



2026:AHC-LKO:1304-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 82 of 2026

AFR

Deepak Kumar And 32 Others

.....Petitioner(s)

Versus

State Of U.P.Thru. Prin. Secy. Deptt. Of Food
Safety And Drug Administration Govt. Of U.P.
And Anr.

.....Respondent(s)

Counsel for Petitioner(s)	: Shireesh Kumar, Utkarsh Kumar
Counsel for Respondent(s)	: C.S.C., Raj Kumar Upadhyaya (R.K.Upadhyaya)

Court No. - 2

**HON'BLE MRS. SANGEETA CHANDRA, J.
HON'BLE AMITABH KUMAR RAI, J.**

1. Heard learned Counsel for the petitioners, who are 33 in number, learned Standing Counsel, who appears on behalf of the State respondents, and Sri Raj Kumar Upadhyaya, learned counsel appearing on behalf of the respondent no.2.

2. This petition has been filed with the following main prayers:-

"(i) issue a writ order or direction in the nature of mandamus declaring ultra vires the Rule 8 of "Uttar Pradesh Food and Drug Administration Department, Gazette Officers (Drugs) Service Rules, 1995 introduced vide notification dated 18.11.2015 as contained in Annexure No.-1_to this writ petition.

(ii) issue a writ order or direction in the nature of certiorari quashing the qualifications prescribed under Clauses 2(a) to (c) of Serial No. 4 under the heading Academic Qualifications for the post of Inspector of Drugs of the advertisement dated 22.12.2025, as contained in Annexure No.-2 to this writ petition.

(iii) issue a writ order or direction in the nature of mandamus commanding the opposite parties to allow the petitioners to apply for appointment to the post of Drug Inspector in pursuance to the advertisement no. No. D-6/E-1/2025 dated 22.12.2025

(iv) issue a writ order or direction in the nature of mandamus commanding the opposite parties to make appointment to the post of Drug Inspectors on the basis of qualifications prescribed by the Central Government under Rule 49 of the Rules the Recruitment Rules of 2025."

3. It has been submitted by the learned Counsel for the petitioners that the petitioners were intending to apply for selection and appointment as Drug Inspectors and an advertisement in this regard has been issued on 22.12.2025, describing the qualifications for the post. However, such qualifications are in contradiction to the provisions of Section 33N(2)(b) of the Act and Rule 49 of the Rules of 1945. Therefore, this petition has been filed with the aforementioned prayers.

4. Learned Counsel for the petitioners has submitted that under Section 33N of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act of 1940'), the Central Government has the power to make rules for the purpose of giving effect to the provisions of the Chapter and under sub-section (2)(d), it can prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors. The Central Government has made the Rules of 1945 with regard to the qualifications of Inspectors.

5. Learned Counsel for the petitioners has referred to Rule 49, which provides that a person may be appointed as an Inspector under the Act if he has a Degree in Pharmacy **or** a Degree in Pharmaceutical Sciences **or** a Degree in Medicine **with** specialization in Clinical Pharmacology or Microbiology from a University established in India by law.

6. In the proviso to the said Rule, the Drug Inspectors who may be

authorized to inspect the manufacture or may be authorized to test or inspect the firm's manufacturing substances in Schedule C of the Act and the Rules have been given, which require 18 months' experience in the respective domain.

7. It has been submitted by learned Counsel for the petitioners that a Full Bench of this Court in Civil Miscellaneous Writ Petition No. 46079 of 2010: *Kuldeep Singh and others versus State of U.P. and another*, along with the connected matters, was referred two questions by a Division Bench. They being, 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.

8. Learned Counsel for the petitioners has read out paragraphs-16 and 17 of the said judgment and also the operative portion wherein the Full Bench has observed that 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 substances specified in Schedule C to the Rules.

9. It has been submitted that only the Central Government is empowered to lay down the eligibility criteria or to prescribe qualifications for appointment to the post of Drug Inspectors, and it has already made Rules in this regard as aforesaid. This fact is also evident from the Notification made by the Ministry of Health and Family Welfare dated 11.11.2025, notifying the Ministry of Health and Family Welfare, Central Drugs Standard Control Organization, Drugs Inspector (Group 'B' Post) Recruitment Rules, 2025. The Central Government, in the Schedule to the said Rules, has given the qualifications as a Bachelor's Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or Institute.

