

SUPREME COURT OF INDIA

Ramesh Kumar

Vs.

High Court of Delhi

(Deepak Verma and Dr. B.S. Chauhan JJ.)

Writ Petition (Civil) No.57 of 2008

01.02.2010

JUDGMENT

Dr.B.S.Chauhan, J

1. These two petitions have been filed under Article 32 of the Constitution of India for seeking directions to the respondents i.e. the High Court of Delhi and Govt. of NCT of Delhi to offer appointment to the petitioners on the posts in the cadre of District Judge.

2. The facts and circumstances giving rise to these petitions are that in order to fill up 20 vacancies in the cadre of District Judge in Delhi, the Respondent No.1, the High Court of Delhi issued an advertisement on 19.5.2007. Out of these 20 vacancies, 13 were to be filled up from the General Category candidates, 3 from Scheduled Castes candidates and 4 from Scheduled Tribes candidates. The petitioners who belong to Scheduled Castes category faced the selection process. The result was declared on 3.1.2008. All the three vacancies reserved for Scheduled Castes candidates could not be filled up as the Respondent No. 1 found only one person suitable for the post. The two petitioners herein were found unsuitable on the ground that they did not secure the required minimum marks in interview.

Hence, these petitions.

3. Shri V. Shekhar, learned senior counsel appearing for the petitioners has submitted that in view of decision taken by the Respondent No. 1, a candidate belonging to Scheduled Castes Category would be called for interview provided he secured 45% marks in written test. Only three candidates belonging to the said category stood qualified in the written test, thus, they could have been offered the appointment without asking them to complete the formality of facing the interview. It was not permissible for the Respondent No. 1 to fix minimum Bench Marks at the interview level also for the purpose of selection. The petitions deserve to be allowed and the respondents be directed to offer the appointment to the petitioners.

4. Per contra, Shri A. Mariarputham, learned senior counsel appearing for the respondents has vehemently opposed the petitions contending that mere passing the written test is not sufficient for appointment as some of the required qualities of a candidate can be assessed only in viva-voce/oral examination. The competent authority is permitted in law to fix the minimum marks at interview level also. In case, the candidate does not secure the marks so fixed, the candidate cannot claim the appointment to the post. Decision for fixing the cut-off marks in the written test and further for securing the minimum Bench Marks in the interview had been taken prior to initiation of selection process and was made public at the same time. The petitioners did not challenge the said criteria at the appropriate stage. Once they had appeared in the examination and could not succeed, petitioners cannot be permitted to take U-turn and challenge the selection process on this ground at all. The petitions lack merit and are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The advertisement dated 19.5.2007 provided that selection process would be in two stages as it would comprise of written examination carrying 750 marks and Viva-Voce carrying 250 marks. Respondent No.1, the Delhi High Court furnished detailed information about the pattern of selection process in the instructions annexed to the application form. It provided 50% minimum qualifying marks in the written examination as well as in the interview for General Category candidates and 45% for Scheduled Castes and Scheduled Tribes candidates.

“The relevant part of the said instruction reads as under:

"A candidate shall be eligible to appear in the viva-voce only in case he secures 50% marks in the written examination i.e.

aggregate of both parts (objective/descriptive) in the case of general category, and 45% marks in the case of reserved category.

Interview/viva-voce will carry 250 marks. A candidate of general category must secure a minimum of 50% marks and a candidate of reserved category must secure a minimum, of 45% marks in the viva-voce".

It was also provided that final merit list will be drawn up from among the candidates who have secured the stipulated minimum marks in the written examination and also the stipulated minimum marks in the viva-voce by adding up the marks in the written examination and the viva-voce.

| Name | Marks obtained in written test | Marks obtained in interview | Grand total | Result |
|-----------------|--------------------------------|-----------------------------|-------------|----------------------------|
| Ramesh Kumar | 357.50 | 105.00 | 462.50 | Not qualified in interview |
| Desh Raj Chalia | 341.50 | 83.00 | 424.50 | Not qualified in interview |

It is thus evident that the petitioners were found unsuitable on the ground that they failed to secure minimum Bench Marks i.e. 112.50 in interview.”

7. As per the submissions advanced by the learned counsel for the Respondent No.1, the High Court of Delhi had fixed the said criteria being empowered by the statutory provisions contained in The Delhi Higher Judicial Service Rules, 1970 (hereinafter called `the Rules"). Rule 10 thereof reads as under:

“The High Court shall before making recommendations to the Administrator invite applications by advertisement and may require the applicants to give such particulars as it may prescribe and may further hold such tests as may be considered necessary.”

(Emphasis added)

8. The aforesaid statutory provision undoubtedly does not fix any particular criteria or minimum Bench Marks either in the written test or in interview for the purpose of selection. Rule 10 provides that the High Court "may hold such tests as may be considered necessary", it impliedly provides for requirement necessary for assessment of suitability of a candidate. There is no challenge to the validity of Rule 10 in these writ petitions. The question does arise as to whether the Rules enabled the High Court to fix the minimum Bench Marks for interview?

