

A.F.R.**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW****SPECIAL APPEAL No. - 163 of 2021**

U.P.Public Service Commission Prayagraj Thru Secy.

.....Appellant(s)

Versus

Ashish Tyagi And Ors.

.....Respondent(s)

Counsel for Appellant(s)	: Raj Kumar Upadhyaya R.K.
Counsel for Respondent(s)	: C.S.C., Pt. S. Chandra, Purnima Mayank, Vineet Kumar Pandey

Along with :**1. Writ - A No. 8721 of 2022:**

Ashish Tyagi and 7 others

Versus

State of U.P. Thru. its Prin. Secy. Food Safety and Drug
Administration Deptt. Lko. and another**Court No. - 1****HON'BLE RAJAN ROY, J.****HON'BLE MANJIVE SHUKLA, J.**

1. Heard Shri Anurag Shukla, learned Senior Advocate assisted by Shri Vineet Kumar Pandey, learned counsel for the respondent-petitioner, Shri R.K. Upadhyaya, learned counsel for the Commission and Shri Nishant Shukla, learned Additional Chief Standing Counsel appearing on behalf of the State.

2. There are two cases before us. One is Special Appeal No. 163 of 2021 filed by the U.P. Public Service Commission challenging a judgment and order dated 08.01.2021 passed in Writ Petition No. 262 (S/S) of 2021 by which the selection to the post of Drug Inspector which was advertised on 10.08.2016 has been quashed. The other case is Writ A No. 8721 of 2022 filed by the petitioners wherein the vires of Rule 8 of U.P. Food and Drug Administration Department Gazetted Officers (Drug) Service (Third Amendment) Rules, 2015

(hereinafter referred to as 'the Rules, 2015') has been challenged apart from seeking a writ of Certiorari for quashing the advertisement dated 18.05.2018 for the post of Drug Inspector. A Mandamus has also been sought for issuance of fresh advertisement for direct recruitment to the aforesaid post as per essential qualifications prescribed under the statutory rules i.e. Rule 49 of the Drugs and Cosmetics Rules, 1945. The petitioners of this writ petition are respondents in the special appeal referred above, meaning thereby, they were petitioners in the writ petition out of which the said special appeal arises.

3. First and foremost, we will consider the relief prayed in the writ petition, specially with regard to the vires of Rule 8 of the Rules, 2015. Rule 8 of the Rules, 2015 reads as under:-

"8. Academic qualification

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 Drug and Cosmetics 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 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.

4. These rules have been made by the State Government in exercise of its powers under the proviso to Article 309 of the Constitution of India. Article 309 of the Constitution of India reads as under:-

"309. Recruitment and conditions of service of persons serving the Union or a State - *Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union*

or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act."

5. As would be evident from a bare reading of the aforesaid Article, recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State are to be regulated by Acts of appropriate legislature, subject to the provisions of the Constitution. It is not out of place to mention that the post of Drug Inspector is covered within the meaning of the term "Public Services" and is a post in connection with the affairs of the State of Uttar Pradesh. The proviso to Article 309 permits making of rules regulating recruitment and conditions of service of such persons, as referred hereinabove, until provision in that behalf is made by or under an Act of the appropriate legislature under Article 309 and any rules so made shall have effect, subject to the provisions of any such act. Thus, the rule making power vested with the State Government under the proviso to Article 309 is to be exercised, firstly, when such recruitment and conditions of service are not regulated by any enactment of an appropriate legislature. Secondly, such rules are subject to the provisions of any such enactment. The law in this regard is very well settled that if recruitment and conditions of service have been regulated by an enactment of an appropriate legislature and on the same subject there are rules which are in conflict with the enactment, then the enactment will prevail. Further, if any rules have been made under an enactment then they will prevail over a rule made under the proviso to Article 309, if the said rule has not been made under any enactment. We may in this regard refer to a recent judgment of Hon'ble the Supreme Court rendered in Civil Appeal No. 1725-1731 of 2023 and connected matters, State of Haryana Vs. Krishan Kumar.

