
(2023) 02 DEL CK 0107

In the Delhi High Court

Case No : Civil Writ Petition No. 4318 Of 2022, Civil Miscellaneous Application
No. 12921 Of 2022

Shazia Kalim

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 16-02-2023

Acts Referred:

Citation : (2023) 02 DEL CK 0107

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Anuj P. Agarwala, Bhumika Sharma, Ranvir Singh, Naresh Kaushik,
Anand Singh, Shubham Dwivedi

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. On 28.10.2020 a Notice No.2/2021.CDS-I dated 28.10.2020 was issued by the Union Public Service Commission ('UPSC') for conducting Combined Defence Services Examination (I), 2021 [Including SSC Women (Non-Technical) Course]. The petitioner, being eligible, applied for Officers Training Academy, Chennai (Madras) 29th SSC Women (NT) (UPSC) Course which was scheduled to commence in April, 2022. The scheme of examination consisted of two stages, first being written examination and those who qualified the written examination, were invited for second stage i.e. interview for intelligence and personality test.

2. The written examination for Combined Defence Services Examination (I), 2021 [Including SSC Women (Non-Technical) Course] was conducted by UPSC on 07.02.2021, result whereof was declared on 23.03.2021 and the petitioner is said to have qualified the written examination. On 23.12.2021, petitioner received a call letter for SSB interview for SSCW (NT)-29 Course Apr 2022 wherein she was directed to report at Main Gate of Selection Centre South, Bangalore Cubbon Road near Manipal Centre on 29.01.2022. According to the

said Call letter, the petitioner was required to bring original documents mentioned therein.

3. According to petitioner, on 29.01.2022, she appeared for the interview at the fixed day, time and place and after verification of her documents, she was not permitted to appear in the interview as on the said date she was not having her graduation degree/ provisional degree with her.

4. During the course of hearing learned counsel appearing on behalf of petitioner submitted that petitioner had graduated in History Honours from Delhi University in the year 2019; she met the eligibility criteria and at the time of verification of documents, she had produced the original marks sheet bearing the stamp of the college and signature of the college Principal. However, respondents discarded the same on the ground that as per UPSC recommendations, the marks sheet cannot be considered as proof of graduation. The officials of the respondents told the petitioner that petitioner did not even present the bona fide issued by her college, in reply to which petitioner informed that bona fide is issued by the college only in respect of those who are yet to complete graduation and she was already graduate and had therefore presented her marks sheet, but no heed was paid to her requests. Petitioner further claims to have sent e-mail to respondents to re-conduct her interview, but to no avail.

5. The grievance of petitioner is that even though she had later been issued graduation degree from her college but due to clerical mistake in one alphabet in the enrolment number, a letter was sent by the college Principal to the competent authority for correction of the same.

6. Learned counsel for petitioner next submitted that rejecting petitioner's candidature solely on the basis of technicalities is not only harsh but arbitrary. It was submitted that petitioner had presented her original marks sheet before the concerned officials at the time of verification of documents, which is a form of proof of her graduation, which is duly stamped and signed. It was submitted that due to third wave of Covid Pandemic, petitioner, who is living in Sandila, Uttar Pradesh; could not travel Delhi to collect her degree and thereafter to Bangalore for appearing in the interview.

7. Reliance was placed upon DOPT OM No. 35015/2/93-Esst(d) Dated 09.08.1995 where-under petitioner could have been given extension of time to produce her original degree before the competent authority.

8. Reliance was placed upon decision of Hon'ble Supreme Court in Charles K. Skaria and Ors. Vs. Dr. C. Mathew and Ors. (1980) 2 SCC 752, wherein three candidates who were ousted for non production of diploma with the application form, it was observed that the way of viewing problems dehumanizes the administrative, judicial and even legislative processes in the wider perspective of law. Reliance was also placed upon decision of this Court in DR. Shidore Shital Mhatardeo Versus National Board Of Examination 2019 SCC OnLine Del 10444, petitioners wherein were unable to produce their original MBBS degree in the

final round of counseling and this Court had granted relief to them.