9. In *State of U.P. v. Rafiquddin & Ors*¹, *Dr. Krushna Chandra Sahu & Ors. v. State of Orissa & Ors.*² *Majeet Singh, UDC & Ors. v. Employees' State Insurance Corporation & Anr.*³ and *K.H. Siraj v. High Court of Kerala & Ors.*⁴ this Court held that Commission/Board has to satisfy itself that a candidate had obtained such aggregate marks in the written test as to qualify for interview and obtained "sufficient marks in viva voce" which would show his suitability for service. Such a course is permissible for adjudging the qualities/capacities of the candidates. It may be necessary in view of the fact that it is imperative that only persons with a prescribed minimum of said qualities/capacities should be selected as otherwise the standard of judiciary would get diluted and sub-standard stuff may get selected. Interview may also be the best mode of assessing the suitability of a candidate for a particular position as it brings out overall intellectual qualities of the candidates. While the written test will testify the candidate's academic knowledge, the oral test can bring out or disclose overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a Judicial Officer.

10. Re-iterating similar views, this Court has given much emphasis on interview in *Lila Dhar v. State of Rajasthan & Ors.*⁵, and *Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.*⁶ stating that interview can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, co-operativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment,

ability to make decision, ability to lead, intellectual and moral integrity with some degree of error.

11. In *Shri Durgacharan Misra v. State of Orissa & Ors.*⁷ this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in *B.S. Yadav & Ors. v. State of Haryana & Ors.*⁸ *P.K. Ramachandra Iyer & Ors. v Union of India & Ors.*⁹ and *Umesh Chandra Shukla v. Union of India & Ors.*¹⁰ wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.

12. Similarly, in *K Manjusree v. State of Andhra Pradesh & Anr.*¹¹ this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

13. Thus, law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum Bench Marks for written test as well as for viva-voce.

14. In the instant case, the Rules do not provide for any particular procedure/criteria for holding the tests rather it enables the High Court to prescribe the criteria. This Court in *All India Judges' Association & Ors. v Union of India & Ors.*¹² accepted Justice Shetty Commission's Report in this regard which had prescribed for not having minimum marks for interview. The Court further explained that to give effect to the said judgment, the existing statutory rules may be amended.

“However, till the amendment is carried out, the vacancies shall be filled as per the existing statutory rules. A similar view has been reiterated by this Court while dealing with the appointment of Judicial Officers in *Syed T.A. Naqshbandi & Ors. v. State of J & K & Ors.*¹³ and *Malik Mazhar Sultan & Anr. v. Union Public Service Commission*¹⁴. We have also accepted the said settled legal proposition while deciding the connected cases, i.e., Civil Appeals @ SLP (Civil) Nos..... in CC 14852-

14854 of 2008 (*Rakhi Ray & Ors. v. The High Court of Delhi & Ors.*) vide judgment and order of this date. It has been clarified in *Ms. Rakhi Ray* (supra) that where statutory rules do not deal with a particular subject/issue, so far as the appointment of the Judicial Officers is concerned, directions issued by this Court would have binding effect.”

15. The view taken hereinabove is in conformity with the law laid down by this Court in *Nand Kishore v. State of Punjab*¹⁵, wherein it has been observed as under:-

“Their Lordship's decisions declare the existing law but do not enact any fresh law, is not in keeping with the plenary function of the Supreme Court under Article 141 of the Constitution, for the Court is not merely the interpreter of the law as existing but much beyond that. The Court as a wing of the State is by itself a source of law. The law is what the Court says it is.”

16. These cases are squarely covered by the judgment of this Court in *Hemani Malhotra v. High Court of Delhi*¹⁶ wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in *All India Judges' case* (supra) had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview.

17. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact-situation, the question of acquiescence would not arise.

18. In view of the above, as it remains admitted position that petitioner Ramesh Kumar had secured 46.25% marks in aggregate and as he was required only to have 45% marks for appointment, writ petition No.57 of 2008 stands allowed. The connected writ petition filed by Desh Raj Chalia as he failed to secure the required marks in aggregate, stands dismissed. The respondents are requested to offer appointment to petitioner Ramesh Kumar, at the earliest, preferably within a period of two months from the date of submitting the certified copy of this order before the Delhi High Court. It is, however, clarified that he shall not be entitled to get any seniority or any other perquisite on the basis of his notional entitlement. Service benefits shall be given to him from the date of his appointment. No costs.

¹*AIR 1988 SC 162*

²*AIR 1996 SC 352*

³*AIR 1990 SC 1104*

⁴*AIR 2006 SC 2339*

- ⁵*AIR 1981 SC 1777*
⁶*AIR 1987 SC 454*
⁷*AIR 1987 SC 2267*
⁸*AIR 1981 SC 561*
⁹*AIR 1984 SC 541*
¹⁰*AIR 1985 SC 1351*
¹¹*AIR 2008 SC 1470*
¹²*AIR 2002 SC 1752*
¹³*(2003) 9 SCC 592*
¹⁴*(2007) 2 SCALE 159*
¹⁵*(1995) 6 SCC 614*
¹⁶*AIR 2008 SC 2103*