6. Now, the contention of the counsel for the petitioner in the case at

hand is that as regards recruitment and conditions of service on the post of Drug Inspector is concerned, the post finds mention in a central enactment i.e. Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act, 1940') which is referable to Entry 19 of the Concurrent List of the Seventh Schedule of the Constitution of India. Section 21 thereof, reads as under:-

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

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

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

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

7. On a reading of Sub-section 1 of Section 21, it is evident that the qualifications for the post of Inspector i.e. Drug Inspector have to be such as are prescribed. Now, the word 'prescribed' has been defined in Section 3(i) of the Act, 1940 to mean 'prescribed by rules made under the Act, 1940'. Reliance has then be placed upon Section 33 of the same act which mentions the power of the Central Government to make rules. Section 33(2)(v) empowers the Central Government specifically to make rules prescribing the qualifications of Inspector i.e. Drug Inspector. The general powers are also vested in the Central Government under Sub-Section 1. It may be pointed out at this stage that under the Act, 1940 there is no provision vesting any power in the State Government for prescribing qualification of Inspectors. Section 38 of the Act, 1940 prescribes the procedure as to how a rule made under Section 33 would be laid before the Parliament etc..

8. As, drugs and cosmetics is referable to Entry 19 of the Concurrent List of the Seventh Schedule of the Constitution of India, the State also has power to legislate over the subject. However, the State of Uttar Pradesh has not promulgated any such enactment pertaining to drugs and cosmetics that is the subject matter over which a central enactment i.e. the Act, 1940, exists. As already stated, the State Government has not been vested with any power to make Rules prescribing qualification for the post of Drug Inspector which is vested under Section 21(1) read with Section 33(2)(b) of the Act, 1940 in the Central Government. Reference may be made to the rules made by the Central Government in exercise of its powers under Section 33(2)(b) read with Section 21(1) of the Act, 1940 namely the Drugs & Cosmetics Rules, 1945. Rule 49 thereof reads as under:-

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

Provided that only those Inspectors--

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

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

(iii) who have gained experience of not less than three years in the inspection of firm manufacturing any of the substances specified in Schedule C during the tenure of their services as Drugs Inspectors ; shall be authorized to inspect the manufacture of the substances mentioned in Schedule C:

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

9. The submission on behalf of the petitioners is that the qualification for the post of Inspector, as prescribed by the Central Government under the said rules which have statutory force is a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a

University established in India by law. The proviso to the said rule, as per Shri Anurag Shukla, learned Senior Advocate appearing for the petitioners is referable to the duties to be performed by the Inspectors and creates an embargo on inspection of manufacture of substances mentioned in Schedule 'C' only by such Inspectors who fulfill the experience mentioned in Clause 1, 2 and 3 of the proviso. The submission is that apart from the aforesaid, the Drug Inspector performs many other functions and duties. Inspection of manufacture of substances mentioned in Schedule 'C' is only one of the functions, for which, only such Inspectors are entitled who fulfill the experience mentioned in Clause 1, 2 & 3 of the proviso, which does not mean that this experience is an essential qualification prescribed under Rule 49. The proviso has specific purpose in respect of a specific duty to be performed by the Drug Inspectors, which is only part of all the duties performed by them. A reference has been made to Section 22 and 23 pertaining to powers of Inspectors and procedure of Inspectors, as also, Rule 51 & 52 of the Rules, 1945 pertaining to duties of Inspectors.

10. Against the aforesaid background, it has been contended, firstly that in view of Section 21(1) read with Section 3(i) and Section 33(2)(b) of the Act, 1940, the Central Government alone is empowered under the aforesaid enactment to prescribe qualifications for the post of Drug Inspector, which has been done by the Rules, 1945. The State of Uttar Pradesh lacks competence to make rules prescribing qualifications for the post of Drug Inspector under the Act, 1940, and as there is an enactment i.e. the Act, 1940 and the Rules made thereunder i.e. the Rules, 1945 framed by the Central Government, prescribing qualifications for the post of Inspector, therefore, the field being covered by a Central enactment, there is no question of application of proviso to Article 309 to the subject at hand. Even otherwise, if any rule is made by the State Government under the proviso to Article 309, it will, in the event of conflict, have to give way to these rules made by the Central Government under an enactment. For this reason, he also referred to Article 254 of the Constitution of India in this very context, as has been considered by Hon'ble the Supreme Court in the case of **State of Haryana Vs. Krishan Kumar and others, [2026 INSC 63]**. For all these reasons,

he has submitted that Rule 8 of the Rules, 2015 is *ultra vires* Section 21(1) read with Section 3(i) and Section 33(2) of the Act, 1940 read with Rule 49 of the Rules, 1945.

