

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) Nos. 9114/2008, W.P. (C) No. 809/2009, W.P. (C) No. 9139/2008, W.P. (C) No. 181/2009 and W.P. (C) No. 110/2009.**

Judgment reserved on: 19.05.2009

% Judgment delivered on: 30.05.2009

Rashmi Dhara & Ors. Petitioners
Through: Mr. Manoj Ohri, Advocate and
Mr. Sanjay Bansal, Advocate

versus

Govt. of NCT of Delhi & Ors. Respondents
Through: Mr. V.S.R. Krishna, Advocate
Mr. Anjum Javed, Advocate
Mr. Mohammed Sajid, Advocate
Ms. Zubeda Begum, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

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1. This common order shall dispose of W.P. (C) No. 809/2009, W.P. (C) No. 9139/2008, W.P. (C) No. 181/2009 and W.P. (C) No. 110/2009.

2. In all these petitions the petitioners are seeking quashing of result dated 15.12.2008 declared by the Delhi Subordinate Service Selection Board in short referred as 'DSSSB' and for restoring the result declared by DSSSB on 29.7.2008 in which all these petitioners were declared successful. The petitioners also seek their appointment based on 29.7.2008 result.

3. In the case at hand, there are two categories of petitioners, viz. petitioners who received their certificate of qualification from Delhi Nursing Council and those who received certificate of qualification from Haryana Nurses Registration Council.

4. To better elucidate, the prayer para of W.P.(C) No. 9114/2008 is reproduced as under:

i) writ order or direction in nature of certiorari to quash the result dated 15.12.08 declared by respondent No. 3 on its website/display board for the post of Staff nurse;

ii) writ order or direction in nature of mandamus directing the respondents to restore the result declared on 29.7.2008 as valid in

which the petitioner were declared successful for the post of staff nurse;

iii) issue a writ order or direction in nature of mandamus directing the respondents to recommend and grant appointment to the petitioners for the post of staff nurse (post code 170/07) in terms of result dated 29.7.08;

5. The brief facts of the case relevant for deciding the present petitions are as under:-

That an advertisement bearing No. 09/07 was carried by respondent/DSSSB for 1225 vacancies for the post of staff nurses with post code 170/07. One of the requirements for the above posts was the certificate of General nursing and midwifery course. The Delhi Subordinate Services Selection Board or DSSSB invited applications from eligible candidates for various posts by way of an advertisement no. 09/2007 dated 7/1/2008. The petitioners herein submitted their applications for the post of 'staff nurse' and 'auxillary nurse (midwife)' in the Department of Health and Family Welfare in Govt. of NCT of Delhi. The petitioners were allocated roll numbers and they appeared in the exams also. Later, the respondents had published a list of selected candidates, who had qualified the written examination by

publishing the result, which was displayed on the notice board on 11.7.2008. The respondents had published another list of selected candidates only with roll numbers by giving a publication in the newspaper on 29.7.2008, which contained names of those persons, who did not even qualify the preliminary examination and the names of some of the candidates were missing from the said list of 29.7.2008. Therefore, a writ petition bearing WPC No. 5731/2008 was filed by few of such candidates and court directed the respondents to come out with proper list, without any errors, of selected and unselected candidates. After complying with the said orders the respondents came out with the proper list of selected and unselected candidates and in this list the petitioners were found ineligible since they did not possess the requisite qualification as on the closing date for receipt of applications. Aggrieved with the same, the present petitions have preferred by the petitioners.

