HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 13292/2020

Payal W/o Arjun Thamir, Aged About 29 Years, R/o Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

Connected With

S.B. Civil Writ Petition No. 13307/2020

Laxmi W/o Dhanpal Harijan, Aged About 29 Years, R/o Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13315/2020

Laxman Harijan S/o Chapla Harijan, Aged About 40 Years, R/o Khandu Colony, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13319/2020

Sunita W/o Vijay, Aged About 29 Years, R/o Dabgar Colony, District Banswara (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.

2. The Commissioner Municipal Council, District Banswara (Raj.)

----Respondents

S.B. Civil Writ Petition No. 13332/2020

Nilesh S/o Ramesh Thamir, Aged About 30 Years, R/o Khandu Colony, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13435/2020

Dinesh S/o Bhikha Harijan, Aged About 38 Years, R/o Shri Ram Colony, District Banswara (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13441/2020

Anish S/o Dhulji, Aged About 29 Years, R/o Behind Near Amba Mata Mandir, District Banswara (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.)

----Respondents

S.B. Civil Writ Petition No. 13444/2020

Shankar S/o Dadu, Aged About 29 Years, R/o Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary,

Department Of Local Self Government, Secretariat, Jaipur.

2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13454/2020

Smt. Chanda Kumari D/o Natwar Lal W/o Kapil Harijan, Aged About 40 Years, R/o Behind Vinod Talkies, Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13456/2020

Chanda W/o Cheeku Harijan, Aged About 31 Years, R/o Khandu Colony, District Banswara (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13461/2020

Kavita W/o Ravi Gouri, Aged About 29 Years, R/o Behind Amba Mata Temple, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13462/2020

Radha W/o Shankar Harijan, Aged About 28 Years, R/o Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13465/2020

Mukesh S/o Mangi Lal, Aged About 32 Years, R/o Khandu Colony, District Banswara (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.)

----Respondents

S.B. Civil Writ Petition No. 13469/2020

Naresh S/o Ganpat Lal, Aged About 33 Years, R/o Behind Mangalam Complex, District Banswara (Raj.)

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.)

----Respondents

S.B. Civil Writ Petition No. 13470/2020

Shankar S/o Mukesh Harijan, Aged About 21 Years, R/o Kundala, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.)

----Respondents

S.B. Civil Writ Petition No. 13473/2020

Anita W/o Rajesh Harijan, Aged About 27 Years, R/o Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.)

----Respondents

S.B. Civil Writ Petition No. 13480/2020

Smt. Shilpa W/o Shri Mahaveer Harijan, Aged About 27 Years, Resident Of Behind Ambamata Mandir, Mahaveer Colony, Banswara.

----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary, Local Self Department, Government Of Rajasthan, Secretariat, Jaipur.
2. Director, Department Of Local Bodies, Rajasthan, Jaipur.
3. The Commissioner, Municipal Council, Banswara.

----Respondents

S.B. Civil Writ Petition No. 13481/2020

Mahaveer S/o Shri Nathu Rathore, Aged About 31 Years, Resident Of Behind Ambamata Mandir, Mahaveer Colony, Banswara.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Local Self Department, Government Of Rajasthan, Secretariat, Jaipur.
2. Director, Department Of Local Bodies, Rajasthan, Jaipur.
3. The Commissioner, Municipal Council, Banswara.

----Respondents

S.B. Civil Writ Petition No. 13485/2020

Radha W/o Balu Lal, Aged About 38 Years, R/o Behind Vinod Takiz, Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara

(Raj.).

----Respondents

S.B. Civil Writ Petition No. 13490/2020

Pankaj Harijan S/o Rama Harijan, Aged About 34 Years, R/o Behind Vinod Takiz Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13502/2020

Anju W/o Mukesh Thamir, Aged About 30 Years, R/o Khandu Colony, District Banswara (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13519/2020

Smt. Chanda W/o Sanjay, Aged About 35 Years, R/o Behind Vinod Takiz Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13520/2020

Kalpana W/o Dadu Harijan, Aged About 41 Years, R/o Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.

