

Before Deepak Sibal, J.

DEEPAK SINGH—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 3483 of 2022

December 22, 2022

Constitution of India, 1950—Art. 226—Writ petition for grant of 02 marks allocated for having undergone NCC ‘B’ course and consideration of candidature for appointment as Constable in Haryana Police—Sought for—Denial by Commission of 02 marks to candidate having successfully undergone course unjust and thus unsustainable—Petitioner entitled to grant of these 02 marks—Since after addition of these marks his score would come to 65.35 marks which is more than 63.55 marks which obtained by last person selected and appointed in category under which petitioner had also applied, subject to petitioner fulfilling all other prescribed requirements, respondents are directed to consider his candidature for appointment as Constable in Haryana Police against any of existing vacancies—Therefore, petitioner’s appointment shall notionally relate back to date when person lesser in merit than him, in selection in question, was appointed and on principle of ‘no pay for no work’ not entitled to any salary from date of his notional till date of his actual appointment.

Held, that the law laid by the Supreme Court the denial by the Commission of 02 marks to the petitioner for him having successfully undergone the course is found to be unjust and thus unsustainable. Resultantly, the petitioner is held entitled to the grant of these 02 marks. Since after addition of these marks his score would come to 65.35 marks which is more than 63.55 marks which have been obtained by the last person selected and appointed in the category under which the petitioner had also applied, subject to the petitioner fulfilling all other prescribed requirements, the respondents are directed to consider his candidature for appointment as a Constable in the Haryana Police against any of the existing vacancies. However, the petitioner's appointment shall notionally relate back to the date when the person lesser in merit than him, in the selection in question, was appointed. On the principle of 'no pay for no work' he would not be entitled to any

salary from the date of his notional till the date of his actual appointment.

(Para 21)

A.P.S. Sandhu, Advocate, *for the petitioner.*

Sharad Aggarwal, Asst. A.G., Haryana.

DEEPAK SIBAL, J.

(1) Through the present petition the petitioner seeks issuance of directions to the Haryana Staff Selection Commission (for short – the Commission) to grant him 02 marks allocated for having undergone the NCC 'B' course (for short – the course) and thereafter consider his candidature for appointment as a Constable in the Haryana Police.

(2) Through advertisement No.8/2015 dated 19.07.2015 the Commission invited applications for appointment of 5,000 Male Constables (General Duty). As per the advertisement, the closing date for submission of online applications was 06.10.2015 and that the applications could be uploaded at the given website from 07.09.2015 till 06.10.2015. The advertisement further provided that no offline application form or copy of downloaded application form would be acceptable. The documents to be uploaded alongwith the application form and the documents to be brought by the candidate at the time of interview/ viva voce were also detailed therein.

(3) The petitioner uploaded his online application on the given website on 12.09.2015. In his application, amongst other things, he disclosed the factum of him having successfully undergone the course and thus claimed weightage for the same.

(4) Being eligible, the petitioner's candidature was considered by the Commission. After having undergone the prescribed written and physical tests he was called for interview on 15.06.2017. Before the interview board the petitioner produced a certificate dated 02.12.2015 showing him to have passed the course. However, the certificate was rejected as the same had not been uploaded alongwith the petitioner's application and because it bore a date which was beyond the cut off date. On the declaration of the final result the petitioner secured 63.35 out of the total of 100 marks. He was not offered appointment as the last person who made it to the select list in the category to which the petitioner had applied had secured 63.55 marks. Since the petitioner had not been awarded 02 marks earmarked for having undergone the course he filed a representation with the

Commission claiming the same. However, when he received no response to his representation he knocked the doors of this Court through the instant petition for the aforementioned reliefs.

(5) Learned counsel for the petitioner submitted that the Commission has denied weightage for the course undergone by the petitioner on the ground that the certificate showing the petitioner to have passed the said course was not uploaded by him along with his application form as also for the reason that such certificate was dated after the cut off date; both the grounds taken by the Commission had no legs to stand because the petitioner had claimed weightage for having undergone the course through his application which had been uploaded well in time; as per the advertisement there was no requirement of uploading the certificate for having done the course along with the application form and that there was unrebuttable proof on the record that the petitioner had in fact undergone the course much before the cut off date.