6. Counsel for the petitioners as far as candidates of Haryana are concerned in these petitions, submitted that these candidates appeared in examination and had submitted their respective applications before the cut off date i.e. 21.1.2008. Counsel further submitted that as on the cut off date, the result of the examination

was still awaited. Counsel also submitted that all these petitioners had truthfully disclosed the fact of the said result being awaited in their respective applications. Counsel further submitted that the result in the said exam was declared in the month of March, 2008 and all the petitioners were successful in the said exams and were duly registered as nurses with the Nursing Council of Haryana in the first week of April, 2008. Counsel also submitted that all these candidates were issued admit cards based on their said applications and pursuant thereto all these candidates appeared in their exams for appointment on the post of staff nurse held on held on 3rd, 4th May, 2008. Mr. Bansal further submitted that the result of the written examination which was held on 3.5.2008 and 4.5.2008 was declared by the respondent on 29.7.2008. Drawing attention to the result, counsel submitted that all these petitioners were selected and recommended for appointment to the said post of nurse. Counsel thus submitted that roll numbers of all the petitioners are mentioned in the said result being the successful candidates and were recommended for appointment on the said post. The contention of the counsel for the petitioners is that the respondents would have declared the result of these candidates only after having fully scrutinized the application

forms of the petitioners and on finding them meeting the eligibility criteria, then only would have declared the results. After finding them fully eligible, the respondent now cannot turn round to state that the applications of these petitioners were not properly scrutinized at that stage on account of lakhs of people having applied in response to the advertisement. Counsel further submitted that wherever the petitioners gave some wrong or incomplete information in their application forms or the necessary documents were not annexed by them along with the application, their roll numbers in the result were suffixed either with P-1 or P-2, as the case may be, and as far as the present petitioners are concerned, there was no such suffixation of P-1 and P-2. Counsel further submitted that one Pinki and some other candidates had earlier approached this court in W. P. (C) No. 573/2008 to challenge the said selection, list dated 29.7.2008 and in terms of interim order dated 8.8.2008 the selection list dated 29.7.2008 was directed to be stayed. Counsel further submitted that vide orders dated 19.11.2008 a consent order was passed by the court with certain directions to be complied with by the respondents and the said directions were primarily procedural in nature and could not have affected the final select list earlier announced by the

respondent/DSSSB. The contention of the counsel for the petitioner is that infact the respondent had mis-construed the directions of this court given in the said order dated 19.11.2008 and declared the final result on 15.12.2008 although in the manner as was directed by the said court but after upsetting the earlier selected list. Counsel thus contended, that the respondent had no right to tinker with the final result as was announced earlier as no such direction was given by the court in the said order. Counsel further submitted that by its own conduct of acquiescence the respondent themselves have relaxed the condition of last cut off date by finally selecting the petitioners after finding them eligible for the post based on the information submitted by them in their application forms. Counsel further submitted that on the date of the examination i.e. 3.5.2008 the petitioners had completed the said GHM course and became fully eligible to compete with the other candidates. Counsel further submitted that respondent had no right to cancel the candidature of the present petitioners after the selection process was over and duly notified on 29.7.2008 whereby the petitioners were finally selected.

7. Dealing with Haryana candidates, Ms. Zubeda Begum counsel for the respondent/DSSSB submitted that admittedly, these present petitioners were not eligible to apply for the post in question as on the cut-off date they had not completed the GNM course. Counsel thus stated that once the admitted position is that they had completed the said course by 18th March, 2008, although they had appeared in the said examination in November, 2007, therefore, they were totally ineligible even to apply for the said post, pursuant to the advertisement, wherein, clearly the cut off date of 21.1.2008 was spelt out. Counsel for the respondent further stated that DSSSB is a recruiting agency and has to act as per the mandate of the user department and the conditions as were advertised by the respondent/DSSSB were laid by the user department and not by the DSSSB. The contention of the counsel for the respondent is that in response to the advertisement large number of candidates running into lacs made applications and therefore, at the stage of the submission of the applications or even till the finalization of the result, it is humanly impossible to scrutinize each and every application to find out as to whether the requisite enclosures are attached with the application or the exact details have been given in the application or