2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13523/2020

Vinita W/o Anil Harijan, Aged About 28 Years, R/o Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 13545/2020

Mukesh Jogi S/o Shri Purnath Jogi, Aged About 35 Years, R/o Baba Basti, Banswara, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Department Of Local Bodies, Jaipur, Rajasthan.
2. The Commissioner, Municipal Council, Banswara, Rajasthan.

----Respondents

S.B. Civil Writ Petition No. 13547/2020

Renuka W/o Shri Dipak Harijan, Aged About 46 Years, R/o Baba Basti, Banswara, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Department Of Local Bodies, Jaipur, Rajasthan.
2. The Commissioner, Municipal Council, Banswara, Rajasthan.

----Respondents

S.B. Civil Writ Petition No. 13549/2020

Rekha W/o Shri Ganesh Harijan, Aged About 32 Years, R/o Baba Basti, Banswara, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Department Of

Local Bodies, Jaipur, Rajasthan.

2. The Commissioner, Municipal Council, Banswara, Rajasthan.

----Respondents

S.B. Civil Writ Petition No. 13553/2020

Ganpat S/o Shri Ram Singh Harijan, Aged About 28 Years, R/o Baba Basti, Banswara, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Department Of Local Bodies, Jaipur, Rajasthan.
2. The Commissioner, Municipal Council, Banswara, Rajasthan.

----Respondents

S.B. Civil Writ Petition No. 13555/2020

Kamla W/o Shri Harish Gauri, Aged About 45 Years, By Caste Harijan, R/o Near Kabristan, Behind Ramdev Temple Banswara, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Department Of Local Bodies, Jaipur, Rajasthan.
2. The Commissioner, Municipal Council, Banswara, Rajasthan.

----Respondents

S.B. Civil Writ Petition No. 211/2021

Maya W/o Ramesh Harijan, Aged About 36 Years, R/o Baba Basti, District Banswara (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner, Municipal Council, District Banswara (Raj.).

----Respondents

S.B. Civil Writ Petition No. 1164/2021

Narayan Gauri S/o Nathu Ji, Aged About 36 Years, R/o Behind Vinod Takiz, Baba Basti, District Banswara (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.)

----Respondents

S.B. Civil Writ Petition No. 1528/2021

Indra W/o Prabhu, Aged About 37 Years, R/o Shyampura, Banjara Basti, Banswara (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. The Commissioner Municipal Council, District Banswara (Raj.)

----Respondents

S.B. Civil Writ Petition No. 2675/2021

Smt. Suman W/o Shri Parveen Harijan, Aged About 23 Years, R/o Behind Police Choki, Padal Road, Ghatol, District Banswara.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Local Bodies, Government Of Rajasthan, Secretariat, Jaipur.
2. The Director, Department Of Local Bodies, Rajasthan, Jaipur.
3. The Executive Officer, Municipal Board, Banswara.

----Respondents

S.B. Civil Writ Petition No. 2788/2021

Maheshwar S/o Shri Amba Lal Harijan, Aged About 41 Years, R/o Village Post Surwaniya Tehsil And District Banswara, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Department Of Local Bodies, Rajasthan, Jaipur.
2. The Commissioner, Municipal Council, Banswara, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Lokesh Mathur Mr. Sanjay Raj Pandit Mr. Rakesh Matoria Mr. Surendra Singh Mr. Mahaveer Singh Mr. Suryadeep Mr. Prashant Kumar Sharma
For Respondent(s)	:	Mr. Rajesh Panwar, Sr. Advocate & AAG assisted by Mr. Ayush Gehlot & Mr. Monal Chugh Mr. P.R. Mehta

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

REPORTABLE

02/08/2024

1. Since the issue involved in all these writ petitions is identical, therefore, they are being heard and decided by this common order.