(6) Learned State counsel, who also appeared for the Commission, opposed the petitioner's prayer on the ground that the certificate showing that the petitioner had passed the course was dated 02.12.2015 and that since such certificate was beyond the cut off date and had also not been uploaded along with the petitioner's application form, in terms of the advertisement, the same had rightly been ignored.

(7) I have heard learned counsel for the parties and have also carefully perused the record.

(8) The Commission seeks to justify the denial of 02 marks to the petitioner earmarked for having undergone the course on two grounds. Firstly, because he had not uploaded any certificate or proof of him having successfully undergone the said course along with his application and secondly, for the reason that the certificate/ proof produced by the petitioner at the time of his interview was dated 02.12.2015 and since the same was beyond the cut off date, in terms of the advertisement, was required to be ignored.

The relevant clauses of the advertisement read as under:-

Advt. No. 08/2015 Date of publication : 19/07/2015

Closing date for submission of online applications:
06/10/2015

Closing date for deposit of fee : 09/10/2015

INTERVIEW /viva

- i) All original certificates/documents/testimonials of educational qualifications and other documents mentioned in the online applications and one set of self attested copies of all these certificates.
- ii) Printed Copy of online application form along with latest stamp size photograph duly attested by a gazetted officer and pasted on the application form.
- iii) Original proof of earlier fee deposited i.e. Treasury Challan/ Credit Certificate issued by concerned treasury etc.

(9) As per the advertisement the aspiring candidates could upload their application forms on the given website from 07.09.2015 till 06.10.2015 and that their qualifications / eligibility conditions as also other documents were to be determined with regard to the last date fixed to apply online which was 06.10.2015.

(10) The documents which were required to be uploaded along with the application form were also clearly stipulated in the advertisement. These documents were a scanned copy of the essential qualifications; scanned copy of valid eligibility certificate in the case of dependents of ex- servicemen candidates; scanned copy of BCA/BCG/SC/SBC/EBPG certificate; scanned copy of Haryana Domicile certificate in case of BCA/BCB/SC/SBC/EBPG/ESM/DESM/DFP candidates; scanned copy of Aadhar Card (desirable); copy of e-Challan (in case the candidates who had applied earlier); scanned photographs duly signed by the candidate and scanned signatures of the candidate.

(11) The advertisement further provided that all original certificates/ documents/ testimonials of educational qualifications and other documents mentioned in the online application along with one set of self attested copies of all these certificates, printed copy of online application form as also original proof of earlier fee deposited in the Treasury, if any, were required to be brought by the candidate at the time of his interview/ viva voce.

(12) A perusal of the application form which was required to be uploaded by a candidate further shows that the same contains several columns through which relevant information from the aspiring candidate was sought, one of which was in the form of a question as to

whether the candidate had passed any of the NCC courses.

(13) A harmonious reading of the afore quoted portions of the advertisement as also the application form leads to the irresistible conclusion that in his application the aspiring candidate was only required to divulge information which was sought to be elicited from him and such information which is relevant to the instant case was as to whether he had undergone any of the NCC courses. If the answer to such question was in the affirmative then proof of having successfully undergone the said course was not required to be uploaded alongwith the application as such certificate does not find mention in the list of documents given in the advertisement which were required to be uploaded alongwith the candidate's application.

(14) As noted earlier, the petitioner had uploaded his application well before the cut off date through which he had claimed weightage for having undergone the course. Proof of him having passed the said course on 29.07.2015 has been placed on the record in the form of a certified result sheet (Annexure P-11). A certificate dated 02.12.2015 with regard to passing of the same course was also produced by him before the Commission at the time of his interview. Learned counsel appearing for the Commission has not disputed the genuineness or veracity of the aforesaid result sheet showing the successful completion of the course by the petitioner on 29.07.2015 or of the certificate dated 02.12.2015 and thus, does not deny that the petitioner had actually passed the course on 29.07.2015 i.e. much before the cut off date which was 06.10.2015. Once the Commission does not dispute that the petitioner had actually undergone the course much before the cut off date then to deny marks allocated for such course only because the certificate/ proof thereof was of a date beyond the cut off date would be unjustified especially when in terms of the advertisement, such proof/ certificate was not required to be uploaded alongwith the application and was required to be produced only at the time of interview, which the petitioner did.