9. Further reliance was placed upon decisions dated 28.11.2018, passed by the Supreme Court in *Dr. Vinayak Varma Vs. Medical Counselling Committee & Ors.* (2020) 19 SCC 767; dated 24.07.2018 in *W.P. (W) 12002/2018*, titled as *Dr. Arnab Makar Vs. The West Bengal University of Health Sciences & Ors.*; dated 11.08.2015 in *W.P. (C) 6985/2015* titled as *Sachin Katyal Vs. University of Delhi & Anr.*; *K. Devaraj Vs. The Secretary to Government, Education Department* 2006 (1) CTC 379; *Dolly Chhanda vs. Chairman, Jee and Others* (2005) 9 SCC 779. Also, reliance was placed upon decision dated 18.11.2015 of Hyderabad High Court titled as *UOI, Ministry of Personnel and Ors. Vs. Guduru Raja Surya Praveen and Ors.* in *WP No. 28874/2015*, wherein it is held that non-substantive and non-material irregularities should not result in denying benefit of evaluation of answer sheet of a candidate.

10. Lastly, learned petitioner's counsel submitted that due to unforeseen circumstances, petitioner will lose the opportunity of being appointed and hence, prayed this Court that a direction be issued to the respondents to issue a fresh call up letter for SSB interview for course of SSCW (NT)-29 (APR 2022) and consider the petitioner for appointment in the Officers Training Academy, Chennai (Madras) 29th SSC Women (NT) (UPSC) Course commencing in April, 2022.

11. On the other hand, learned Central Government Senior Panel Counsel appearing on behalf of respondents No.1 & 2 submitted that the examination in question was conducted as per Notification published by the UPSC vide Notice No.2/2021/CDS-I dated 28.10.2020 and in the call up letter dated 23.12.2021 sent to petitioner, the original documents required for interview were outlined in detail and in Para-9(k) thereof, it was specifically mentioned that failure to produce documents in original at the time of SSB interview shall result in cancellation of the candidature.

12. It was submitted by learned counsel appearing on behalf of respondents that despite clear instructions, petitioner failed to produce the required documents and she was even unable to show her documents in DigiLocker and the copy of her graduation degree certificate dated 04.11.2019 enclosed in the present petition is more than two years before the date of SSB interview. It was submitted that the restrictions due to Covid Pandemic were eased and petitioner could have collected the degree from her college and hence, her inability to show the degree at the time of SSB interview cannot be accepted. It was next submitted that the process of selection of candidates for all courses conducted by the SSB stood completed and merit list of SSCW (NT)-2019 was published in March, 2022 and also, there is no provision for issuance of fresh call letter.

13. It was further submitted by learned counsel for respondents that even though petitioner had produced marks sheet of all semesters, however, as per notification either degree or provisional degree was mandatory at the time of SSB interview, which she did not produce. It was submitted that there were

three other candidates who could not produce the degree and all the four candidates, including petitioner, were asked to sign the form stating that they were being returned on account of not having produced the degree. The three other candidates signed the said form, but not by the petitioner. Learned counsel submitted that as a special concession, the final year / semester candidates, upon production of a bona fide certificate issued by their college/ university at the time of interview, are permitted to produce the degree at the time of commencement of the course; whereas petitioner had graduated in the year 2019 and so, this concession is not available to her. Lastly, it was submitted that the present petition lacks merit and deserves to be dismissed.

14. Respondent No.3-UPSC in its counter affidavit has taken the stand that the Commission's role is limited to the conduct of Written Examination of CDS-I Examination, 2021 as per the Examination Rules and Examination Notice No.2/2021 CDS-1, dated 28.10.2020 and to declare the written result. The selected candidates in the written examination were required to appear in the SSB interview conducted by AHQ and UPSC has no role in the conduct of SSB interview. Hence, the relief sought in the present petition is not under the domain of respondent No.3-UPSC.

15. Upon hearing learned counsel for the parties and on perusal of material placed before this Court, we find that the Notification dated 28.10.2020 issued by Union Public Service Commission for COMBINED DEFENCE SERVICES EXAMINATION (I), 2021 [INCLUDING SSC WOMEN (NON-TECHNICAL) COURSE], lays down the following criteria:-

"3. CONDITIONS OF ELIGIBILITY

(c) Educational Qualifications:

(i) For I.M.A. and Officers' Training Academy, Chennai - Degree of a recognized University or equivalent.

