REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3600 OF 2019
(Arising from SLP(C) No.4210 of 2019)

Food Corporation of India ..Appellant

Versus

Rimjhim ..Respondent

J U D G M E N T

M.R. SHAH, J.

Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.08.2018 passed by the Division Bench of the High Court of Delhi at New Delhi in L.P.A. No. 383 of 2018, by which the Division Bench has allowed the said appeal preferred by the respondent herein – the original writ petitioner and has quashed and set aside the judgment and order passed by the learned Single Judge of the High Court, dismissing the

writ petition preferred by the original writ petitioner and consequently quashed and set aside the action of the Food Corporation of India (hereinafter referred to as the 'FCI') rejecting the case of the original writ petitioner for appointment on the post of Assistant Grade-II(Hindi), the original respondent – the appellant herein has preferred the present appeal.

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

That the appellant herein – the original respondent – FCI invited applications for the post of Assistant Grade-II (Hindi) by publishing an advertisement on 14.02.2015. The original writ petitioner applied for the said post on 16.03.2015. Her application form was accepted and she was issued an admitted card for the written test to be conducted by the FCI. The written test was held on 4.10.2015. The original writ petitioner was short-listed. She was ranked sixth in the merit list. A call letter was issued to her on 31.12.2015. She was asked to report at the Zonal office of the FCI and produce her original documents, which were retained by the FCI and after verification, the same were returned. However, she did not receive the final letter of appointment. The list of selected candidates was published on

the website of the FCI on 2.5.2016, in which her name did not figure. Therefore, a representation was submitted by her on 6.5.2016, which was not considered favourably. Therefore, the original writ petitioner approached the High Court by way of a writ petition. Before the learned Single Judge, it was the case on behalf of the FCI that the original writ petitioner was not finally selected as she did not produce any experience certificate to show that she had one year's experience of translation from English to Hindi and vice-versa. It should be noted that before the learned Single Judge, the original writ petitioner produced the certificates issued by her erstwhile employer in support of her case that she had an experience of translation from English to Hindi and vice-versa.

3.1 The learned Single Judge dismissed the writ petition holding that since the original writ petitioner did not have requisite experience of one year for translation work from English to Hindi and vice-versa, the FCI was justified in denying her employment.

4. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge dismissing the writ petition, the original writ petitioner preferred Letters Patent

Appeal before the Division Bench of the High Court. By the impugned judgment and order, the Division Bench has allowed the appeal preferred by the original writ petitioner and has quashed and set aside the judgment and order passed by the learned Single Judge dismissing the writ petition and consequently has set aside the action of the FCI rejecting the case of the original writ petitioner. While passing the impugned judgment and order, the Division Bench has observed and held that considering the certificates produced by the original writ petitioner dated 14.01.2015 and 18.07.2016, the original writ petitioner can be said to have the requisite experience of translation from English to Hindi and vice-versa, and considering the fact that the original writ petitioner ranked 6th in the merit list, therefore otherwise was found to be meritorious, the Division Bench of the High Court held that FCI was not justified in denying the appointment to the original writ petitioner.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the FCI has preferred the present appeal.

5.1 Shri N.K. Kaul, learned Senior Advocate has appeared on behalf of the FCI and Shri R.K. Raizada, learned Senior

Advocate has appeared on behalf of the respondent herein – the original writ petitioner.

5.2 Shri N.K. Kaul, learned senior advocate appearing on behalf of the appellant – FCI has vehemently submitted that the Division Bench of the High Court has materially erred in setting aside the action of the FCI in rejecting the case of the original writ petitioner.

5.3 It is vehemently submitted by Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the appellant – FCI that it is an admitted position that as per the advertisement, one of the essential requirements was that the candidate must have one year's experience of translation from English to Hindi and vice-versa. It is submitted that therefore a candidate was required to submit the one year's experience certificate/proof of translation from English to Hindi and vice-versa at the time of submitting the application. It is submitted that admittedly the original writ petitioner did not produce any certificate of her having one year's experience of translation from English to Hindi and vice-versa.

5.4 It is vehemently submitted by Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the appellant – FCI that certificate which was produced by the original writ petitioner

dated 27.08.2014, which was produced along with the application, by no stretch of imagination, can be said to be a certificate of one year's experience of translation from English to Hindi and vice-versa, as required. It is submitted that what was produced by the original writ petitioner was a relieving-cum-experience letter. It is submitted that therefore the FCI was justified in not appointing the original writ petitioner as the original writ petitioner did not produce any experience certificate to fulfil the eligibility criteria. Relying upon clauses 28, 32, 33, 35 and 37 of the advertisement, it is submitted by Shri Kaul, learned Senior Advocate appearing on behalf of the FCI that the FCI was justified in not appointing the original writ petitioner.