11. On being confronted with the aforesaid situation, learned State Counsel submitted that Entry 41 of the State list dealing with public services, empowers the State of Uttar Pradesh to make rules governing the terms and conditions pertaining to the services and posts connected with the affairs of the State of Uttar Pradesh, therefore, the rules are referable to the said Entry and it cannot be said that the State does not have the competence. However, on being confronted with the law as elucidated by Hon'ble the Supreme Court in the case of **Krishan Kumar (Supra)**, which was also a case similar to the one at hand, wherein certain qualifications had been prescribed by the State of Haryana, which were in conflict with the rules made by the Central Government and the same were struck down by Hon'ble the Supreme Court, the State Counsel for obvious reasons could not dispute this legal position. Reference may be made in this regard to Paragraph 42 to 46 of the aforesaid dictum of Hon'ble the Supreme Court in this regard which reads as under:-

"Doctrine of Occupied Field vis-a-vis Article 309 of the Constitution of India

42. The question of applicability of Article 309 of the Constitution of India in the context of promotional rules arose in **A.B. Krishna and Others Vs. State of Karnataka and Others**. In this case, the Mysore Fire Force (Cadre Recruitment) Rules, 1971 were framed by the State of Karnataka under Section 39 of the Fire Force Act, 1964, being a State Act. The 1971 Rules required qualifying an examination for the purpose of promotion. This Court upheld the applicability of the 1971 Rules over an amendment made by the Governor of Karnataka to the Karnataka Civil Services (General Recruitment) Rules, 1977 in exercise of powers under Article 309 of the Constitution of India. The observations made in this regard are necessary below for ready reference:-

"8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in

pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "doctrine of occupied field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.

9. It is no doubt true that the rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, the Governor, under Article 309 and the Government under Section 39), but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the legislature and not under Article 309. It has also to be noticed that rules made in exercise of the rule-making power given under an Act constitute delegated or subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and, therefore, on the principle of "occupied field", the rules under Article 309 cannot supersede the rules made by the legislature.

*43. In light of the facts of the present appeals and the judgment of this Court in **A.B Krishna** (Supra), we are of the considered opinion that the Doctrine of Occupied Field is applicable. The D&C Act being a central law confers power to the Central Government to prescribe the qualification for appointment of Inspectors, which has been exercised by framing the Drug Rules. Thus, it is the primary legislation on the subject and occupies the field. The Drug Rules, were framed by the Central Government in exercise of powers conferred by the D&C Act. The Rules of 2018 framed by the State of Haryana under the proviso to Article 309 of the Constitution of India cannot override the Drug Rules in so far as it relates to*

prescription of qualification for appointment of Inspector Similar is the case in the State of Karnataka where the Rules of 2013 were framed in exercise of powers under Section 3(1)(b) of the KSCSA.

44. It is therefore apposite to underscore the material distinction in the manner of framing of the two sets of Rules. While the Rules of 2013 trace their authority to a State enactment, the Drug Rules emanate from a central legislation enacted under the Concurrent List, wherein the central law, along with the Rules framed thereunder, constitutes the primary and dominant regulatory framework. Consequently, the Rules of 2013 cannot be construed so as to invalidate or prevail over the central Drug Rules.