10. However, the State Government has framed Rules by way of an amendment notified on 18.11.2015, which prescribe an additional qualification for appointment as Drug Inspector. Rule 8(a) mentions 18 months' experience given in the proviso of Rule 49 as an essential criteria for appointment in addition to the possession of Bachelor's Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology or equivalent from a recognized University.

11. It has been submitted by the learned Counsel appearing for the petitioners that the observations made by the Full Bench in *Kuldeep Singh* have been referred to and followed by two High Courts, i.e., the Delhi High Court and the Patna High Court, and the first proviso has been held by such High Courts to only prescribe the eligibility for authorization to inspect firm's manufacturing Schedule C substances as mentioned in the Rules.

12. Learned Counsel for the respondents, on the other hand, has pointed out the judgment rendered by the Hon'ble Supreme Court in *S. Satyapal Reddy and others versus Government of Andhra Pradesh and others*, 1994 (4) SCC 391, wherein the Supreme Court has held that the State can prescribe additional qualifications for services under it.

13. It has been argued that Public Services is a State subject and under Entry No. 41, List II it is within the State List of the Seventh Schedule of the Constitution.

14. It has been submitted that only additional and higher qualification in terms of 18 months' experience has been provided under the Rules and no lower qualification than what has been prescribed under Rule 49 has been prescribed by the State Government for recruitment of Drug Inspectors.

15. It has also been stated that several applications have already been received from persons who possess the essential eligibility criteria and it is not as if there are no persons with 18 months' experience. In the last two selections held by the respondents, they have selected only persons having 18 months' experience.

16. Having gone through the judgment rendered by the Full Bench of this Court, we find that the observations made in paragraph-26 should also be taken into account. Paragraph-26 of the said judgment is being quoted hereinbelow:-

"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."

17. The issue before the Full Bench in Civil Miscellaneous Writ Petition No.46079 of 2010: *Kuldeep Singh and others versus State of U.P. and others*, was as to 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.

18. The U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995 earlier provided the qualification for appointment of Drug Inspectors as under:-

"A candidate for direct recruitment to the post o Inspector of Drugs must possess such qualifications as have been prescribed under rule-49 of the Drugs and Cosmetic Rules, 1945 made by the Central Government in accordance with the provisions contained in section 21 of the Drugs and Cosmetics Act, 1940."

After the third amendment in the year 2015, the said qualification has been substituted as under:-

"A candidate for direct recruitment to the post of Inspector of Drugs must possess the following qualifications;-

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

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

(b) Eighteen months' experience in testing of atleast 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 Drug Inspector of any State Government or Central Government."

19. The Judgement in the case of *Kuldeep Singh* (supra) is of 10.04.2014 and the Third amendment in the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995, is subsequent to the decision of Full Bench incorporated by Notification No.78/2015/1934/88-15-75Oshadhi/10 dated 18.11.2015. The U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995, have been framed under proviso to Article 309 of the Constitution of India.

20. The Drugs and Cosmetics Act, 1940, is a Central legislature covered under Entry 19 of the Concurrent List (List III).

21. The Drugs and Cosmetic Rules, 1945, have been framed in exercise of powers conferred by Sections 6(2), 12, 33 and 33(N) of the Drugs and Cosmetics Act, 1940. Rule 49 prescribes qualification for appointment of Drug Inspectors and Rule 49 was interpreted by the Full Bench in the case of *Kuldeep Singh* to hold that the experience referred to in the first proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945, is not an essential qualification for appointment as a Drug Inspector and 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 the substances specified in Schedule 'C' to the Rules of 1945.

22. The qualification of the Drug Inspector as prescribed in Rule 49 is a minimum qualification which should have to be adhered to in the appointment of Drug Inspectors and cannot be ignored.

23. The State Government while amending the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995, by the Third amendment issuing Notification dated 18.11.2015 made the experience mandatory, which is an additional qualification to what Rule 49 of the Drugs and Cosmetic Rules, 1945 prescribes for appointment of a Drug Inspector.

24. The State Government in its wisdom has introduced the additional qualification as the Drug inspectors appointed by the State Government have to discharge their duties which also includes inspection of firms & units manufacturing drugs and other related substitutes which cannot be faulted upon by merely referring to Rule 49 of the Rules of 1945 as the State Government while amending the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995 by the Third amendment introduced additional qualification, which in no manner has violated the qualifications as prescribed in Rule 49 of the Rules of 1945.

25. The services under the State Government are the exclusive domain of the State legislature and falls within Entry 41 of the State List (List II) and as such the State Government is fully empowered to frame Rules with regard to the services in connection with the State Public Services.

