was granted to the JRN University apart from three other institutions/universities. The said approval was granted for courses provided by the JRN University till 2005. The petitioners have undertaken diploma course of Lab Technology prior to it. In view of the approval by the DEC, which is a statutory body under the Indira Gandhi National Open University (for short "the IGNOU"), the respondents' action to treat qualification obtained by the petitioners to be unrecognized, becomes illegal.

The ex-post facto approval given by the statutory bodies cannot be ignored by the respondents. This is moreso when, after establishment of IGNOU, the DEC was introduced in the year 2003 with a right to grant ex-post facto approval for the courses. In the aforesaid background, the respondents not only gone contrary to the provisions of UGC Act of 1956

but against their own Circular dated 03rd November, 1999 and also the Notification issued by the Government of India recognizing qualification obtained by the petitioners for government service. A reference of documents has been made to substantiate the arguments apart from reference of judgment in the case of ***Bharathidasan University & Anr. Vs. All India Council for Technical Education & Ors.*** reported in ***(2001) 8 SCC 676*** and also in the case of ***Vikas Kumar Vs. Haryana State Pollution Control Board & Anr.*** reported in ***(2010) 159 PLR 102*** so as the judgment in the case of ***Jaibir Singh Goyat Vs. Haryana Coop. Sugar Mills Ltd. & Anr.*** decided by Punjab & Haryana High Court on 24.02.2010 holding that qualification obtained from JRN University earlier known as Rajasthan Vidhyapeeth is having due recognition. Same view was taken by Himachal Pradesh High Court in the case of ***Sudesh Kumari Vs. HPSEB in Civil Writ Petition No.3206/2010 decided on 05.04.2011.*** All the learned counsel for petitioners referred various documents issued by the UGC so as the AICTE and DEC to substantiate their arguments.

Few documents in that regard were filed along with an application for taking it on record, which was duly

accepted.

It is urged that the State Government is not a statutory or competent body to recognize any institution for the qualification of Diploma in Laboratory Technology, moreso when, the Act of 2008 has not come in force. The diploma courses granted by the JRN University apart from other institution needs no separate recognition from State Government. A reference of various provisions of the UGC Act has been given to show that deemed to be university is having competence to provide diploma courses without separate recognition. The DEC has granted ex-post facto approval to the courses started by the JRN University, which were approved by their statutory bodies. The DEC was constituted pursuant to the Indira Gandhi National Open University Act, 1985 (for short "the IGNOU Act of 1985") where responsibility for promotion and coordination of open university and distance education system was given to the IGNOU.

The Ministry of Home and Department of Family Welfare, Government of India vide its letter dated 14.05.2001 confirmed that there is no council to recognize course of

Medical Lab Technology or Ex-ray Technology. Even by a

separate letter, the Medical Council of India clarified that they are not having power to recognize para-medical course. The facts aforesaid are sufficient to show that action of the State Government is wholly unjustified, thus needs to be interfered by this Court.

Learned Additional Advocate General,

Mr.R.P.Singh appearing on behalf of the State Government submitted that none of the petitioners are having requisite qualification from a recognized institution. As per Rules of 2008 so as the Rules of 1965, one is required to possess qualification of Secondary with nine months Laboratory Technician Course from an institution recognized by the Government. The word "Government" has been defined under the rules, which means Government of Rajasthan. None of the institutions have been recognized by the State Government for imparting education for Laboratory Technician/Technology courses. In absence of it, none of the petitioners can be held eligible for appointment to the post of Laboratory Technician/Rural Laboratory Technician. The

training course of Laboratory Technician is required to be undertaken with the required standard, therefore recognition of the institution are given by the Government keeping in mind that it is attached with the hospital. Apart from government hospitals, two more institutions were recognized vide the order dated 25.07.1995, which are, namely, (A) Santokba Durlabji Hospital, Jaipur and, (B) B.Sc. (Biology) from Mahrishi Dayanand Saraswati University, Ajmer with practical training from J.L.N. Hospital, Ajmer. This is apart from recognition of various Government Medical Colleges, namely:

- (i) SMS Medical College, Jaipur
- (ii) J.L.N. Medical College, Ajmer
- (iii) S.N. Medical College, Jodhpur
- (iv) Government Medical College, Kota and two more private college, namely:
 - (i) Institute of Medical Technology and Nursing Education, Jaipur, and;
 - (ii) Smt. Dakuben Sharemaiiji Sancheti Paramedical Institute, Sumrepur (Pali).

