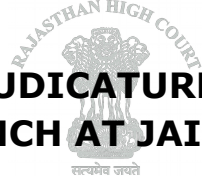




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 17796/2022

Sita Ram Jakhar S/o Shri Kalyanmal Jakhar, Aged About 24 Years, R/o Jakhro Ki Dhani, Bheslana, Kishangarh Renwal, Jaipur (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through Additional Chief Secretary, Department Of Home, Secretariat, Jaipur, Rajasthan.
2. Additional Director General Of Police, Recruitment And Promotion Board, Police Headquarter, Jaipur.
3. Director General And Commandant General Of Home Guards, Jalebi Chowk, Jaipur, Rajasthan.
4. Insepctor General, Directorate Of Home Guard, Jalebi Chowk, Jaipur, Rajasthan.

-----Respondents

For Petitioner(s) : Mr. Sita Ram Jakhar, in person
For Respondent(s) : Mr. Rupin Kala, GC
Mr. Bhanu Sharma, Dy. Commandant,
Rajasthan Home Guard Service

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

14/03/2023

Reportable

1. Heard both the parties, present in person as also learned counsel for respondents and perused the material available on record.
2. Pursuant to advertisement dated 18.11.2021 (Ann.1) issued by the Directorate, Home Defence, Rajasthan for recruitment on posts of Constable General, Constable Bigular, Constable Drumman and Constable Driver in various districts, units and





battalion of Home Department in Rajasthan under Rajasthan Home Guard Subordinate Service Rules, 2021 (hereinafter for short "the Rules of 2021"), petitioner applied for the post of Constable General Non TSP in OBC (Non Creamy Layer) category.

It has not been disputed that petitioner had qualified the written examination as also the Physical Efficiency Test and Physical Standard Test (PET/PST), but was not selected in the final merit list. By way of instant writ petition, petitioner has raised a grievance that he has not been awarded 5 marks for his computer aptitude, on account of qualifying certificate course of Rajasthan State Certificate in Information Technology (RS-CIT), for which he is entitled under Rule 30 of the Rules of 2021 and as per Clause 14 of the advertisement dated 18.11.2021. Petitioner states that if 5 marks are added to marks obtained in written examination and physical test, he falls in merit and becomes entitle for appointment. Therefore, petitioner has prayed that respondents be directed to award 5 marks to petitioner for his RS-CIT certificate and to accord appointment to him on the post of Constable General Non TSP in the OBC (NCL) category.

3. Petitioner has pleaded that prior to participation in the recruitment selection process, petitioner had undergone to the course of computer education and has been awarded a RS-CIT certificate by the Vardhman Mahaveer Open University, Kota on 03.10.2017. A copy of certificate has been placed on record as Annexure 6. It has been pleaded that petitioner produced his certificate of RS-CIT before the selection Board, at the time of documents verification, but respondents did not consider the



certificate and thereby, deprived the petitioner from the award of 5 marks, for which he is legally entitled, as indicated in the Clause 14 of the advertisement as per Rule 30 of the Rules of 2021. Thus the action of respondents is arbitrary and violative to Articles 14 & 16 of the Constitution of India. Petitioner states that after addition of 5 marks for his special education of computer aptitude, he stands higher in merit to the last cut off marks in the final merit list for the post of Constable General in the category of OBC (NCL) and as such entitled for appointment. Therefore, denial of appointment to petitioner is violation of his legal and constitutional rights.

4. In reply to writ petition, respondents have taken a plea that as per point No.18 of the advertisement, it was compulsory to produce all documents in original and their self attested copies at the time of PET/PST, but petitioner never produced his certificate of RS-CIT along with other documents during course of documents verification, therefore, he was not awarded 5 mark for his additional qualification of computer aptitude and for which respondents are not at fault. It has also been stated by respondents in the reply that the similar type of RS-CIT certificates like petitioner, produced by other several candidates were considered by the recruitment Board for awarding bonus marks, but since petitioner did not produce his RS-CIT certificate, therefore, he was rightly not awarded bonus marks on this count.

5. This Court, after considering such peculiar facts of the present case, where the petitioner is in possession of the



certificate of RS-CIT, but was deprived of 5 marks for his certificate, in presence of both parties, passed the Order dated 14.12.2022 and permitted the petitioner to appear before respondents for document verification and to consider his certificate of RS-CIT, provisionally to award bonus marks and consider the case of petitioner on merits. In compliance thereof, the certificate of RS-CIT of petitioner has been examined by the Selection Board and the result of the petitioner was produced by learned counsel for respondents in the sealed cover before this Court. The report of selection Board has been opened and the same is taken on record.

6. As per the report of Board proceedings, Members of the selection Board have examined the RS-CIT certificate of petitioner on 12.01.2023 and awarded 5 marks, provisionally to the petitioner for having computer aptitude on the basis of his RS-CIT certificate. The Selection Board has opined that on addition of 5 marks to the credit of petitioner, total marks of petitioner become higher than the last cut off marks in the OBC (NCL) category and as such petitioner is eligible and entitled for inclusion in the final selection list.