not. Counsel thus contended that once any such application is made by the candidate there is presumption that the candidate fulfills the criteria laid down in the advertisement. Counsel thus submitted that after the Preliminary scrutinization of all these applications final result is declared by the DSSSB but subject to the final satisfaction of the user department who can again scrutinize the applications of the selected candidates to find out as to whether the selected candidates fulfill the eligibility criteria as laid down in the advertisement or not. Ms. Begum further submitted that even after the final declaration of the result there is no embargo on the rights of the DSSSB to scrutinize the applications again to find out as to whether the applicants fulfill the laid down criteria or not. In support of her arguments, counsel for the respondent/DSSSB placed reliance on the judgments of the Supreme Court in **State of U.P.Vs. Vijay Kumar Mishra, AIR 2003, SC 4411, Ashok Kumar Sorkar Vs. UOI & Ors. (2007) 4 SCC 54, State of Haryana & Ors. Vs. Anurag JT 1998 (9) SC 190, Bhupinder Pal Singh Vs. State of Punjab, AIR 2000 SC 2011** and the judgment of learned Single Judge of this Court in **Ravita & Ors. Vs. MCD and Anr., W.P.(C) No. 6466/2008**. Counsel for the respondent also placed reliance on

the conditions laid down by the respondent DSSSB in the advertisement dealing with the cancellation of the candidates on the ground that if at any stage of selection process, it is found by the DSSSB that they do not fulfill the eligibility criteria, their candidature for the post applied can be cancelled by the Board or appointing authority. The said term dealing with the cancellation is referred as under:

“CANCELLATION OF CANDIDATURE

1. The candidates applying for the posts should ensure that they fulfill all the eligibility conditions. Merely because a candidate has been allowed to appear at the examination will not be considered as a valid ground for his/her being eligible for the selection. If on verification at any time before or after the written examination or at any stage of selection process, it is found that they do not fulfill any of the eligibility conditions, his/her candidature for the post applied for, will be cancelled by the Board/Appointing Authority.”
2. Candidates are cautioned that they should not furnish any incomplete, false information or submit any document which is defective or fabricated or otherwise commit any act of misconduct in submitting the application forms or during the course of recruitment or fraudulently claim SC/ST/OBC etc. and other benefits. In case any such case is detected, the Board/Appointing Authority reserves its right to withdraw/cancel any selection and take legal action against the candidate concerned. The candidate may be permanently or for a specified period **debarred**

from taking part in the recruitments conducted by the Board.”

8. Ms. Zubeda Begum counsel for the respondent DSSSB submitted that in the W.P.(C) No. 181/2009 in the application made by petitioner no.1 Yogesh Rani in column no. 16-B, she herself stated that she did not possess the requisite qualification as on the date of the receipt of the application. Similarly, as far as petitioner No. 2 Promila is concerned in the said column no. 16 of the application, she stated that ‘result awaiting’, although in column no. 16-B, she wrongly tickmarked the box ‘Yes’ to show that she possessed the essential qualification as on the date of receipt of the application. Counsel further pointed out that even petitioner no.3 Meena has wrongly tick marked the box against ‘yes’ in column no. 16-B, although she did not possess the essential qualification. She also wrongly stated 70% marks secured in GNM course although by that time she did not obtain the diploma in the said course.

9. Counsel also pointed out that so far as the position of the petitioners in W.P.(C) No. 110/2009, is concerned the same is no different. Counsel stated that same is the position so far the petitioner in W.P.(C) No. 9139/2008 is concerned. Ms. Begum stated

that in W.P. 7671/2005, 7679/2005, 7643/2005, incorrect information was submitted by the petitioners/candidates who did their diploma from Haryana.

10. Counsel for the respondent does not dispute this position that so far as the final result declared by the respondent on 15.12.2008 is concerned, the names of the petitioners are shown as per their merit of selection but they have been deprived only on the ground that they were not eligible having not qualified the said course as on the cut-off date.