The petitioners have not obtained qualification from recognized institutions, accordingly their representations were rejected.

So far as the provisions of Universities Grants Commission Act are concerned, it makes reference only for degree courses to be given by a deemed to be university, which is clearly coming out from Section 22(2) of the UGC Act of 1956. The course in question is not a degree course but is a diploma course, thus the UGC does not occupy field to recognize course. If it has recognized the course without authority then cannot be held binding on the State Government. This is moreso when, recognition of the institution is required by the State Government as per Rules of 2008 as well as Rules of 1965 for appointment to the post of Lab Technician. The AICTE is again not a competent body to recognize para-medical course, as would be clear from bare perusal of the provisions for AICTE Act.

So far as the DEC is concerned, it is having authority to recognize distance education courses but not a course of para-medical, inasmuch as, the course of Lab

Technician needs not only study but training from an attached hospital. There is nothing on record to show that petitioners had ever taken training from an attached hospital. This is moreso when, a Lab Technician has to serve the patient, thus their services are quite important for a patient. The Government of Rajasthan recognized institutions taking into consideration the aforesaid aspect because casual approach may be at the cost of patient.

The DEC granted ex-post facto approval to the distance mode programmes though there is nothing to indicate that the course of Lab Technician has been approved. The perusal of letter issued by the DEC shows casual approach to give ex-post facto approval to the distance mode programme run by the JRN University as it is without proper inspection. The recognition of the courses started from the year 2001 till 2005 has been given in the year 2007 even without noticing as to whether standard required for the studies were maintained by the JRN University or not? In fact, initial report of UGC and other bodies shows that JRN University was lacking in proper infra and other facilities to distance mode programme. The UGC commanded JRN University with the direction not to provide off-campus programmes without their

approval. The instructions aforesaid was given in the year 2001 itself. Contrary to instructions of UGC, if the JRN University provided courses without prior approval then recognition of such courses at subsequent stage shows casual approach, rather it to be without jurisdiction. In any case, if the appointments have to be made under the Rules of 1965 and 2008 then requirement of recognition of institution by the State gets importance and thereby, it is only the State Government, which is competent to give recognition to the institution.

So far as the Circular dated 03rd November, 1999 is concerned, it is in reference to the degrees offered by the University and not for the diploma courses. The JRN University was not granted recognition for diploma courses by the State Government at any point of time. The Circular dated 03rd November, 1999 has been misinterpreted by the petitioners for diploma courses whereas it makes a reference about the degree courses only, though in the last part of said Circular, word 'diploma' exists but it is only for seeking information from the University to know about the course they are providing and not to grant deemed recognition to the

diploma courses.

Referring to the letter of the Government of India, the Ministry of Home, it is given out that degrees granted by the Universities, which include deemed to be universities, would be treated as recognized for the purpose of appointment to different posts in Government of India. In the aforesaid letter, reference of diploma or other programmes does not exist, rather a deemed university is entitled only to provide degrees whereas in the instant case, the petitioners have obtained diploma course from JRN University and from other institutions, not recognized by the State Government.

So far as the judgments cited by learned counsel for petitioners are concerned, those are not in reference of the Rules of 2008 and 1965 or in reference to similar provisions apart from the fact that qualification for the post of Lab Technician was not in consideration therein. A prayer is accordingly to dismiss the writ petitions.

Learned counsel appearing for the University Grants Commission Mr. Bharat Vyas submitted that as per the provisions of UGC Act of 1956, deemed to be University is

required to work in the defined areas. Section 3 gives power to declare any institution as deemed to be University for higher education. Section 22 (1)(2) of the Act of 1956 provides about rights of conferring and grant of degrees and no person or authority shall confer or grant or would be entitled to confer any degree other than provided under sub-section (1) of Section 22 of the UGC Act of 1956. Section 22 (3) defines "degree", which means any such degree as may be with the previous approval of the Central Government and specified in this behalf by the Commission by Notification in the Official Gazette.