2. For proper adjudication of the case, the facts of S.B. Civil Writ Petition No.13292/2020 (Payal Vs. The State of Rajasthan & Anr.) are being taken into consideration.

3. Briefly noted the facts in the present writ petition are that the respondents initiated the process of recruitment for appointment on the post of Safai Karmachari in accordance with Rajasthan Municipalities (Safai Employee Service) Rules, 2012 (hereinafter referred to as "the Rules of 2012") by issuing an advertisement dated 13.04.2018. A corrigendum to the advertisement dated 13.04.2018 was issued on 28.04.2018, whereby, the requirement of having counter signature of the Head of the Department on the experience certificate issued by a

contractor/placement agency was dispensed with. Thereafter, an order dated 17.05.2018 was issued by the Department of Local Self Government providing guidelines for the above recruitment. The eligible persons including the petitioner submitted her candidature for the post of Safai Karamchari and on being found successful, the appointment order dated 14.07.2018 was issued. While the petitioner was discharging her duties as Safai Karamchari, a show cause notice was issued by the respondent No.2 on 23.11.2020 purportedly in compliance of the directions issued by Hon'ble Division Bench of this Court in the case of ***Virendra Kumar & Ors. vs. State of Rajasthan & Anr. : D.B.S.A.W. No.1733/2018*** decided on 09.08.2019. The petitioner submitted reply to the same, however, the services of the petitioner were terminated vide order dated 03.12.2020 by the respondent No.2 on the ground that her experience certificate is not certified by the competent authority. Hence, the present writ petition has been filed.

4. Reply to the writ petition was filed by the respondents and thereafter, in pursuance of the directions issued by this Court on 06.04.2023, an additional affidavit has also been filed by the respondents.

5. Learned counsel for the petitioners vehemently argued that the petitioners were given appointment after following due process of law and they discharged their duties after appointment on the post to the utmost satisfaction of the respondent-authorities. The post of Safai Karamchari is the lowest post in the respondent-Department on which the petitioners were given appointment. He

submits that the petitioners were performing the duties of Safai Karamchari and they obtained the experience certificate from the Sanitary Inspector under whom they were discharging their duties and the certificates issued by the other authorities under whom, they had performed the duties as Safai Karamchari for a period of one year or more and therefore, the same was produced before the respondent-authorities in support of their eligibility for experience. Since the petitioners belong to the lowest rung of the society and are not literate enough to understand the consequences of not producing the certificate issued by the Commissioner/Deputy Commissioner of the respondent-Department, they produced a certificate of the Sanitary Inspector showing the experience of work performed by them on the post of Safai Karamchari.

6. Learned counsel for the petitioners further submits that even as per Rule 6 of the Rajasthan Municipalities (Safai Employee Service) Rules, 2012, it is not mandatory to obtain a certificate from a particular authority or any Municipality, Central or State Government Departments, Autonomous Bodies/Semi-Government Institutions. He also submits that since the Rule does not mandate the Authority from whom the certificate is to be obtained, then the conditions mentioned in the notification/advertisement dated 13.04.2018 that the certificate should be under the signature of a particular Authority is *de hors* the rules.

7. Learned counsel for the petitioners further submits that the certificates produced by the petitioners are absolutely genuine and have been issued by none other than the Sanitary Inspector of the

respondent-Department, therefore, there is no reason for the respondents to terminate the services of the petitioners on the ground that the certificates produced by them are not as per the prescribed norms and rules.

8. Learned counsel for the petitioners further submits that the Division Bench of this Court in the case of ***Virendra Kumar*** (supra) never directed the respondents to terminate the services of the petitioners and other persons in the manner the same has been done. The directions of the Hon'ble Division Bench was only to the extent that the matter should be inquired into and the respondents shall also ensure that names of ineligible candidates or the persons who made false declarations may suitably be removed in accordance with law. But the respondents under the garb of the directions issued by the Hon'ble Division Bench in the case of ***Virendra Kumar*** (supra) have terminated the services of the petitioners without any basis and in gross violation of the directions issued.

