

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE Ms.JUSTICE P.T.ASHA
W.A.No.638 of 2018

THE MEMBER SECRETARY

TAMIL NADU UNIFORMED SERVICES RECRUITMENT

BOARD OLD COMMISSIONER OF POLICE CAMPUS

PANTHEON ROAD EGMORE CHENNAI. ... appellant/Respondent

Vs

E. JEGANATHAN ... respondent/Petitioner

Writ Appeal filed under clause 15 of Letter patent Act to set aside the order dated 07.11.2017 made in WP.No.24712 of 2017.

WP.NO.24712/2017:

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent to award marks for NCC certificates produced by the petitioner at the time of Certificate Verification dated 01.08.2017 and to award 65 marks in total and consequently select and appoint the petitioner to the post of Grade II Jail Warder/Fireman under BC category based on merits and selection.

For appellant : Mrs.A.Sreejeyanthi, Spl.G.P.
For Respondents : Mr.G.Sankaran

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The respondent in his application for appointment to the post of Grade II Police Constable, made a claim that he was in possession of the National Cadet Corps (hereinafter referred to as "NCC") "C" Certificate and as such, he was eligible for two marks as per the notification. The candidature was ultimately rejected on the ground that supporting documents were not produced along with the application form. The learned single Judge perused the application form and the related file and opined that supporting certificate was produced along with the application form and directed consideration of the respondent's candidature by granting him two marks earmarked for the holders

of NCC Certificates. The said order is under challenge at the instance of the Tamil Nadu Uniformed Services Recruitment Board.

The brief facts:-

2. The Tamil Nadu Uniformed Services Recruitment Board issued a notification in January 2017 for selection to the post of Grade II Police Constable/ Grade II Jail Warder and Fireman. The notification contain the method of selection viz., written examination, physical measurement test, physical efficiency test. It was indicated that weightage marks would be awarded for additional qualification during the time of certificate verification. The respondent in his application form indicated that he was holding NCC "C" certificate. The relevant entry was shaded to make it appear that he was in possession of NCC Certificate.

3. The respondent appeared for the written test pursuant to the call letter issued by the Recruitment Board. Since the respondent cleared the written examination, he was directed to appear for the physical measurement test. The respondent took part in the physical measurement test on 27 July 2017. It was followed by physical efficiency test conducted on 1 August 2017. The respondent cleared the physical measurement test and the physical efficiency test, making him eligible for the selection.

4. The respondent was asked to produce the originals of the certificates for verification. The respondent produced the certificates and it was verified by the Board. However, his name was not included in the provisional selection list published on 31 August 2017. The respondent was informed that he secured 51 marks in the written test and 12 marks in the physical efficiency. However, he was not given marks for NCC. The cut off marks for Backward Community was indicated as 64 marks. The respondent made a claim that in case he was given two marks for NCC, he would have crossed the cut off marks.

5. The respondent filed a writ petition before the writ court for issuance of a Writ of Mandamus, directing the Board to award marks for possession of NCC certificate.

6. Before the writ court, the appellant contended that the certificate was not produced along with the application form. It was produced only during the time of certificate verification.

The respondent was therefore not given marks for his possession of NCC "C" Certificate.

7. The learned single Judge verified the entire file. It was found that necessary indication was made in the application form, claiming weightage marks for NCC. The learned single Judge also found that the Selection Committee verified the original certificates produced by the respondent, including NCC Certificate. The learned single Judge therefore directed the appellant to consider the case of the respondent after awarding him marks for NCC certificate.

8. We have heard the learned Special Government Pleader on behalf of the appellant. We have also heard the learned counsel for the respondent.

Discussion :-

9. The notification issued by the Board for selection to the post of Police Constable/ Jail Warden/Fireman for the year 2017 indicates that weightage marks would be given for possession of NCC "C" Certificate. The candidates were called upon to shade the relevant entry and produce a copy of the related certificates along with the application form.

10. The respondent claimed that he was in possession of NCC "C" Certificate. The application form submitted by the respondent contain the necessary shading against the column "NCC Certificate". The respondent made a claim that he has enclosed a copy of the NCC Certificate along with the application form.

11. It is a matter of record that the respondent cleared the written examination and thereafter, subjected to physical measurement and physical efficiency test. The respondent secured 63 marks.