Coming on the facts of this case, it is submitted by learned counsel Mr.Bharat Vyas that UGC vide its letter dated 04.08.2001 informed all the Vice Chancellors including Vice Chancellor of JRN University to take prior approval from UGC to enter into collaboration with private institution. It was further informed that no university will give off-campus private educational franchise. In view of the aforesaid, the JRN University had no authority to provide off-campus studies, diploma/certificate courses. The UGC took serious note of the fact that some of the deemed to be universities

introduced new courses, open new study centres and off-campus programmes without taking approval of the UGC. Every university was directed with the guidelines to deal with the issue and therein, it was provided that deemed university should take specific approval of DEC for distance education programmes. The guidelines were circulated to all the universities in the year 2004, thus every deemed to be University was under an obligation to follow guidelines issued by the respondent-UGC. The JRN University, however, failed to do so while starting programmes and diploma courses till the year 2005. Though, at a subsequent stage and after having a joint meeting of UGC, AICTE and DEC, ex-post facto approval to the distance programme was given. This was mainly due to equity in favour of the students, otherwise vide the letter dated 03rd August, 2005, the DEC informed that JRN University apart from other institutions were not recognized for distance education programmes. It was due to major deficiencies found in their delivery system and self inspection material. Vide the letter dated 23rd August, 2005, it was further clarified to the JRN University apart from other institutions that off-campus centres can be opened only with the prior permission of UGC and that of the State

Government, where the center is proposed to be opened. So far as the distance education programmes are concerned, prior approval by the UGC and DEC was required. Vide the letter dated 03rd August, 2005, the JRN University was informed that Council has not recognized University to offer distance education programme and they were directed to make compliance of few issues.

From the aforesaid, it becomes clear that the JRN University was not entitled to run off-campus programme though subsequently UGC issued a letter on 03.07.2006 granting ex-post facto approval to certain courses started up to 31st August, 2005. Therein it was clarified that permission of relevant statutory bodies or Council should be taken, wherever it is necessary. If approval of the institution by the State Government was necessary then it should have been obtained by the JRN University as well as by other institutions even in view of the letter issued by the UGC on 03.07.2006. The ex-post facto approval was given in the joint meeting on receipt of inspection report. It was taking into consideration the welfare of the students. In the aforesaid background, if the petitioners are not treated eligible for the appointment to

the post of Lab Technician for want of recognition of institution, then it is between petitioners and the State Government.

Learned counsel Mr.R.C. Joshi appearing for the JRN University submitted that vide the Notification dated 12.01.1987, JRN University was given status of deemed to be University though its initial name was different then changed w.e.f. 19.08.2003. The course conducted through distance learning programme was given ex-post facto approval by the DEC apart from the AICTE and UGC. It was after a visit of the committee in the year 2006. In the aforesaid background, there was no need to obtain separate recognition/approval from the State Government moreso when, Government of India issued Notification to the effect that qualification awarded by the deemed to be University stands automatically recognized for the purpose of employment and service under the Central Government.

Learned counsel for the JRN University further stated that diploma courses of Medical Laboratory Technician were stopped w.e.f. 12.07.2002 and it is only by distance

learning programmes, it was continued till the year 2005 with ex-post facto approval. The University made all efforts to get recognition from all the competent bodies/Council. The JRN University provided courses as were permissible and without ill-intention. The university took a decision to stop continuance of such courses, thus it is not providing any course of the nature involved herein. In view of the above, so far as the JRN University is concerned, it has very limited role to play in the present matters but looking to the fact that a proper educational programme was given to the students, they have a right to seek appointment on the post so advertised by the State Government.

Learned counsel appearing for IGNOU Mr.G.P.Kaushik submitted that DEC is a statutory body constituted under the Act of 1985. It approved all the programmes given by the JRN University till 2005, however, it has not given recognition the institution for any specific course/programme. The ex-post facto approval given by the DEC after joint meeting with UGC and AICTE should be viewed with proper caution. The DEC never accorded recognition to study center of the University. The ex-post

facto approval was given on the recommendation of the Committee constituted for the aforesaid purposes, however, if the institution needs recognition by the State Government, the DEC has no role to play therein. The ex-post facto approval was granted keeping in mind the career of the students who had undertaken studies under distance mode programmes. It was lastly urged that despite of specific order of this Court to produce record of the inspection and time granted for it, it could not be produced for certain reasons.