*45. Additionally, Section 33(2)(b) read with Section 33(2)(n) of the D&C Act confer exclusive jurisdiction upon the Central Government to frame rules for the purpose of appointment of Inspector '**Expressio unius est exclusio alterius**' means the "express mention of one thing excludes others." This internal aid to statutory interpretation further reinforces the legislative intent that the power to prescribe qualifications and conditions for appointment of Inspectors vests exclusively with the Central Government under the D&C Act. Once the Centre has consciously and expressly occupied the field by placing the Drug Rules framed under the D&C Act before both Houses of the Parliament as provided under Section 38, any inconsistent exercise of power by the State, even under the proviso to Article 309 of the Constitution of India, stands impliedly excluded.*

46. Reverting to the issue as raised regarding inconsistency between the laws made by the Parliament and the laws made by legislature of the State is also a point which requires consideration. As discussed, the power for appointment to the post of DI/DCO is co-extensive with the Central and State Governments, and they may assign the duties as they think fit. As analysed above, under the D&C Act, the power to prescribe the qualification of Inspectors is the domain of the Central Government. In the previous paragraphs, it is also said that the provisions of the D&C Act regarding power of the Central Government to prescribe the qualification has not been amended by the respective States. Since the subject matter is under Entry No. 19 by Concurrent List of List III, therefore, on the subject occupied by the Central Legislation, the power of State legislation does not flow to the State on the subject so occupied."

12. Learned counsel for the Commission, though he does not have much of a locus in the matter, as the rules under challenge have been made by the State Government and Commission is only the recruiting authority, nevertheless, argued on the same lines as the State Counsel, and the said arguments are also not acceptable for obvious reasons.

13. We find merit in the submission of Shri Shukla, as regards Rule 8 of the Rules, 2015 framed by the State Government under the proviso to Article 309 of the Constitution of India being *ultra vires* Section 21(1) read with Section 3(i), Section 33(2)(b) of the Act, 1940 and Rule 49 of the Rules, 1945. The matter is squarely covered by the decision of Hon'ble the Supreme Court in Krishan Kumar's case, (Supra) relevant extracts of which have already been quoted hereinabove. The State of U.P. lacks the competence to prescribe qualification for the post of Drug Inspector in view of Section 21(1) read with Section 3(i) of the Act, 1940. Further, the Central Government, which is competent in this regard, has already prescribed the qualifications vide Rule 49 of the Rules, 1945 made under Section 33(2)(b) read with Section 21(1) of the Act, 1940. Apparently, under Rule 8, though, the essential qualifications as mentioned in Rule 49 of the Rules, 1945 have been mentioned but the proviso to Rule 49, which is not part of the essential qualifications prescribed by the Central Government, has been incorporated by the State Government in Rule 8 as an essential qualification which it could not have done, firstly for the reason, it lacked competence to do so, which in fact, is an error so fundamental and fatal that no other reason is required for declaring the same as *ultra vires* but, additionally, it is also in conflict with Rule 49 of the Rules, 1945.

14. As regards, reliance placed by learned counsels appearing for the State and Commission on the decision of Hon'ble Supreme Court in the case of **S. Satyapal Reddy and Others Vs. Government of Andhra Pradesh and others, 1994 (4) SCC 391**, the same has already been considered by Hon'ble the Supreme Court in the case of Krishan Kumar (Supra) in Paragraph 47 and 48 which reads as under:-

"47. Learned Additional Solicitor General, Mr. Vikramjeet Banerjee appearing on behalf of the State of Haryana has heavily placed reliance on the judgment of S. Satyapal Reddy (Supra) wherein the qualification for appointment on the post of Assistant Motor Vehicles Inspector in the State of Andhra Pradesh as per State rules was an issue. In the facts of the said case, the Central Government framed the rules in exercise of power under Section 213(4) of the Motor Vehicles Act, 1988 vide S.O 443(E) dated 12.06.1989 prescribed a diploma in Mechanical Engineering as the 'minimum qualification' for appointment to the said post. The Government of Andhra Pradesh in exercise of powers under proviso to Article 309

of the Constitution of India, framed the Andhra Pradesh Transport Subordinate Service Rules, 1984 and enhanced the qualification of diploma into degree as qualification for appointment. In the said context, this Court held as under:

"5. It is seen that marginal note in Section 213 for "appointment of Motor Vehicles Officers" indicates the subject-matter of the section. Sub-section (1) says that the State Government may, for the purpose of carrying into effect the provisions of this Act, establish Motor Vehicles Department and "appoint as officers thereof such persons as it thinks fit". The power of appointment includes the power to select a fit and competent person who it thinks fit to hold the post and would discharge efficiently the functions assigned under the Act. **It includes the power to prescribe qualifications to select suitable officers.** The Parliament preserved that power to the State Government under Section 213(1) itself by allowing it to appoint the officers whom it finds fit to carry into effect the provisions of the Act. Sub-section (4) gives power to the Central Government, having regard to the object of the Act, by a notification in the Official Gazette "to prescribe minimum qualification" which the officers or class of officers thereof shall possess for being appointed as such officer or to the cadre belonging to the State Government. Under Entry 41 of List II (State List) of VIIth Schedule to the Constitution, the public service includes the services of the officers to be appointed under sub-section (1) of Section 213 of the Act. No doubt, as contended by the learned counsel for the appellants that the Act receives paramountcy, since under Entry 35, the subject under the Act covers the concurrent field. **Sub-section (4) of Section 213 also preserves the power to prescribe qualifications higher than that "minimum qualification" prescribed by the Central Government to appoint the "said officers or any class thereof shall possess for being appointed as such."**

48. In light of the said observations, if we examine the scheme of the Mother Vehicle Act, 1988, Section 213 deals with the appointment of Assistant Motor Vehicle Inspectors. Sub-section (iv) therein confers

power on the Central Government to prescribe the 'minimum qualification' which the said officers or any class thereof shall possess for being appointed as such. However, prescribing the 'minimum qualification' i.e., holding a diploma in Mechanical Engineering was 'minimum' Section 213(iii) of the Motor Vehicles Act, 1988 also confers powers on the State Government to make rules for regulating the discharge of functions by officers of the motor vehicle department and in particular, and without prejudice to the generality of forgoing power, prescribe the uniform to be worn by them, the authorities to which they shall be sub-ordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them and the conditions governing the exercise of such power Therefore, to sustain the discharge of the duties of the powers were given to the State Government. In the said case, the State Government by its rules under the proviso to Article 309 of the Constitution of India prescribed the educational qualification as a degree in Mechanical Engineering for the post of Assistant Motor Vehicle Inspector However, the said qualification was above that prescribed by the Central Government ie, a diploma in Mechanical Engineering which was the minimum qualification. This Court while dealing with the issue has observed 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 the 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 a 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, ie., 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."

15. Therefore, the reliance placed on the said decision is of no avail.

16. At this very stage, we may consider a Co-ordinate Bench Judgment dated 08.01.2026 rendered in ***Writ-A No. 82 of 2026, Deepak Kumar & 32 others Vs. State of U.P. & Another***, wherein the similar issue, as has been considered herein, was involved and the rule was held to be *intra vires*, however, this judgment was rendered prior to judgment of Hon'ble the Supreme Court in the case of Krishan Kumar (Supra), which has been rendered subsequently on 13.01.2026, therefore, the Co-ordinate Bench did not have the benefit of the aforesaid Supreme Court's decision. In view of this, there is no need to refer the matter to a larger Bench, as, the issue involved is directly covered by a Supreme Court decision which has been recently pronounced, which for obvious reasons, prevails, and by which, we are bound.

17. In fact, we find that in context of the Food Safety Act, 2006 also, a

similar controversy arose where rules were made by the Government of Jharkhand in conflict with rules made by the Central Government and Hon'ble the Supreme Court in a recent decision dated 28.03.2025 rendered in **Civil Appeal 10389 of 2024, Chandra Shekhar Singh Vs. State of Jharkhand**, held that the State lacked the competence to make the rules, as the field was covered by the provisions of a central enactment and rules made by the Central Government.

18. We, accordingly, declare Rule 8(ii)(a) to (c) of the Rules, 1945 as *ultra vires*. Consequences shall follow accordingly as per law.