(15) The result sheet of the course produced by the petitioner (Annexure P-11) unshakingly shows that he had successfully completed the course in question on 29.07.2015. The Commission also does not dispute the same. In the light of such fact if the Commission's stand is accepted, the same would virtually amount to invalidating the petitioner's NCC course. In the circumstances of this case the only emphasis of the Commission should have been to see if the petitioner had in fact acquired the qualification in question prior to

the cut off date and once such fact was established the petitioner should not be denied the fruits of the same only because he had produced the proof of its acquisition which was dated after the prescribed cut off date. Apparently, the Commission got confused between recognizing a fact and insisting for proof thereof.

(16) The afore view of mine finds support from a judgment of the Supreme Court in *Charles K. Skaria and others versus Dr. C. Mathew and others*¹ wherein the Supreme Court was dealing with an issue where a candidate sought 10% marks earmarked for diploma holders which was required to be obtained on or before the last date for filing of the application and not later. The candidate in that case secured the diploma before the cut off date but did not produce the evidence along with the application. Therefore, he was not allowed the extra 10% marks leading to denial of admission. The Supreme Court considered the distinction between essential requirements and proof/mode of proof and opined that what was essential was that the candidate must have obtained the essential qualifications on or before the last date of application and not later and that was the primary requirement. Submission of proof of having obtained the diploma was secondary. It was specifically observed by the Supreme Court that what was essential is the possession of the required diploma before the cut off date and that production of the safe mode of proof of the same qualification at a later stage was ancillary.

(17) Paragraphs 20, 24 and 26 of the judgment which are relevant are reproduced below:-

20. There is nothing unreasonable nor arbitrary in adding 10 marks for holders of a diploma. But to earn this extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only

¹ (1980) 2 SCC 752

later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

(4)(b): 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub- specialities.

13. Certificates to be produced:- In all cases true copies of the following documents have to be produced:-

xx xx xx

(k) Any other certificates required along with the application.

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential in the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as

directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and commonsense is not inimical to interpreting and applying the guidelines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.

26. Even so, there is a snag. Who are the diploma-holders eligible for 10 extra marks? Only those who, at least by the final date for making applications for admissions possess the diploma. Acquisition of a diploma later may qualify him later, not this year. Otherwise, the dateline makes no sense. So, the short question is when can a candidate claim to have got a diploma? When he has done all that he has to do and the result of it is officially made known by the concerned authority. An examinee for a degree or diploma must complete his examination-written, oral or practical-before he can tell the selection committee or the court that he has done his part. Even this is not enough. If all goes well after that, he cannot be credited with the title to the degree if the results are announced only after the last date for applications but before selection. The second condition precedent must also be fulfilled, viz., the official communication of the result before the selection and its being brought to the ken of the committee in an

authentic manner. May be, the examination is cancelled or the marks of the candidates are with-held. He acquires the degree or diploma only when the results are officially made known. Until then his qualification is inchoate. But once these events happen his qualification can be taken into account in evaluation of equal opportunity provided the selection committee has the result before it at the time of-not after-the selection is over. To sum up, the applicant for post-graduate degree course earns the right to the added advantage of diploma only if (a) he has completed the diploma examination on or before the last date for the application, (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the selection committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory, a sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. There is nothing improper even in a selection committee requesting the concerned universities to inform them of the factum and get the proof straight by communication therefrom-unless, of course, this facility is arbitrarily confined only to a few or there is otherwise some capricious or unvarnished touch about the process.

(18) Similarly, in *Dolly Chhanda versus Chairman Jee and others*² the issue seeking the Supreme Court's opinion was that the appellant therein had passed her 10+2 examination conducted by the Council of Higher Secondary Education, Orissa. Thereafter, she appeared in the Joint Entrance Examination under the reserved category of dependents of ex-servicemen. Under Clause 2.1.4 of the Information Brochure of JEE-2003 certain seats were reserved for children/ widows of personnel of armed/ paramilitary forces of Orissa killed/ disabled in action during war or peacetime operations. On the

