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

% ***Date of decision: 29th August, 2024***

+ W.P.(C) 11907/2024 and CM APPL.49530-49531/2024

EMPLOYEES STATE INSURANCE CORPORATIONPetitioner
Through: Dr. Swati Jindal Garg, Mr. Sowmya
China and Mr. Abhimanyu Kumar,
Advocates.

Versus

CHHEL NARAYANRespondent
Through: Nemo.

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 petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking quashing of order dated 09.11.2023 passed by the learned Central Administrative Tribunal ('Tribunal'), Principal Bench, Delhi in OA 1335/2017.
2. The respondent had preferred O.A.1335/2017 before the learned Tribunal seeking invalidation of Notice No. 11-A-12/2012/online exam/2012-12/RC(M) dated 10.03.2017 issued by the petitioner. The aforesaid notice issued by the petitioner provided for a list of ineligible candidates, including the respondent, who were disqualified in the



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recruitment process initiated by the petitioner to fill the post of 'Nursing/Paramedical Staff' in Directorate (Medical), Delhi in respect of notification of November, 2012.

3. The selection process included written examination, followed by an interview and the respondent was declared successful by securing 94.512 marks. Vide Notice dated 17.02.2017, the selected candidates were invited for document verification. However, the petitioner did not find his name in the list of candidates invited for document verification.

4. Thereafter, impugned Circular dated 10.03.2017 was issued by the petitioner, mentioning the names of ineligible candidates. The aforesaid Circular declared the respondent ineligible stating as under :-

"No status about registration with Nursing Council has been reported/replied in relevant column in Online Applicant form. Moreover no document was enclosed with application form as an evidence having Registered with Nursing Council. So applicant was liable to be rejected at initial stage."

5. The respondent while challenging the impugned Circular dated 10.03.2017 submitted before the learned Tribunal that his candidature was cancelled merely on the ground that in the online registration form, no document was enclosed, whereas in the online form there was no column asking for details or instructions with respect to uploading of the necessary documents. The respondent claimed to have uploaded the necessary documents, as on the date of the application, he was in possession of a valid registration certificate from Nursing Council.



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6. The petitioner in its counter affidavit filed before the learned Tribunal averred that the respondent had not filled up the relevant column in the application form giving necessary details and thus, his candidature was rightly cancelled.

7. Learned Tribunal upon going through the copy of the online application form submitted by the respondent observed that there was no column seeking information with respect to the registration with Nursing Council. The Tribunal in the facts of the case held as under:-

“16. In view of what have been elaborately discussed above, the O.A. is allowed and the notice/circular dated 10.03.2017, (Annexure A6) qua the applicant is quashed and set aside. The competent authority amongst the respondents shall forthwith invite the applicant for document verification and subject to satisfactory verification, take further consequential action of appointing the applicant to the post of Staff Nurse. The appointment of the applicant shall be on notional basis with effect from the date the last candidate pursuant to selection process, initiated in the year 2012, was given such an appointment and on actual basis with effect from the date he assumes the charge, pursuant to the appointment so made. The applicant shall be entitled to all consequential appointment only on notional basis. In case availability of post becomes an impediment to giving effect to this order, the respondents are directed to create a supernumerary post for such a period as it may be required with a view to ensure compliance of the directions contained herein.”

8. The challenge to the impugned order dated 09.11.2023 passed by the



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learned Tribunal is on the ground that the Recruitment Rules explicitly mentioned in the vacancy notification with regard to the essential qualification for the post of 'Staff Nurse' was that the applicant shall be a registered Nurse with Nursing Council.

9. During the course of hearing, learned counsel appearing for the petitioner vehemently submitted that without proof of basic minimum qualification, the respondent cannot be held to be qualified for the post of 'Staff Nurse' and she was required to attach the photocopies of the relevant testimonials as per the advertisement which was not done and thus, her name was included in the list of ineligible candidates published by the petitioner on 10.03.2017. Learned counsel submitted that the candidature of the respondent was rightly cancelled because she did not fulfil the essential eligibility criteria at the time of submitting online application as per recruitment regulations for the post of staff nurse and the learned Tribunal has erred in directing the petitioner to call upon the respondent for document verification and offer her appointment. Thus, setting aside of impugned order dated 09.11.2023 passed by the learned Tribunal is sought by the petitioner.

