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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4199 of 2011**

- Kumari Chitrani Raj, D/o Late Benjamin Raj, aged about 40years, Ex. Female Multipurpose Health Worker, Section Farakanara, Community Health Centre, Chaple, Raigarh (C.G.) R/o Sarvamangla Road, Patelpara, Korba, District-Korba (Chhattisgarh)

---- **Petitioner****Versus**

1. State of Chhattisgarh, Through the Secretary, Health and Family Welfare Department, D.K.S. Bhavan, Raipur (C.G.)
2. The Chief Medical & Health Officer, District Hospital, Raighr, District-Raigarh, C.G.
3. The Director, Health Services Raipur, District Raipur, CG
4. The Block Medical Officer, Community Health Centre Lailunga, District-Raighr, C.G.

---- **Respondents****And****WPS No. 4200 Of 2011**

- Ku. Reena Ekka D/o Victer Ekka, aged about 32 years, R/o Bazarpara, Janjgir, District- Janjgir Champa, (Chhattisgarh)

---- **Petitioner****Vs**

1. State of Chhattisgarh, Through the Secretary, Health and Family Welfare Department, D.K.S. Bhavan, Raipur (C.G.)
2. The Chief Medical & Health Officer, District Hospital, Raighr, District-Raigarh, C.G.
3. The Director, Health Services Raipur, District Raipur, CG
4. The Block Medical Officer, Community Health Centre Lailunga, District-Raighr, C.G.

---- **Respondents**

For Petitioners	:	Shri Kunal Das, Advocate
For Respondent/State	:	Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

23/04/2015

1. Petitioners have assailed the legality and validity of the order, whereby their appointments on the post of Multipurpose Health Worker (Female) have been cancelled by the office of Chief Medical and Health Officer, Raigarh (hereinafter referred to as 'CMHO').
2. Facts of the case, briefly stated, are that the office of CMHO, Raigarh issued an advertisement for filling up posts of Multipurpose Health Worker (Male), Multipurpose Health Worker (Female), AG-III, Dresser, Driver and Peon, under the special drive for filling up backlog vacancies. The advertisement was published on 26-7-2003 inviting the applications till 4-8-2003 for the post of MPHWP (female), with which this Court is presently concerned. The advertisement clearly stipulated that the candidate should have obtained 18 months training as MPHWP (Female) and should have live registration with Mahakoshal Nurses Registration Council (for short 'the Council').
3. Both the petitioners submitted their candidature and were eventually selected. They were issued appointment letters on 22-8-2003. Complaints were received by the Collector alleging huge illegalities, nepotism and fraud in making appointment, therefore, the concerned Collector conducted enquiry, pursuant to which the appointments were cancelled, however, since opportunity of hearing was not afforded to the petitioners, they preferred WP Nos.6713 & 6872 of 2009, which were allowed on the grounds of violation of principles of natural justice, however, liberty was reserved in favour of the

respondents to take appropriate steps in the matter after complying with the principles of natural justice.

4. Thereafter, the petitioners were issued show-cause notice and were also afforded personal hearing to explain the circumstances regarding non-acquisition of live registration with the Council on or before the cut off date. Since the petitioners failed to submit the required certificate, which was valid and alive on the cut off date, their appointments have again been cancelled by the impugned order.
5. Shri Kunal Das, learned counsel for the petitioners, would submit that on the date of issuance of letter of appointment, the petitioners had acquired the certificate, therefore, the appointments should not have been cancelled. He would submit that the advertisement mentioned in the column of educational qualification that the candidates should have obtained 18 months training/live registration with the Council, therefore, if a candidate has either of one qualification, he is eligible for appointment, thus, even if petitioners' certificates are obtained after the cut off date, the same would not affect the eligibility.
6. Per contra, learned State counsel would submit that in Chhattisgarh Public Health And Family Welfare (Directorate of Health Services) Class-III Ministerial Service Recruitment Rules, 1989 (for short 'the Rules, 1989'), Schedule-III, the essential qualification for direct recruitment on the post of MPHW (female) is that the candidate should have passed X th Class examination; should have passed 18 months training course of female health worker; and should have registration of female health worker. The qualification has to be obtained on the cut off date. Since the petitioners were not having the certificate of registration of female health worker on the

cut off date, the appointments have rightly been cancelled.

7. The petitioner Kumari Chitrani Raj acquired the certificate on 30-10-2009 from the Chhattisgarh Nurses Registration Council. The petitioner Ku. Reena Ekka acquired the certificate on 10-10-2003 mentioning therein that her name is entered in the roll of Mahakoshal Nurses Registration Council as 22-9-2003.
8. Thus, both the petitioners were not having live registration either with the Mahakoshal Nurses Registration Council or with the Chhattisgarh Nurses Registration Council, on or before the cut off date i.e. 4-8-2003, which was the last date for submission of application form. Although no date for acquiring the qualification is mentioned in the advertisement, however, the law is well settled that when the advertisement does not mention the date by which the qualification is to be obtained, the last date of submission of application form is treated to be the cut off date, on which a candidate should possess all the essential qualifications.
9. It has been strenuously put forth by the learned counsel for the petitioners that the petitioners having already undergone 18 months training and having acquired the certificate before issuance of appointment order, they do not lack the qualification, however, the argument fails to impress this Court for the reason mentioned above that the essential qualification is to be obtained on the cut off date and not later on when the appointment order is issued. If the contention raised by the learned counsel for the petitioner is accepted, then a recruiting agency would allow the ineligible candidates to compete in the selection process and later on wait for them to acquire the qualification by delaying the issuance of appointment order and when the candidates obtain certificates later on, after the cut off date, an appointment order is

issued in their favour. Allowing the same would promote or encourage the recruiting agency to indulge in such activities which are not desirable or warranted in process of recruitment. On this issue it is profitable to refer herein the observations made by the Supreme Court in **Charles K. Skaria and others Vs. Dr. C. Mathew & others**¹, wherein the following has been held:-

“What is essential is the possession of a diploma before the given date, what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.”

10. For the foregoing, this Court does not find any merits in both the writ petitions, they deserve to be and are hereby dismissed, leaving the parties to bear their own costs.

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¹ AIR 1980 SC 1230