19. As regards, the other reliefs in the writ petition regarding quashing of the advertisement dated 18.05.2018 and issuance of a fresh advertisement for the post of Drug Inspector, we have been informed that selection in pursuance to the said advertisement has already been completed and persons have been appointed, we, therefore, do not find it reasonable to quash the advertisement and selection held in pursuance thereof, especially as, those selected do possess the essential qualifications prescribed by the Central Government, and in addition to it, they also fulfill the requirements in the proviso to Rule 49, therefore, these reliefs are declined. It is, however, made clear that in all pending and future selections for the post of Drug Inspector, the qualification prescribed shall be such, as is prescribed by the Central Government by Rules made under Section 33(2)(b) read with Section 21 and 3(i) of the Act, 1940 unless the statutory provision and law undergoes a change. The petition stands **allowed in part** in the aforesaid terms.

20. We, now, come to the Special Appeal No. 163 of 2021. In this appeal, the Writ Court has allowed the writ petition of the respondent-petitioners by considering the legal position as to the competence of the State Government to prescribe qualification for the post of Drug Inspector. The Writ Court has found that the State Government lacks such competence. This aspect has already been discussed by us while deciding the writ petition as aforesaid, therefore, we need not reiterate the same. To this extent, we do not find any error in the judgment of the learned Single Judge on the point of law decided by him, however, so far as, the relief granted by him is concerned, as he

has quashed the advertisement dated 18.05.2016 and the selection held in pursuance thereof, therefore, this aspect requires consideration. This is for the reason, out of 27 posts of Drug Inspector which had been advertised, 23 have already been filled up, albeit after passing of the interim order in this appeal filed by the Commission, and no doubt, their joining is also subject to result of this appeal but, the fact of the matter is that these persons after joining in 2021 have been continuing for almost five years. Further, all of them possess the qualifications prescribed in Rule 49 of the Rules, 1945, and additionally, also possess the experience mentioned in the proviso to the said Rule, which though not an essential qualification, is satisfied by them, therefore, they being qualified, we find it inequitable and unjust to throw them out of service after five years, as all their experience would go waste. This aspect has also been dealt with while allowing the writ petition pertaining to the Advertisement of 2018, therefore, purely on facts, the selection, joining and appointment of the said candidates need not be interfered.

21. As regards the rights of respondent-petitioners to be considered for public employment having been violated and prejudice caused to them, it is informed that there is one selection to the post in question pending which is at its nascent stage, having been initiated in pursuance to the advertisement dated 22.12.2025, as informed by learned Counsel for the Commission, Shri R. R. Upadhyay. As, the respondent-petitioners were deprived of an opportunity to appear in the selection on account of prescription of qualifications in excess of what has been prescribed by the Central Government, and as, we have declared Rule 8 (ii)(a) to (c) *ultra vires*, therefore, it is equitable that the Respondent No's. 1 to 8 are permitted to participate in the selection which has been initiated as aforesaid in 2025 by being permitted therein to apply for the same, and further they should be considered as per law keeping in mind what has been stated hereinabove, provided they satisfy other conditions of recruitment as per law. The Commission is directed to make necessary arrangement to facilitate submission of applications by Respondent No's. 1 to 8 with respect to the aforesaid selection and consider them as per law. We have already observed and directed while deciding the writ petition earlier, that any selection to the post of Drug Inspector which

is pending or which takes place in future will have to be considered in the light of the qualifications prescribed by the Central Government under Section 21(1) read with Section 3(i) and Section 33(2)(b) and Rules made thereunder, unless the law undergoes a change.

22. We have been told that Respondent no. 1 participated in the advertisement but did not submit requisite documents on account of which, he was not called for interview. Be that as it may, there are certain exceptions to the rule of estoppel in cases where a person has appeared in a selection and then proposes to challenge the same subsequently, one of the exceptions is, where there is an apparent error in the sense that the advertisement is in the teeth of statutory rules or law on the subject, as in this case. We are of the opinion that the writ petition, as also, the special appeal at the behest of Respondent No. 1, was / is maintainable as it falls in the aforesaid exception.

23. The judgment of learned Single Judge stands modified to the aforesaid extent. The appeal is **allowed in part** as stated hereinabove.

April 3, 2026
Lokesh Kumar

(Manjive Shukla,J.) (Rajan Roy,J.)