9. Learned counsel for the petitioners submits that in the additional affidavit filed by the respondents in pursuance of the directions issued by this Court on 06.04.2023, there is not even a whisper that the certificates issued and produced by the petitioners are false or fabricated. Learned counsel submits that what is relevant in the present case is the certificate showing the fact that a candidate has performed the duties and has to his credit the experience for a particular period which is relevant for holding a post. It is not the issue that which authority has issued the same. Once, it is established that a particular person has

gained experience for working on the post and the same has been certified by the concerned authority of the respondent-Department, then it will not make any difference whether the same has been issued by the Commissioner/Deputy Commissioner or Sanitary Inspector, much less when the Rules do not prescribe the authority issuing such certificate.

10. To buttress his contention, learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Dolly Chhanda vs. Chairman, JEE & Ors.,*** reported in ***AIR 2004 SC 5043*** and ***Food Corporation of India vs. Rimjhim*** reported in ***AIR 2019 SC 1954***. He, therefore, prays that the writ petitions may be allowed and the termination order dated 03.12.2020 may be quashed and set-aside.

11. Per contra, learned counsel for the respondents has vehemently submitted that in pursuance of the directions issued by this Court in the case of ***Virendra Kumar*** (supra) on 09.08.2019, the respondents have instituted an inquiry and in pursuance of the inquiry report, show cause notices were issued, to which the replies have been filed by the petitioners and since the respondent authorities were not satisfied with the replies filed by the petitioners, therefore, their services have been terminated considering the fact that the experience certificate produced by them is not under the signature of the authority mentioned in the advertisement/notification dated 13.04.2018.

12. Learned counsel for the respondents further submits that in pursuance of the directions issued by the competent authority on 06.04.2023, a chart was prepared and it was found that there is

no record with respect to the certificate issued to the petitioners by the respondent-Urban Local Body and therefore, it could not be verified that whether a particular person rendered the services as mentioned in his experience certificate. Learned counsel for the respondents, therefore, submits that the writ petitions are devoid of merit and the same should be dismissed.

14. I have considered the submissions made at the Bar and have gone through the relevant records of the case.

15. The chronology of the events mentioned in the preceding paras shows that in pursuance of the advertisement issued by the respondent-Department on 13.04.2018 for filling-up the post of Safai Karamchari, the petitioners along with other candidates applied for the same. Considering their candidatures to be falling within the four corners of the eligibility criteria, the respondents selected the petitioners and gave them appointment on the post of Safai Karamchari. Thereafter, in pursuance of the directions issued by this Court in the case of ***Virendra Kumar*** (supra), the matter was inquired into by the respondents and finding the infirmity in the experience certificates, show cause notices were issued. The reply to the show cause notice was submitted by the petitioners and since the respondents were not satisfied with the reply, the services of the petitioners were terminated. The reason for termination mentioned is that the experience certificates produced by the petitioners were not signed by the authority mentioned in the advertisement/notification dated 13.04.2018. Further, it is mentioned that in pursuance of the directions issued by this Court

in the case of ***Virendra Kumar*** (supra), their services are being terminated.

16. A perusal of the judgment passed by the Division Bench of this Court in the case of ***Virendra Kumar*** (supra) shows that there is no direction to the respondents to terminate the services of the persons like the petitioners but the direction is only to examine the matter and to discharge the services of those persons who are ineligible or those who made false declaration. Therefore, the removal was required to be undertaken in accordance with law. Since the petitioners herein were fully eligible for appointment on the post of Safai Karamchari, therefore, the respondents have wrongly taken the shelter of the judgment by passing the order dated 03.12.2020.

17. Secondly, the ground of termination is that the experience certificates produced by the petitioners were not in accordance with the rules. For brevity, Rule 6 which has been amended on 11.04.2018 reads as under:-

> "A candidate for direct recruitment to the post of safai employee must have minimum one year experience as a safai worker/employee in any Municipality, Central or State Government Departments, Autonomous Bodies/Semi Government institutions constituted, by or under an order of the Central or State Government including person appointed on contract basis or through placement agencies. The widow and divorcee women may be given preference."

