

A THE STATE OF BIHAR & ORS.

v.

MADHU KANT RANJAN & ANR.

(Civil Appeal No. 7677 of 2021)

B DECEMBER 16, 2021

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

C *Service law: Appointment – A candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority – Also, only those documents, which are submitted alongwith the application form, which are required to be submitted as per the advertisement have to be considered – Therefore, when respondent No.1-original writ petitioner did not produce the photocopy of the NCC ‘B’ certificate alongwith the original application as per the advertisement and the same was submitted after a period of three years from the cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC ‘B’ certificate.*

Allowing the appeal, the Court

E **HELD:** As per the advertisement, the applicants were required to submit the photocopies of all the relevant documents/certificates alongwith the application form and the originals were required to be produced at the time of their appointment before the Selection Council. The original writ petitioner did not produce/
F submit the photocopy of the NCC ‘B’ certificate alongwith his original application. Therefore, in absence of the submission of the photocopy of the NCC ‘B’ certificate alongwith the application, he was not allotted five marks of NCC ‘B’ certificate. However, he submitted the same in the year 2007 after the physical test. Therefore, he filed a writ petition making a grievance that as he
G had produced/submitted the NCC ‘B’ certificate, he had been denied five additional marks. The Single Judge of the High Court refused to issue any positive direction by observing that there is no pleading in the writ petition in support of his claim that he had annexed his NCC ‘B’ certificate alongwith the original application

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form. The Single Judge also observed that from the pleadings it appears that he submitted the same after the physical test on 15.01.2007, i.e., before the results were published on 26.12.2007. However, when subsequently the instant writ petition was filed, the original writ petitioner came out with a contrary stand that he had produced all the necessary documents including the NCC 'B' certificate alongwith his original application. This is nothing but an afterthought. Having failed to get any positive direction in the earlier writ petition on the ground that there is no pleading that he had annexed his NCC 'B' certificate alongwith the original application, he is not entitled to any positive direction and the original writ petitioner cannot be permitted to improve his case in the subsequent litigation, when it was not his case in the earlier round of litigation. [Paras 6, 7][511-D-H; 513-B-D]

Bedanga Talukdar v. Saifudaullah Khan and Ors., (2011) 12 SCC 85 : [2011] 11 SCR 635; *Rakesh Kumar Sharma v. State (NCT of Delhi) and Ors.*, (2013) 11 SCC 58 – referred to.

Case Law Reference

[2011] 11 SCR 635	referred to	Para 3	
(2013) 11 SCC 58	referred to	Para 3	E

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7677 of 2021.

From the Judgment and Order dated 20.02.2015 of the High Court of Judicature at Patna in L.P.A. No.1631 of 2014.

Abhinav Mukerji, Mrs. Bihu Sharma, Ms. Pratishtha Vij, Akshay C. Shrivastava, Advs. for the Appellants.

M. Shueb Alam, Ms. Fauzia Shakil, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.02.2015 passed by the Division Bench of the High Court of Judicature at Patna in Letters Patent Appeal No.1631 of 2014 in Civil Writ Jurisdiction Case No.7650 of 2009 by which, after condoning

A the delay of 3 years and 55 days in preferring the appeal, the Division Bench of the High Court has allowed the said appeal and has quashed and set aside the judgment and order passed by the learned single Judge and has directed the D.I.G., Munger to take into account the select list forwarded to him on 08.09.2007, which included the name of the respondent No.1 herein (hereinafter referred to as “original writ petitioner”) and take necessary steps for his appointment as Constable, the State of Bihar and Others have preferred the present appeal.

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

C 2.1 That applications were invited vide advertisement bearing No. 1/2004 published on 08.02.2004 for selection of Constables in the Bihar Police Force. As per the advertisement, the applicant/candidate was required to enclose the self-attested copies of all necessary documents along with their application form. It further provided that all successful candidates will produce their original certificates before the Selection Council at the time of their appointment. The advertisement also further provided that additional five marks for NCC ‘B’ certificate and 10 marks for NCC ‘C’ certificate shall be awarded to the candidates holding such certificates.

