

Dr. Nagaraju Tanneru And Another vs Telangana State Public Service ... on 5 June, 2023

Author: Surepalli Nanda

Bench: Surepalli Nanda

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WP_12961_2020
SNJ

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 12961 of 2020

Between:

Dr Nagaraju Tanneru and another

... Petitioners

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

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WP_12961_2020

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 12961 of 2020

% 05.06.2023

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Dr Nagaraju Tanneru and another

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... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Party in person

^ Counsel for the Respondents: G.P for Medical and
Health

? Cases Referred:

1. 2002 (6) SCC 252
2. 1990(1) SCC 288
3. 2009(1) SCC 610
4. 1975(3) SCC 76
5. 2019 (2) SCC 404

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WP_12961_2020
SNJ

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 12961 of 2020

ORDER:

Heard the Party in Person for the Petitioners and Learned Government Pleader for Respondent No.1, Learned Standing Counsel for Respondent No.2 and 3.

2. This Writ Petition is filed to issue a Writ of Mandamus, declaring the arbitrary rejection of the case of the petitioners for selection to the post of Food Safety Officer by the 1st respondent and non ascertaining by the 1st respondent the equivalency of BDS & MDS to that of a degree in medicine as illegal and consequently, direct the respondents to treat the qualification of BDS and MDS possessed by the Petitioners for selection to the post of Food Safety Officer notified vide Notification no. 10 of 2019 as per merit and eligibility.

3. The case of the petitioners, in brief, is as follows:

a) The 1st petitioner is a MDS degree holder and the BDS and the 2nd petitioner is a BDS degree holder and have applied for selection to the post of Food Safety Officer against WP_12961_2020 SNJ the notification issued by the 1st respondent vide No. 10 of 2019.

b) Even though, both the petitioners have successfully qualified the Written Examination but both the petitioners, despite being qualified were not considered for selection.

c) As per Educational Qualification prescribed in the notification, the degrees held by both the petitioners are equivalent to the qualification of a degree in Medicine.

d) A degree in Dental Surgery, is a Degree in Medicine and is equivalent to the Degree of MBBS and hence satisfies the prescription given in the notification. It had been orally informed by the Petitioners that the cases of the petitioners had been rejected deeming BDS & MDS as not recognized qualifications to hold the post of Food Safety Officer.

e) Though the Apex Bodies of Medical and Dental Courses are clear about the equivalency of BDS degree to a degree in Medicine, the respondents herein had not applied their mind and rejected the case of the petitioners for the post of Food Safety Officer. Hence, the Writ Petition.

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4. The counter affidavit filed by the 1st respondent, in particular paras 6, 7, 8 and 9, reads as under:

"6. In this connection, I respectfully submit that the qualifications for these posts of Food Safety Officers are clearly mentioned in the Notification at Para No.-4 under the column of Educational Qualifications:

"Para 4) EDUCATIONAL QUALIFICATIONS:

Applicants must possess the qualifications from a recognized university/Institution as detailed below or equivalent thereto, as specified in the relevant Service Rules, indented by the Department as on the Date of Notification.

Post Name of the Post Educational Qualification as Code specified by the Department as per G.O.Ms.No.20, HM&FW (C2) 01 Food Safety i) A degree in Food Technology Officer in IPM. or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio Chemistry or Microbiology or Master's Degree in Chemistry or Degree in Medicine from a recognized university.

OR

ii) Any other equivalent/ recognised qualification notified by the Central Government.

7. In view of the above, it is clear that the qualifications of the petitioners i.e. MDS (Oral & Maxillofacial Surgery) & B.D.S. are not either prescribed or equivalent qualifications as per the WP_12961_2020 SNJ Notification and accordingly, their candidature was rejected. It is also relevant to submit here that, some more candidates with the qualification of BDS, BAMS and BHMS were also rejected on the same grounds.