12. The Recruitment Board called upon the respondent to appear before the Selection committee for certificate verification. The respondent pursuant to the call letter, appeared before the Chairperson, Sub Committee constituted by the Tamil Nadu Uniformed Services Recruitment Board, Kanchipuram and produced the certificates. The certificates, including the NCC Certificates, were verified and it was attested by the Administrative Officer.

13. The respondent was not given two marks in spite of producing the NCC certificate. He was informed that the copy of the certificate was not annexed with the application form and that was the reason for denying two marks in spite of producing the original of the NCC certificate during the time of verification.

14. The respondent in his affidavit filed in support of the writ petition maintained that a copy of the NCC certificate was forwarded along with the application form. The notification contain a provision that originals of the certificates would be verified only in case copies have already been furnished along with the application form. The communication sent by the Deputy Inspector General of Police cum Chairperson, Sub Committee, Kanchipuram clearly shows that the NCC certificate produced by the respondent was verified and it was attested by the Administrative Officer. The certificate was forwarded to the Tamil Nadu Uniformed Services Recruitment Board for awarding two marks to the respondent. The communication dated 21 September 2017 is part of the records. The fact that the Sub Committee, presided over by the Deputy Inspector General of Police, verified the NCC certificate produced on behalf of the respondent clearly shows that the copy of the same was enclosed along with the application form. The learned single Judge was therefore justified in his direction to the appellant to process the application of the respondent by awarding him marks for possession of NCC certificate.

15. There is one more aspect which would go to the root of the matter. The controversy relates to the omission on the part of the respondent to produce a copy of the NCC certificate along with the application form. It is the admitted case of even the appellant that the original was produced during the time of certificate verification. In fact, documents were produced only pursuant to the call letter sent by the appellant.

The basic difference:-

16. There is a basic difference between the eligibility to take part in the selection process and the claim for weightage marks taking into account the possession of a particular certificate by the candidate. The candidate must fulfil the eligibility criteria for making him eligible to apply for the post in question. The documents evidencing such eligibility must

be produced along with the application form. The application form should contain a clear indication that he satisfied the eligibility criteria.

17. The weightage marks would be awarded only after clearing the written test and the physical efficiency test. The certificate verification is done not only for verification of the originals but also for considering the claim for award of weightage marks. The marks for possession of NCC certificate would be given only after verifying the original certificates. Therefore, the question of awarding weightage marks would arise only after the verification of certificates. In case the original certificate is produced at the time of certificate verification, it would be a substantial compliance of the requirement regarding production of certificate, provided sufficient indication is given in the application form. This is without prejudice to the case of the respondent that he has enclosed a copy of the certificate along with the application form.

The Law:-

18. The Hon'ble Supreme Court in Charles K. Skaria vs. Dr. C. Mathew, [1980(2) SCC 752], considered the case of a candidate who claimed 10 marks for possession of Diploma in the relevant subject. The prospectus provided that attested copies of the statement of marks and other documents should be attached with the application. The Selection Committee granted admission to three candidates even though certificates were not attached to show their possession of the Diploma before making the application. When a challenge was made, their admission to the Post Graduate course was set aside by the High Court on the ground that the required certificates have not been attached along with the application form. While reversing the said judgment, the Hon'ble Supreme Court, speaking through His Lordship Mr. Justice V.R. Krishna Iyer, held:

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these 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 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. ... 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 is 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.

19. The respondent in his application form made a claim that he is in possession of the NCC "C" certificate. His certificates were verified by the Board. The Board was therefore obliged to award weightage marks to the respondent. The Board took a hyper technical attitude and refused to award marks for the NCC certificate on the ground that copy was not produced along with the application form, notwithstanding the verification of the original documents, including the NCC certificate and ignoring the indication in the notification that only those documents attached along with the application form alone would be verified during the time of certificate verification. We are therefore of the view that the learned single Judge rightly allowed the writ petition.

20. We direct the appellant to comply with the order dated 7 November 2017 in W.P.No.24712 of 2017. The respondent should be given weightage marks, taking into account the NCC certificate and further process should be taken to give him appointment, if he is otherwise qualified. Such exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment.

21. The order passed by the learned single Judge is confirmed. The intra court appeal is dismissed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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TO:

THE MEMBER SECRETARY
TAMIL NADU UNIFORMED SERVICES RECRUITMENT
BOARD OLD COMMISSIONER OF POLICE CAMPUS
PANTHEON ROAD EGMORE CHENNAI.

+1cc to Mr.G.Sankaran, Advocate SR.NO. 69219
+1cc to Government Pleader SR.NO. 69403

W.A.No.638 of 2018

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