(ii) For Indian Naval Academy-Degree in Engineering from a recognised University/ Institution.

(iii) For Air Force Academy-Degree of a recognised University (with Physics and Mathematics at 10+2 level) or Bachelor of Engineering.

Graduates with first choice as Army /Navy/ Air Force are to submit proof of Graduation/provisional certificates on the date of commencement of the SSB Interview at the SSB.

Candidates who are studying in the final year/ semester Degree course and have yet to pass the final year degree examination can also apply provided candidate should not have any present backlog upto the last semester / year for which results have been declared upto the time of submission of application and they will be required to submit proof of passing the degree examination at the time of commencement of course....."

16. The petitioner had appeared in the Combined Defence Service (1) Examination -2021 and had qualified in the written examination. The call letter dated 23.12.2021 for SSB interview scheduled on 29.01.2022 for SSCW (NT)-29 (APR 2022) COURSE was sent to petitioner. In the said call up letter, the following instructions were given with respect to production of documents:-

"9. Documents. Candidates will bring following documents in ORIGINAL alongwith 02 x photocopy duly signed & self attested at the time of reporting for Service Selection Centre (SSB) interviews:-

(a) Matriculation/Secondary School Examination certificate alongwith Passing certificate or equivalent certificate issued by the concerned Board of education as proof of candidate's name, parent's name (father & mother) and date of birth (No other document like Admit card/Marksheet/Transfer/School Leaving certificate etc are acceptable).

(b) Valid proof of identity with photograph - Aadhar Card /PAN Card /Voter ID Card/Passport.

(C) Two copy of UPSC application/ Admit Card duly signed and affixed with self attested photograph.

(d) Original alongwith two self attested copy of 12th Class Certificate & Mark sheets or equivalent.

(e) Original alongwith two self attested copies of Degree/ provisional Degree recognized by AIU.

(f) Original alongwith two self attested copies of Marksheets of all Semesters.

(g) Principal/Head of the Institution stating that the candidate is in final year and his result will be declared by 1st Apr 2022. (for final year appearing candidates only) as per specimen attached at Appendix 'A'.

(h) Candidates Who Have Submitted Their Certificates and Mark Sheets in College or institution for Pursuing High Studies. Please bring a bonafide certificate along with certified true copy of those documents as per specimen attached at Appendix 'B'.

(j) Risk Certificate. (To be typed/ handwritten on plain paper and signed by parent/guardian) as per specimen attached at Appendix 'C'.

(k) All certificates as above in Originals will be returned after verification at the Service Selection Board ITSEL. Any candidate who does not carry these entire documents in original for the SSB Interview, his candidature will be cancelled."

17. The aforesaid interview call letter clearly indicated that the candidate is required to produce the original marks sheets and degree at the time of SSB interview and with respect to those candidates, whose final year result was awaited, they were required to submit a declaration/ bona fide by the Head/ Principal of the college that the candidate is in final year, in the prescribed

proforma. Indisputably, at the time of SSB interview the petitioner could not produce the original degree of graduation but had produced her all marksheets of graduation. It is not disputed that the marksheets presented were duly signed and stamped by the college Head/ Principal and so, authenticity thereof cannot be disputed. However, since petitioner could not produce the original degree, she was debarred from appearing in the interview on 29.01.2022. Thereafter, within two days, petitioner sent e-mails dated 01.02.20022 and also on 13.02.2022 requesting for some time to produce the degree. Petitioner's degree was in the process of corrections due to typographical error in the enrolment number and it is supported by copy of letter dated 09.02.2021 written by officiating Principal of her college to the Dean of Examination, University of Delhi, which clearly shows that it was a reminder of letter dated 14.09.2020 to rectify the clerical mistake in the enrollment numbers of the students. Therefore, it validates the claim of petitioner.

18. So far as plea of respondents that if petitioner was not having the degree, she could have produced the bona fide from her college Head/Principal at the time of interview is concerned, we find that the bona fide is issued only in respect of those candidates who are pursuing their final year/semester in college. The petitioner had graduated in the year 2019 and so, there was no occasion for her to obtain a bona fide from her college Head/ Principal.