8. Further, I respectfully submit that, an Expert Committee was constituted to ascertain the equivalency of the various qualifications i.e. MDS, BDS, BAMS and BHMS, etc, with the following professors:

1. Prof. Kavita Waghray, Osmania University

2. Prof. V. Vijaya Lakshmi, PITSAU, Hyderabad

3. Mrs. M. Jaya Surya Kumari, Koti Womens College, O.U. A meeting of the Experts Committee was held on 02/09/2020 in TSPSC Office and the following Resolutions were passed

1. It is resolved that Degree in Medicine referred in Indian Medical Council Act-1956 has not made any mention with regard to the Dental degrees.

Further, it is also resolved that, as per the first, second and third schedules of the said Act, there is no such mention about BDS and MDS degrees

2. The Indian Medical Council Act-1956 also mentioned that modern scientific medicine include the branches of medicine pertaining to the subjects governed by

Indian Medical Council such as: Radiology, Cardiology. Pediatrics, Orthopedics, General Medicine, Neurology, Urology, etc. (reference: first, second and third schedules of the IMC Act-1956)

3. It is also resolved that the Indian Medical Degree Act-1916, the definition may not be appropriate to say WP_12961_2020 SNJ that BDS and MDS are equivalent to the Degree in Medicine.

4. It is also resolved that, as per the Dentist Act-1948, dentist meant who practices dentistry. The reference made in the Act by the petitioners is with reference to practice. Hence, the dentist is governed by the Rules and Regulations made under this Act.

5. Further, the degrees such as BDS, MDS, BAMS, BHMS, BUMS and BYNS were also not figured in the schedules of the Indian Medical Council Act 1956.

9. In view of the above Resolutions of the Experts Committee, it is clear that the qualifications of the petitioners i.e. MDS and BDS are not equivalent to that of prescribed in the Notification and hence their candidature cannot be considered for the post of Food Safety Officers.

5. The counter affidavit filed by the 2nd respondent, in particular, paras 3, 4, and 7, reads as under:

"3. It is respectfully submitted that, the Respondent No.2 has notified the (10) vacancies to the post of Food Safety Officer/ Food Inspector along with other posts in Institution of Preventive Medicine, Public Health Lab & Food (Health) Administration, Hyderabad to the Respondent No. 1 i.e. The Telangana State Public Service Commission, Hyderabad, Telangana state vide No. 3037/TS/IPM/E6(E1)/2016, Dated:22-09-2016 and vide Re No.5032/E6/2016-2018, Dated:30-06-2018 to WP_12961_2020 SNJ fill up the above vacancies along with the Break up of the Rule of Reservation for the above vacancies

4. Further it is respectfully submitted that, the Respondent No.2 clearly informed to the Respondent No.1 regarding the requisite Education Qualifications to fill up the Food Safety Officer post as per FSS Rules 2011 and G.O.Ms.No.20 HM&FW(C2) Dept., Dated: 20-03-2018 that, the candidate must possess a degree in Food Technology (or) Dairy Technology (or) Bio Technology (or) Oil Technology (or) Agricultural Science (or) Veterinary Sciences (or) Bio-Chemistry (or) Microbiology (or) Masters Degree in chemistry (or) Degree in Medicine from a recognized University (OR) any other equivalent/Recognized qualification notified by the Central Government.

7. Further, it is submitted that, the petitioners stating that, wherein the education qualifications to the post of FSO mentioned in the notification No.10/2019 as, Degree in Medicine from a recognized University (OR) any other equivalent/Recognized qualification notified by the Central Government is valid qualification for selection to this post. Therefore, a degree of BDS and MDS is a degree in Dental Surgery which is equivalent qualification of a Medical degree and the IMC Act, 1965 also defines Medicine as Modern Scientific Medicine in all its branches and includes surgery & Obstetrics, but WP_12961_2020 SNJ does not include Veterinary Medicine and Agriculture degree. The Dentists Act 1948 also clearly defines the profession of dentistry as including surgery/treatment of human oral cavities and organs like teeth & Jaws. PERUSED THE RECORD :