5.5 It is further submitted by Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the appellant – FCI that the Division Bench of the High Court has materially erred in considering the certificates produced subsequently, namely, certificates dated 14.01.2015 and 18.07.2016. It is submitted that as such the experience certificate was required to be produced at the time of submitting the application and/or at least at the time of verification of documents. It is submitted that the certificates dated 14.01.2015 and 18.07.2016 upon which the

reliance has been placed by the original writ petitioner were neither produced by the original writ petitioner along with the application form nor even at the time of verification of the documents. It is submitted that therefore the Division Bench of the High Court has materially erred in considering those certificates while holding that the original writ petitioner was having one year's experience of translation from English to Hindi and vice-versa, as required as per the advertisement.

5.6 It is vehemently submitted by Shri N.K. Kaul, learned Senior Advocate appearing on behalf of the appellant – FCI that if the impugned judgment and order passed by the Division Bench of the High Court is accepted, in that case, there shall not be any sanctity of the requirement as per the advertisement. It is submitted that if the candidate is permitted to produce the relevant experience certificate subsequently and that too after the selection process is over, in that case, there shall not be any sanctity of the relevant clauses of the advertisement and/or the procedure which is required to be followed as per the advertisement and there shall not be any end to the selection process.

5.7 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the Division Bench of the High Court.

6. The present appeal is opposed by Shri R.K. Raizada, learned Senior Advocate appearing on behalf of the original writ petitioner.

6.1 It is vehemently submitted by the learned Counsel appearing on behalf of the original writ petitioner that in the facts and circumstances of the case and considering the fact that the original writ petitioner was, in fact, having the requisite experience of translation from English to Hindi and vice-versa, and considering the fact that on merits even the original writ petitioner ranked 6th in the merit list, the Division Bench of the High Court has not committed any error in quashing and setting aside the action of the FCI in rejecting the case of the original writ petitioner.

6.2 It is vehemently submitted by the learned Counsel appearing on behalf of the original writ petitioner that as rightly observed by the Division Bench, at the most, non-production of the requisite experience certificate can be said to be mere

irregular which shall not defeat the case of a meritorious candidate. It is submitted that as such in the present case in the advertisement it was not specifically mentioned that a candidate has to produce the experience certificate along with the application. It is submitted that the advertisement speaks about the essential eligibility criteria. It is submitted that therefore when in the advertisement it was not specifically mentioned that a candidate has to produce the certificate/experience certificate along with the application, non-production of the experience certificate along with the application cannot be said to be fatal so as to deny the legitimate right of the original writ petitioner to consider her case for appointment on merits.

6.3 It is submitted by the learned Counsel appearing on behalf of the original writ petitioner that as such in the counter affidavit filed by the FCI before the High Court, the FCI did not specifically disputed and/or doubted the certificates dated 14.01.2015 and 18.07.2016.

6.4 It is further submitted by the learned Counsel appearing on behalf of the original writ petitioner that as rightly observed by the Division Bench of the High Court, when the original writ petitioner appeared before the authority for

verification of the documents, if the FCI would have any doubt about the original writ petitioner having not fulfilled any eligibility criteria, more particularly one year's experience, considering clause 33 of the advertisement, the FCI/authority could have called for any additional documentary evidence in support of educational qualification and experience of the applicant. It is submitted that therefore in the facts and circumstances of the case and after having been satisfied that the original writ petitioner was fulfilling all the eligibility criteria including one year's experience of translation from English to Hindi and vice-versa and having found that the original writ petitioner ranked 6th in the merit list and therefore otherwise found to be meritorious, the Division Bench of the High Court has rightly set aside the action of the FCI in rejecting the case of the original writ petitioner.

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

7. We have heard learned Senior Advocates appearing on behalf of the respective parties at length.

7.1 At the outset, it is required to be noted that the original writ petitioner was denied the appointment on the post of

Assistant Grade-II (Hindi) on the ground that the original writ petitioner did not produce the certificate of one year's experience of translation from English to Hindi and vice-versa along with the application and/or even at the time of verification of documents. According to the FCI, one year's experience of translation from English to Hindi and vice-versa was essential to become a candidate eligible for the post in question. It is required to be noted that the aforesaid stand was taken by the FCI for the first time before the learned Single Judge in a writ petition filed by the original writ petitioner. Therefore, the original writ petitioner produced the certificates dated 14.01.2015 and 18.07.2016 issued by her erstwhile employer, in support of her case that she was having one year's experience of translation from English to Hindi and vice-versa.