10. Having heard learned counsel for the petitioner and on perusal of the impugned order as well as material placed before this Court, we find that the undisputed facts of the present case is that the respondent had applied for the post of 'Nursing Staff' pursuant to 2012 Advertisement notified by the petitioner. The aforesaid advertisement clearly mentioned that the candidates were required to attach attested photocopies of relevant documents and any online registration or application received without



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documents would summarily be rejected.

11. It is also not in dispute that the petitioner, at the first instance, was declared successful and her name was included in the list of successful candidates having secured 94.512 marks. However, her name went missing from the list of those candidates, who were called for document verification and vide impugned notice/circular dated 10.03.2017, she was named in the list of ineligible candidates.

12. Learned Tribunal in the impugned judgment has observed that on perusal of copy of online application form submitted by the respondent and its copy placed on record by the petitioner, no column seeking information with respect to the registration was found. The Tribunal also observed in the online form of one other candidate, the option to upload or mention document existed but not in the Form of respondent. The Tribunal took note of the fact that the respondent had attached the registration certificate with Nursing Council with her manual form.

13. Learned Tribunal thus in the facts of the case observed as under:-

“14. The averments made in the O.A. and as vehemently argued by the learned counsel are that there was no column in the online application form for furnishing such an information and uploading such documents, nor were there any instructions. On the other hand, the respondents have contended that such instructions did exist and there was a column to this effect and the applicant is now trying to cover his omissions. None of the two parties has been able to clarify as to what is factually correct. We have no reason to disbelieve either of them. The respondents have tried to make us believe on the basis of an



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assumption that the applicant has been negligent. But the documentary evidence produced by the respondents to establish that such a column existed are the application form of some other candidates and not that of the applicant, and they have admitted that despite efforts they have not been able to trace the original application form of the applicant. There being a doubt as to the factual correctness of the situation, we have to decide as to who should be extended the benefit of doubt.

15. We also give due weightage to the fact that the applicant did possess the requisite qualification supported by the certificates as a proof; only issue against him is omission to upload the same. We have no hesitation in these facts and circumstances, in holding that such a benefit should necessarily go to the applicant only.”

14. The learned Tribunal in view of the fact that the respondent was in possession of the requisite qualification at the time of filling up of online form and also the fact that in the application form of some other candidate, the column for uploading the necessary document existed, however, not in the case of respondent; and also the fact that the petitioner conceded before the learned Tribunal that petitioner was unable to trace out the manual original form application submitted by respondent; has rightly held that in such circumstances, the benefit has to be given to the candidates only.

15. A Coordinate Bench of this Court in **Ajay Kumar Mishra Vs. Union of India & Ors. 2016 SCC OnLine Del 6553** has observed as under:-

“9. It is true that whenever any material discrepancy is noticed in the application form and/or when any



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suppression and/or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.”

16. The Hon’ble Supreme Court in ***Vashist Narayan Kumar Vs. The State of Bihar & Ors.*** 2024 SCC OnLine SCC 2 while dealing with a case the petitioner wherein though had successfully completed the selection process but was declared unsuccessful for not mentioning his correct date of birth in the online form, took note of afore-noted decision in *Ajay Kumar Mishra (Supra)* and observed as under:-

“20. In this case, the appellant has participated in the selection process and cleared all the stages successfully. The error in the application is trivial which did not play any part in the selection process. The State was not justified in making a mountain out of this molehill. Perhaps the rarefied atmosphere of the cybercafe, got the better of the appellant. He omitted to notice the error and even failed to avail the corrective mechanism offered. In the instant case, we cannot turn a Nelson's eye to the ground realities that existed. In the order dated 22.11.2021 in C.A. No. 6983 of 2021 [Prince Jaibir Singh v. Union of India], this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide.”

17. The Supreme Court in ***Vashist Narayan Kumar (Supra)***, directed the



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respondent-State to treat the petitioner as a candidate who had “passed” in the selection process and if not otherwise disqualified, grant him appointment.

18. It is not the case of petitioner herein that respondent was not in possession of necessary qualification as on the date of application or that she was disqualified or that she was unsuccessful in the examination process or that there is any misrepresentation. In our considered opinion, in the peculiar facts of the present case denial of appointment to the respondent, despite having successfully accomplished the selection process for a mere technical glitch in the online form filling procedure, cannot be permitted.

19. In view of above, finding no error in the impugned judgment, the present petition is dismissed, with direction to the petitioner to comply with the directions given in Para- 16 of the impugned judgment dated 09.11.2023 passed by the learned Central Administrative Tribunal within four weeks.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 29, 2024/uk/r