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

% *Date of decision: 23rd July, 2024*

+ W.P.(C) 10057/2024 & CM APPL.41085-86/2024

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES (AIIMS)

.....Petitioner

Through: Dr. Vikrant Narayan Vasudeva and
Mr. Rohit Lochav, Advocates

versus

MS. KIRAN GROVER

.....Respondent

Through: Ms. Aanchal Anand and Mr.
Anmol Pandita, Advocates for
Respondents

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present writ petition under Articles 226 and 227 of the Constitution of India has been preferred by the petitioners seeking setting aside of the impugned order dated 14.12.2023 passed by the learned Central Administrative Tribunal, Principal Bench, Delhi in OA No. 2486/2022.
2. Notice issued.
3. Ms. Aanchal Anand, Advocate accepts notice on behalf of respondent.
4. Learned counsel for petitioners submits that the present petition has been filed mainly on two grounds, i.e. C and F which are reproduced as under:



“C. That the Ld. Tribunal erred in not taking into consideration that the Ld. Tribunal is opening a flood gate by directing the Petitioner to check the admissibility of certificates, in that case the Petitioner has to writ to all concerned universities, departments and authorities to check the admissibility of the certificates produced by each and every certificate/document produced by the candidate in verification process.

F. That the Ld. Tribunal erred in not taking into consideration that the Respondent (Ms. Kiran Grover, Rank 3452) produced Income and Assets Certificate dated 15.01.2021, which was valid for financial year 2020-21 but issued prior the date as mentioned in Notice No.149/2021 dated 16.10.2021. However, she has produced clarification certificate which was issued on 02.05.2022 which is not valid as per required period as per guideline/condition contained in the Notice/Advertisement.”

5. The brief facts, as spelt out in the impugned order dated 14.12.2023 passed by learned Tribunal, are that the respondent ranked 3452 in the merit list of NORCET 2021 for the post of Nursing Officer vide an advertisement dated 16.10.2021 in EWS category. She is aggrieved by the fact that her candidature was orally rejected on the ground that she did not possess a valid EWS certificate issued in the year 2020-2021. It was highlighted on behalf of the respondent that by way of order dated 31.08.2022 her candidature was cancelled/withdrawn.

6. Being aggrieved, she approached the learned Tribunal seeking quashing and setting aside of order dated 31.08.2022. She also sought direction to respondents to grant appointment to the post of Nursing Officer; allocation of institute on the basis of NORCET 2021 and to grant all the consequential benefits to her along with arrears.

7. Learned counsel for respondent stated that at the stage of admission,



vide order dated 09.09.2022, purely as an interim measure, learned Tribunal directed the last appointment to the post of Nursing Officer at AIIMS, New Delhi under EWS category, which was subject to the outcome of OA filed by respondent.

8. Learned counsel for respondent did not dispute the fact that the terms and conditions of the advertisement were sacrosanct and the closing date had to be treated as the crucial date for determination of the candidature of the respondent. Learned counsel argued that the impugned post was advertised on 16.10.2021 with a closing date of 30.10.2021; the document verification was done on 13.04.2022 and the notification of the result was done on 03.02.2022, wherein the respondent was successful in the EWS category.

9. Learned counsel for the respondent stated that he had already filed a EWS I&A, which was valid for the relevant period year 2021-22 which is reproduced as under:

*"This is to certify that Kumari KIRAN GROVER daughter of Shri Laxman DASS GROVER permanent resident of House No.- 2J WH 10, Street No-NIT 2, LandMark- FARIDABAD, Pincode- 121001, Town MUNICIPAL CORP FARIDABAD, Post Office NH 1, District FARIDABAD in the State HARYANA Pin Code 121001 whose photograph is attested below belongs to Economically Weaker Sections, since the gross annual income of his/her "Family" is below Rs.8 lakh (Rupees Eight Lakh only) for the financial year 2020-21. His/Her family does not own or possess any of the following assets***.*

I. 5 acres of agricultural land and above.

II. Residential flat of 1000 sq. ft. and above.

III. Residential plot of 100 sq. yards and above in notified municipalities.

IV. Residential plot of 200 sq. yards and above in areas other than the notified municipalities.

2. Kumari KIRAN GROVER belongs to the 'PUNJABI' caste which is not recognized as a Scheduled Caste, Schedule Tribes and Other Backwards Classes (Central List)."



10. However, at the time of document verification it was pointed out by the competent authority of the respondent that the certificate may not be a valid one in terms of Notice No.149/2021 dated 16.10.2021, i.e. the advertisement, as the same was issued on 15.01.2021, before completion of the financial year, i.e. for 01.04.2021 to 31.03.2022 and submitted thereafter.

11. Learned counsel for respondent further highlighted that pursuant to the aforesaid requisition, the respondent immediately approached the competent authority, i.e. the Tehsildar and sought clarification qua the I&AC dated 15.01.2021. The Tehsildar after going through the record issued a fresh certificate, clarifying as under:

“This is to certify that Income and Assets Certificate (Economically Weaker Sections) No.EWS/2021/12 dated 15.01.2021 issued from the Office of Tehsildar badkhal, District Faridabad to Kumari Kiran Grover D/o Laxman Dass Grover R/o H.No. 2J/WH-10, NIT Faridabad, Haryana-121001 was only valid from 01.04.2021 to 31.03.2022 (Year 2021-22).”

12. Learned counsel for the respondent drew support from the aforesaid certificate and stated that since Tehsildar, Badkhal, i.e. the competent authority in this case has clarified the period of validity of the said certificate, and so, there should be no ground to cancel the candidature of the respondent. He further stated that the petitioner, at no stage whatsoever, had ever questioned the genuineness or otherwise of the said certificate. Learned counsel added that the respondent being a law abiding citizen has strictly adhered to the rules and instructions as advertised by the petitioner.

