

(2023) 01 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 5738 Of 2022

Manthan	Vs	APPELLANT
State Of Himachal Pradesh & Ors		RESPONDENT

Date of Decision : 02-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 01 SHI CK 0015

Hon'ble Judges : Sabina, J; Sushil Kukreja, J

Bench : Division Bench

Advocate : Suman Thakur, Richa Sharma, I.N. Mehta, Vishal Panwar

Final Decision : Allowed

Judgement

Sabina, J

1. Petitioner has filed the writ petition under Article 226 of the Constitution of India, seeking the following relief(s):

"1) That the respondents may kindly be directed to award additional two marks, which are wrongly not awarded to the petitioner.

2) That the respondents may kindly be directed to declare the petitioner eligible for the post of constable after considering the revised mark sheet.

3) That the respondents may kindly be ordered to keep one post vacant till the decision of the present writ petition.

4) That the Hon'ble Court may kindly pass any further order in favour of the petitioner and against the respondents, which deems fit and proper in the interest of justice and fair play

2. Learned counsel for the petitioner has submitted that the petitioner is a 'Bonafide Himachali' and had applied for the post of Constable in pursuance to the Recruitment Notice, dated 10.02.2021, issued by the respondents. Petitioner

had appeared in the written examination on 03.07.2022 and had qualified the same. The height of the petitioner was 5'11", whereas, the respondents had wrongly treated the same as 5'10". Petitioner had participated in three NSS Camps, i.e. for the period from 19.07.2011 to 25.07.2011, 23.06.2012 to 26.06.2012 and 22.06.2013 to 28.06.2013. Hence, in terms of the Recruitment Notice, the petitioner was entitled to be granted three marks in the category of NSS, whereas, he has been accorded only two marks. Petitioner was having NCC (A) Certificate and for that the petitioner has been rightly granted one mark.

3. Learned Senior Additional Advocate General, on the other hand, has opposed the petition and has submitted that so far as the height of the petitioner is concerned, as per the report of the Medical Board, constituted in terms of the order passed by this Court on 13.12.2022, it was in between 5'10" to 5'11". Hence, the petitioner has rightly been granted two marks, vis-à-vis, his height. So far as the Certificate Annexure P-6 showing that the petitioner had participated in NSS Camp w.e.f. 19.07.2011 to 25.07.2011 is concerned, the same cannot be taken in consideration as the petitioner had attended the NSS Special Camp within the period of three months of his admission. The NSS Certificate for the year 2011 had been issued in favour of petitioner due to inadvertence.

4. We have heard learned counsel for the parties and have gone through the record available on the file, carefully.

5. Vide order dated 13.12.2022 passed by this Court, the Chief Medical Officer, Una, was directed to constitute a Medical Board to assess the height of the petitioner and send its report. As per the report received from the Medical Board, the height of the petitioner is 180.1 cms. equal to 5'10.906" (5 Feet 10.906 Inches). Thus, the height of the petitioner was more than 5'10" but was less than 5'11". As per the Recruitment Notice, a male candidate whose height was 5'10" but less than 5'11", was to be granted four marks, and a candidate whose height was 5'11" and above, was liable to be granted five marks. Hence, the argument raised by learned counsel for the petitioner that the petitioner was entitled to be granted five marks, as his height was 5'11", is without any basis in view of the report submitted by the Medical Board.

6. The next argument raised by learned counsel for the petitioner is that the petitioner was liable to be granted three marks for his participation in three NSS Camps. As per the Recruitment Notice dated 10.02.2021, Annexure P-1, so far as the participation of a candidate in NSS Camp is concerned, one mark was to be granted for each completed year and maximum four marks can be granted in this category.

7. Admittedly, the petitioner had taken admission in 10+1 on 19.04.2011. A perusal of the Certificate Annexure A-6 reveals that the petitioner had attended NSS Camp from 19.07.2011 to 25.07.2011. Since the period of three months from the date of joining of the petitioner in 10+1 Class elapsed on 18.07.2011, it can be said that the petitioner had attended NSS Camp in the year 2011 after

completion of three months of his joining the 10+1 Class. Hence, we are of the opinion that the respondents erred in rejecting/not considering the participation of the petitioner in NSS Camp in the year 2011 on the ground that he attended the NSS Special Camp within the period of three months of his admission in 10+1 Class. So far as the participation of the petitioner in NSS Camps held in the years 2012 & 2013 are concerned, there is no dispute qua the same and petitioner has already been granted two marks, vis-à-vis, his participation in NSS Camp in the years 2012 & 2013. However, the respondents erred in discarding the Certificate qua participation of the petitioner in NSS Special Camp in the year 2011 as the petitioner had participated in the said Camp after three months of his taking admission in 10+1 Class. Hence, petitioner was liable to be granted three marks for his participation in NSS Camps for the years 2011, 2012 & 2013.

8. As per Certificate Annexure P-6, petitioner had completed two years as NSS Volunteer. The said Certificate has been issued by the Principal, Government Senior Secondary School, Lathiani. From Annexure P-4, it is evident that the petitioner did his matriculation from Government Senior Secondary School Lathiani and had thereafter done his 10+2 from the same School.

9. Accordingly, the writ petition is allowed. Respondents are directed to consider the candidature of the petitioner for the post of Constable by awarding him additional one mark in view of his NSS Special Camp participation for the year 2011. It is clarified that the petitioner would be entitled for appointment to the post of Constable, in case, he is otherwise found eligible on merits after awarding one additional mark.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.