19. As far as plea of respondents that the copy of degree/ certificate dated 04.11.2019 enclosed with this petition shows that she was in possession of degree on the date her interview was scheduled, but did not produce the same is concerned, we find that petitioner had graduated in the year 2019 and so, the degree/ certificate obviously shall bear the same year of passing out i.e. 2019 only. The fact remains that Principal of her college had written to the Dean of the University to rectify the clerical mistake in the enrollment numbers in respect of petitioner and others and therefore, petitioner's inability to produce it at the time of interview cannot be negated.

20. Upon further analyzing the Notification dated 28.10.2020 issued by the UPSC, we also find that with regard to those candidates who are studying in the final year/ semester degree course and are yet to get degree, liberty has been granted to submit proof of passing the degree examination at the time of commencement of the course; though petitioner's emails seeking some time to produce the degree has remained unanswered.

21. The Supreme Court in Charles K. Skaria (Supra), with respect to three candidates who were admitted by the selection committee but ousted for not producing the certificate of diploma, directed creation of a seat by observing and holding as under:-

"22. The present case is a capital illustration of nominalism battling with realism for judicial success. Both sides admit that the appellants before us had secured diplomas. They further admit (ignoring for a moment the submission on 2% for

outsiders) that if the diploma scores were added, the applicants, by the measure of marks, deserve to be selected, provided the diploma obtained in the examination held in 1979 is within time. Then, why did the High Court upset their selection? Because the certificates of diploma were not attached to the applications and communication by the Registrar of the University to the selection committee was an unauthorised mode of proof, deviating from the prospectus, though authentic in fact. Two flaws vitiate this verbally virtuous approach. True, the prospectus directs that certificates shall be produced along with the applications for admission. The purpose obviously is to have instant proof of the qualification.

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28. To dismiss an appeal is merely to declare that judicial remedy will not issue and not that by other processes justice should not be sought or granted. From the humane perspective and with a view to helping Appellant 1 to pursue his relief through the university or other appropriate State agency, we directed the impleadment of the Indian Medical Council which is the statutory body concerned, at the national level, with higher medical degrees and courses. The Medical Council has not appeared before the court though its presence would have helped the forensic process to heal the fractured academic course. But we cannot wait longer. It behoves the State to give academic justice — not legal remedy — to Appellant 1 if circumstances permit, having regard to the fact that, with diploma qualification, he has spent months in doing his ophthalmology degree course. In law he fails, in justice he need not, if marginal adjustments by increasing one seat more were possible without injury to academic efficiency. What we mean is that though Appellant 1 has no legal claim to a seat, the overall circumstances will merit compassionate consideration, and we direct the Kerala University and the Indian Medical Council to permit him to complete his course by adding one more seat, for this year only, to the ophthalmic degree course.”

22. In *Dolly Chhanda (Supra)*, the Supreme Court in an appeal filed against the judgment and order passed by the High Court of Orissa, whereby petitioner therein was denied admission to MBBS Course, though had passed out JEE-2003 but could not produce the ‘category certificate’ in requisite form, had observed and held as under:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of

reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

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9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29-6-2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year."

23. In DR. Shidore Shital Mhatardeo (Supra), this Court dealt with a case wherein a direction was sought to the National Board of Examination to allot seat to the petitioners therein pursuant to final round of counseling which was held on 21.06.2019, though one of the petitioner was able to obtain degree certificate on 24.06.2019 and the other 30.06.2019 i.e. after the cut off date, allotted seat and observed and held as under:-

"95. The concerned Counselling Committee of the NBE, in my view, lost focus of the fact that cases of the petitioners were poised at the stage of verification of documents and/or certificates to enable it to conclude that they in point of fact met the eligibility criteria, the eligibility criteria being acquisition of MBBS degree. No candidate can claim admittance to a postgraduate course unless he or she has obtained the basic degree (with stipulated percentage wherever provided on or before cut-off date); as there can be no dilution qua the eligibility criteria. Those who haven't will have to await admittance in the following session. However, those who have passed may rely upon documents to establish the factum of having qualified the MBBS course.

96. The question is should such candidates not be given a greater leeway by interpreting the provision in issue purposefully and if I may say so more meaningfully. This is especially so when there was enough and more material already on record for concerned counselling authority to gather that both petitioners had in their possession acquired the basic qualification i.e. MBBS degree.