I have considered the rival submissions made by learned counsel for all the parties and scanned the matter carefully.

It is a case where advertisement was issued on 07.07.2008 and 06.10.2009 for the post of Rural Laboratory Technician, thus first set of petitioners have made their claim pursuant to the aforesaid advertisement. Certain writ petitions were filed even in the year 2011 when a new advertisement was issued for the post of Laboratory Technician but under the Rules of 1965.

The issue for my consideration is as to whether petitioners are in possession of required educational qualification for the post of Laboratory Technician, thus relevant Schedule under the Rules of 2008 as well as 1965 are quoted hereunder for ready reference to show required qualification:

“Schedule-IV (Medical Side) of Rules,
2008 :

<i>S.No./ Designation of post</i>	<i>Methods of recruitment with %</i>	<i>Post from which promotion is to be made</i>	<i>Qualifica tion & experien ce for promotio n</i>	<i>Qualification & Experience for direct recruitment</i>	<i>Remarks</i>
2.Laboratory Technician	100% by direct recruitment	-	-	Secondary Standard with 9 months Laboratory Technician Course passed from Institutes recognized by Government	If no suitable person is available, post shall be filled in by transfer from Laboratory Technician appointed under Rajasthan & Health Subordinate Service Rules, 1965.

Schedule-I of Rules, 1965 prescribes

minimum qualification of Laboratory
Technician :

<i>S.No. Name of Post</i>	<i>Source of recruitm ent with percenta ge Direct Recruit ment</i>	<i>Promo tion</i>	<i>Minimum Qualification & Experience for Direct recruitment</i>	<i>Post from which promo tion is to be made</i>	<i>Min. qualific ation & experie nce for promoti on</i>	<i>Rema rks</i>
4. Laboratory Technician	100.00%		Secondary or its equivalent with 9 months Training Certificate from Institute Recognized by Govt. Or In the event of non- availability of candidates possessing certificate of 9 months training from Institute recognized by Government, the candidates possessing the following qualifications can be considered – Secondary of a recognized certificate of Laboratory Technology course run by the Santokba Durlabhji Memorial Hospital, Jaipur or B.Sc. With Biology with Post Graduate Diploma in Laboratory Technology from the Maharshi Dayanand Saraswati University, Ajmer with Hospital based training in the JLN Medical College, Ajmer recognized by the Government.			

Perusal of the Rules of 1965 as well as Rules of
2008 shows qualification of Secondary with Laboratory

Technician Course from an institute recognized by the Government. The reference of certain institutions has further been made therein. Most of the petitioners did their diploma course in Medical Laboratory Technology from JRN University though there are petitioners who have undertaken same or similar course run by various societies/institutions, which are summarized and mentioned hereunder to illustrate broadly as to from which institutions other petitioners took their course:

“(1) One year's Diploma from PMTS of India & PMTO of India registered by Delhi Administration, Government of India under SR Act XXI of 1860 (CWP – 5244/09, 5248/09, 9505/09, 14667/09);

(2) Indian Medical Association, New Delhi registered Society through its School –
(a) Sevayatan Institute of Para Medical Science, Sikar (CWP-8188/09), (b) Rajdhani Institute of Para Medical Technology, Alwar (CWP-15880/09);

(3) Institute of Para Medical Technology, New Delhi (One year Diploma)(CWP-5250/09);

(4)Sanjeevan Institute of Paramedical Sciences & Nursing Jaipur (CWP-13458/09)

(5)University of Tech. & Sciences, Raipur (CWP-15861/09)

(6)Institute of Public Health Hygiene, New Delhi (CWP-14158/09) & 14667/09 (Mahesh Kr. Dewat);

(7)Punjab Technical University Jalandhar (CWP-16038/09);

(8)Sanford Institute of Paramedical Sciences Bangalore (CWP-13458/09) & Indian Health & Para Medical Research, Bikaner (CWP-16096/09) under Continuing Education Centre approved by All Indian Council for Technical Education (statutory body of Government of India);

(9)Baba Haridas College of Pharmacy & Technology New Delhi under Board of Technical Education, Delhi (CWP-14125/09);

(10)VMRF Deemed University Salem (Tamilnadu)(CWP-14667/09 – Vasudev Sharma)

All these are private institutes registered under Registration of societies Act or with Indian Medical Association recognised by Director, Health & Medical Service Government of India. Indisputably, the training of medical laboratory technology imparted by these private institutes (supra) is not being recognized by the Government of Rajasthan."