11. As far as the candidates who did their GNM course from Delhi, Mr. Ohri, counsel appearing for the petitioners 1 to 17, 19, 23 to 34, 37 to 43 in W.P. (C) No. 9114/2008, and Mr. Rana, counsel representing the petitioners 1 to 6 in W.P.(C) No. 809/2009 submit that as far as selection process is concerned, the DSSSB being the recruiting agency is the final agency and not the user department. The contention of the counsel for the petitioners is that job of the user department is to verify the authenticity of the documents and not to find fault with the selection process and on the eligibility of the candidates. Counsel for the petitioners further submitted that as far as Delhi candidates are concerned, it is not in dispute that they had

completed three years course before the cut off date of 21.1.2008 as laid down in the advertisement but they were still to complete six months training. Counsel further submitted that the respondent no. 5 in the counter affidavit has taken a stand that as far as candidates for the academic year 2004-05 are concerned, who completed the said course of GNM in the year 2007, the requirement of six months training would not apply as by that time various State Nursing Councils had not implemented the said condition laid down by the All India Nursing Council. Counsel for the petitioners thus submitted that already the respondents had selected the candidates who had completed the said three years nursing course from Haryana and other states without undergoing the training and if the appointment to the petitioners is denied on the ground of non completion of the six months training course, then, it will create hostile discrimination against the petitioners vis-à-vis other candidates who had done their course from other States. Counsel for the petitioner has placed reliance on para 11 of the counter affidavit filed by respondent no.5. Counsel for the petitioner further stated that adequate vacancies are still available to accommodate the present petitioners and even fresh advertisement has been issued by

the respondent to fill up 101 vacancies out of which 57 vacancies are for general category, 25 vacancies are reserved for OBC and 14 for SC and 5 for ST candidates. Counsel further stated that even 211 vacancies for OBC candidates as per the information given by the DSSSB are yet to be filled by the respondent. Counsel thus stated that petitioners can be easily accommodated against the said vacancies once they have already completed the said course even after undergoing the training period as on date.

12. Per contra, counsel for the respondents submitted that the eligibility of the Delhi candidate has to be seen as per the stipulated cut off date 21.1.2008 mentioned in the advertisement and if all conditions are satisfied, then only they can be considered for appointment.

13. I have heard learned counsel for the parties at considerable length.

14. The Article 226 empowers High Courts to issue directions, orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Such directions, orders or writs may be issued for the enforcement of fundamental rights or for any other purposes. Under the first component of the above provision a writ may be issued

under the said Article only if it is *prima facie* clear that the aggrieved party has a fundamental right and that it has been infringed. Under the second component it may be issued only after finding that the aggrieved party has a legal right which entitles him to any of the aforesaid writs and that such right has been infringed.

15. A party to the lis cannot invoke the powers of judicial review of this court under Article 226 of the Constitution of India to seek enforcement of something which is legally not enforceable.

16. India is one of the most populated countries in the world, second after China. With a workforce of more than 440 million, a huge pool of English-speaking graduates and a fast-growing economy, the need for employment opportunities has increased drastically. The Government has a challenging task to bring about a better matching between the demand and the supply of work opportunities. Our constitution talks about equality in public employment. Equality means, equality among equals and not unequals.

17. The Delhi Subordinate Services Selection Board or DSSSB invited applications from eligible candidates for various posts by way of an advertisement no. 09/2007 dated 7/1/2008. The petitioners herein

submitted their applications for the post of 'staff nurse' and 'auxillary nurse (midwife)' in the Department of Health and Family Welfare in Govt. of NCT of Delhi. The petitioners were allocated roll numbers and they appeared in the exams also. Later, the respondents had published a list of selected candidates, who had qualified the written examination by publishing the result, which were displayed on the notice board on 11.7.2008. The respondents had published another list of selected candidates only with roll numbers by giving a publication in the newspaper on 29.7.2008, which contained names of those persons, who did not even qualify the preliminary examination and the names of some of the candidates were missing from the said list on 29.7.2008. Therefore, a writ petition bearing WPC No. 5731/2008 was filed by few of such candidates and court directed the respondents to come out with proper list, without any errors, of selected and unselected candidates. After complying with the said orders the respondents came out with the proper list of selected and unselected candidates and in this list the petitioners were found ineligible since they did not possess the requisite qualification as on the closing date for receipt of applications. Aggrieved with the same, the present petitions have preferred by the petitioners.