8. The learned Single Judge dismissed the writ petition solely relying upon and/or considering the document produced by the original writ petitioner as relieving-cum-experience letter dated 27.08.2014 and opined that from the said letter, it cannot be said that the original writ petitioner had one year's experience of translation from English to Hindi and vice-versa, which was the essential requirement to become a candidate eligible.

However, the learned Single Judge did not consider the certificates dated 14.01.2015 and 18.07.2016 issued by the erstwhile employer of the original writ petitioner. If the aforesaid two certificates are considered, in that case, it can safely be said that the original writ petitioner was having one year's experience of translation from English to Hindi and vice-versa and therefore fulfilled all the essential requirements/eligibility criteria. As observed hereinabove, and it can be seen from the counter affidavit filed on behalf of the FCI, filed before the High Court, the FCI have not doubted the aforesaid two certificates. Their only contention seems to be that as the original writ petitioner did not produce the certificate of one year's experience of translation from English to Hindi and vice-versa either along with the application or even at the time of verification of documents, the aforesaid certificates cannot be considered at all and therefore in absence of those certificates and/or any certificate of having one year's experience in translation from English to Hindi and vice-versa, which was the essential requirement, the original writ petitioner cannot be said to have fulfilled the eligibility criteria/essential requirement of having one year's experience.

9. So far as the case on behalf of the FCI that as the original writ petitioner did not produce the certificate of one year's experience along with the application is concerned, it is required to be noted that in the advertisement there was no such requirement. What is provided in the advertisement is that a candidate must have one year's experience of translation from English to Hindi and vice-versa along with the other qualifications. The advertisement does not provide specifically and/or provide that a candidate shall produce the certificate of experience along with the application. Therefore, the Division Bench of the High Court has rightly observed that non-production of one year's experience certificate along with the application cannot be said to be fatal to the case of the original writ petitioner and on that ground the original writ petitioner could not have been denied the appointment, if otherwise she is found to be meritorious. We are in complete agreement with the view taken by the Division Bench of the High Court.

10. Now so far as the submission on behalf of the FCI that the original writ petitioner did not produce the certificate of one year's experience even at the time of verification of documents and what was produced was the relieving-cum-experience letter

dated 27.08.2014 along with the application and on the basis of which it cannot be said that the original writ petitioner was having one year's experience is concerned, it is required to be noted that at the time of verification of the documents, the original writ petitioner was not informed/told that the letter dated 27.08.2014 is not sufficient to establish the essential requirement of one year's experience. The original writ petitioner was also not told/informed at the time of verification of documents on 18.01.2016 that certificate of one year's experience is lacking.

10.1 Clause 33 of the advertisement, which is also considered by the Division Bench of the High Court, provides that the management reserves the right to call for any additional documentary evidence in support of educational qualification & experience of the applicant. As found from the record and even as observed by the Division Bench, the management at the time of verification of the documents, did not thought it fit to call upon the applicant to produce any additional documentary evidence in support of her experience. The management could have called for any additional documentary evidence in support of experience of the applicant. If the management would have called for the

additional documentary evidence in support of experience of the applicant, in that case, the original writ petitioner would have produced the certificates, which are subsequently produced before the High Court. At the cost of the repetition, it is to be noted that the FCI has not doubted the certificates dated 14.01.2015 and 18.07.2016 issued by the erstwhile employer of the original writ petitioner. Therefore, the Division Bench of the High Court has rightly observed and held considering the aforesaid two certificates that the original writ petitioner was having one year's experience of translation from English to Hindi and vice-versa and therefore fulfilled all the requisite essential requirements/qualifications and therefore she was required to be considered for appointment on merits.

11. 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 "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 paragraphs 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 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.

xxx xxx xxx

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 over-emphasis 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 mark-lists from universities, why, even bail orders from courts and Government Orders from public offices. This

> frustrating delay was by-passed 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 guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks."

11.1 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)*.

12. 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.

13. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[L. NAGESWARA RAO]

NEW DELHI;
APRIL 09, 2019.

.....J.
[M.R. SHAH]