E 2.2 Pursuant to the said advertisement, the original writ petitioner applied for the said post. He also participated in the re-measurement and physical test held on 08.09.2006 as per another advertisement published in the daily newspaper for the same. As the original writ petitioner did not submit his NCC certificate either with the application form or with the second application, he scored 12 marks. As he did not submit his NCC certificate, he was not awarded five additional marks for NCC ‘B’ certificate. The original writ petitioner approached the High Court by way of writ petition being CWJC No.5431 of 2008 making a grievance that he has been denied the benefit of five marks with regard to NCC ‘B’ certificate possessed by him, as provided for in the advertisement. It was his case that while his total marks were 17, making him eligible for appointment, those with lesser marks have been appointed, while his candidate has been considered on the basis of 12 marks only. The learned Single Judge refused to issue any positive direction with regard to the consideration of his candidature by observing that there is no pleading in the writ petition that the petitioner had annexed his NCC ‘B’ certificate in support of his claim along with the original

application and in the absence of necessary pleading that the petitioner had annexed his NCC 'B' certificate alongwith his original application, no positive direction can be issued. However, the learned Single Judge observed that if the petitioner had not annexed such document with his original application and submitted the same subsequently after physical test but before the publication of the results, the matter shall remain in the discretion of the authority. Therefore, while refusing to issue any positive direction, disposed of the said writ petition for an appropriate decision by the authority, to exercise the discretion and to consider whether he could be allowed five additional marks on production of NCC 'B' certificate subsequently, after the physical test, but before the publication of the results.

2.3 That thereafter under the Right to Information Act, the original writ petitioner received the information that he was awarded 17 marks. His representation, pursuant to the earlier order passed by the learned Single Judge came to be disposed of by the appropriate authority refusing to allow five additional marks by observing that as at the time of submitting the original application, he did not submit the photocopy of the NCC 'B' certificate and which was filed subsequently after the physical test, he is not entitled to the benefit of additional five marks. The original writ petitioner filed the present writ petition before the High Court being Civil Writ Jurisdiction Case No. 7650 of 2009. The learned Single Judge by judgment and order dated 01.10.2010 dismissed the said writ petition.

2.4 After a period of three years, the original writ petitioner preferred the Letters Patent Appeal No.1631 of 2014 before the Division Bench. By impugned judgment and order, the Division Bench of the High Court has condoned the delay of three years and thereafter has allowed the Letters Patent Appeal quashing and setting aside the judgment and order passed by the learned Single Judge, and directed the appointing authority to appoint the original writ petitioner as Constable awarding five additional marks of NCC 'B' certificate as per the select list forwarded on 08.09.2007.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the State of Bihar and Others have preferred the present appeal.

3. Shri Abhinav Mukerji, learned counsel appearing on behalf of the appellants has vehemently submitted that in the facts and

A circumstances of the case, the Division Bench of the High Court has materially erred in quashing and setting aside the well-reasoned judgment and order passed by the learned Single Judge and has materially erred in directing the appellants to appoint the original writ petitioner as a Constable by awarding five additional marks of NCC 'B' certificate.

B 3.1 It is submitted that as per the advertisement, the applicant was required to enclose the self-attested copy of NCC 'B' certificate alongwith the application form and the original was required to be produced at the time of their appointment before the Selection Council. It is submitted that in the present case, the original writ petitioner did not produce the xerox copy of the NCC 'B' certificate alongwith his application form. It is submitted that the same came to be produced after the physical test in the year 2007 and therefore he was not entitled to the additional five marks of NCC 'B' certificate. It is submitted that cut-off date for submitting the application was 22.02.2004 and at that time the original writ petitioner did not submit the photocopy of the NCC 'B' certificate. It is submitted that therefore despite the above, in the select list dated 08.09.2007, he was awarded 17 marks. However, having found that he was not entitled to additional five marks of NCC 'B' certificate as he did not produce the photocopy of the NCC 'B' certificate alongwith the application form, which was the requirement as per the advertisement, the appointing authority did not allot five additional marks.