² (2005) 9 SCC 779

declaration of the result, the appellant was ranked at merit no. 20 in the category under which she had applied. However, since at time of her counselling it was found that in the certificate dated 29.06.2003 through which she claimed reservation it was written “not eligible,” her candidature was rejected. She produced a fresh eligibility certificate issued to her by the Army authorities but the same was also rejected. The father of the appellant therein then requested the Zila Sainik Board to rectify the mistake but the needful was not done. A fresh certificate was then obtained which certified that the father of the appellant therein had been discharged from the Armed Forces as he had incurred permanent disability. Such certificate was produced in the next round of counselling but her candidature was not considered on the ground that at the time of her initial counselling, she had failed to produce a valid certificate. The Supreme Court held that the general rule was that while applying for any course a person must possess the eligibility qualification before the last date fixed for such purpose unless there was an exception carved out in the admission brochure or the application form or the advertisement itself. It was further held that in order to obtain the benefit of reservation or weightage etc. necessary certificates were also required to be produced and depending on the facts of the case there could be some relaxation in the matter of submission of proof as also that it would not be proper to apply a rigid principle as it pertained in the domain of procedure and that every infraction of the rule relating to submission of proof need not necessarily result in rejection of the candidature. After rendering such opinion the Supreme Court directed the respondents therein to admit the petitioner to any one of the State Medical Colleges forthwith and in case the State seats had already been filled up one extra seat was directed to be created for her.

Paragraph 7 of the judgment which is relevant reads as under:-

7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark-sheets. Similarly, in order to avail of the benefit of reservation or weightage etc.

necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

(19) To the same effect is the judgment of the Supreme Court in *Food Corporation of India versus Rimjhim*³ wherein through an advertisement dated 14.02.2015, the appellant before the Supreme Court (hereinafter referred to as FCI) invited applications for the post of Assistant Grade II (Hindi). The respondent therein (hereinafter referred to as Rimjhim) applied for the said post on 16.03.2015 and after her application was accepted she appeared in the written test held on 04.10.2015. On the declaration of the result she ranked 6th in merit. Accordingly, a call letter was issued to her on 31.12.2015 and she was asked to produce her original documents at the Zonal Office of the FCI which she did. However, she did not receive the final letter of appointment and her name also did not find mention in the final list of selected candidates. Therefore, she filed a representation and on the rejection thereof she knocked the doors of the High Court of Delhi where before a Single Judge the case of FCI was that Rimjhim was not finally selected as she did not produce the required experience certificate to show that she had one year's experience of translation from English to Hindi and vice versa. The Single Judge dismissed Rimjhim's petition. Feeling aggrieved Rimjhim preferred an Intra Court Appeal before a Division Bench of the High Court at Delhi which was allowed occasioning FCI to knock the doors of the Supreme Court.

(20) After considering the afore facts the Supreme Court opined that the experience certificates dated 14.01.2015 and 18.07.2016 issued by the erstwhile employers of Rimjhim and produced by her at a later stage were not doubted by FCI. Merely because these certificates were not produced along with the application they could not be discarded as what was required under the advertisement was one year's experience in translation especially when these certificates were also not doubted by the FCI.

³ (2019) 5 SCC 793

Paragraphs 9, 10, 12 and 13 of the judgment of the Supreme Court in FCI's case (*supra*) which are relevant are reproduced below:-

“9. The learned Single Judge dismissed the writ petition solely relying upon and/or considering the document produced by the original writ petitioner as relieving-cum-experience letterdated 27.08.2014 and opined that from the said letter, it cannot be said that the original writ petitioner had one year’s experience of translation from English to Hindi and vice-versa, which was the essential requirement to become a candidate eligible. However, the learned Single Judge did not consider the certificates dated 14.01.2015 and 18.07.2016 issued by the erstwhile employer of the original writ petitioner. If the aforesaid two certificates are considered, in that case, it can safely be said that the original writ petitioner was having one year’s experience of translation from English to Hindi and vice-versa and therefore fulfilled all the essential requirements/eligibility criteria. As observed hereinabove, and it can be seen from the counter affidavit filed on behalf of the FCI, filed before the High Court, the FCI has not doubted the aforesaid two certificates. Their only contention seems to be that as the original writ petitioner did not produce the certificate of one year’s experience of translation from English to Hindi and vice-versa either along with the application or even at the time of verification of documents, the aforesaid certificates cannot be considered at all and therefore in absence of those certificates and/or any certificate of having one year’s experience in translation from English to Hindi and vice-versa, which was the essential requirement, the original writ petitioner cannot be said to have fulfilled the eligibility criteria/essential requirement of having one year’s experience.

