

A KUMARI LAXMI SAROJ & ORS.

v.

STATE OF U.P. & ORS.

(Civil Appeal No. 9040 of 2022)

B DECEMBER 15, 2022

[M. R. SHAH AND HIMA KOHLI, JJ.]

Service Law: Appointment – Post of Health Worker (Female)

- As per the advertisement, along with the requisite qualifications, candidate to be registered with the U.P. Council – All the appellants C had M.P. Council registration and had applied for U.P. Council registration before the publication of the advertisement and it took some time for the M.P. Council to issue the NOC and thereafter, it took further time for the U.P. Council to issue the registration – As such the candidatures of the appellants not considered for D appointment on the ground that that at the time of verification of documents and/or even at the time of submitting the applications forms, they were not registered with U.P. Council and thus, were ineligible – Writ petition challenging the same – Dismissed by the High Court – Held: There was no fault on the part of the appellants in not producing the U.P. Council registration either at the time of E submitting the applications forms or even at the time of verification of the documents – All the appellants except one had applied for U.P. Council registration before the publication of the date of advertisement – Thus, the appellants could not have been made to suffer – High Court misread and/or misinterpreted the judgment of F this Court in Narender Singh’s case while dismissing the writ petition – Order passed by the High Court is unsustainable and is quashed and set aside – State to appoint the appellants to the post of Health Worker (Female) within the stipulated period.*

Narender Singh Vs. State of Haryana and Ors. (2022)

G **3 SCC 286 – Clarified.**

Case Law Reference

(2022) 3 SCC 286

Clarified

Para 4.2, 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No.9040
of 2022.

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From the Judgment and Order dated 13.07.2022 of the High Court A
of Judicature at Allahabad, Lucknow Bench in Writ-A No.3993 of 2022.

Alakh Alok Srivastava, Chandan Kumar Singh, Advs. for the
Appellants.

Ardhendumauli Kr. Prasad, AAG, Vishnu Shankar Jain, Ashish B
Madan, Modassir Husain Khan, Sheena Taqui, Gyanendra Kumar
Srivastava, Ms. Megha Karnwal, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J. C

1. Feeling aggrieved and dissatisfied with the impugned judgment D
and order dated 13.07.2022, passed by the High Court of Judicature at
Allahabad, Lucknow Bench in Writ A. No. 3993/2022, by which, the
High Court has dismissed the said writ petition and refused to issue a
writ directing the respondent(s) to appoint them on the post of Health
Worker (Female), the original writ petitioners have preferred the present
appeal.

2. The facts leading to the present appeal in a nutshell are as E
under: -

2.1 That applications were invited vide advertisement dated F
15.12.2021 for appointment on the post of Health Worker (Female).
The last date for submitting the application was 05.01.2022. As per clause
6 of the advertisement, it was inevitable for the candidate to possess the
essential qualifications (educational and other) till the last date of the
application which included a condition that the candidate must have
successfully completed one year six months/two years Auxiliary Nurses
and Midwives (ANM) training course (including six months training
related to obstetrics) as per the norms of the Nursing Council of India
and that the candidate was duly registered with the Uttar Pradesh Nurses
and Midwife Council, Lucknow (U.P. Council). All the appellants filled
up their applications forms through online mode and appeared in the said
examination. The eligibility of the candidate was required to be considered
only during verification of the documents. All the appellants were
registered with the M.P. Council. All the appellants except one submitted G

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- A the applications for the U.P. Council registration. The M.P. Council furnished the NOC. However, the U.P. Council took time to issue the registration and therefore, the respective appellants could not produce the U.P. registration during verification of documents. The candidatures of the appellants were not considered further for appointment on the
- B ground that at the time of verification of the documents they were not duly registered with the Uttar Pradesh Nurses and Midwife Council, Lucknow, and therefore, they were ineligible as they did not possess the essential qualifications, as per the advertisement. The appellants therefore, filed the writ petition before the High Court. By the impugned judgment and order, the High Court has dismissed the said writ petition by accepting the stand taken on behalf of the State that at the time of verification of documents and/or even at the time of submitting the applications forms, they were not registered with U.P. Council and therefore, they are ineligible.
- D 2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the writ petition, the original writ petitioners have preferred the present appeal by way of special leave.
- E 3. We have heard learned counsel appearing on behalf of the respective parties at length.
- F 4. At the outset, it is required to be noted that the date of advertisement inviting applications was 15.12.2021. The last date of submitting the application was 05.01.2022. It is true that as per the advertisement, a candidate should have been registered with the U.P. Council. All the appellants – writ petitioners who were having M.P. Council registration had applied for U.P. Council registration before the date of the advertisement published on 15.12.2021, except for one candidate (namely Kumari Pooja Rani). It took some time for the M.P. Council to issue the NOC and thereafter, it took further time for the U.P. Council to issue the registration. The statement showing the date of application for U.P. Council registration, issuance of the NOC by M.P. Council, date of application to the U.P. Subordinate Services Selection Commission and date of issuance of the U.P. Council registration in respect of each appellant is as under:
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| Petitioner/ Appellant No. | Date of MP Council Registration | Application for UP Council Registration | MP Council NOC Furnished | Date of Application to UPSSSC | Date of UP Council Registration |
|------------------------------|---------------------------------------|---|--------------------------------|-------------------------------------|---------------------------------------|
| 1. Kumari Laxmi Saroj | 17.09.2021 | 18.09.2021 | 02.12.2021 | 21.12.2021 | 14.02.2022 |
| 2. Kumari Pooja Rani | 23.11.2021 | 23.12.2021 | 28.12.2021 | 26.12.2021 | 03.06.2022 |
| 3. Hema Lata Mishra | 12.09.2017 | 22.11.2021 | 29.11.2021 | 31.12.2021 | 24.03.2022 |
| 4. Durga Sharma | 12.09.2017 | 22.11.2021 | 29.11.2021 | 31.12.2021 | 16.03.2022 |

4.1 Thus, because of the late issuance of the registration by the U.P. Council, the appellants could not produce the U.P. Council registration either on the last date of the application and/or at the time of verification of documents and therefore, they were held ineligible.

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

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- A 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, mis-read the judgment of this Court.
5. In view of the above and for the reasons stated above and
- B 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
- C 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 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.

Nidhi Jain

Appeal allowed.