6. G.O.Ms.No.20, dated 20.03.2018 issued by Principal Secretary to Government, Health, Medical & Family Welfare (C2) Department, brought about certain amendments in the G.O.Ms.No.459, HM & FW (L1) Department, dated 08.09.1994. The said notification and amendments read as under :

"ORDER:-

The Director (FAC), Institute of Preventive Medicine, Public Health Labs & Food (Health) Administration, Hyderabad, in his letter third read above, has furnished proposals to amendment to the "Telangana Institute of Preventive Medicine, Public Health Laboratories and Food (Health) Administration subordinate service Rules, 1994" issued in the G.O. first read above, for changing the nomenclature of the post of Food Inspector as Food Safety Officer in conformity with the Food Safety and Standards Act, 2006, (Central Act No.34 of 2006) and fixation of quota between Direct Recruitment and Promotees, in view of deletion of the earlier quota of 1/3 meant for Qualified Sanitary/Health Inspectors working in Panchayats, Municipal Corporations, Municipalities and Health Inspectors in Health & Medical Department.

2. Government after careful examination of the matter, hereby accept the proposal of the Director, Institute of Preventive Medicine, Public Health Labs & Food (Health) WP_12961_2020 SNJ Administration, Hyderabad, to issue necessary amendments to the Telangana Institute of Preventive Medicine, Public Health Laboratories and Food (Health) Administration Subordinate Service Rules, 1994' issued in the G.O. first read above, with immediate effect.

3. The following notification will be published in the Telangana State Gazette, Dated.24/3/2018.

NOTIFICATION In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Government of Telangana, hereby make the following amendments to the 'Telangana Institute of Preventive Medicine, Public Health Laboratories and Food (Health) Administration Subordinate Service Rules, 1994 issued in G.O. Ms.No.459, Health, Medical & Family Welfare (L1) Department, dt:8.9.1994, and as amended from time to time:-

AMENDMENTS

1. In the said Rules, for the expression "Food Inspector (Non-Gazetted)" wherever it occurs, the expression "Food safety Officer shall be substituted.

2. In Rule 3,-

(1) in Column (3) of the Table under Class-B for the word "Director", wherever it occurs, the words "Commissioner of Food Safety" shall be substituted.

(ii) In Note (2), items (i) and (ii) and the proviso thereunder shall be substituted with the following:-

(i) One-third of the posts shall be filled by appointment by transfer of Junior Analyst and Ministerial Staff i.e., Senior Assistant, Junior Assistant-cum-Typist in the ratio of 1:1 and

(ii) Two-third of the posts shall be filled by Direct Recruitment through Telangana Public Service Commission.

Provided that if qualified candidates are not available for appointment by transfer referred to in item (i) WP_12961_2020 SNJ above, the vacancies meant for the relevant category shall lapse and the said vacancies shall be filled by direct recruitment".

3. In the Annexure (under Rule 5), under Class-B, for Column (3), the following shall be substituted,- The Food Safety Officer shall be a whole time officer and shall on the date on which he is so appointed possesses the following qualification:-

(i) A Degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Master's Degree in Chemistry or Degree in Medicine from a recognized University, or

(ii) Any other equivalent/ recognized qualification notified by the Central Government.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)"

7. The educational qualifications as per Clause 4 of the Notification No.10/2019, dated 31.12.2019 issued by the Telangana State Public Service Commission, Hyderabad, as specified by the Department as per G.O.Ms.No.20, HM & FW (C2) Department dt.

20.03.2018, reads as under :

"Para 4) EDUCATIONAL QUALIFICATIONS:

Applicants must possess the qualifications from a recognized university/Institution as detailed below or equivalent thereto, as specified in the relevant Service WP_12961_2020 SNJ Rules, indented by the Department as on the Date of Notification.