26. The services of Drug Inspectors of the U.P. Food & Drug Administration Department undisputedly belong to the State Public Services and as such the State Government is fully empowered to prescribe qualification for the post of Drug Inspectors prescribing additional qualification to that as provided in Rule 49 of the Rules of 1945.

27. We, therefore, find no reason to issue notice to the learned Advocate General only because the *vires* of such amended Rules have been challenged. In fact, we find no merit in the writ petition and we, therefore, refuse to show any interference as prayed for.

28. Learned Counsel for the petitioners, at this stage, has stated that as per paragraph-26 of the Full Bench decision of this Court, only the legislature can make amendment to the Rules and the legislature in this case will be the Central Legislature as per Section 33N of the Drugs and Cosmetics Act, 1940.

29. We have gone through Section 33N of the Act of 1940, which refers to the power of the Central Government to make Rules under Chapter IV A. Chapter IV A of the Act refers to the provisions relating to Ayurvedic, Siddha and Unani drugs and Inspectors relating to Ayurvedic, Siddha and

Unani drugs. Such provision under Section 33N is confined to Chapter IV A of the Act of 1940. There is no mention in the said Rule or Chapter IV A of the Act of 1940 that the State Government cannot make Rules for appointment of Drug Inspectors relating to Allopathic medicine. Although the counsel for the petitioner has only referred to Section 33(N) of the Act of 1940, this Court finds reference of framing Rule with respect to the Allopathic medicine relating to the appointment of Drug Inspectors under Section 33(2)(b). Thus, under the Drugs and Cosmetic Rules, 1945 the prescription of minimum qualifications for appointment of Drug Inspectors is traceable to Rule 33(2)(b) of the Act of 1940.

30. The reliance placed on the Full Bench judgment rendered by the Allahabad High Court in *Kuldeep Singh* (supra) by learned counsel for the petitioners while challenging the vires of the Uttar Pradesh Food and Drug Administration Department Gazetted Officers' (Drugs) Service (Third Amendment) Rules, 1995, as amended by notification dated 18.11.1995, is also misconceived. The issue before the Full Bench was with regard to the interpretation of the then existing qualifications required for appointment to the post of Drug Inspector in the Food Safety and Drug Administration Department, Government of U.P.

31. The Full Bench interpreted the then existing Rules and held that the experience required in the first proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945 was not an essential qualification for appointment as a Drug Inspector. At that point of time, the Rules, 1995 provided qualifications under Rule 8 akin to those specified in Rule 49 of the Drugs and Cosmetics Rules, 1945.

32. Subsequently, vide notification dated 18.11.2015, the Rules were amended and the experience required under Rule 8(ii) was introduced as an additional qualification for appointment to the post of Drug Inspector, while retaining the minimum qualifications prescribed under Rule 49 of the Drugs and Cosmetics Rules, 1945.

33. The Full Bench, while deciding the issue, took into consideration the then existing Rule 21(1)(a) of the Rules, 1995, which provided for confirmation of a probationer Drug Inspector only if he had acquired 18

months' experience in testing Schedule C substances in an approved laboratory, as indicated in paragraph 17 of the Full Bench judgment.

34. Rule 8 has been amended by notification dated 18.11.2015, and correspondingly, Rule 21 of the Rules, 1995, regarding confirmation has also been amended, which now reads as under:-

"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) his work and conduct are reported to be satisfactory;

(b) his integrity is certified; and

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

(2) Where, in accordance with the provisions of the Uttar Pradesh State Government Servants Confirmation Rules, 1991, confirmation is not necessary, the order under sub-rule (3) of Rule 5 of those Rules declaring that the person concerned has successfully completed the probation shall be deemed to be the order of confirmation."

35. Thus, the reliance placed on the Full Bench judgment by learned counsel for the petitioners is misconceived and untenable in the eyes of law, as the interpretation of the then existing Rules by the Full Bench cannot be imported to hold the substituted Rules as ultra vires. In fact, the judgment of the Full Bench in Kuldeep Singh (supra) has lost its relevance after the Third Amendment to the Rules, 1995, introduced vide notification dated 18.11.2015.

36. Be that as it may, as we have already held above that the State Government while exercising power under Article 309 with respect to the

State Public Services can frame Rules which cannot be in contravention of the minimum qualifications laid down in Rule 49 of the Drugs and Cosmetic Rules, 1945, but certainly the State Government can always prescribe additional qualification apart from the minimum qualification prescribed under the Drugs and Cosmetic Rules, 1945.