C It is therefore submitted that a right decision was taken by the appointing authority and the State not to allot five additional marks of NCC 'B' certificate. It is submitted that the learned Single Judge rightly dismissed the petition which is erroneously set aside by the Division Bench of the High Court. It is vehemently submitted by the learned counsel appearing on behalf of the appellants that as per the settled position of law the documents submitted at the time of application only shall have to be considered. Reliance is placed on the decisions of this Court in the cases of **Bedanga Talukdar vs. Saifudaullah Khan and Ors., (2011) 12 SCC 85** and **Rakesh Kumar Sharma vs. State (NCT of Delhi) and Ors., (2013) 11 SCC 58**.

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4. Present appeal is opposed by Shri M. Shoeb Alam, learned counsel appearing on behalf of the respondents. It is submitted that from the very beginning it was the case of the original writ petitioner that he had produced all the relevant certificates including the NCC 'B' certificate alongwith his application. It is submitted that even in the writ

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petition being CWJC No.7650 of 2009; it was specifically pleaded by the original writ petitioner that he had submitted all the necessary documents including the NCC 'B' certificate alongwith the application. It is urged that subsequently it was found that the relevant record had been destroyed in the flood. It is submitted that even in the select list dated 08.09.2007; the original writ petitioner was allotted 17 marks, which included five additional marks of NCC 'B' certificate. It is therefore submitted that the Division Bench of the High Court has rightly directed to act as per the select list dated 08.09.2007 and has rightly directed to appoint the original writ petitioner as Constable on the basis of select list dated 08.09.2007. It is submitted that even the Division Bench of the High Court has also denied back wages.

4.1 Making above submissions it is prayed to dismiss the present appeal.

5. We have heard the learned counsel for the respective parties at length.

6. At the outset, it is to be noted that as per the advertisement, the applicants were required to submit the photocopies of all the relevant documents/certificates alongwith the application form and the originals were required to be produced at the time of their appointment before the Selection Council. It appears that original writ petitioner did not produce/submit the photocopy of the NCC 'B' certificate alongwith his original application. Therefore, in absence of the submission of the photocopy of the NCC 'B' certificate alongwith the application, he was not allotted five marks of NCC 'B' certificate. However, he submitted the same in the year 2007 after the physical test. Therefore, he filed a writ petition being CWJC No. 5431 of 2008 making a grievance that as he had produced/submitted the NCC 'B' certificate, he had been wrongly awarded 12 marks and denied five additional marks. The learned Single Judge of the High Court refused to issue any positive direction by observing that there is no pleading in the writ petition in support of his claim that he had annexed his NCC 'B' certificate alongwith the original application form. The learned Single Judge also observed that from the pleadings it appears that he submitted the same after the physical test on 15.01.2007, i.e., before the results were published on 26.12.2007. Observing so the learned Single Judge held that in absence of necessary pleadings that the petitioner had annexed his NCC 'B' certificate alongwith his original application, the Court finds it difficult to issue any positive

A direction with regard to the consideration of his candidature. The order passed by the learned Single Judge reads as under:-

“Heard learned counsel for the petitioner and the State.

B The petitioner was an applicant for appointment on the post of Constable under advertisement no. 1 of 2004. Having applied in response to the same, he appeared for physical test on 8.5.2006 when he was given 12 marks. The grievance is that he has been denied the benefit of 5 marks under the advertisement with regard to NCC-B certificate possessed by him as provided for in the advertisement. In this manner, while his marks were total 17 making him eligible for appointment, those with lesser marks have been appointed when his candidate has been considered on the basis of 12 marks only.