I am considering the cases of JRN University first.

The cases of JRN University :

The JRN University was notified deemed to be university in the year 1987 though initially in a different name which was changed on 19.08.2003. It being deemed to be university under Section 3 of the UGC Act of 1956, many courses were started, which are claimed to be within its competence. The perusal of Section 3 of the UGC Act of 1956 shows that an institution for higher education can be declared deemed to be University. Thus, declaration of deemed to be University is for higher education. As per Section 14 of the UGC Act of 1956, the Universities are under obligation to

comply with the recommendations of the Commission. Section 22 of the UGC Act of 1956 provides about right to confer degrees and and as the aforesaid provision is material, thus quoted hereunder for ready reference:

"22. Right to confer degrees. - (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree' means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official Gazette."

Perusal of Sub-section (1) of Section 22 of the

UGC Act of 1956 shows that conferment or grant of degree can be by the University established or incorporated by or under a Central Act, a Provincial Act or a State Act. It can be by deemed to be University under Section 3 of the Act. Sub-section (3) of Section 22 of the UGC Act of 1956 defines "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by Notification in the Official Gazette.

From perusal of the provisions aforesaid, it reveals that deemed to be University can provide degree and such degree should be specified in this behalf by the Commission by the Notification in the Official Gazette, that too, with the previous approval of the Central Government. Nothing has been brought on record to show that diploma course of Laboratory Technology was ever notified in Gazette by the Commission. In the aforesaid background, diploma in Laboratory Technology conferred by the respondent JRN University does not fall in the definition of "degree" under Section 22 of UGC Act of 1956. The UGC even issued a letter on 09th August, 2001 whereby all the Universities were

commanded not to provide off-campus programmes without prior approval of the UGC. The relevant part of the said letter is quoted hereunder for ready reference:

“The Universities can conduct courses through its own departments, its constituent colleges and/or through its affiliated institutions. There is, however, no provision for leaving it to private institutions for conducting courses leading to award of its degrees. As per recent UGC guidelines, the Universities are permitted to impart education and award its degrees through their own campuses located elsewhere in the country or even at their own off shore campuses with the approval of the UGC.

Looking into the wide spread menace of franchising the university education through the private institutions, the University Grants Commission has decided that any university which proposes to enter into collaboration with any private institution, would be required to take prior approval of the UGC. The Commission has also decided that no University should be permitted to go for

off-campus private educational franchise leading to the award of its degrees.

Accordingly, all the universities are being directed to stop franchising their degree education through private agencies/establishments with immediate effect. However, to safeguard the interest of the students, it has been decided to approve award of degrees under currently practiced franchise programmes only for those who have already been so far enrolled. No new enrolment of students, henceforth, shall be permitted."

The UGC again issued a letter on 16th March, 2004 indicating that off-campus studies are provided by certain deemed Universities against well defined objectives and limits. They were accordingly warned with the penal consequences. It seems that JRN University failed to take cognizance of the letter dated 09.08.2001 as there is no document on record to show prior approval of UGC to start off campus course in question. Even IGNOU vide its letter dated 03rd August, 2005 informed about major deficiencies in

delivery system in the distance education programmes. This was specifically in reference to the JRN University. Relevant part of the aforesaid letter is quoted hereunder for ready reference:

"This has reference to our tele-discussion in respect of the distance education programmes run by JRN Rajasthan Vidhyapeeth, Deemed University Udaipur, and Allahabad Agricultural Institute, Deemed University, Allahabad, I would like to inform you that Distance Education Council has not recognized either of these institutions to offer distance education programmes anywhere in the country so far because major deficiencies have been found in their delivery system and Self Instructional materials."

Even vide letter dated 23rd August, 2005, it was informed that distance education programmes can be offered in the manner indicated therein. Para Nos.2, 3, 5 and 7 are quoted hereunder for ready reference:

"2.The Deemed to be Universities are not permitted to affiliate any college/institute.

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3. The Deemed to be Universities can start new departments within the university campus or start off-campus centres with prior specific permission of the UGC and that to of the State Government where the centre is proposed to be opened.