18. Before delving on the contentions raised by the counsel for the parties, it would be relevant to reproduce relevant portions of the advertisement, which are as under:

ADVERTISEMENT NUMBER 09/2007

OPENING DATE FOR RECEIPT OF APPLICATIONS 07.01.2008	CLOSING DATE FOR RECEIPT OF APPLICATIONS 21.01.2008 (In case the closing date happens to be a public holiday the next working day will be the last date for receiving of applications)
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Applications are hereby invited from eligible candidates for recruitment to various posts of Health and Family Welfare Department of Government of NCT of Delhi. The detailed information regarding the post(s), number of vacancies, educational qualifications (as per recruitment rules provided by the user department), experience required, pay scale, age and mode of selection, procedure of submission of application is mentioned below. However, the applicants are required to go through the detailed advertisement and understand all the information and instructions carefully before applying for the post(s).

GROUP 'C' POSTS: APPLICATION FEE Rs. 50/- PER

APPLICATION

"Staff Nurse

NUMBER OF VACANCIES – 1225 (UR-618, OBC-331, SC-184, ST-92). Out of the total vacancies shown above, 122 posts are reserved for Ex-Servicemen as per Govt. of India's instruction regarding interlocking reservation. Essential qualifications: 1. Matriculation or its equivalent 2. 'A' Grade certificate in Nursing from a recognized institution. 3. Certificate in Midwifery. 4. Should be able to speak Hindustani fluently. Pay Scale: Rs. 5000-8000/- Period of Probation – Two years. Age Limit : Below 32 years (Relaxation in upper age limit for SC/ST-05 years and OBC-03 years, Departmental Candidates with 03 years (Relaxation in upper age limit for SC/ST-05 years and OBC-03 years, Departmental Candidates with 03 years continuous service who are in the same line or allied cadres-up to 40 years for General Category Employees and up to 45 years for ST & SC employees in accordance with the instructions/orders issued by the Central Govt.).

ELIGIBILITY CONDITIONS

1. The candidate must be a citizen of India.
2. The educational qualifications, age, experience etc. as stipulated in SECTION –A shall be determined as on the closing date of receipt of applications i.e. 21.01.2008.
3. In respect of above mentioned posts, the requirement and the category as given above, in the advertisement shall be determined and selections be made. In accordance with the instructions/orders issued from time to time by the Competent/Notified Authorities.
4. A candidate must be in good mental and physical health and free from any physical defect, likely to interfere with the efficient discharge of duties. A candidate after such medical examination as may

be prescribed by the competent authority, if found not to satisfy the requirements for the post(s), will not be appointed. Only such candidates as are likely to be considered for appointment will be medically examined.”

CANCELLATION OF CANDIDATURE

1. The candidates applying for the posts should ensure that they fulfill all the eligibility conditions. Merely because a candidate has been allowed to appear at the examination will not be considered as a valid ground for his/her being eligible for the selection. If on verification at any time before or after the written examination or at any stage of selection process, it is found that they do not fulfill any of the eligibility conditions, his/her candidature for the post applied for, will be cancelled by the Board/Appointing Authority.”
2. Candidates are cautioned that they should not furnish any incomplete, false information or submit any document which is defective or fabricated or otherwise commit any act of misconduct in submitting the application forms or during the course of recruitment or fraudulently claim SC/ST/OBC etc. and other benefits. In case any such case is detected, the Board/Appointing Authority reserves its right to withdraw/cancel any selection and take legal action against the candidate concerned. The candidate may be permanently or for a specified period **debarred** from taking part in the recruitments conducted by the Board.”