37. The Hon'ble Supreme Court in the case of *Dr. Preeti Srivastava and another Vs. State of M.P. and others*, reported in 1999 (7) SCC 120, while dealing with the issue of admission to the Medical Colleges has noted the terms "Eligibility" and "qualifications" and has held that minimum standards laid down by the Central statute have to be complied with by the State while making admissions, however it may in addition lay down other additional norms for admission or regulate admission in exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down by the Central Statute.

Paragraph-39 of the Judgement rendered by Hon'ble Supreme Court in *Dr. Preeti Srivastava* (supra), is being quoted hereinbelow:-

"39. The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66 List I. At times, in some of the judgments, the words "eligibility" and "qualification" have been used interchangeably, and in some cases a distinction has been made between the two words — "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does

not dilute the criteria so laid down."

38. The Hon'ble Supreme Court in the case of *S. Satyapal Reddy and others Vs. Government of Andhra Pradesh and others*, reported in 1994 (4) SCC 391, while dealing with the issue regarding prescription of qualifications for recruitment of officers in the Transport Department, has held in paragraph-7 as under:-

"7. It is thus settled law that Parliament has exclusive power to make law with respect to any of the matters enumerated in List I or concurrent power with the State Legislature in List III of the VIIth Schedule to the Constitution which shall prevail over the State law made by the State Legislature exercising the power on any of the entries in List III. If the said law is inconsistent with or incompatible to occupy the same field, to that extent the State law stands superseded or becomes void. It is settled law that when Parliament and the Legislature derive that power under Article 246(2) and the entry in the Concurrent List, whether prior or later to the law made by the State Legislature, Article 246(2) gives power, to legislate upon any subject enumerated in the Concurrent List, the law made by Parliament gets paramountcy over the law made by the State Legislature unless the State law is reserved for consideration of the President and receives his assent. Whether there is an apparent repugnance or conflict between Central and State laws occupying the same field and cannot operate harmoniously in each case the court has to examine whether the provisions occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnancy between the two laws. Article 254 lays emphasis on the words "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are absolutely irreconcilable and when it is impossible to obey one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and court

would endeavour to give harmonious construction.

The purpose to determine inconsistency is to ascertain the intention of Parliament which would be gathered from a consideration of the entire field occupied by the law.

The proper test would be whether effect can be given to the provisions of both the laws or whether both the laws can stand together. Section 213 itself made the distinction of the powers exercisable by the State Government and the Central Government in working the provisions of the Act. It is the State Government that operates the provisions of the Act through its officers. Therefore, sub-section (1) of Section 213 gives power to the State Government to create Transport Department and to appoint officers, as it thinks fit. Sub-section (4) thereof also preserves the power. By necessary implication, it also preserves the power to prescribe higher qualification for appointment of officers of the State Government to man the Motor Vehicles Department. What was done by the Central Government was only the prescription of minimum qualifications, leaving the field open to the State Government concerned to prescribe if it finds necessary, higher qualifications. The Governor has been given power under proviso to Article 309 of the Constitution, subject to any law made by the State Legislature, to make rules regulating the recruitment which includes prescription of qualifications for appointment to an office or post under the State.

Since the Transport Department under the Act is constituted by the State Government and the officers appointed to those posts belong to the State service, while appointing its own officers, the State Government as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. But while so prescribing, the State Government may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act. In the latter event, i.e., prescribing lesser qualifications, both the rules

cannot operate without colliding with each other. When the rules made by the Central Government under Section 213(4) and the statutory rules made under proviso to Article 309 of the Constitution are construed harmoniously, there is no incompatibility or inconsistency in the operation of both the rules to appoint fit persons to the posts or class of officers of the State Government vis-a-vis the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act."

39. In view of the above proposition of law as laid down by Hon'ble Supreme Court, as applied in the present case, we are of the view that the State Government can always prescribe additional qualification apart from the minimum qualification prescribed under Rule 49 of the Drugs and Cosmetic Rules, 1945 for the purpose of recruitment of Drug Inspectors in the Department of Food Safety and Drug Administration while framing rules in exercise of power under proviso to Article 309 of the Constitution.

40. Consequently, we hold that Rule 8 of the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995 introduced vide Notification No.78/2015/1934/88-15-75Oshadhi/10 dated 18.11.2015 is *intra vires*.

41. The writ petition stands ***dismissed***.

42. No order as to Costs.

(Amitabh Kumar Rai,J.) (Mrs. Sangeeta Chandra,J.)

January 8, 2026

Rahul