C There is no pleading in the writ application that the petitioner has annexed his NCC-B certificate in support of his claim along with the original application. It appears from the pleadings that he did submit the same after the physical test on 15.1.2007 before the results were published on 26.12.2007. Strong reliance has been placed on the information furnished to the petitioner under Right to Information Act by Annexure-8 dated 23.6.2008 in support of the plea.

E In absence of necessary pleadings that the petitioner had annexed his NCC-B certificate along with his original application, this Court finds it difficult to issue any positive direction with regard to consideration of the candidature of the petitioner. If the petitioner had originally annexed his NCC-B certificate along with his application, naturally he is required to be considered on basis of 17 marks as mentioned in Annexure-8 dated 23.6.2008. But, if the petitioner had not annexed such documents with his original application and submitted the same subsequently after physical test but before the publication of the results, the matter shall remain in the discretion of the Respondents and it is not possible for this Court to pass any positive orders on the aspect of consideration of his candidature. The Court is of such view for the reason that if this Court was to direct any relaxation of any condition, it would amount to violation of Article 14 of the Constitution by a judicial order.

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The writ application stands disposed in the aforesaid terms for an appropriate decision by the Respondents within a maximum period of six weeks from the date of receipt and/ or production of a copy of this order.” A

7. Thus, as per the pleadings in the earlier writ petition being CWJC No.5431 of 2008, there was no averment in support of his claim that he had annexed his NCC ‘B’ certificate alongwith the original application. However, when subsequently the present writ petition was filed, the original writ petitioner came out with a contrary stand that he had produced all the necessary documents including the NCC ‘B’ certificate alongwith his original application. The aforesaid is nothing but an afterthought. Having failed to get any positive direction in the earlier writ petition on the ground that there is no pleading that he had annexed his NCC ‘B’ certificate alongwith the original application, he is not entitled to any positive direction and the original writ petitioner cannot be permitted to improve his case in the subsequent litigation, when it was not his case in the earlier round of litigation. B C D

8. At the cost of repetition, it is to be observed that in the earlier round of litigation, the learned Single Judge specifically observed that there is no pleading in the writ petition that the petitioner had annexed his NCC ‘B’ certificate alongwith the original application. Once, it is found that the respondent No.1– original writ petitioner did not submit the photocopy of the NCC ‘B’ certificate alongwith the original application which was the requirement as per the advertisement and the cut-off date as per the advertisement was 22.02.2004 and he produced the same after the physical test on 15.01.2007, the appointing authority rightly held that he shall not be entitled to additional five marks of NCC ‘B’ certificate. Though in the select list dated 08.09.2007, he was awarded 17 marks, which included five additional marks of NCC ‘B’ certificate, the appointing authority disagreed with the same on the ground that as photocopy of the NCC ‘B’ certificate was not produced alongwith his application form, which was the requirement as per the advertisement, he shall not be entitled to five additional marks of NCC ‘B’ certificate. Therefore, when a decision was taken on the representation made by the respondent No.1 – original writ petitioner which was pursuant to the earlier order passed by the learned Single Judge in writ petition being CWJC No.5431 of 2008, the authority rightly refused to allot/award five additional marks of NCC ‘B’ certificate. E F G H

- A 9. As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Also, only those documents, which are submitted alongwith the application form, which are required to be submitted as per the advertisement have to be considered. Therefore, when the respondent
- B No.1 – original writ petitioner did not produce the photocopy of the NCC ‘B’ certificate alongwith the original application as per the advertisement and the same was submitted after a period of three years from the cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC ‘B’ certificate. In these circumstances,
- C the Division Bench of the High Court has erred in directing the appellants to appoint the respondent No.1 – original writ petitioner on the post of Constable considering the select list dated 08.09.2007 and allotting five additional marks of NCC ‘B’ certificate.

- D 10. In view of the above and for the reasons stated above, the present appeal succeeds, the impugned judgment and order passed by the Division Bench of the High Court is hereby quashed and set aside and judgment and order passed by the learned Single Judge dismissing the writ petition is restored. In the facts and circumstances of the case, there shall be no order as to costs.