

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 381 of 2015**

Kumari Reena Ekka, D/o Vicer Ekka, Aged About 32 years R/o Bazarpara, Janjgir, Police Station & Post Janjgir, Civil & Revenue District Janjgir - Champa (Chhattisgarh).

---- Appellant**Versus**

1. State Of Chhattisgarh Through : Secretary, Health & Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh).
2. The Chief Medical & Health Officer, District Hospital, Raigarh, District- Raigarh (Chhattisgarh).
3. The Director, Health Services Raipur, District- Raipur (Chhattisgarh)
4. The Block Medical Officer, Community Health Centre Lailunga, District- Raigarh (Chhattisgarh).

---- Respondents**And****Writ Appeal No. 382 of 2015**

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

---- Appellant**Versus**

1. State Of Chhattisgarh Through The Secretary, Health & Family Welfare

Department, Mantralaya, Capital Complex, Naya Raipur, District Raipur, (Chhattisgarh)

2. The Chief Medical & Health Officer, District Hospital, Raigarh, District Raigarh, (Chhattisgarh)
3. The Director, Health Services, Raipur, District Raipur, (Chhattisgarh)
4. The Block Medical Officer, Community Health Centre, Lailunga, District Raigarh, (Chhattisgarh).

---- Respondents

For Petitioners	:	Shri Kunal Das, Advocate.
For Respondents/State	:	Shri UNS Deo. Govt. Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Chief Justice.

13/08/2015

1. These two Appeals arise from a common order dated 23.04.2015 passed in two separate Writ Petitions.
2. Since the facts and the questions of law involved are common, the two Writ Appeals have been heard together and are being disposed by a common order.
3. Separate I.As have been filed in both the Appeals for condonation of delay of eight days. Considering the duration of delay, the IA applications are allowed.

4. The Learned single Judge held that 04.08.2003 being the last date for submission of applications for the post of Multipurpose Female Health Workers, was the relevant date for possessing valid and live registration with the Mahakoshal Nurses Registration Council (hereinafter referred to as 'Council') to render a candidate eligible for consideration.
5. Learned counsel for the Appellants submitted that the advertisement provided that a candidate must have passed the 18 months course of Multipurpose Female Health Worker Training. After that there was a “/” mark. Live registration with the Council was mentioned after the “/” mark meaning thereby that either of the two qualifications would suffice. Both the Appellants had completed the 18 months training course in 2002 and 2003 respectively long before the date of cut off date of 04.08.2003. It was next submitted that so far as the Appellant in Writ Appeal No.381 of 2015 is concerned, she had applied for registration with the Council and only the certificate of registration was issued to her on 22.09.2003. If the advertisement represented that either of the two qualifications would suffice, there was no justification for terminating their appointment after six long years on the ground that they did not possess valid registration with the Council as on 04.08.2003.
6. Learned counsel for the Appellants has relied upon 1990 (3) SCC-655 (District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizjanagaram Vs. M. Tripura Sundari Devi).
7. Counsel for the State opposing the Appeals submitted that “/” used in the advertisement did not connote an either “/” or qualification. The

connotation of the advertisement read in its entirety reveals that the candidate was required to possess both requirements of having passed the 18 months training course combined with a live registration with the Council. In this context he also refers to the requirement for the post of Typist and Driver to submit that in all of them the sign “/” had not been used in terms of either “/” or, but in place of word “and”.

8. We have considered the submissions on behalf of the parties and are in concurrence with the contention on behalf of the State.
9. A Multipurpose Female Health Worker even after she passes training examination is not well eligible to work as a Nurse unless she has a valid registration with the Council. Therefore, the candidate as on 04.08.2003 was required to possess the twin qualifications of eligibility having completed the 18 months training coupled with a live registration with the Council. Fulfillment of one of the conditions only would not have sufficed.
10. In the facts of the present case, it is apparent that both the Appellants did not possess a valid registration with the Council as on 04.08.2003. The fact that they may have passed the 18 months training course before 04.08.2003 will not amount to fulfillment of the conditions of eligibility without a valid registration with the Council as on 04.08.2003, which they undoubtedly did not possess. The view taken by the learned Single Judge that the registration with the Council was mandatory as on 04.08.2003 finds full support from 1998 (8) SCC-399 (State of Haryana and Others Vs. Anurag Srivastava & Another) observing at paragraph-4 as follows:

“4. Learned counsel for the 2nd respondent has relied upon two decisions of this Court in *Ashok Kumar Sharma v. Chander Shekhar*, and *Rekha Chaturvedi v. University of Rajasthan*. Both these judgments hold that the qualifications which have to be considered are those possessed as on the last date of filing applications. The High Court has, therefore, rightly held that the 2nd respondent did not possess the requisite qualifications at the material time and was not entitled to be selected under the advertisement of 7.12.1980. The appeal is, therefore, dismissed. There will be no order as to costs.”

11. In *M.Tripura Sundari Devi (Supra)* relied upon on behalf of the Appellants, the qualification for the post was a Second Class degree in M.A. The Respondent held a Third Class degree in M.A. and therefore, despite having been called for selection, she was denied joining. The Administrative Tribunal, on a challenge, permitted her to join duties. The Supreme Court held that the original selection was made by mistake on an assumption that those who had applied, possessed the qualification. The error having been detected during verification of original certificates, the Tribunal was not justified in giving directions to accept her joining observing at paragraph-6 as follows:

“6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

12. However, in the facts of the case, directions came to be given for continuance in view of the fact that in the meantime, the Respondent had acquired Second Class M.A. degree. We are afraid that we do not possess the power under Article 226 to do complete and substantive justice. The power of judicial review by the High Court under Article 226 has to be exercised within the constraints of the law. The order sought to be relied upon was passed in exercise of powers under Article 141 of the Constitution.
13. The Appeals are dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P.Sam Koshy)
JUDGE