97. Obeisance to letter (and that too not completely) rather than the object of the provision led to the unfair denial of seats to the petitioners.

98. In this context let me advert to only one document each which was placed before the Counselling Committee by the petitioners. While Dr. Shidore had produced a "Passing Certificate" dated 23.02.2016, Dr. Jaya had produced a "Provisional Certificate" dated 06.11.2004. Both the documents bore the signatures of the competent authorities in the respective universities.

99. The question then which the NBE needed to ask itself was should it not give the petitioners the leeway to produce the original MBBS degree certificate or a letter from the competent authority, latest by the date when they joined the allotted institute? In my view, NBE ought to have granted that latitude to the petitioners.

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110. The petitioners, in fact, perhaps given their rank, had put all their eggs in one basket. Therefore, to deny the petitioners claim for a seat in DNB (Post MBBS) Course when seats are available would be, in my view, both unfair and unreasonable. I do realize that there is a very forceful argument advanced on behalf of the NBE that the concerned courses have already commenced.

111. This argument needs consideration but then one cannot lose sight of the fact that because a Court is inundated with matters, it cannot, even if it wants, adjudicate upon all causes on the first date of institution. These are matters, which, as colloquially put, want adjudication "as of yesterday". Therefore, interim orders of necessity have become the mainstay in such jurisdictions.

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135. If one were to distill the ratio of the judgments adverted to above what would come through is that while there can be no dilution of the essential eligibility criteria prescribed for gaining admission to the course, a distinction has to be drawn between the factum of a candidate having acquired the eligibility qualification(s) on or before the cut-off date as against the proof required to establish this fact.

136. A mere inability to produce the original degree or certificate on the cut-off date cannot be the reason for denying admission as long as there is material available with the Counselling Committee or the authority charged with the responsibility of admitting the student which is demonstrative of the fact that a candidate has acquired the eligibility qualification or met the eligibility criteria.

137. Apart from anything else, such conditions that require the production of original certificates depicting attainment of eligibility criteria by a certain date

have been held by the courts as being directory and not mandatory.”

24. In support of her case, petitioner has also placed reliance upon DOPT OM No. 35015/2/93-Esst(d) Dated 09.08.1995 to submit that at the request of a candidate two months time can be granted. In our considered opinion the aforesaid OM is in respect of extension of time pursuant to “appointment” to Central Civil Services and due to delay in joining, revival of offers of appointment and determination of seniority. Pertinently, this OM is in extension of earlier OM NO. 9/27/71-Estt (D) dated 06.06.1978 with respect to issuance of offer of appointment and contents thereof; whereas in the present case the petitioner was sent call up letter for ‘interview’ and was not permitted to appear in interview and does not relate to ‘appointment’. Hence, this Notification is of no support to the case of petitioner.

25. Applying the dictum of Supreme Court in afore-noted cases to the case in hand, we find that petitioner was a graduate on the day her interview was scheduled on 29.01.2022. She had presented her marks-sheets bearing authenticated stamp and signature of the college Head/ Principal, however since she could not produce her degree at the time of verification of documents prior to the interview, she was not permitted to appear in the interview. The fact remains that petitioner’s degree was under corrections before the concerned University and also the final year/semester students, who were yet to graduate were permitted to produce their degree at the time of commencement of the course. So, there was no bar upon the respondents to extend the similar concession to petitioner. Even petitioner’s request for extension of time to produce her degree via e-mails remained unanswered. This Court has been informed that the course for which petitioner sought admission, has already commenced, but in view of the fact that respondents have hypo technically denied opportunity to petitioner to present her degree at the stage when final/semester year students were permitted to show the same at the commencement of the course, we hereby direct the respondents to forthwith issue a fresh call letter for SSB interview for course of SSCW (NT)-29 (APR 2022) and constitute a fresh panel to interview petitioner within two weeks.

26. We hereby make it clear that if petitioner is found eligible and 29th SSC Women (NT) (UPSC) Course has already commenced, the petitioner shall be allowed to join the next Batch, however, with her seniority and consequential benefits of 29th Batch.

27. With directions, as aforesaid, the present petition and pending application are accordingly disposed of.