

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. LPA No.282 of 2014 (O&M)

Krishan Yadav and others ...Appellants
Versus
Suman and others ... Respondents

AND

2. LPA No.1009 of 2014(O&M)

State of Haryana and others ...Appellants
Versus
Suman and others ...Respondents

Date of Decision: 31.07.2015

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: - Mr.R.K. Malik, Sr. Advocate with
Mr.Vijay Dahiya, Advocate
for the appellant (in LPA No.282 of 2014)

Mr.Sandeep Moudgil, Addl. A.G., Haryana
for the appellant (in LPA No.1009 of 2014
for the respondent-State (in LPA No.282 of 2014).

Mr.Harish Nain, Advocate for respondent No.1.

HARINDER SINGH SIDHU, J.

This order shall dispose of two intra-Court appeals under Clause X of the Letters Patent as the both are directed against the common judgment dated 04.02.2014 passed by the learned Single Judge, whereby, the writ petition filed by respondent No.1 challenging the selection and appointment of private respondents No.5 to 17 has been allowed.

For the purpose of decision, the facts are being taken from LPA No.282 of 2014.

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An advertisement dated 24.8.2012 was issued by the Director, Health Education and Research, Haryana inviting applications for various posts including 27 posts of Nursing Sisters to be posted at Shaheed Hasan Khan Mewati Government Medical College Nalhad (Mewat), Haryana. The following qualifications were stipulated for the post of Nursing Sisters:-

- “(i) A-Grade Nurse with Mid Wifery Training*
- (ii) Registered with Haryana Nursing Registration Council.*

Or

- B.Sc. Nursing (Honour/Post Basic);*
- (iii) Hindi/Sanskrit upto Matric Standard*
- (iv) 5 years Experience as Staff Nurse.”*

The last date of submission of the applications was 14.09.2012. Interviews were held on 4th and 5th December, 2012. The result was declared in the month of January, 2013 and appointment letters were issued on 1st February, 2013. Respondent No.1, who possessed all the requisite qualifications including of being registered with the Haryana Nursing Registration Council (HNRC) was not selected. On the other hand, the appellants were selected though they were not eligible, inasmuch as, they were not registered with the HNRC.

Aggrieved, respondent No.1 filed the writ petition challenging the selection of the appellants.

Upon issue of notice of motion, the selection and appointment of the appellants was justified by the respondent-

State by stating that vide letter dated 08.08.2012, the Government of Haryana had given relaxation in the service rules with regard to the condition of registration with HNRC for appointment of Staff Nurses and it was stipulated that the candidate could be registered with Haryana Nursing Registration Council within six months after the date of joining the service. Subsequently, a clarification was issued on 12.12.2012 that in the Government letter dated 08.08.2012, the word 'Staff Nurse' be replaced with 'Nursing Staff'. Vide this letter, it was clarified that the relaxation is meant for all the Nursing Staff i.e. Nursing Superintendent, Deputy Nursing Superintendent, Assistant Nursing Superintendent, Nursing Sister and Staff Nurse with the condition that they get themselves registered with HNRC within six months after the date of joining the service.

It was argued that this clarification would relate back to the date of the initial decision taken by the Government i.e. 08.08.2012. Therefore, this decision would apply to the appointment and selection of the appellants, as the relaxation ought to be taken to have been made before the date of advertisement.

Learned Single Judge, however, disagreed with the contention of the respondent-State. It was held that the requirement of registration with HNRC is a mandatory condition provided in the Statutory Rules, which are as under:

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Nursing Sister	(i) A-grade Nurse with Mid Wifery Training (ii) Registered with Haryana Nursing Registered Council or B.Sc. Nursing (Honour/Post Basic); (iii) Hindi/Sanskrit upto Matric Standard (iv) 5 Years experience as staff Nurse	9300- 34800+4800 GP
Staff Nurse	(i) A-Grade Nurse with Midwifery Training Registered with Haryana Nursing Council it two years from the date of Joining Or (ii) Certificate in General Nursing & Midwifery from a recognized institution or equivalent qualification from a institution recognized by the Indian Nursing Council. Or Any recognized higher qualification (B.Sc/M.Sc (Nursing)) (iii) Hindi/Sanskrit upto Matric standard	9300- 34800+200 GP

It was further held that the decision for relaxation dated 08.08.2012 was qua a particular post i.e. Staff Nurse and in pursuance thereto, the advertisement was issued on 24.08.2012 (Annexure P-1). Accordingly, in that advertisement, the requirement for registration with the HNRC was not provided for the post of Staff Nurses but the said condition finds mention in the qualifications prescribed for the post of Nursing Sisters. From this, it is clear that the Government intended the decision only to cover the posts of Staff Nurse and not the Nursing Staff. It was held that the decision to replace the words 'Staff Nurses' with 'Nursing Staff' had been taken on 12.12.2012, which was even after the date of interviews which were held on 4th and 5th of December, 2012. The decision, accordingly, could have only

prospective application and could not be made applicable to the present selection. It was held that merely because the term used in the order dated 12.12.2012 is 'replacement of words' that would not mean that a decision had been taken by the Government qua the Nursing Staff also on 08.08.2012. The settled legal proposition that no change could be made after the issue of advertisement and that the rules of the game could not be changed mid way, was also relied on to reject the contention of the State Government. Accordingly, the selection of the appellants who did not fulfil the requirement of registration with HNRC and possessed the qualification of A-Grade Nursing with Mid Wifery Training was set aside. The selection and appointment of respondents No.5 and 7 who possessed the qualification of B.Sc. Nursing (Honour/ Post Basic) and qua whom registration with HNRC was not a prescribed condition in the advertisement was not disturbed. Similarly, the selection of respondents Nos.15 and 17, who had been registered with HNRC prior to the date of advertisement was also upheld.

