

Praveen Kumar
P.S.- Kasim Bag

1. The State Bank of India
2. The General Manager, State Bank of India, Press Journal
3. The Assistant State Bank Manager, Marg, Narin
4. The Approving Officer

.... Petitioner.

1. The State Bank of India
2. The General Manager, Central Recruitment & Promotion Department, State Bank of India, Corporate Centre, Tulsiani Chambers, West Wing, 212, Free Press Journal Marg, Nariman Point, Mumbai 400021.
3. The Assistant General Manager, Central Recruitment & Promotion Department, State Bank of India, Tulsiani Chambers, West Wing, 212, Free Press Journal Marg, Nariman Point, Mumbai.
4. The Appropriate Officer, SBI Administrative Office, Sardar Vallabhbha Patel Marg, Near Main Railway Station, Nagpur

.... Respondents

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate
: Mrs. Swapna Tripathi, Advocate
For the Respondent/s : Mr. Kaushlendra Kumar Sinha, Advocate

C.A.V. JUDGMENT

The petitioner seeks direction to the respondents to appoint him as a clerk in the State Bank of India against one of the vacancies published under Advertisement no.CRPD/CR/2009-10/04, as he secured 131 marks, much more than the last candidate appointed under the Other Backward Castes category, who got mere 121 marks.

2. The petitioner applied for the post of clerk in the State Bank of India against vacancies advertised by Central Recruitment and Promotion Department (hereinafter referred to as 'the CRPD') vide Advertisement no. CRPD/CR/2009-10/04 published on 23.07.2009 through its General Manager inviting applications from

the Indian citizen by 15th September, 2009, for which the written examination was scheduled for 8th and 15th November, 2009.

3. The petitioner was successful in written examination and was called for interview. The result was published in 2010. The petitioner did not find his names amongst the successful candidates. The grievance of the petitioner is that he has not been selected though he secured 131 marks, whereas the last candidate, who was appointed under other Backward Class Category, had got only 121 marks. He submits that from the Website and on enquiry, he learnt that cut off marks was introduced in interview, though there was no such stipulation in the advertisement. Furthermore, the candidates, who had secured minimum qualifying marks, were considered for preparation of State wise, category wise final list on the basis of total marks secured in written examination and interview. As the petitioner failed to secure minimum qualifying marks in interview, he was not considered and included in preparation of merit list. The primal stand of petitioner is that no cut off marks can be introduced for interview, when there was no such stipulation in Advertisement or booklet laying down the guidelines for selection.

4. Before I examine the rival submissions of the parties, it would be relevant to notice the facts of the case and the relevant provisions of law in brief.



5. As per the Advertisement, the final selection was to be made on the basis of marks obtained in written examination and personal interview. 200 marks were earmarked in written test and 35 marks were fixed for interview. As per Clause 11 of the Advertisement, the candidates belonging to General Category were required to secure minimum of 40%, whereas the SC/ST/PWD/XS were required to score a minimum 35% on the aggregate to be considered for being called for interview.

6. Furthermore, qualifying marks were prescribed in written examination for each of the five categories of multiple tests. The other detailed informations regarding written examination was to be given in the 'Acquaint Yourself Booklet', which was to be made available to the eligible candidates along with the call letter for the test. The final selection was to be made on the basis of candidate's performance in the written test and interview, taken together. The advertisement also stipulated that in case it is detected an any stage of recruitment that a candidate does not fulfill the eligibility norms and/or that he/she has furnished any incorrect/false information or has suppressed any material facts, his/her candidature would stand cancelled. The bank reserved its right to hold skill test/any other tests, wherever deemed necessary as well as the right to add, delete or allot any centre at its discretion. In paragraph 17 of the booklet, it was

mentioned that the bank reserves the right to change the cut off marks. It was emphasized at more than one place, that the final selection would be made on the basis of candidate's performance in the written examination, and personal interview. Apart from written examination, 35 marks were prescribed for interview.

7. The Advertisement provides for fixing a cut off marks for the written test. The 'acquaint yourself booklet' too is also in the same terms and only mentions cut off marks for written papers. Both the advertisement as well as the booklet are silent about cut off marks for interview. Clause 11 of the Advertisement, which is relevant in the context, is quoted herein below:

“All eligible candidates should apply on line before the last date for registering the applications:

(a) Final Selection will be made on the basis of performance in the written test and interview taken together. Merely satisfying the eligibility norms does not entitle a candidate to be called for written test or interview.