Post Code	Name of the Post	Educational Qualification as specified by the Department as per G.O.Ms.No.20, HM&FW (C2)
01	Food Safety Officer in IPM.	i) A degree in Food Technology or Dairy Technology or
02	Food Safety Officer in GHMC	Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio Chemistry or Microbiology or Master's Degree in Chemistry or Degree in Medicine from a recognized university.
		OR
		ii) Any other equivalent/

recognised qualification notified by the Central Government.

8. The letter dated 02.08.2021 of the Under Secretary, Government of India, Ministry of Health and Family Welfare, Department of Health & Family Welfare, Food Regulation Section, addressed to the Principal Secretary, Telangana State Public Service Commission, Nampally, Hyderabad, is extracted hereunder :

"I am directed to refer to the Commission's letter dated nil reporting this Ministry to clarify as to whether BDS, MDS, BAMS, BHMS, BUMS and BYNS could be considered as requisite qualifications under degree in Medicine.

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2. It is to inform that the qualification for the post of Food Safety Officer has been prescribed under Rule 2.1.3 (1) (i) of Food Safety and Standards Rules, 2011. Further, Rule 2.1.3 (1) (ii) provides, 'or' any other equivalent/recognized qualification notified by the Central Government".

However, no such qualification has been notified by the Central Government.

3. The Commission may also consider the order dated 27/01/2015 by Hon'ble High Court of Allahabad in the matter of WP No. 2754 of 2015 Dr. Amit Pandey and Ors. Vs. State of Uttar Pradesh and Ors in this regard (copy enclosed), wherein Hon'ble High Court observed that 'degree in Medicine' doesn't include any other system of Medicine. It will not be proper to include or read

any her degree awarded by councils under other acts in to degree of Medicine, Medicine defined only under Indian Medical Council Act, 1956 and not in other enactments.

4. This issues with the approval of Competent Authority.

DISCUSSION AND CONCLUSION :

9. The National Medical Commission (NMC) has been constituted by an Act of Parliament known as National Medical Commission Act, 2019 which came into force on 25.09.2020 by Gazette Notification dated 24.09.2020 and the Board of Governors in suppression of Medical Council of India Constituted under section 3A of the Indian Medical Council Act, 1956 stood dissolved thereafter.

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10. National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2022 defines "Modern Medicine" as follows :

e) "Modern medicine" or "Allopathy" is a healthcare discipline that involves a scientific understanding of disease processes and uses rational and evidence-based treatment methods.

This system of medicine views disease as a biological abnormality in the function or structure of organs or organ systems, with effects on organs and the body as a whole. Animal experiments may be used to understand disease processes and the efficacy of therapeutic measures. Medical research using blinded studies and statistical analyses informs all aspects of diagnosis, testing, treatment, and disease prevention. Modern medicine has international uniformity in theory and practice. It has found universal acceptance in India and is currently practiced and taught in Government and Private hospitals and medical colleges governed/regulated and accredited by the National Medical Commission, Government of India.

The present issue pertains to notification issued by the 1st Respondent dated 13.12.2009, vide No.10/2009.

11. It is the specific case of the Petitioners that the 1st Petitioner is an MDS (Oral & Maxilo Facial Surgery) and the 2nd Petitioner is a BDS and both applied for WP_12961_2020 SNJ selection to the post of Food Security Officer, pursuant to the Notification issued by the 1st Respondent vide No.10/2019, dt. 13.12.2009. Both the Petitioners came out successfully in the written examination held on 23.02.2020 and were hopeful of the selection to the said posts. But the 1st Petitioner though he scored 45th rank with 183 marks however 63rd ranker with 180 marks had been selected against BC-A vacancy and that the 2nd Petitioner though he scored 160 marks with rank 400 however 429th ranker who scored 159 marks was selected to the post of Food Security Officer against the ST (Woman) vacancy. It is further the case of the Petitioners that the State of Andhra Pradesh in its recently concluded selection to the same posts of Foods Safety Officer have treated the BDS degree

as an equivalent qualification to a degree of Medicine and selected BDS candidates on the basis of their merit, but however, the Respondents have not applied a proper discretion and arbitrarily rejected the cases of the Petitioners for selection to the post of Food Safety Officer.

