

SUPREME COURT OF INDIA

High Court of Hyderabad for the State of Telangana and State of Andhra Pradesh,

Vs.

P.Murali Mohana Reddy

C.A.No.73-74 of 2019

(A.K.Sikri and S.Abdul Nazeer,JJ.,)

25.01.2019

A.K.Sikri,J.,

JUDGMENT

1. In these appeals, challenge is laid to the judgment dated March 25, 2015 passed by the Division Bench of the High Court of judicature at Hyderabad, whereby two writ petitions filed by the respondents herein have been allowed. There are, in all, four persons who had filed these two writ petitions and who are appointed as Additional District and Session Judges in the erstwhile State of Andhra Pradesh (now States of Andhra Pradesh and Telangana) as Adhoc Fast Track Court District Judges.

2. The issue of appointment of such Adhoc Judges came up for consideration before this Court in *Brij Mohan Lal v. Union of India & Ors*¹. Where by this Court prescribed the modalities and procedure to be undertaken for absorption of such Judges on regular basis. It included qualifying test as well as viva voce test. Pursuant to these directions, the appellant herein, namely, High Court held the qualifying examination and also conducted interviews. These four persons (hereinafter referred to as the 'respondents') were considered not qualified for absorption on regular basis. The respondents, feeling aggrieved by the decision of the appellant, had challenged the same in the aforesaid two writ petitions which have been allowed in the following terms:

"31. In view of the aforesaid discussion, we hold that the decision of the Selection Committee declaring that the petitioners and each of them are not eligible to be absorbed for not securing the minimum qualifying marks in viva voce or aggregate qualifying marks in written and viva voce is illegal and arbitrary. Therefore, we direct the respondents to appoint the petitioners and each of them as they have qualified in the written test and have also taken viva voce test. This appointment shall be made within a period of one month from the date of communication of this order, subject to compliance with other formalities as required under law."

3. Some facts relevant for deciding the controversy, may now be taken note of:

Pursuant to the directions of this Court in Brij Mohan Lal's case on the aspect of establishment and functioning of Fast Track Courts, the State of Andhra Pradesh created several Fast Track Court throughout the State of Andhra Pradesh. After establishing such Fast Track Court, the Government of Andhra Pradesh issued orders dated October 06, 2003 appointing 20 advocates (19 advocates and 1 APP) from Bar on ad-hoc basis (in terms of Rules of Andhra Pradesh State High Judicial Service Special Rules for Ad hoc appointment 2001) to preside over the Fast Track Courts vide GOMs. No. 1798, dated October 06, 2003. From the date of their appointment, the respondents and the similarly situated persons (all over the country) were claiming absorption permanently to the post of District and Sessions Judge (Entry Level). Ultimately, this Court in Brij Mohan Lal's case directed all the States to conduct written examination for the ad-hoc Fast Track Court District Judges, who were appointed directly from the Bar and presiding/presided over the Fast Track Courts, and to initiate the process of selection for absorption of those officials. This Court in the aforesaid case also specified the mode and manner in which ad-hoc Fast Track District Judges are to be absorbed in the State Judicial Service. In nutshell, the relevant directions can be summarised:

- (a) Written examination is to be conducted for 150 marks.
- (b) Interview is to be conducted for 100 marks.
- (c) Qualifying marks in the written examination shall be aggregate 40% for general candidates and 35% for SC/ST/OBC candidates.
- (d) Each of the appointees shall be entitled to one mark per year of service in the FTCs, which shall form part of the interview marks.

4. In pursuance of the aforesaid directions, the High Court placed the matter before the Committee of Judges constituted for recruitment to the cadre of District Judges in the meeting held on August 09, 2012 and the Committee resolved to issue a notification calling for applications from the working/former ad-hoc Fast Track Court District Judges for absorption into regular cadre of Additional District Judges and directed to conduct a written examination with the syllabus that was given at the time of conducting written examination for the post of District Judge and to place the notification in the official website of Andhra Pradesh High Court on August 13, 2012 calling for applications from working/former Adhoc Fast Track Court District Judges fixing the last date for receipt of applications as August 31, 2012. It would be relevant to point out that for appointment of Judicial Officers in the State, Andhra Pradesh Judicial Services Rules, 2007 (hereinafter referred to as the 'Rules') were also in place. All the 19 Adhoc Fast Track Court District Judges submitted their applications. The High Court set up the mode of examination which comprised of Paper-I objective questions with multiple choice for 50 marks (50 questions at the rate of one mark per question) and Paper-II subjective or narrative for 100 marks (5 questions, 20 marks per question) (Total duration for two papers-three hours) and viva voce for 100 marks. It was also specified that in the written examination one has to get minimum qualifying marks of

40% in aggregate for general candidates and 35% for SC/ST/BC candidates. Similarly, marks relating to the completed years of service as Adhoc Fast Track Court District Judges, were to be given to all the candidates.