(b) The written test will be of Objective type consisting of (i) General Awareness (ii) General English (iii) Quantitative Aptitude (vi) Reasoning Ability and (v) Marketing Aptitude/Computer Knowledge. The questions in these objective tests, except for the test of General English, will be printed in bilingual i.e. English & Hindi.

There will be negative marks for the wrong

answers in the objective Tests $\frac{1}{4}$ marks will be deducted for each wrong answer. Candidate will have to pass in each of the objective tests.

The passing marks in each of the tests will be decided by the Bank on the basis of the performance of all the competing candidates taken together in each test to a minimum required level. Candidates are also required to score a minimum 40% (35% for ST/SC/PWD/XS) marks on aggregate to be considered for being called for interview. Bank reserves the right to vary this cut off.

Note:

(i) Other detailed information regarding the written examination will be given in the 'Acquaint Yourself Booklet', which will be made available to the eligible candidates along with the call letter for the test.

(ii) Interviews: Depending upon the number of vacancies, only a certain number of candidates from amongst those who qualify by ranking high enough in the merit will be called for interview and/or proficiency test in ratio of maximum 3 candidates for each vacancy. Final selection will be made on the basis of candidate's performance in the written test and interview taken together."

8. It was mentioned in the interview letter that performance in interview would carry weightage. It appears that the

respondents, subsequently took a decision to fix qualifying marks of 40% for the interview, as a large number of applicants had qualified in the written examination.

9. The issue that falls for consideration is whether cut off marks can be introduced in the midst of the selection process, more so when the written examination is over.

10. The grievance of the petitioner is that co-candidates belonging to Backward Castes Category, who had secured 121 marks out of 235 marks has been declared successful, whereas one like petitioner, who has secured 131 marks has been declared unsuccessful. He submits that neither the advertisement nor the Acquaint Yourself Book or the recruitment rules in the clerical cadre, mentions or provide for cut off marks for interview, as such it was impermissible to introduce cut off marks for it, in the midst of selection process. In support of his submissions, learned counsel relied upon the decision in case of Bishnu Biswas and others Vs. Union of India and others, reported in (2014) 5 SCC 774 and in case of Hemani Malhotra vs. High Court of Delhi, reported in (2008) 7 SCC 11.

11. Mr. Kaushlendra Kumar Sinha, learned counsel for the Bank submits that there is sufficient indications both in the advertisement and the booklet that final selection will be made on the



basis of candidate's performance in the written test and interview taken together. Even the call letter for interview clearly stipulated that the candidate's performance in the interview will also carry weightage. Furthermore, the selection of a suitable candidate was to be decided on touchstone of attributes/parameters, such as Academic achievement, special involvement motivation, communication skill and General demeanour and aptitude to work.

12. He submits that 35 marks was fixed for personal interview and a minimum marks was stipulated by the Bank to ensure that the candidates possess the required attributes, which are not measurable in written test. Keeping in view the said parameters, the minimum qualifying marks in interview was fixed (12 marks for ST/SC/PWD/XS and 14 marks for General and OBC category out of total 35 marks). In other words, the candidates belonging to ST/SC/PWD/XS were required to secure 35% marks and the candidates belonging to General and OBC category would be required to secure 40% of minimum marks for being declared over all successful. He submits that minimum cut off marks for the interview was approved by the competent authority and it applied equally to all candidates and as such the action was not discriminatory. Furthermore, vide letter no. 7/48/2004-BOA, dated 22.02.2005 of Ministry of Finance, the Banks have operational authority to decide

all human resources matters relating to its staffing pattern, recruitment, placement, transfer, training, promotion and pension.

13. I have heard the counsel for the petitioner and the learned counsel appearing for the Bank.

14. The contention of the petitioner is that neither the advertisement nor the 'Acquaint Yourself booklet' provides for cut off marks. In absence of any such stipulation, the Bank could not have introduced cut off marks in the midst of selection process.

15. On the other hand, counsel for the Bank submits that there was sufficient indications in the advertisement that the recruiting authority is authorized to fix minimum cut off marks for even interview. Furthermore, as a large number of candidates had qualified in the written examination and it became necessary to provide cut off marks for interview in order to judge a candidate's performance reasonably and effectively.