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12. Petitioners specifically contend that a degree of BDS and MDS is a degree in Dental Surgery which is equivalent qualification of a Medical degree and IMC Act, 1956 also defines Medicine as Modern Scientific Medicine in all its branches and includes surgery and obstetrics but does not include Veterinary Medicine and Agricultural Degree, and that the Dentists Act, 1948 clearly defines the profession of Dentistry as including Surgery/Treatment of Human Oral Cavities and Organs like teeth and jaws and further that as per Indian Medical Degrees Act, 1916, Western Medical Science means the western methods of Allopathic Medicine, Obstetrics & Surgery but does not include that Homeopathic or Ayurvedic or Uani System of Medicine, and therefore a degree in dental surgery and also masters degree is a degree in medicine and is equivalent to the degree of MBBS and it satisfies the prescription given in the notification cited above i.e., Degree in Medicine or an equivalent qualification as recognized by Government of India. Petitioners also place reliance on the definition of modern medicine and Indian systems of medicine as defined U/s.2 (o) & (m) of Kaloji Narayana Rao University of Health Science Act, 1986, Act WP_12961_2020 SNJ No.6 of 1986 respectively and contends that modern medicine includes Dental Medicine.

13. A bare perusal of the specific averments made in the counter affidavit filed on behalf of the 1st Respondent referred to and extracted above clearly indicates the stand of the Respondents that since qualifications of the Petitioners i.e., MDS (Oral and Maxillo & Facial Surgery) and BDS are not either prescribed or equivalent qualification as per the notification and therefore the Petitioner's candidature along with other candidates with the qualification of BDS, BAMS, BHMS were rejected and that an expert committee was also constituted to ascertain the equivalency of the various qualifications i.e., MDS, BDS, BAMS, BHMS with 3 Professors and the subject issue was examined in detail and certain resolutions passed which clearly held that the qualifications of the Petitioners i.e., MDS and BDS are not equivalent to that of the qualifications for the posts of FSO prescribed in the notification dt. 31.12.2019 vide Notification No.10/2019 and hence Petitioners candidature cannot be considered for the posts of Food Safety Officers.

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14. This Court takes into consideration the contents of the letter dated 02.08.2021 in No.P.15025/44/2020- PR, Government of India, Ministry of Health & Family Welfare, Department of Health & Family Welfare, (Food Regulation Section), Nirman Bhavan, New Delhi - 11, dated 02-08-2021, (referred to and extracted above) which refers to the order dated 27.01.2015 of the High Court of Allahabad in W.P.No.2754/2015 in Dr. Amit Pandey & Others Vs. State of Uttar Pradesh & Others, which observed that 'Degree in Medicine does not include any other stream of Medicine and further that it will not be proper to include or read any other degree awarded by councils under other acts into Degree of Medicine and further that medicine is defined only under Indian Medical Council Act, 1956 and not in other enactments'.

15. This Court also takes note of the fact that the qualification for the post of Food Safety Officer has been prescribed under Rule 2.1.3 (1)(i) of Food Safety and Standards Rules, 2011 and further Rule 2.1.3(1)(ii) provides "or any other equivalent/ recognized WP_12961_2020 SNJ qualification notified by the Central Government". However no such qualification is notified by the Central Government notifying equivalency of BDS and MDS to that of a Degree in Medicine.

16. The Apex Court in few judgments observed as under :

(i) In Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & others reported in 2019 (2) SCC 404 held as under :

"It was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine".