5. The Deemed to be Universities can offer Distance Education Programme only through its own study centres and that too with the specific approval of both the UGC and Distance Education Council.

7. As of today, UGC has not approved the study centres of any Deemed to be Universities including the above three Deemed to be Universities."

Perusal of paras quoted above clarifies that deemed to be University was not permitted to affiliate any institution. They were also directed that off-campus centres can be opened with the prior and specific permission of the UGC and the State Government where it is proposed to be opened. In the instant case, there is nothing on record to show prior approval to open off-campus centres, as ex-post facto approval cannot be said to be prior approval of UGC and

there is absence of approval by the State Government.

The letter dated 30th August, 2005 issued by the UGC further shows major deficiencies in delivery system by JRN University under distance education programme. It was in view of information given by the DEC. Relevant part of the aforesaid letter is quoted hereunder for ready reference:

“The Distance Education Council (IGNOU, New Delhi) has not recognized Rajasthan Vidhyapeeth to offer Distance Education Programme anywhere in the country so far because major deficiencies have been found in the delivery system and self instructional materials. (Ref.IGNOU/DEC letter NO.IG/PVC/05 dated 03rd August, 2005.)

All off-campus centres/ Extension Centres/Study Centres and Academic Centres offering distance education programmes of the Vidhyapeeth running without the approval of UGC and Distance Education Council be closed down immediately. A list of such centres may also please be sent to UGC along-with the documentary evidence of closure of these centres.”

The perusal of the aforesaid letter reveals that even as per the report by the DEC, till 2005, major deficiencies were found in the delivery system and it was also noted that JRN University is running those courses without approval, thus directed to close it immediately. Contrary to the aforesaid and ignoring even the deficiencies earlier pointed out, ex-post facto approval was given to certain courses without specifying the name of the course. The aforesaid shows nothing but mockery of the system otherwise courses provided by JRN University till the year 2005 with major deficiencies should not have been given ex-post facto approval only in the name of equity because inspection after the year 2005 was nothing but an empty formality and therefore only, the IGNOU failed to produce original record of inspection despite order of this Court. A course with major deficiencies upto year 2005 is approved based on inspection in the year 2006, as if deficiencies can be removed with retrospective effect and even for those, who have already passed out the course. This Court cannot ignore the fact that till 2005, neither UGC nor DEC had granted permission to the programmes by distance mode by JRN University, rather

deficiencies were found therein.

According to the learned counsel for UGC and even by DEC, they had not approved particular programme of JRN University. If that is so, then ex-post facto approval without specifying course again shows casual approach of bodies like the DEC and UGC. This is moreso when a Laboratory Technician course without required standard may be fatal for the patients because a Laboratory Technician has to work in the hospital or in Diagnostic centres. It is for that purpose only, the State Government granted recognition to the institutions which are attached to the hospital so that practical training can be provided in the field for which they are imparted education. Neither petitioners nor JRN University could produce any document that while undertaking studies by distance education mode, the institution therein was attached to a hospital to provide practical training of the course.

In view of above, the argument of learned Additional Advocate General carries weight. This is moreso when, the Rules of 2008 and 1965 requires Laboratory Technician Course from an institution recognized by the

Government and the word "Government" as defined under the Rules indicates the Government of Rajasthan.

It is admitted case of all the parties that State Government had never granted recognition to the JRN University for the course in question though a reference of Circular dated 03rd November, 1999 has been made to show that no separate recognition was not required for a course provided by deemed to be University. For ready reference, relevant part of the aforesaid Circular is quoted hereunder to show as to whether every course provided by deemed to be University has been recognized or not :

"इस विषय में राज्य सरकार द्वारा इस विभाग पत्रांक : दि. 8.7.88 द्वारा स्पष्ट दिशा निर्देश दिए जा चुके हैं परन्तु फिर भी विभिन्न विश्वविद्यालयों द्वारा प्राप्त उपाधियों के सम्बन्ध में उनकी मान्यता के बारे में राज्य सरकार के आदेश मांगे जाते रहे हैं. इस हेतु उपाधि धारियों को अकारण ही समस्या उठानी पड़ रही है अतः पुनः स्पष्टीकरण जारी किया जाता है कि गृह मंत्रालय भारत सरकार के पात्र क्रमांक 26.4.52-सी एस दि. 30.9.52 जो बाद में उनके पत्रांक : 6.7.62 संख्या डी. दि. 4.7.1962 द्वारा संशोधित किया गया था के अंतर्गत भारत सरकार ने यह स्पष्ट आदेश भिजवाए गए हैं कि