18. A perusal of Rule 6 shows that a candidate for direct recruitment to the post of Safai Karamchari must have minimum one year experience as a Safai worker/employee in any Municipality, Central or State Department Autonomous Bodies/ Semi Government Institutions constituted by or under an order of

the Central or State Government including person appointed on contract basis or through placement agencies. Therefore, by no stretch of imagination, it can be inferred that the certificate should be signed by a particular authority. Meaning thereby, the certificate showing the experience of one year of working on the post of Safai Karamchari/employee was sufficient to make a person eligible for holding the post of Safai Karamchari as per the rules. In the present case, since the experience certificate of one year was produced by the petitioners under the signatures of Sanitary Inspector, the same is meeting the test of eligibility as per the rules.

19. Further, the Hon'ble Supreme Court in the case of ***Dolly Chandra*** (supra) in para 7 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 or 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 for benefit or reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission or 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."

20. In the case of ***Food Corporation of India*** (supra), in para 11 held as under:-

> **"**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 (Para 8 of AIR), 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 guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.""

19. It is worthwhile to take note of the fact that in pursuance of the directions issued by this Court on 06.04.2023, the Additional Affidavit had been filed by the respondents. In the Additional Affidavit filed by the respondents, it has been mentioned that there is no record of the services rendered by the petitioners as verified by the Sanitary Inspector in the respondent department, therefore, it cannot be verified by the respondent-ULB that whether a particular person has performed the work of Safai Karamchari for one year or not. Learned counsel submits that what is relevant in the present case is the experience of work performed by the petitioners as Safai Karamchari and not the authority who has given the certificate under his signatures. Therefore, the candidature of the petitioners cannot be non-suited on the ground that the experience certificate is not under the signatures of the authority mentioned in the Advertisement/ Notification dated 13.04.2018 and nowhere in the additional affidavit it is stated that the certificates produced by the petitioners were false and fabricated.

20. In the considered opinion of this Court, if the provision of law does not provide for producing a certificate by a candidate under

the signatures of a particular authority, then the condition mentioned in the advertisement/Notification for producing the experience certificate under the signatures of a particular authority is clearly *de hors* the Rule. The provisions mentioned in the Rule will prevail over the condition enumerated in the advertisement. Therefore, the certificates of experience produced by the petitioners under the signatures of the Sanitary Inspector are meeting the provisions of the Rules and therefore, they are held to be valid. There is nothing on record to show that the certificates produced by the petitioners are forged or fabricated, therefore, for all intents and purposes, it is considered that the petitioners are holding the requisite eligibility criteria of experience for appointment on the post of Safai Karamchari.

21. This Court is also of the view that the appointment in the present case is for the post of Safai Karamchari and the candidates who had applied for the same belong to the lowest rung of the society and they are not literate enough to understand the niceties or effect of the signatures on the experience certificate. Since the petitioners performed their work as Safai Karamchari under the command of a Sanitary Inspector, therefore, they approached the authority concerned and got the certificates issued of the work performed by them unmindful of the fact that the same does not make the criteria laid down in the advertisement. They cannot be penalized for the same. The petitioners are poor, bonafide aspirants who have served the respondents for last six years in the respondent-Department though under the interim orders passed by this Court and

therefore, at this juncture, even the equity is in their favour and therefore, ends of justice will be met if they are allowed to continue on the post of Safai Karamchari shorn of the hyper-technical stand taken by the respondents for terminating their services.

22. In view of the discussion made above, the writ petitions merit acceptance and the same are allowed. The termination order dated 03.12.2020 is quashed and set aside.

23. Stay petition as well as other pending application(s), if any, shall stand disposed of.

(VINIT KUMAR MATHUR),J

101-129, 131, 133, 135-137-/Anil/-