5. Written examination was held on September 06, 2012. Thereafter, the answer sheets were evaluated. For conducting oral interviews to the qualified candidates, the matter was placed before the Committee of the judges in the meeting held on November 27, 2012. The Committee found that out of nineteen candidates, seventeen alone were qualified for the oral interview and they were to be called for interview. Accordingly, call letters were sent to those seventeen candidates to appear for oral interview. Two other candidates were permitted to attend the oral interview in view of interim orders obtained by them by filing writ petitions. After completion of interviews for 19 candidates, a merit list was prepared, and the same was placed before the Committee. The Committee after considering the same found that twelve candidates were eligible to be appointed as regular Additional District Judges. They have since been regularised.

6. As per the High Court, other seven candidates including the four respondents, did not secure the required percentage of marks. Insofar as four respondents are concerned, who filed the writ petitions, the marks secured by them are noted hereunder:

Sl. No.	Regd. No.	Name of the Candidate	Group/ Category	Require percentage of marks to be secured out of 250	Marks secured out of 250 (Written + Viva Voce)
1	108	Sunitha Busireddy	OC	100	99.7 (67.5 + 32.2)
2	111	S. Sarada Devi	OC	100	99.3 (60.5 + 38.8)
3	103	G. Bhuvaneshwari Raju	BC-A	87.5	81 (53 + 28)
4	104	P. Muralimohana Reddy	OC	100	89 (63 + 26)

7. Vide impugned judgment, these writ petitions have been allowed by the High Court.

8. At this juncture, we would like to take note of the reasons which have weighed with the High Court in granting the relief to the four respondents. The High Court has taken note of the marks obtained by these four respondents in the written examination as well as oral interview, as mentioned above. On that basis, the High Court has itself observed that 40% qualifying marks in case of general candidates would be 100 and in case of reserved candidates, it would be 87.5. Insofar as written examination is concerned, all the four candidates had secured the minimum qualifying marks. However, none of them had secured

40%/35% marks in the viva voce. Further, none of them had secured 40%/35% marks in combined written test and viva voce examination. Precisely this was the reason for excluding the respondents from the consideration zone from absorption as they could not secured the qualifying marks in viva voce test and aggregate qualifying marks of 40%/35%. This approach of the appellant was questioned on the ground that no such norm was published in the advertisement which was later on stipulated unilaterally. Further, it was in derogation of the Rules inasmuch as these Rules do not stipulate securing of minimum qualifying marks in the viva voce test. The appellant, on the other hand, sought to justify the selection process in which respondents stood excluded, with the submission that this process was followed strictly in accordance with the judgment of this Court in Brij Mohan Lal's case.

9. The High Court has accepted the submission of the respondents. It observed that each of them qualified the written examination by securing the minimum qualifying marks as per the stipulation given in the advertisement, which was also in accordance with the Rules. Insofar as advertisement is concerned, following stipulation was inserted therein:

Viva Voce (Interview)	:	100 marks
Minimum qualifying marks to be secured	:	Qualifying marks in the written examination shall be 40% aggregate for general candidates and 35% for SC/ST/BC candidates. Each of the appointees shall be entitled to one mark per year of service in the FTCs, which shall
		form part of the interview marks.

10. Rule 6 of the Rules prescribed the methodology for conducting the examination relevant portion whereof is as under:

"6. Methodology for conducting examination: (1) The High Court from time to time shall notify the number of vacancies for the category of District Judges to be appointed by direct recruitment indicating inter alia, the eligibility criteria, the syllabus, the number of marks allotted for written examination, the qualifying mark to be secured by a candidate, the number of marks allotted for the viva voce and the minimum to be secured therein by the candidate.

Provided that owing to the contingency it shall be open to the High Court to conduct a screening test which shall be objective type before conducting the written examination followed up by viva voce after duly notifying the same.

(2) While the written examination is meant to test the academic knowledge of the candidate, the viva voce is to test his communication skills; his tact; ability to defuse the situations to control the examination of witnesses and also lengthy irrelevant arguments and the like; and his general knowledge.

(3) ..

(4) The written examination shall invariably carry 80 marks limiting the viva voce to the remaining 20 marks. Provided that the candidate shall secure a minimum qualifying mark of 40% for O.C. category, 35% for B.C. category; and 30% for S.C. and S.T. category in the written examination. (as amended by G.O.Ms.No.132, dated 16th November, 2011)

(5) ..

(6) ..

(7) ..

(8) ..