19. In the case of petitioners who received their certificate of qualification from Delhi Nursing Council, the issue arises that whether

the 6 months period of internship, which was not undergone by the persons who received certificate of qualification from other states, can be eligible as on 21/1/2008, the closing date of application, which was also the cut-off date. The issue in case of petitioners who received certificate of qualification from Haryana Nurses Registration Council later than the cut-off date is “whether they can be considered eligible as on the cut-off date.”

20. Article 14 loathes upon hostile discrimination of any person by State. In this regard this Court has in **Thomson – CSF vs National Airport Authority of India – ILR (1993) 2 Del 203** held as under:-

“20. Article 14 prohibits hostile discrimination of any person by the State. It is well settled that Article 14 ensures that the State metes out just, fair and reasonable treatment within the territory of India to every individual. It inhabits the State from acting arbitrarily since arbitrariness is anti-thesis of equality and comes into play whenever the exercise of power by the State of its instrumentality is contaminated by arbitrariness and mala-fides. Absence of arbitrary exercise of power is the first essential rule upon which the foundation of Article 14 rests. Therefore, discretion when conferred on an executive authority must be contained within clearly defined limits, and the decision must not be inspired by humor, whim or caparice but is required to be informed by reason, which must proceed on the principles of equality, justice, fair play and application of known principles and rules and in general such a decision should be predictable. Besides the authority must act in furtherance of national interest, which should be the paramount consideration in matters affecting the country and large sections of the society.”

21. Clearly, the decisions and actions of the State cannot be arbitrary, capricious and unreasonable in any sphere of its activities and should conform to norms and standards flowing from Article 14.

22. But at the same time it is a settled proposition of law that a person raising an issue of hostile discrimination has the burden to prove in the first place that he has equal rights as others in the group and that he has been discriminated. In this regard this Court in **Ravinder Kumar vs Director, AIIMS ILR (2005) 2 Del 1158** observed as under:-

“35. In State of Haryana & Anr. Vs. Tilak Raj & Ors. AIR 2003 SC 2658 the Supreme Court considered the doctrine of equal pay for equal work in the context of daily wagers of the Haryana Roadways. After taking note of a series of earlier decisions the Supreme Court observed:

“A scale of pay is attached to a definite post and in case of a daily wager, he holds no post. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. **To claim a relief on the basis of equality, it is for the claimants to substantiate a clear cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination.** No material was placed before the High Court as to the nature of duties” of either categories and it is not possible to hold that the principle of “equal pay for equal work” is an abstract one.”

“Equal pay for equal work” is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.”

23. In the instant case, the Delhi candidates have claimed hostile discrimination against persons who undertook GNM course for the academic year 2004-2005 from other States.

24. In the case of candidates/petitioners who received their certificate of qualification from Delhi Nursing Council, respondent no. 5, Indian Nursing Council clarified that since all the states did not uniformly implement the new syllabus, which included 6 months period of internship and extended the period of GNM course from 3 years to 3 and a half years for the General Nursing and Midwifery course (GNM) and only Delhi implemented the said new syllabus, therefore, for the academic year 2004-2005, the course of study of GNM course would only be three years. The petitioners belonging to this category undertook their exams in September/October 2007 and their mark sheets for final year was published on 21/12/2007, which is much prior to the cut-off date of 21/1/2008 for the recruitment/selection process under challenge.

25. Thus, it is manifest that if we ignore the 6 months training period from the course of GNM in case of Delhi candidates, then they had completed their course in September/October, 2007 and had received

their marksheets for final year on 21.12.2007. therefore, if there is no other fallacy in their candidature, then Delhi candidates were eligible as on the cut off dated of 21.1.2008. To deprive Delhi candidates due to non completion of six months training when already candidates for other states were found eligible even in the absence of six months training will certainly result in causing a hostile discrimination viz-a-viz Delhi candidates. Therefore, they succeed in their claim made herein.

26. In case of petitioners who received certificate of qualification from Haryana Nurses Registration Council their mark sheets for final year was published in March-April 2008, which is posterior to the cut-off date of 21/1/2008 for the recruitment/selection process under challenge.

