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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) No. 6434/2010

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**22<sup>nd</sup> July, 2013**

LALIT KUMAR & ORS.

.....Petitioners

Through: Mr. P.S.Bindra, Adv.

**VERSUS**

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Zubeda Begum, standing counsel  
for GNCTD with Ms. Sana Ansari,  
Adv. for R-1 and 2.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This writ petition is filed by 12 petitioners. Out of all these 12 petitioners, 9 were aspirants to contractual posts of 'dressers' with the respondent no.2, contractual appointment being for a period of only 11 months. Two petitioners were aspirants for the post of Staff Nurse and one petitioner was aspirant to the post of Auxiliary Nurse Midwife (ANM). The contention raised on behalf of the petitioners is simple. According to the petitioners as per the advertisement in question, filed at page 26 of the paper-book, there was a requirement of minimum qualifications for a

candidate who had also to be selected as per an interview, however it is alleged that the respondent no.2 after the petitioners appeared in the interview put them through another qualification criteria being of a written test and which was not envisaged in the advertisement. It is argued that changing the rules of the game midway by asking the petitioners to appear in a written test without adequate notice (notice being only of 24 hours before the test was conducted) is illegal and arbitrary action of the respondent no.2.

2. A reading of the writ petition shows that it is nowhere the contention of the petitioners that the questions which were put in the written test were such tough questions that they could not be answered without preparation. It is not even the case in the writ petition that questions which were asked did not pertain to the subject of the petitioners. It is also further not the case of the petitioners that the questions were not ordinary questions which the petitioners having the necessary qualifications could not have given answers without sufficient preparation. All the aforesaid aspects are relevant because if oral questions can be put in an interview there is no reason why the same type of questions which can be put in an interview cannot be put by asking the candidates to reply to the same by means of written test. Questions in an interview are also put pertaining to the subject related to the relevant qualifications of the candidates, and therefore, merely

because questions are put in writing for being answered in writing cannot mean that such questions could not have been put to the candidates for their being answered in writing.

3. In view of the aforesaid facts, I do find that the petitioners are in no way prejudiced by means of the additional test which they were required to undergo. 'Test' is really in my opinion a misnomer in the sense that the written test is not a written test entailing considerable amount of study and preparation.

4. Learned counsel for the petitioner placed reliance upon the judgment of the Supreme Court in the case of ***Hemani Malhotra Vs. High Court of Delhi (2008) 7 SCC 11***, wherein the Supreme Court said that introduction of minimum marks of viva voce during the selection process, and which aspect was not notified at the commencement of the process, is illegal. Counsel for the petitioners has relied upon the following paragraphs of the judgment:-

14. It is an admitted position that at the beginning of the selection process, no minimum cut off marks for vive-voce were prescribed for Delhi Higher Judicial Service Examination, 2006. The question, therefore, which arises for consideration of the Court is whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed would amount to changing the rules of the game after the game was played. This Court notices that in Civil Appeal No. 1313 of 2008 filed by K.Manjusree against the State of A.P. and Anr. decided on February 15, 2008, the question posed for consideration of this Court in the instant petitions was considered and

answered in the following terms:

“33. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for vive-voce. Therefore, prescribing minimum marks for vive-voce was not permissible at all after written test was conducted.

15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum

marks by the respondent at vive-voce, test was illegal.

16. The contention raised by the learned Counsel for the respondent that the decision rendered in K.Manjusree (Supra) did not notice the decisions in Ashok Kumar Yadav v. [State of Haryana MANU/SC/0026/1985](#) : AIR1987SC454 as well as K.H. Siraj v. [High Court of Kerala and Ors. MANU/SC/8184/2006](#) : AIR2006SC2339 and therefore should be regarded either as decision per incuriam or should be referred to Larger Bench for reconsideration, cannot be accepted. What is laid down in the decisions relied upon by the learned Counsel for the respondent is that it is always open to the authority making the rules regulating the selection to prescribe the minimum marks both for written examination and interview. The question whether introduction of the requirement of minimum marks for interview after the entire selection process was completed was valid or not, never fell for consideration of this Court in the decisions referred to by the learned Counsel for the respondent. While deciding the case of K.Manjusree (Supra) the Court noticed the decisions in (1) P.K. Ramachandra Iyer v. [Union of India MANU/SC/0395/1983](#) : (1984)ILLJ314SC ; (2) Umesh Chandra Shukla v. [Union of India MANU/SC/0050/1985](#) : AIR1985SC1351 ; and (3) Durgacharan Misra v. [State of Orissa MANU/SC/0627/1987](#) : [1987]3SCR1097 , and has thereafter laid down the proposition of law which is quoted above. On the facts and in the circumstances of the case this Court is of the opinion that the decision rendered by this Court in K.Manjusree (Supra) can neither be regarded as Judgment per incuriam nor good case is made out by the respondent for referring the matter to the Larger Bench for reconsidering the said decision.

5. In my opinion, the judgment which is relied upon by the petitioners would have no application to the facts of the present case for two important reasons. Firstly, the appointments in the present case specifically required holding of an interview, wherein indubitably questions pertaining to the petitioners and their qualifications and other general questions could be asked. If there is an extension of the selection process, by adding a written

test, and with respect to which there are no allegations that the questions were such in nature that they required extensive preparation before hand, therefore this persuades me in the facts of the present case to not interfere with the requirement of the written test, though, the same was not a requirement at the time of giving the advertisement. This is especially all the more so because a written test would be almost an extension of the interview by asking in writing answers with respect to questions which could ordinarily also have been put in the interview. The second reason is that the judgment of the Supreme Court in the case of *Himani Malhotra (supra)* dealt with changing of the rules by prescribing a minimum viva voce marks in the interview, however, in the present case, the requirement is of giving of certain answers in writing and which I would in a way take it as a part of the interview process, except of course, questions are to be answered in writing instead of being answered orally in the interview. Since this rule uniformly applies to all the candidates and the object of the test was to ensure that better candidates are selected, I cannot find fault with the selection process in a case such as the present. I would like to note that the Courts would definitely consider the issue with respect to changing of rules of the game midway in a selection process, when the posts in question are permanent posts or long term posts, but as already stated in the facts of the present case,

the posts in question were contractual posts for just 11 months, and that too for 11 months in the year ending on 31.3.2011 i.e a period long gone.

6. I may note that the petitioners if really they had strength in their contentions with respect to the answers which they have given in the test, would have challenged the marks which were awarded if according to the petitioners they were wrongly given less marks. Admittedly, however, there is no challenge to the process of giving marks to the petitioners-candidates, and who have not obtained the requisite marks, and hence were not selected. Obviously, the petitioners did not do well so as to pass the test, and are now using a technical ground alleging that requirement of written test ought not to have been introduced by the respondent no.2

7. In view of the above, I do not find any reason to interfere, more so in exercise of my powers under Article 226 of the Constitution of India in the facts of the present case, and therefore, the writ petition is dismissed, leaving the parties to bear their own costs.

**JULY 22, 2013**  
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**VALMIKI J. MEHTA, J.**