11. The High Court, on the basis of the aforesaid stipulation in the advertisement as well as in the Rules pointed out that there is no stipulation for securing minimum qualifying marks in viva voce test either as per advertisement or as per the Rules. Insofar as judgment in Brij Mohan Lal's case is concerned, the High Court took the view that it does not mention qualifying marks in viva voce and also clarifies that examination and interview were to be held in accordance with the relevant Rules enacted by the State for direct appointment of Higher Judicial Services. On that basis, the High Court concluded:

"20. While reading the above pronouncement of Supreme Court harmoniously with the Rule, we think the following procedure would have been a fair one, as the said judgment has not ignored, rather accepted the relevant Rules :-

(i) Written test would be for 150 marks.

(ii) Viva voce would be for 100 marks.

(iii) Candidate has to secure minimum 40% qualifying marks in written test.

(iv) Candidate has to participate in viva voce test.

(v) Securing qualifying marks in viva voce or in aggregate are not the requirements.

21. Therefore, we are of the view that the Selection Committee should not have adopted the norm of securing a minimum qualifying mark in the viva voce test or for that matter, minimum aggregate qualifying marks."

12. Regarding the move of the appellant in changing the criteria after issuing the advertisement, the High Court has held that it could not be permitted and the discussion in this behalf proceeds as under:

"22. Moreover, it is rightly contended by the learned counsel for the petitioners, relying on the aforesaid judgment of Supreme Court in Umesh Chandra Shukla v. Union of India (3 supra) and A.A. Calton v. Director of Education (2 supra), that the respondents and each of them cannot act contrary to the norms as published in the advertisement or the Rules and admittedly, the advertisement does not stipulate a minimum qualifying mark for the viva voce test or that of aggregate marks both in written and viva voce test. As the petitioners and each of them, in terms of the advertisement as well as the rules, have acted upon and that they acquired a vested right to be considered in terms of the advertisement and the rules.

23. It is not that the norms cannot be changed or varied, but this has to be done in terms of the statutory rules. If they do not permit, the Selection Committee cannot lay down the same as it will be ultra vires.

24. Moreover, as it appears from the original record produced before us, we find that the assessment was made on the basis of minimum qualifying marks in the aggregate as well as in viva voce tests and it does not appear that the aforesaid norms were ever published."

13. In support, the High Court has referred to *various judgments*².

14. We may mention at the outset that the High Court is right to the extent that the appointments are to be made in terms of stipulations contained in the advertisement. Though, such terms can be changed, but that has to be done in terms of statutory Rules. Insofar as advertisement is concerned, there was no mention of securing minimum qualifying marks in the viva voce test. The High Court is also right in pointing out that Rule 6 of the Rules does not contain any provision of securing minimum qualifying marks in the interview. At the same time, it stipulates qualifying aggregate marks in written examination and viva voce, as 40% for general category, 35% for backward category and 30% for SC/ST category in the written examination. This requirement of securing minimum qualifying marks in the written examination was fulfilled by the respondents.

15. In the aforesaid backdrop, the only question remains to be seen is as to whether the approach adopted by the appellant was in consonance with the modalities stipulated by this Court in Brij Mohan Lal's case. The manner prescribed by this Court for appointment of such ad-hoc judges on regular basis is contained in para 207.9 of the judgment which makes the following reading:

"207.9. All the persons who have been appointed by way of direct recruitment from the Bar as Judges to preside over FTCs under the FTC Scheme shall be entitled to be appointed to the regular cadre of the Higher Judicial Services of the respective States only in the following manner:

(a) The direct recruits to FTCs who opt for regularisation shall take a written examination to be conducted by the High Courts of the respective States for determining their suitability for absorption in the regular cadre of Additional District Judges.

(b) Thereafter, they shall be subjected to an interview by a Selection Committee consisting of the Chief Justice and four seniormost Judges of that High Court.

(c) There shall be 150 marks for the written examination and 100 marks for the interview. The qualifying marks shall be 40% aggregate for general candidates and 35% for SC/ST/OBC candidates. The examination and interview shall be held in accordance with the relevant Rules enacted by the States for direct appointment to Higher Judicial Services.

(d) Each of the appointees shall be entitled to one mark per year of service in the FTCs, which shall form part of the interview marks.

(e) Needless to point out that this examination and interview should be conducted by the respective High Courts keeping in mind that all these applicants have put in a number of years as FTC Judges and have served the country by administering justice in accordance with law. The written examination and interview module, should, thus, be framed keeping in mind the peculiar facts and circumstances of these cases.

f) The candidates who qualify the written examination and obtain consolidated percentage as aforeindicated shall be appointed to the post of Additional District Judge in the regular cadre of the State.

(g) If, for any reason, vacancies are not available in the regular cadre, we hereby direct the State Governments to create such additional vacancies as may be necessary keeping in view the number of candidates selected.

(h) All sitting and/or former FTC Judges who were directly appointed from the Bar and are desirous of taking the examination and interview for regular appointment shall be given age relaxation. No application shall be rejected on the ground of age of the applicant being in excess of the prescribed age.”