7. Respondents have stated in the reply to writ petition that the result of the advertisement in question has already been declared and candidates as per final merit list have been given appointment, however, Mr. Bhanu Sharma, Dy. Commandant, Rajasthan Home Guard Service, present in person states that one



post of Constable General Non TSP in OBC (NCL) category has been kept vacant during course of present writ petition.

8. According to material on record and facts discussed hereinabove, it is not in dispute in the present case that petitioner possesses qualification of computer aptitude and is in possession of RS-CIT certificate dated 03.10.2017. Respondents admit in reply of writ petition that other candidates who produced similar certificates were awarded bonus marks and respondents does not dispute to award 5 marks on account of RS-CIT certificate to petitioner if petitioner would have produced his certificate before respondents during course of documents verification. Petitioner states that he submitted his certificate of RS-CIT at the time of documents verification, but same was not considered by respondents, malafidely. It seems to be unusual and difficult to believe by this Court that when petitioner knows well that he is entitled for 5 marks for RS-CIT certificate, still he will not produce the same for obtaining marks. Be that as it may, the issue in the present case falls for consideration is only that though the petitioner is eligible and entitled for 5 marks having in possession of RS-CIT certificate, however, has been deprived from such marks only on account of non submission of document or showing the proof of the same at the time of documents verification. In order to resolve such controversy, this Court takes resort of a recent judgment of the Hon'ble Supreme Court delivered in case of **Food Corporation of India Vs. Rimjhim [(2019) 5 SCC 793]**.



9. In case of **Food Corporation of India** (*supra*), the matter came up before the Hon'ble Supreme Court on facts that respondent-petitioner was denied appointment on the post of Assistant Gr. II (Hindi) on the ground that she did not produce her certificate of one year experience of translation from English to Hindi and vice versa, along with application and/or even at the time of verification of documents. The Apex Court considered distinction between fact and proof i.e. essential requirement and proof/mode of proof. The Apex Court observed that it is not in dispute that respondent-petitioner was in possession of the requisite certificate of experience, for which 10 marks were required to be awarded, but the dispute is that she did not produce the certificate as proof of his eligibility for the marks. The Apex Court, placing reliance on its two previous judgments, in cases of **Dolly Chhanda Vs. JEE [(2005) 9 SCC 779]** and **Charles K. Skaria Vs. C. Mathew [(1980) 2 SCC 752]**, affirmed the decision of the Division Bench directing the FCI to consider the case of respondent-petitioner for appointment on merits. For ready reference, the relevant portion I.e para Nos.13 & 14 of the judgment are being extracted hereunder:

"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 the case of 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". This Court further observed and held that

"20.....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, to invalidate the 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.

While observing and holding so, in paras 20 & 24, this Court observed and held as under:

"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 aboveboard, 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 overemphasis 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 marklists from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was bypassed 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 common sense 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."

A similar view is taken by this Court subsequently in the case of *Dolly Chhanda (supra)*, relying upon the aforesaid decision of this Court in the case of *Charles K. Skaria (supra)*.

14. Applying the law laid down by this Court in the aforesaid two cases to the facts and circumstances of the case on hand, we are of the opinion that the Division Bench has rightly set aside the action of the FCI in rejecting the case of the original writ petitioner and has rightly directed the FCI to consider the case of the original writ petitioner for appointment on merits, if all other conditions stand satisfied."

10. Applying the law laid down by the Apex Court to facts and circumstances on case at hand, this Court finds that in the present case as well, it is not in dispute that petitioner is in possession of the special education of computer aptitude (RS-CIT) and is eligible to obtain 5 marks. As per proceedings of the Selection Board, placed on record by respondents, the Members of the Selection Board have assessed and examined the RS-CIT certificate of petitioner and awarded 5 marks to petitioner on this count and





has opined that petitioner stands higher in merit to the last cut off marks in the final merit list for the post of Constable General in the category of OBC (NCL) and as such entitled for appointment.

11. In view of above, since the petitioner has secured higher marks than the last cut off marks for the post of Constable General Non TSP in the category of OBC (NCL), after adding five marks on account of his RS-CIT certificate, therefore, petitioner was entitled to be selected in the final merit list. One post is laying vacant as admitted by respondents, therefore, this Court directs the respondents to accord appointment to the petitioner on the post of Constable General Non TSP in the category of OBC (NCL) forthwith. Petitioner shall be entitled for all service benefits like seniority, increment etc. notionally from the date of issuing appointment to person, less meritorious to the petitioner, however, shall be entitled for the actual and monetary benefits from the date of appointment.

12. The instant writ petition allowed accordingly.

13. Stay application and pending application(s), if any, stand disposed of.

(SUDESH BANSAL),J

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