27. Upon reading of the eligibility conditions mentioned above, it is manifest that the condition mentioned in clause (2) pertaining to the eligibility requirements of age, educational qualifications etc. to be fulfilled as on the date of 21/1/2008 as mentioned therein, is mandatory. The Supreme Court of India in the case of **Ashok Kumar Sharma Vs. Chander Shekhar 1993 Supp (2) Supreme Court**

Case 611, in this context is relevant and the relevant portion is in the following terms :

“In legal terminology, when something is required to be done and the consequences of failure to do so are also provided then it is known as mandatory. Mandatory character of the condition stipulated in the advertisement is further strengthened from the fact that the candidates were prohibited from applying if they did not possess the requisite qualifications. The expression shall to be possessed of such qualification is indicative of both mandatory character of the requirement and its operation in praesenti. Acceptance of the view that the appellants had requisite qualification on the date of interview would have the effect of altering condition of eligibility on the date of applications would not be accepted, will also become meaningless.”

28. When the applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established proposition. The purpose of a cut-off date, like 21/1/2008 herein, is explained by the Supreme Court in **Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18**, as under:

6. The review petitions came up for final hearing on 3-3-1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. **The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of**

the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan*². The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

29. From the above discussion, it is manifest that a cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date.

Relaxing the prescribed requirements in the case of one individual may therefore, cause injustice to others.

30. From the above discussion, clearly, the petitioners who received their certificate of qualification from Delhi Nursing Council, succeed in proving their eligibility as on the cut-off date set by the respondents and have a legal right to appointment as they had cleared the examination held for recruitment by the respondents. But the petitioners who received certificate of qualification from Haryana Nurses Registration Council failed in proving their eligibility as on the cut-off date set by the respondents and do not have a legal right to appointment even after they had cleared the examination held for recruitment by the respondents.

31. This court is of the opinion that if it was possible that candidates other than those who were in possession of the prescribed general or special qualifications as on the date of advertisement could also apply, it should have been so stated in the advertisement inviting applications, so that not only the petitioners but others in a similar position could also have applied.

32. The respondent had invited applications mentioning the required specializations i.e. a degree in GNM course. Obviously, candidates not possessing the special qualifications as on the cut off dated were put on notice that they need not apply. The only fact that some of the candidates who had been awaiting for their results did apply is no reason to consider and appoint them in spite of the specific indication contained in the notification that those without the special qualifications were not eligible to apply. The respondent was expected to receive and consider applications only from eligible candidates. If the eligibility criteria was to be altered, the respondent, in fairness, would have amended its notification to the effect that even persons without special qualifications as on the date of closing of applications were eligible to apply and would be considered. In the absence of such an amendment to the notification, the respondent would consider only persons who were eligible in terms of the advertisement.

33. The contention of counsel for the petitioners representing the candidates who received certificate of qualification from Haryana Nurses Registration Council, that these petitioners were declared successful by the respondents in the list of selected/successful candidate but now the respondent cannot turn turtle and state that

they are not eligible even after qualifying the recruitment exam and being declared successful, I do not find any merit in the said contention for the reason firstly, that they did not have the requisite qualification as on the cut-off date, as discussed above and secondly, the said advertisement clearly stated in the column 'cancellation of candidature' that on being found unfit at any stage, the applicant's candidature may be cancelled. Therefore, clearly, petitioners who received certificate of qualification from Haryana Nurses Registration Council, do not have any enforceable legal right for this court to exercise its power of judicial review under Art. 226 of the Constitution of India.

34. Be that is it may, a selectee cannot claim appointment as a matter of right. In this regard, the Hon'ble Apex Court has in **State of U.P. vs Rajkumar Sharma (2006) 3 SCC 330**, observed as under:-

14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination. (See *Shankarsan Dash v. Union of India*⁸; *Asha Kaul v. State of J&K*⁹; *Union of India v. S.S. Uppal*¹⁰; *Hanuman Prasad v. Union of India*¹¹; *Bihar Public Service Commission v. State of Bihar*¹²; *Syndicate Bank v. Shankar Paul*¹³; *Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra*¹⁴; *Punjab SEB v. Seema*¹⁵; *All India SC & ST Employees' Assn. v. A. Arthur Jeen*¹⁶; *Vinodan T. v. University of Calicut*¹⁷; *S. Renuka v. State of A.P.*¹⁸ and *Batiarani Gramiya Bank v. Pallab Kumar*¹⁹.)"