10. So far as the case on behalf of the FCI that as the original writ petitioner did not produce the certificate of one year’s experience along with the application is concerned, it is required to be noted that in the advertisement there was no such requirement. What is provided in the advertisement is that a candidate must have one year’s experience of translation from English to Hindi and vice-versa along with the other qualifications. The

advertisement does not provide specifically and/or provide that a candidate shall produce the certificate of experience along with the application. Therefore, the Division Bench of the High Court has rightly observed that non- production of one year's experience certificate along with the application cannot be said to be fatal to the case of the original writ petitioner and on that ground the original writ petitioner could not have been denied the appointment, if otherwise she is found to be meritorious. We are in complete agreement with the view taken by the Division Bench of the High Court.

xxx xxx xxx xxx

12. Clause 33 of the advertisement, which is also considered by the Division Bench of the High Court, provides that the management reserves the right to call for any additional documentary evidence in support of educational qualification & experience of the applicant. As found from the record and even as observed by the Division Bench, the management at the time of verification of the documents, did not thought it fit to call upon the applicant to produce any additional documentary evidence in support of her experience. The management could have called for any additional documentary evidence in support of experience of the applicant. If the management would have called for the additional documentary evidence in support of experience of the applicant, in that case, the original writ petitioner would have produced the certificates, which are subsequently produced before the High Court. At the cost of the repetition, it is to be noted that the FCI has not doubted the certificates dated 14.01.2015 and 18.07.2016 issued by the erstwhile employer of the original writ petitioner. Therefore, the Division Bench of the High Court has rightly observed and held considering the aforesaid two certificates that the original writ petitioner was having one year's experience of translation from English to Hindi and vice-versa and therefore fulfilled all the requisite essential requirements/qualifications and therefore she was required to be considered for appointment on merits.

13. Now so far as the submission on behalf of the FCI that a candidate must and/or ought to have produced the

experience certificate along with the application is concerned, at this stage, a decision of this Court in the case of Charles K. Skaria v. Dr. C. Mathew (1980) 2 SCC 752 and the subsequent decision of this Court in the case of Dolly Chhanda v. Chairman, Jee and others (2005) 9 SCC 779 are required to be referred to. In Charles K. Skaria (*supra*), this Court had an occasion to consider the distinction between the essential requirements and the proof/mode of proof. In the aforesaid case, this Court had an occasion to consider the distinction between a fact and its proof. In the aforesaid case before this Court, a candidate/student was entitled to extra 10% marks for holders of a diploma and the diploma must be obtained on or before the last date of the application, not later. In the aforesaid case, a candidate secured diploma before the final date of application, but did not produce the evidence of diploma along with the application. Therefore, he was not allowed extra 10% marks and therefore denied the admission. Dealing with such a situation, this Court observed and held that what was essential requirement was that a candidate must have obtained the diploma on or before the last date of application but not later, and that is the primary requirement and to submit the proof that the diploma is obtained on or before a particular date as per the essential requirement is secondary. This Court specifically observed and held that “what is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification”. This Court specifically observed and held that “to confuse between a fact and its proof is blurred perspicacity.”

(21) In the light of the afore discussion and the law laid by the Supreme Court the denial by the Commission of 02 marks to the petitioner for him having successfully undergone the course is found to be unjust and thus unsustainable. Resultantly, the petitioner is held entitled to the grant of these 02 marks. Since after addition of these marks his score would come to 65.35 marks which is more than 63.55 marks which have been obtained by the last person selected and appointed in the category under which the petitioner had also applied, subject to the petitioner fulfilling all other prescribed requirements, the respondents are directed to consider his candidature for appointment as a Constable in the Haryana Police against any of the existing vacancies.

However, the petitioner's appointment shall notionally relate back to the date when the person lesser in merit than him, in the selection in question, was appointed. On the principle of 'no pay for no work' he would not be entitled to any salary from the date of his notional till the date of his actual appointment.

(22) The petition is allowed in the above terms.

(23) No costs.

Dr. Payel Mehta