(ii) In Mohammad Shujat Ali & Ors. v. Union of India & Ors reported in 1975 (3) SCC 76, held as under:

"it was held that the question regarding equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such WP_12961_2020 SNJ qualifications. It was further held that where the decision of the Government is based on the recommendation of an expert body, then the Court, uninformed of relevant data and unaided by technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government unless it is based on extraneous or irrelevant considerations or actuated mala fides or is irrational and perverse or manifestly wrong.

(iii) In Guru Nanak Dev University v. Sanjay Kumar Katwal & Anr., reported in 2009 (1) SCC 610, held as under :

"it was held that this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. Dealing specifically with whether a distance education course was equivalent to the degree of MA (English) of the appellant university therein, the 2 (1990) 1 SCC 288 3 (2002) 6 SCC 252 4 (2009) 1 SCC 610 Court held that no material had been produced before it to show that the distance education course had been recognized as such".

(iv) In *J. Ranga Swamy v. Government of Andhra Pradesh and Others*, reported in 1990 (1) SCC 288, it was held as under :

"That this Court held that it is not for the court to consider the relevance of qualification prescribed for various posts".

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(v) In *State of Rajasthan & Ors. v. Lata Arun*, reported in 2002 (6) SCC 252, it was held as under :

"this Court held that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It was held thus:

"13. From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority."

17. Taking into consideration the specific averments in the counter affidavit filed by the 1st Respondent in particular in paras 6,7 & 8 (referred to and extracted above) and taking into consideration the resolutions of the Experts Committee Meeting held on 02.09.2020 in TSPSC Office holding MDS and BDS as not equivalent to that of the qualification prescribed in the notification WP_12961_2020 SNJ No.10/2019 relating to the recruitment for the post of Food Safety Officer (FSO) vide Notification No.10/2019 issued by the Telangana State Public Service Commission dated 31.12.2019, in view of the fact that the qualification of the Petitioners i.e, MDS (Oral and Maxillo Facial Surgery) and BDS are not either prescribed or equivalent qualifications as per the subject notification, this Court opines that the candidature of the Petitioners cannot be considered for the posts of Food Safety Officers more particularly in view of the clear clarification issued to the 1st Respondent herein by the Under Secretary to the Government of India, Ministry of Health & Family Welfare, Department of Health & Family Welfare, (Food Regulation Section), Nirman Bhavan, New Delhi - 11, Dated : 02-08-2021 vide File No.P.15025/44/2020-FR and therefore the writ petition deserves to be dismissed.

18. The limb of the prayer of the Petitioners that the 1st Respondent has not ascertained the equivalency of BDS and MDS to that of a degree in medicine and WP_12961_2020 SNJ rejected the request of the Petitioners to treat Petitioners qualifications of BDS and MDS as equivalent to that of the qualification prescribed in the notification No.10/2019 relating to the recruitment for the post of Food Safety Officer (FSO) vide Notification No.10/2019 issued by the Telangana State Public Service Commission dated 31.12.2019 as illegal, is factually incorrect in view of the letter dated 02.08.2021 vide File No.P.15025/44/2020-FR which had been in fact issued in response to the clarification sought for by the 1st Respondent on qualification for the post of Food Safety Officer under Food Safety and Standards Act, 2006 and the expert committee constituted by the 1st Respondent herein

also ascertained the equivalency of various qualifications i.e., MDS, BDS, BAMS, BHMS with a committee comprising with 3 Professors in its meeting held on 02.09.2020 in TSPC Office and passed certain resolutions on the subject issue. This Court having considered the judgments relied upon by the petitioner, WP_12961_2020 SNJ opines that they have no relevance to the facts of the case.