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समस्त विश्वविद्यालय कि जो कि केंद्रीय / राज्य सरकार के अधिनियम के द्वारा स्थापित किये गए हैं या विश्वविद्यालय अनुदान आयोग कि एक्ट की धारा 3[1956] के द्वारा भारत सरकार द्वारा विश्वविद्यालय स्तर के संस्थान घोषित किये गए हैं उनके द्वारा प्राप्त उपाधियों नियमित रूप से नियोजन के दृष्टीकोण से मान्य होगी. इस प्रकार विश्वविद्यालय या विश्वविद्यालय स्तर के संस्थाओं द्वारा प्रदत्त उपाधियों की मान्यता के लिए राज्य सरकार द्वारा अलग से कोई आदेश प्रसारित करने की आवश्यकता नहीं है.

विश्वविद्यालय से उपेक्षा की जाती है कि वे समय समय पर उनके द्वारा प्रदत्त डिग्री/डिप्लोमा का विवरण राज्य सरकार के नियोजन अधिकारीयों को सूचित करे. विशेष रूप से जब कोई विश्वविद्यालय नया पाठ्यक्रम आरम्भ करता है."

Perusal of the para quoted above shows that it makes a reference only of degrees provided by deemed to be University and not for any other course like the Diploma or Certificate Course. The aforesaid Circular of the Government has been misinterpreted by the petitioners to show recognition of Diploma or Certificate Course thereunder. Last para of the aforesaid Circular does not recognize Diploma Course but calls upon details of degree/diploma courses provided by the University. The aforesaid Circular is further required to be looked into in reference to Section 22 of the

UGC Act of 1956 because a deemed to be University can provide degree as defined under Sub-section (3) of Section 22 of the UGC Act. There is nothing on record to show a Gazette Notification by UGC to include the course in question. In the aforesaid background, the Circular dated 03rd November, 1999 cannot be treated for recognition of Laboratory Technician Course by the State Government and otherwise requirement of Rules of 1965 and 2008 is for recognition of the institutions and not of the courses. Therefore, aforesaid Circular is of no assistance to the petitioners.

Learned counsel for the UGC Mr. Bharat Vyas very fairly admitted that UGC never recognized any course by distance mode programme as UGC is authorized only for conferment of degrees and not other course, therefore, the jurisdiction of the Commission is very limited. It is only to sort out the problem, the matter was sent to DEC and subsequent ex-post facto approval was given keeping in mind equities in favour of the students. The fact, however, remains that equities cannot be given precedent over the statutory provisions or it should not be by way of misplaced sympathy.

This is specifically when in the present matters, the post involved is to serve the patient. The casual approach to treat petitioners as qualified for the post in reference may be fatal with ill-consequence. In fact, UGC as well as DEC could not justify their act for ex-post facto approval to the distance mode programmes provided by the JRN University. This is moreso when till the year 2005, no approval to those courses were given, rather major deficiencies were found. It has not been clarified as to how those deficiencies got removed for the students, who had already passed out the course by the year 2006 as matter for ex-post facto approval was undertaken thereafter. The deficiencies of course cannot be removed from retrospective effect. In the aforesaid background, it remains nothing but undue favour extended by the UGC as well as DEC to the JRN University. This cannot be in the name of equities. This is moreso when ex-post facto approval is without specifying the name of the courses.

In the aforesaid background, it cannot be said that petitioners are having qualification for the post of Lab Technician as provided under the Rules of 2008 and 1965 because mandate of Rule is for recognition of the institution

by the State Government for the course of Lab Technician, which does not exist in the present matters and thereby, even ex-post facto approval given by DEC remains of no consequence.

In view of the discussion made above, I am not impressed by any of the arguments raised by the learned counsel for petitioners.

