

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-739-2023 (O&M)

Date of decision:08.08.2023

Vishal Goswami

....Appellant

V/s.

State of Haryana and others

....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Rajat Mor, Advocate
for the appellant.

Mr. Sharan Sethi, Addl.A.G., Haryana.

Ritu Bahri, J.

1. The appellant has come up in appeal against the judgment dated 19.09.2022 passed by the Id. Single Bench in CWP-9343-2018 whereby his writ petition seeking quashing of letter dated 22.08.2017 (Annexure P-13) issued by respondent No. 3 i.e. Haryana Staff Selection Commission in which the claim of petitioner for awarding 03 marks for NCC certificates for appointment to the post of Constable, has been rejected.

2. The brief facts of the case are that pursuant to advertisement No. 8/2015 issued on 19.07.2015, the appellant/petitioner applied for the post of Male Constable (General Duty) in Haryana Police, under the BC(B) category. However, while submitting online application form, inadvertently against the NCC column, it was mentioned as 'No'. His candidature was rejected on the ground that neither in the online application form nor at the time of interview, did he produce the said certificates.

3. The further case of the appellant/petitioner was that he had

filled application form through a cyber cafe and due to unavoidable circumstances, he was not able to fill 'Yes' in the column that he had got NCC certificates. The appellant/petitioner participated in the selection process. The final result was declared on 16.07.2017 whereby he scored 59.05 marks and he was not awarded 03 marks under NCC category. He submitted a representation dated 28.07.2017 before respondent No. 2 in this regard and the Commission replied vide letter dated 22.08.2017 (Annexure P-13) stating that he had not claimed in his application form nor produced the NCC certificates at the time of interview, therefore, no marks for the same could be awarded to him.

4. The last selected candidate under BC(B) category had secured 61.90 marks and if the appellant/petitioner is awarded 03 marks for the above said qualification, he would have come into the zone of consideration for recruitment. The case of the appellant/petitioner was that he had supplied the necessary certificate at the time of scrutiny of documents and, hence, even if against the NCC column, he had mentioned 'No', he could not be denied 03 marks for the above said certificate.

5. Writ petition was dismissed on the following grounds:-

1. At the time of filing his application form, he had not mentioned that he had necessary NCC certificates.
2. He did not produce his original certificate at the time of scrutiny of documents which was condition to be complied with.
3. At the time of interview on 05.06.2017, he had produced the provisional certificate in which the note was as under:-

“NOTE: This is a provisional certificate for interim period. Original certificate awaited. The provisional certificate will have to be deposited back with No.2 (Har) Air Sqn NCC, Karnal once original certificate is issued.”

6. The appellant/petitioner had placed on record alongwith his replication a certificate dated 26.07.2021 (Annexure P-15) to show that he had genuine provisional NCC certificate. Since this certificate was issued after the date of interview and scrutiny of documents, the same was not taken into consideration for awarding him 03 marks.

7. The main ground for dismissing the writ petition was that he had not produced the original certificate at the time of scrutiny of documents by placing reliance upon the judgment rendered in ***State of Bihar and others vs. Madhu Kant Ranjan and another, Civil Appeal No. 7677 of 2021*** decided on 16.12.2021 in which Hon’ble Supreme Court held that only those documents are to be taken into account which stood uploaded alongwith the application form.

8. Learned counsel for the appellant has argued that provisional NCC certificate is dated 28.10.2014 (Annexure P-9) which is prior to the cut off date of the advertisement i.e. 09.10.2015 (Annexure P-5).

9. Learned counsel for the appellant has placed on record copy of three NCC certificates (Annexure P-9). A perusal of first certificate dated 31.05.2008 (Annexure P-9) shows that it was NCC certificate issued to the petitioner Vishal Goswami by 7 Haryana Battalion NCC, Karnal on 31.05.2008 and he had got the certificate ‘A’ while passing examination held in the year 2008. Second NCC certificate was issued to him by 2 (Har) Air Sqn NCC Karnal on 23.07.2013 wherein he had got certificate ‘B’. Third

provisional certificate 'C' was issued to him by 2 Har Air Sqn. NCC, Karnal on 28.10.2014.

10. He has referred to a judgment passed by Hon'ble Supreme Court in ***Haryana Staff Selection Commission vs. Priyanka and others AIR Online 2021 SC 986*** wherein the case of the appointment to the post of Post Graduate Teachers was considered. Advertisement was issued on 28.06.2015 and the last of submitting application was 12.10.2015. The Universities had not declared the result prior to cut off date i.e. 12.10.2015. However, provisional/confidential result (certificates) were issued in favour of the candidates. They were considered ineligible on the ground that Universities had not officially declared the result prior to cut off date and provisional/confidential result (certificates) could not be made basis for making application pursuant to the advertisement. The Hon'ble Supreme Court held that as long as the authenticity of the provisional/confidential result declared by the Universities is not in doubt, it cannot be said that the respondents were not qualified on the cut off date which was 12.10.2015, as the provisional/confidential result had been declared by the Universities in favour of the candidates prior to the said date. With these observations, the judgment of this Court was upheld to this extent.