19. It is settled law that the Courts should not ordinarily interfere with the technical qualifications prescribed by the employer. A Full Bench of this Court in W.P.No.40157 of 2017 and batch (MALLESK KORUKORU v. STATE OF TELANGANA) rendered a judgment on 18.09.2020, in this context held as under:

"63. From the above presidential case law on all the four aspects it is, thus, safe to conclude that:

(a) & (b) xxx

(c) It is for the employer to prescribe procedure of selection for direct recruitment to public employment;

(d) xxx

e) The scope of judicial review in matters of prescribing qualifications, procedure of selection, and method of selection is very limited. The Writ Court cannot act as Court of appeal, and cannot determine what qualifications can be prescribed to hold a post; it cannot prescribe the procedure of selection to make regular recruitment. Only when there is patent illegality in the selection procedure/process would the writ Court interfere.

92. it is for the employer to prescribe the qualifications required to hold a post. It is equally for WP_12961_2020 SNJ the employer to prescribe the procedure for selection and to recruit the eligible and suitable persons for a post. Depending on the job description, the employer may stipulate educational qualifications, age, and experience. Posts in the higher echelons, specialized posts, posts in special establishments may require specialized qualifications, experience and only by a particular category of persons. Thus, depending on the requirements of a job, appropriate qualifications/eligibility criteria may be prescribed. It is the prerogative of the employer. Judicial review cannot be stretched to oversee what qualifications, eligibility criteria, and mode of selection should be prescribed by the employer."

20. This Court opines that in exercise of power of judicial review under Article 226 of the Constitution of India, this Court cannot interpret the eligibility criteria in such a manner which will have the effect of revising or modifying the eligibility criteria prescribed by the employer. As held in a catena of decisions, it is for the employer to prescribe the eligibility criteria and the same cannot be altered or reviewed by a Writ Court. Moreover, admittedly when there is no challenge by the WP_12961_2020 SNJ petitioners to the recruitment notification. This Court opines that a Writ of

Mandamus can be issued only when it is established by the petitioners that the petitioners have an existing legal right and the same has been infringed by the concerned authorities malafidely. The Petitioners herein have not made out any case warranting interference under Article 226 of the Constitution of India. Any interpretation of the eligibility criteria prescribed by the respondents would amount to this Court interfering in the decision making process of the administrative authorities, who are the best suited to decide who is suitable for appointment to a particular post as per the criteria prescribed in the advertisement.

21. Taking into consideration all the above referred facts and circumstances of the case and the law laid down by the Apex Court in the various judgements referred to and discussed above (i) In Zahoor Ahmad Rather &Ors. v. Sheikh Imtiyaz Ahmad &Ors. reported in 2019 (2) SCC 404, (ii) In Mohammad Shujat Ali &Ors. v. Union of India &Ors reported in 1975 (3) SCC WP_12961_2020 SNJ 76, (iii) In Guru Nanak Dev University v. Sanjay Kumar Katwal & Anr., reported in 2009 (1) SCC 610, (iv) In J. Ranga Swamy v. Government of Andhra Pradesh and Others, reported in 1990 (1) SCC 288, (v) In State of Rajasthan &Ors. v. Lata Arun, reported in 2002 (6) SCC 252, and the judgment of Full Bench of High Court at Hyderabad in W.P.No.40157/2017 and batch in MalleshKorukoru Vs. State of Telangana referred to and discussed above, this Court opines that the present writ petition is devoid of merits and accordingly is dismissed.

22. It is however, observed that in view of the specific contention pleaded by the Petitioners at para 8 of the affidavit filed by the Petitioners in support of the present writ petition that the State of Andhra Pradesh in its recently concluded selection to the same post of Food Safety Officer have treated the BDS degree as an equivalent qualification to a degree of medicine and selected BDS candidates on the basis of their merits, the Respondents are directed to examine the truth in the said averments made at para 8 of the petitioners WP_12961_2020 SNJ affidavit within a reasonable period and if on enquiry it is found that there is truth in the said averments refer the same to the Apex Governing Body in the interest of justice. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

____ SUREPALLI NANDA, J Date: 05.06.2023 Note: L.R. copy to be marked
b/o kvrm