So far as the judgments cited by learned counsel for petitioners are concerned, in the case of ***Bharathidasan University & Anr. (supra)***, the issue was quite different than involved in the present matters. Therein, a University does not require a prior approval of AICTE for starting department or unit as the University is having authority to conduct Technical Education Course on its choice. The AICTE was not found to be controlling or supervising authority over the University, thus the issue therein was in the light of the Act of 1956. The conflict was looked into in reference to different provisions under UGC Act and AICTE Act regarding its jurisdiction. The position of fact herein is different, inasmuch as, under the UGC Act, a deemed to be university can grant a degree, as notified in the Gazette by the

Commission. The course obtained by the petitioners from JRN University was never notified in the Gazette to make it a "degree" as defined under Section 22(3) of the UGC Act of 1956. It has been admitted by learned counsel for UGC and to justify their action, the matter was sent to the DEC, though without showing authority of the DEC to recognize a course in para-medical side. It is coming out that till the year 2005, there was no prior approval of the course by the UGC or DEC, rather major deficiencies were found in the programme by distance mode, thus facts of this case are quite different than the judgments referred above.

So far as the judgment in the case of Vikas Kumar (supra) is concerned, the issue has not been dealt with by Hon'ble Punjab and Haryana High Court after taking into consideration the relevant provisions as well as the facts and the reasons as to why ex-post facto approval was granted. It seems that the Court therein was not apprised of the fact that till the year 2005, no prior approval for distance mode programme was existing and otherwise, major deficiencies were found by none else but DEC and UGC. The issue was not even considered in reference to Section 22 of the UGC Act of 1956, rather the Courts seems to be apprised only to the

letter dated 07.08.2007 whereby ex-post facto approval was given.

Learned counsel for the IGNOU has admitted that they had not granted recognition to a particular institution and even programme or course was not noticed for ex-post facto approval. In the aforesaid background, no assistance is provided by the judgment in the case of Vikas Kumar (Supra) so as the other judgments in the case of Jaibir Singh (Supra) and Suresh Kumari (Supra) as none of the relevant facts were brought to the notice of the Hon'ble High Court. Therein, the set of rules for recruitment were also different because case in hand has to be decided in reference to the Rules of 1965 and 2008 wherein required education qualification for the post of Lab Technician has been given in specific terms. This Court cannot further ignore the fact that Lab Technician have to work in the hospital and Diagnostic centres, thus their working is of importance for treatment of a patient and in the present matters, there is nothing on record to show that the institution from where petitioners have taken diploma course was attached to hospital for providing practical training. Therefore, treating petitioners to be eligible for the post may be at the cost of patients. Thus, this Court cannot show

misplace sympathy towards petitioners as otherwise shown by the UGC and DEC when a decision was taken for grant of ex-post facto approval.

Other Institutions:

The position of facts for other institutions is not better than JRN University. They are not having approval by a statutory body having competence for the aforesaid and it is not under a deemed to be University. The fact further remains that recognition of the institution has to be the State Government as per the Rules of 1965 or 2008.

The name of institutions have been given along with the bodies from which it is either registered or recognized. None of those bodies are shown to have authority under the law to recognize diploma course of the nature involved herein. This is apart from the fact that position of deemed university Salem (Tamilnadu) is not different than of the case of the deemed university discussed in the preceding para. The Sanford Institute of Paramedical Sciences Bangalore may be approved by AICTE but it needs recognition

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by the body having competence to do so. It has already been noticed that Para-medical Institution needs recognition from the State Government for service under Rules of 1965 or 2008 and none of the institutions from which other petitioners have obtained qualifications are recognized institution by the State Government. The factual position of each institution is not required to be discussed in absence of argument for their recognition from competent body.

None of the learned counsel for petitioners could show authority of any of the society/body to either register those institutions or approve it, thus facts pertaining to other institutions are not required to be elaborated in absence of arguments. However, their cases are covered by the ratio propounded in regard to the JRN University, thus applying the issues discussed therein, even the candidates taken course of Lab Technician from other institutions cannot be held to be in possession of required qualification.

In the aforesaid background, I do not find any merit in arguments of learned counsel for petitioners. Accordingly, all the writ petitions so as the stay applications

are dismissed.

(M.N. BHANDARI), J.

preety, Jr.P.A.

All corrections made in the judgment/order have been
incorporated in the judgment/order being emailed.

*Preety Asopa
Jr.P.A.*