The decision has been assailed both by the selected candidates and the State of Haryana by filing two separate appeals.

Ld. Counsel for the appellant- State has argued that the decision to relax the Service Rules regarding registration with HNRC for appointment of Nursing Staff was taken before the interviews were held. He states that there was no reason or

logic to limit the change only to Staff Nurses and not make it applicable to the `Nursing Staff' as a whole. He argued that the use of the term `Staff Nurse' in the letter dated 8.8.2012 was a mistake, which was corrected by issuing the subsequent letter dated 12.12.2012. The decision taken actually to relax the condition regarding registration with HNRC in respect of the entire Nursing Staff was sought to be explicitly emphasized by stating in the order dated 12.12.2012 that the word "Staff Nurses" in the Government Memo dated 8.8.2012 be replaced with "Nursing Staff". To leave no room for doubt, the letter dated 12.12.2012 went on to clarify that this relaxation is meant for all the Nursing staff i.e. Nursing Superintendent, Deputy Nursing Superintendent, and Assistant Nursing Superintendent & Nursing Sister and Staff Nurses.

On the other hand, the Ld. Counsel for respondent No.1 supported the decision of the Ld. Single Judge and urged that there is no ground to interfere in the said judgment. It was stressed that as per the settled law no change in the selection criteria can be made once the selection process has commenced.

Having heard Ld. Counsel for the parties, we are of the view that the appeals deserve to be allowed.

We agree with the view of the Ld. State Counsel and the Ld. Counsel for the appellants, that the use of the words `Staff Nurse' in the letter dated 8.8.2012 was a mistake, which

was corrected by issuing the subsequent letter dated 12.12.2012. The recital in the letter dated 12.12.2012, that in the Government Memo dated 8.8.2012 the word "Staff Nurses" may be replaced with "Nursing Staff" itself indicates that the intention was that the change was to relate back to the date of issue of the letter dated 8.8.2012. To clear all ambiguity on the issue, it was also clarified in the letter dated 12.12.2012 that the relaxation was meant for all the Nursing Staff i.e., Nursing Superintendent, Deputy Nursing Superintendent, and Assistant Nursing Superintendent & Nursing Sister and Staff Nurses with the condition of registration with HNRC within six months of joining the service.

It is a well settled that an order passed in clarification of an earlier order must be deemed to relate back to the earlier order. This is the essence of an order of clarification. It has been so held by the Hon'ble Supreme Court in **S.S. Grewal v. State of Punjab**, 1993 Supp (3) SCC 234 :

9. From a perusal of the letter dated April 8, 1980, we find that it gives clarifications on certain doubts that had been created by some Departments in the matter of implementation of the instructions contained in the earlier letter dated May 5, 1975. Since the said letter dated April 8, 1980 is only clarificatory in nature, there is no question of its having an operation independent of the instructions contained in the letter dated May 5, 1975 and the clarifications contained in the letter dated April 8,

1980 have to be read as a part of the instructions contained in the earlier letter dated May 5, 1975. In this context it may be stated that according to the principles of statutory construction a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See: Craies on Statute Law, 7th Edn., p. 58) It must, therefore, be held that all appointments against vacancies reserved for Scheduled Castes made after May 5, 1975 (after May 14, 1977 insofar as the Service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5, 1975 as clarified by letter dated April 8, 1980.”

To the same effect is the decision of the Hon'ble Supreme Court in **Anil Kumar Gupta v. State of Bihar, (2012) 12 SCC 443**, wherein, it was observed as under:

“19. The learned counsel for the respondents relied upon the corrigendum dated 1-7-1994 and argued that if the period of one year is counted from the date of corrigendum then the declaration issued under Section 6(1) cannot be treated as beyond the period of one year. We are unable to accept the submission of the learned counsel for two reasons. Firstly, it has not been shown whether the corrigendum had been published in the manner prescribed under Section 4(1). Secondly, the corrigendum was issued only for correcting the typographical mistakes in the gazette publication of the notification issued under Section 4(1). Such corrigendum will relate back to the date on which the notification under Section 4(1) was issued and the same cannot be relied upon for recording a finding

that the declaration under Section 6(1) was issued within the period prescribed under the first proviso (ii) to that section.”

Moreover, limiting the relaxation only to the `Staff Nurses' and not to the other `Nursing Staff' would be iniquitous, as there could be no reasonable basis for insisting on prior registration with HNRC in respect of the Nursing Staff other than the Staff Nurses. We are of the view that the relaxation was rightly given and was meant for the entire Nursing Staff. The inadvertent error that had crept in while issuing the letter dated 8.8.2012 was corrected through the letter dated 12.12.2012. In this view of the matter, the argument that the selection criteria has been changed after the selection process had commenced is not attracted, in the facts of this case.

Accordingly, these appeals are accepted. The judgment and order of the Ld. Single Judge to the extent assailed is set aside. The selection and appointment of the appellants as Nursing Sisters is upheld.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 31, 2015

Atul