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**IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR**

W. P. S. NO. 5499 OF 2012

Single Bench

PETITIONER : Ku. Pooja Sharma D/o Shri
Bhaktwatsal Sharma, aged about- 22
years, R/o Palidih Chauk, Jashpur
Raod, Pathalgaon, P.S. Pathalgaon,
Tahsil- Pathalgaon, Distt. Jashpur
(C.G.).

R No. 5499/12
Presented by Shri. M.K. Sinha
Dated. 11/12/12

VERSUS

- RESPONDENTS**
1. State of Chhattisgarh through Secretary,
Health Services, D.K.S. Bhavan, Raipur
(C.G.).
 2. The Directorate, Health Services, Old
Nurses Campus, near D. K. S. Bhavan,
Raipur (C.G.)
 3. The Collector, Jashpur Distt. Jashpur
(C.G.).
 4. Chief Medical and Health Officer, District
Hospital, Jashpur, Distt. Jashpur (C.G.).
 5. Ku. Reshma Kujur D/o Shri
Aknasiyus Kujur, aged about- 27 years,
R/o behind Kachhari, Ambikapur Road,
Bagicha, Tahsil-Bagicha, Distt. Jashpur
(C.G.).

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

The petitioner respectfully begs to submit as under:-

1. PARTICULARS OF THE PETITIONER.

As shown in the cause title

Amk



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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(S). No. 5552 of 2012

PETITIONER : Chandrakumar

VERSUS

RESPONDENTS : State of Chhattisgarh & others

&

W.P.(S) No. 5499 of 2012

PETITIONER : Ku. Pooja Sharma

VERSUS

RESPONDENTS : State of Chhattisgarh & others

(PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

(SB: Hon'ble Mr. N.K. Agarwal, J.)

Present : Shri MK Sinha and Shri Somkant Verma, Advocates for the
respective petitioners.
Shri Satish Gupta, Govt. Advocate for the State.

ORAL ORDER

(Passed on 26.02.2014)

1. This order shall govern disposal of both the petitions, leading case of which is WP (S) No. 5552 of 2012.,
2. Challenge in this petition is to the select list of the Pharmacist Grade II pursuant to the advertisement dated 08.06.2012 wherein the petitioners, after having participated in the selection process, did not find place in the list.
3. Petitioners challenge the select list inter alia mainly on the ground that the authorities have given preference to the Diploma holders for appointment on the post of Pharmacist Grade II. The qualification prescribed in the advertisement for the post of

Pharmacist Grade II is Higher Secondary pass certificate or 10/12th pass in Science subject in 10+2 system with diploma in Pharmacist.

4. Learned counsel appearing for the petitioners submit that Diploma in Pharmacy is a minimum qualification, if a candidate has highest qualification i.e. Bachelor of Pharmacy, it cannot be said that there is any discrimination or arbitrariness in considering the candidatures of those candidates who have higher qualification and it also does not amount to change in the process of selection mentioned in the advertisement. According to learned counsel for the petitioners, it was also not mentioned in the advertisement that the minimum qualification is Diploma in Pharmacy only, and not Bachelor of Pharmacy, which was higher qualification.
5. On the other hand, learned counsel appearing for the State would submit that diploma was prescribed as one of the essential qualifications, the authorities cannot give preference or select those candidates who had degree in Bachelor of Pharmacy. Second contention of learned counsel appearing for the respondent is that it amounts to change of procedure in the selection process.
6. I have heard the counsel appearing for the parties and perused the orders impugned including paper book.
7. It is true that a qualification after issuance of advertisement cannot be changed, however, in case on hand, there is no change of

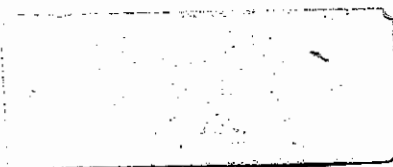


qualification. In my opinion, Diploma in Pharmacy is the minimum qualification, as has been prescribed in the advertisement itself, and if a person is having superior qualification i.e. Bachelor of Pharmacy, his/her candidature cannot be rejected on the ground that he/she did not have Diploma in Pharmacy. A better qualified can never be rejected on the ground that the candidates having lesser qualification i.e. Diploma in Pharmacy are available.

8. Co-ordinate Bench of this court in case of Domendra Kumar Sahu vs State Of Chhattisgarh & Others (WPS No. 2117 of 2012), considering almost the identical issues, has observed in para 6 & 7 as under:

6. It is true that a qualification after issuance of advertisement cannot be changed, as pleaded by learned counsel appearing for the petitioner; however, in case on hand, there is no change of qualification. Diploma in Pharmacy is the minimum qualification, as has been prescribed in the advertisement itself, and if a person is having superior qualification i.e. Bachelor of Pharmacy, his/her candidature cannot be rejected on the ground that he/she did not have Diploma in Pharmacy. Having Bachelor of Pharmacy qualification means that the candidate has better knowledge in the Pharmacy, which is required for appointment on the post of Pharmacist Grade-II. A better qualified can never be rejected on the ground that the candidates having lesser qualification i.e. Diploma in Pharmacy are available. This is also not the intention of the Government.

7. It is well settled by a catena of decision that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme. The Supreme Court in the matter of Government of Andhra Pradesh v. P. Dilip Kumar & Others; another, considering the very issue observed as under :



13.There is nothing arbitrary or unreasonable in the employer preferring a candidate with higher qualification for service. It is well settled by a catena of decisions that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme. See Roshan Lal Tandon v. Union of India², State of J.K. v. Triloki Nath Khosa³, Md. Sujat Ali v. Union of India⁴, Roop Chand Adlakha v. Delhi Development Authority⁵, V. Markendeya v. State of A.P.⁶ and Sanatan Gauda v. Berhampur University⁷. We, therefore, do not agree that treating post graduates as a class and giving them preference in this manner is violative of Articles 14/16 of the Constitution...

9. In view of foregoing, both the petitions are allowed. The respondents are directed to consider and decide the petitioner's case, at par, with the other candidates having qualification of Diploma in Pharmacy and if the petitioners are otherwise found fit, their candidature for appointment on the post of Pharmacist Grade II shall be considered as early as possible preferably within a period of three months from the date of receipt of copy of this order.
10. Learned State counsel is directed to sent back all the original records to the concerned authority.
11. Copy of this order be placed on record of WPS No. 5499 of 2012.

Sd/-
N.K. Agarwal
Judge