35. Furthermore, if the State by mistake makes an appointment, that does not confer any right on the person so appointed and such a mistake of the State cannot be forced to be perpetuated. In this regard, the Hon'ble Apex Court has in **State of U.P. vs Raj Kumar Sharma (2006) 3 SCC 330**, observed as under:-

“15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha v. State of U.P.*²⁰; *Secy., Jaipur Development Authority v. Daulat Mal Jain*²¹; *State of Haryana v. Ram Kumar Mann*²²; *Faridabad C.T. Scan Centre v. D.G., Health Services*²³; *Jalandhar Improvement Trust v. Sampuran Singh*²⁴; *State of Punjab v. Dr. Rajeev Sarwal*²⁵; *Yogesh Kumar v. Govt. of NCT, Delhi*²⁶; *Union of India v. International Trading Co.*²⁷ and *Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority*²⁸.)”

36. Although, this court has sympathies with these petitioners who received certificate of qualification from Haryana Nurses Registration Council but compassion cannot overtake justice and law. As for compassion, it shall not operate at the expense of justice and equity. The ineligible and unqualified candidates who managed to obtain selection through questionable methods could not be the recipients, in equity of undeserved benefits. Allowing them to benefits which they do not deserve would be a travesty of justice. In **State of Tamil Nadu**

and Ors. v. St. Josephs Teachers Training Institute,
[MANU/SC/0589/1991](#), the Supreme Court struck down a direction issued by a Full Bench of the Madras High Court on humanitarian grounds in the following terms:

"Courts cannot grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The directions issued by the Full Bench are destructive of the rule of law. Since the Division Bench issued the impugned orders following the judgment of the Full Bench, the impugned orders are not sustainable in law."

37. The judgment of this Court in **Varun Kumar Shukla vs Bharat Sanchar Nigam Ltd. & Ors. 2005 II AD (Delhi) 165**, relied upon by the counsel for the petitioners is of no assistance to them as the facts in the said case were different from the facts of the case at hand as in the said case the advertisement for recruitment specifically provided that even candidates appearing in the final year exams of engineering could apply. Clearly, same is not the case at hand. The case of Delhi candidates is different from Haryana candidates as the main grievance of the Delhi candidates was that due to an additional 6 months training period introduced in the curriculum of GNM course their candidature was rejected by DSSSB. But in the case of Haryana candidates, they

had not even despite their being no training period for six months having been introduced in their curriculum did not get their final marksheet before the cut off date of 21.1.2008. Clearly, Delhi candidates are at different pedestal from Haryana candidates.

38. In view, of the foregoing discussion, the petitions filed by petitioners who received certificate of qualification from Delhi Nursing Council is allowed and the result dated 15/12/2008 declared by respondent no. 3 is quashed and respondent no. 3 is directed to restore the result declared on 29/7/2008, so far as petitioners who received certificate of qualification from Delhi Nursing Council are concerned. Respondent is further directed to consider these petitioners for appointment on the post of nurse staff in terms of result dated 29/7/2008 as per their merit.

39. Petition filled by petitioners who received certificate of qualification from Haryana Nurses Registration Council is devoid of any merits and is hereby dismissed.

40. In view of the above discussion, the petitions bearing W.P. (C) No. 9114/2008, W.P. (C) No. 809/2009, W.P. (C) No. 9139/2008, W.P. (C)

No. 181/2009 and W.P. (C) No. 110/2009 are disposed of in above terms.

May 30, 2009
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KAILASH GAMBHIR, J.