13. Learned counsel for petitioner submitted that the respondent produced the Income and Assets Certificate (I&AC) dated 15.01.2021, which is valid



for the financial year 2020-21 but was issued prior to the date as mentioned in the advertisement dated 16.10.2021. Learned counsel for petitioner submitted that it ought to have been issued prior to the closing date of application, i.e. 30.10.2021.

14. He relied upon the terms and conditions as stipulated in the advertisement notification for NORCET 2021 which is reproduced as under:

“The vacancies advertised under EWS Category are as per the instructions issued by DoPT, Ministry of Personnel, Public Grievances & Pension, Govt. of India, vide OM. No. 36039/1/2019-Estt (Res), dated 31.01.2019. Application under EWS category will be considered subject to submission of Income and Assets certificate on a prescribed format issued by the competent authority and subject to verification of genuineness of the certificate by the issuing authority. As per DoP&T OM No. 36039/1/2019-Estt (Res), dated 31.01.2019, the crucial date for submitting income and asset certificate by the candidate is the closing date for receipt of application for the post, except in cases where date is fixed otherwise. Accordingly, a EWS certificate Issued in prescribed format for employment in Central Government on the basis on income of financial year 2020-2021 issued after 01.04.2021 but not later than 31.03.2022 valid for the year 2021-2022 will be considered valid.”

15. Learned counsel for petitioner also drew strength from the DoPT OM dated 31.01.2019, more specifically from clause 5.3 of the same which explicitly stated that the crucial date for submitting the I&AC by the candidate may be treated as the closing date for receipt of application. Hence, no benefit could have been given to the respondent.

16. Upon hearing and perusal of material placed before us, this Court finds that it is not in dispute that the respondent was in possession of a valid EWS Certificate on 15.01.2021 in a specified format. However, it appears that the said certificate issued on 15.01.2021, has been construed by the petitioner authorities as having been issued w.e.f. 01.04.2022 and the



petitioner in denying and refusing the said certificate have said that it cannot be in piecemeal and cannot have been issued in the middle of the year. What the learned counsel for the petitioner would contend is that the complete financial year should have been taken into consideration while issuing the EWS Certificate. It is also seen that there is a serious contradiction in the impugned order dated 31.10.2022 itself, wherein in the first para it has been stated that a valid EWS certificate must be issued between the period of 01.04.2021 and 31.03.2022 as per the advertisement but in the later paragraph it has been contended that the EWS certificate must be issued during the period from 01.04.2020 to 18.08.2020.

17. It is worth to be noted that the that the petitioner had neither gone into nor had carefully examined both the certificates issued by the competent authority; the first EWS certificate dated 15.01.2021 and the further clarification issued by the same authority dated 02.05.2022; which explicitly states that the said certificate is valid from 01.04.2021 to 31.03.2022 (Year 2021-22), i.e. the relevant financial year according to the certificate. Both the certificates are to be read in conjunction with each other. It would have been incumbent on the petitioner-authority before cancelling the candidature of the respondent to properly ascertain whether the said certificate is valid.

18. In view of above, the learned Tribunal found no doubt whatsoever that the Tehsildar was competent to issue both the certificates.

19. Moreover, learned Tribunal has relied upon the decision rendered by Hon'ble Supreme Court in the case of ***Kumari Laxmi Saroj & Ors. vs. State of U.P. & Ors.*** Civil Appeal No.9040/2022 on 15.12.2023, wherein it was held that despite the applicant applying for a certificate after the closure date, the delay should not be attributed to the applicant. The relevant extract



from the said judgment is reproduced below:

“4.2 From the aforesaid, it can be seen that as such, there was no fault on the part of the appellants in not producing the U.P. Council registration either at the time of submitting the applications forms or even at the time of verification of the documents. As such, all the appellants except one had applied for U.P. Council registration before the date of advertisement i.e. 15.12.2021. Therefore, for no fault(s) of theirs, the appellants could not have been made to suffer. The issue involved is directly covered by the decision of this Court in the case of Narender Singh Vs. State of Haryana and Ors.: (2022) 3 SCC 286. In the said decision, it is observed and held by this Court that once it was found that there was no lapse/delay on the part of the applicant and/or there was no fault of the appellant/applicant in not producing the NOC at the relevant time, he cannot be punished for the same. When the aforesaid decision was pressed into service before the High Court on behalf of the appellants, the High Court has not followed the same by observing that the directions issued by this Court in the case Narender Singh (supra), were in exercise of powers under Article 142 of the Constitution of India. The aforesaid is a misreading and/or misinterpreting of the judgment of this Court. This Court has specifically laid down the law that if it is found that there is no lapse/delay on the part of the applicant, he cannot be punished for no fault attributable to him. However, as in that case, another candidate/employee was already appointed, this Court had protected his service also while exercising the powers under Article 142 of the Constitution of India. Therefore, exercise of the powers under Article 142 of the Constitution of India was for protecting the service of another employee – respondent No. 4 in that case. The High Court has as such, misread the judgment of this Court.

5. In view of the above and for the reasons stated above and applying the law laid down by this Court in the case of Narender Singh (supra), the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside.

6. The respondent(s) are directed to appoint the appellants herein to the post of Health Worker (Female) within a period of six weeks from today, if otherwise, they are found meritorious and fulfilling the other eligibility criteria. However, it is made clear that the appellants shall be



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entitled to all the benefits from the date of their actual appointments. Present appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs."

20. In view of above, we find no error in the impugned order passed by learned Tribunal. Thus, averments made in the present petition lack merit and the same is dismissed accordingly. Pending applications are also dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 23, 2024
rk/r