16. A conjoint reading of sub-para (c) and (f) of the methodology stipulated above would clearly bring out the following factors:

(a) Written examination was to be for 150 marks and interview for 100 marks.

(b) Such written examination and interview was to be held in accordance with relevant Rules enacted by the State for direct appointment to High Judicial Services.

(c) Each candidate was required to qualify the written examination.

(d) No qualifying marks for viva voce.

(e) At the same time, candidates were supposed to obtain 'consolidated percentage as afore-indicated', which means 40% aggregate and 35% for SC/ST/OBC candidates. Such consolidated percentage means 40% and 35% respectively out of 250 marks.

17. We are, therefore, of the opinion that even the judgment in Brij Mohan Lal's case does not lay down minimum qualifying marks for viva voce. It, however, prescribes qualifying marks in aggregate i.e. both for written examination and interview combined.

18. Since the Court also directed that examination and interview shall be held in accordance with the relevant Rules enacted by the State for direct appointment to the Higher Judicial Services, such Rules were to be followed except to the extent they stood modified by the modalities prescribed by the Court. For example, in the instant case, though Rule 6 of the Rules prescribes 30% qualifying marks for SC and ST category in written examination. Thus, the candidates were required to obtain such qualifying marks in the written examination. At the same time they were also mandated to secure consolidated qualifying marks (i.e. both in written plus interview) as prescribed in Brij Mohan Lal's case.

19. It follows from the above that insofar as written examination and interview is concerned, the minimum qualifying marks could be insisted upon if there was a stipulation to this effect in the Rules, inasmuch as there was no such direction in the judgment on this aspect. We find that insofar as Rules are concerned, minimum qualifying marks are mentioned for written examination only. A combined and cumulative effect of the judgment along with the Rules would be as under:

(a) Minimum qualifying marks are required for written examination by general candidates and SC/ST/OBC candidates respectively.

(b) No minimum qualifying marks are required for interview. However, consolidated qualifying marks for written examination and interview are required which is 40% aggregate for general candidates and 35% for SC/ST/OBC candidates.

20. As noted above, all the respondents obtained qualifying marks in written examination. At the same time, none of them could secure qualifying aggregate/consolidated percentage marks. Insofar as non-securing of qualifying consolidated marks by the respondents is concerned, though the High Court has noted this fact but has not touched upon this aspect at all. It has only dealt with the aspect of requirement of minimum qualifying marks in viva voce test.

21. We are, thus, faced with the situation where the respondents could not secure qualifying marks as per the judgment of this Court. However, a close scrutiny of the marks obtained by respondents would disclose that two candidates, namely, Sunitha Busireddy and S. Sarada Devi have secured 99.7 and 99.3 marks as against the required marks of 100. Insofar as

Sunitha Busireddy is concerned, when the marks are rounded off, it has to be treated as 100 marks. Since, S. Sarada Devi is also short by only 0.7 marks, there is no reason not to round off her marks to 100 as well, going by the consideration that they have been working as ad-hoc judges for number of years and also the fact that it was only a qualifying examination for the purpose of regularisation. Therefore, these two candidates/respondents have to be treated as qualified the written test and interview when their marks are aggregated.

22. No doubt, other two candidates could not secure 40%/35% aggregates marks and, therefore, they cannot be treated as having qualified the examination (consisting of written test and interview). However, we find that they have, by this time, substantial number of years of service. Moreover, in the written examination they could secure 40%/35% marks though they fell short of this target when it comes to securing aggregate marks is concerned. It may also be pointed out that one of the candidates belongs to the Scheduled Caste category and as per the Rules persons belonging to the SC/ST category are supposed to secure a minimum qualifying mark of 30% in the written examination. In such circumstances, it would be more appropriate to give them one more chance to appear in the written examination and viva voce, which should be held by the High Court in accordance with the mandate in Brij Mohan Lal's case. This direction, therefore, is given having in mind the aforesaid equitable considerations, and in exercise of our powers under Article 142 of the Constitution. The High Court may hold such an examination within a period of six months from today and during this period these two persons shall also continue in service.

23. As a result, these appeals are disposed in the aforesaid terms.

24. No order as to cost.

Judgment Referred.

¹(2012) 6 SCC 0502

²*Umesh Chandra Shukla v. Union of India & Ors.*, (1985) 3 SCC 721; *A.A. Calton v. Director of Education & Anr.*, (1983) 3 SCC 33; *K. Manjusree v. State of Andhra Pradesh & Anr.*, (2008) 3 SCC 512; *State of Bihar & Ors. v. Mithilesh Kumar*, (2010) 13 SCC 467 and *Arunachal Pradesh Public Service Commission & Anr. v. Tage Habung & Ors.*, (2013) 7 SCC 737.