11. The said judgment is directly applicable to the facts of the present case as the petitioner had qualified 'C' certificate examination on 28.10.2014 (at page No. 77 of the paper-book). The petitioner has further placed on record copy of certificate dated 26.07.2021 (Annexure P-15) issued by Wing Commanding Officer No. 2 (Har) Air Sqn NCC Karnal 132001, alongwith his replication which is reproduced as under:-

“It is certified that HR/SA/12/10544 Cdt Sgt Vishal

Goswami S/o Bhagirath Goswami was Cdt of No. 2 Air Sqn NCC Karnal and passed in 'C' Certificate Exam held on 2014. Unit issued Provisional certificate of above mentioned Cdt on 29 Oct 2014.

Unit received original 'C' certificate after long time from the date of signature by ADG PHHP&C. Individual have both 'C' certificate signed on 28 Oct 2014 and provisional certificate signed on 29 Oct 2014 and both certificate are genuine and issued from this unit."

12. As far as respondents are concerned, they are not disputing that the petitioner had not cleared the 'C' certificate on 28.10.2014 as per Annexure P-9 which has further been clarified in certificate dated 26.07.2021 (Annexure P-15). The case of the respondents to deny 03 marks to the appellant/petitioner was that he had not produced original certificate at the time of scrutiny of documents and the original certificate was not part of his application form.

13. As per the judgment passed in ***Haryana Staff Selection Commission's case (supra)***, the provisional result issued by the Universities could not be rejected to make candidates ineligible if the final result had not been declared by the Universities itself. Similarly, in the present case, even if original certificate was not available with the appellant/petitioner at the time of submitting application form and at the time of scrutiny of documents, the same could not be made basis to deny him 03 marks, since the provisional certificate issued by the Wing Commanding Officer which he was accepting as genuine as per certificate dated 26.07.2021 (Annexure P-15) was produced at the time of scrutiny.

14. The issue with respect to producing documents at the time of

scrutiny of documents/interview had come up for consideration in *CWP-17449-2017* titled as *Jaideep Singh vs. State of Haryana and others*, **decided on 16.01.2019** with respect to the post of Constable under BCA category. In that case as well, the petitioner therein had inadvertently made a mistake by clicking on 'No' in the column of possessing NCC certificate and, subsequently, he was not given 3 marks for possessing NCC 'C' certificate. While allowing his writ petition, reference was made to resolution dated 20.06.2017 passed by the Commission wherein unanimously Commission had resolved to consider the claims of all such candidates who had not claimed/produced the evidence of educational qualifications, NCC certificates etc. while submitting applications but produced the same at the time of scrutiny of documents/interview/viva voce. The benefit of the said resolution was extended to the petitioner as he had produced the NCC 'C' certificate on the date of interview and had also sent his documents through his representation. The last candidate had secured 58.22 marks and by giving him 3 marks for the NCC certificate, the petitioner's score came to 60.15 and in this backdrop, his writ petition was allowed.

15. The judgment passed in *State of Bihar and others's case (supra)* cannot be made basis to reject the case of the petitioner and dismiss his writ petition as at the time of of scrutiny of documents, provisional NCC certificates had been produced and the date of passing 'C' certificate was 28.10.2014/29.10.2014 as per certificate dated 26.07.2021 (Annexure P-15). Moreover, in that case there was no such resolution passed by the Commission that the candidates can produce eligibility certificates at the time of scrutiny of documents/interview/viva voce.

16. The judgment passed in *Jaideep Singh's case (supra)* has attained finality. Since the resolution dated 20.06.2017 passed by the Commission is related to the same selection process, benefit of the said resolution has to be given to the petitioner as well in the present case.

17. Hence, for all intents and purposes, the appellant/petitioner was eligible to get 03 marks for having NCC certificates. Letters Patent Appeal is allowed and the judgment dated 19.09.2022 passed by the 1d. Single Bench in CWP-9343-2018 is set aside.

18. The appellant/petitioner has further placed on record information dated 09.11.2022 received under RTI Act, 2005 which is taken on record as Annexure R-1. As per the said information, 03 posts of Male Constable under the BC(B) category are still lying vacant. Since the appellant/petitioner had participated in the selection process to the post of Male Constable under BC(B) category and the petitioner has got 59.05 marks, direction is being given to the respondents to award 03 marks to the petitioner for having NCC certificates thereby making 62.05 marks (59.05+03=62.05) which are more than 61.90 marks secured by the last selected candidate under BC(B) category. Respondents are further directed to issue appointment letter to him after verifying original certificate dated 26.07.2021 (Annexure P-15) within a period of two weeks from the date of receipt of certified copy of this order.

19. Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

08.08.2023

Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No