16. Counsel for the Bank in this context has relied upon the Clause II of the Advertisement, the relevant extract of which reads as follows:

“Final selection will be made on the basis of candidate's performance in the written test and interview taken together merely satisfying the eligibility norms does not entitle a candidate to be called for written test or interview.”

17. In my view, the said extract merely states that final selection will be made on the basis of written and interview taken together. The interpretation of the Clause by no means of imagination would be suggestive of including cut off marks for interview.

18. According to the general principle of interpretation, a statute or a phrase or a clause should be given its literal meaning and no attempt should be made to read something more in clause than what it may plainly convey. Only when a clause or phrase is capable of more than one interpretation, the recourse to general principle of interpretation can be resorted to.

19. In the instant case, the advertisement refers to only cut off marks for written test. There is no reference of cut off marks for interview and as such it is difficult for me to accept the submissions of the learned counsel appearing for the Bank that the advertisement stipulated cut off marks for interview.

20. This takes us to all important issue whether cut off marks for interview can be introduced in the midst of the selection process when it is not provided in the advertisement or the booklet containing the details of selection process.

21. Learned counsel for the Bank argued that cut off marks introduced for interview, was applied unilaterally to all



candidates, who were successful in the written and as such the application of the same cannot be termed discriminatory. The application of minimum qualifying marks for interview had become necessary, as a large number of candidates had qualified in the written examination and in order to judge a candidate's performance effectively, the cut off marks was imperative.

22. Though I may broadly agrees with the submissions that no candidates can possibly allege discrimination, as the cut off marks for interview was uniformly applied to one and all to judge a candidate's performance effectively in view of large number of applicants having qualified in the written examination. However, the issue remains whether it was legally permissible for the Bank to have introduced the cut off marks for interview when neither the advertisement nor the Booklet laying down parameters of test, nor the Recruitment Rules for clerical staff, provided for cut off marks for interview.

23. In other words, if a particular selection criteria are not adopted at the time of commencement of the recruitment process, whether subsequent criteria can be adopted in the midst of selection process. In the case of K. Manjusree Vs. State of A.P., reported in (2008) 3 SCC 512, the Hon'ble Supreme 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 interviews. But such prescriptions 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.

24. Again in case of Hemani Malhotra Vs. High Court of Delhi, reported in (2008) 7 SCC 11, the Hon'ble Supreme Court held that "it was not permissible for the employer to change the criteria of selection in the midst of selection process."

25. Recently in case of Bishnu Biswas and others Vs. Union of India & others, reported in 2014(5) SCC 774, the Hon'ble Apex Court reiterating the principle laid down in K. Manjusree (Supra) and Hemani Malhotra (supra) in para. 15 observed that in case statutory rules prescribed a particular mode of selection, the same has to be adhered to strictly. 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 benchmarks for written test as well as for viva voce.

26. In the instant case, nothing has been brought on



record to suggest even that the statutory rules prescribed minimum qualifying marks in interview for selection of clerical cadre. However, even in absence of any statutory procedure, it was still within the right of Bank or the recruiting authority to specify the minimum benchmark for viva voce, which admittedly the Bank has not done in the instant case. Moreover, the Bank seemingly conscious of the position itself has in the subsequent Advertisement no. no.CRPD/PO/2011-12/01 for the post of Probationary Officer in the State Bank of India, has prescribed minimum benchmark or cut off marks or viva voce. Clause 4 of the said advertisement provided for minimum qualifying marks for the candidates of different categories. A copy of the same has been annexed as Annexure-7 to the rejoinder to the counter affidavit.

27. Learned counsel appearing for the Bank submits that the Hon'ble Apex Court in case of Yogesh Yadav Vs. Union of India & Ors., reported in 2013(4) PLJR SC 121 has held that the marks earmarked for the written test can be changed or lowered. In my view, the case law relied upon by the learned counsel for the Bank would not be of any help in the facts of the case, as the facts are different in the cases.

28. In the aforesaid case, the Competition Commission of India (CCI) had issued advertisement through its notification dated



11th November, 2009 inviting applications for various posts. The written test was carrying 80% of the marks whereas 20% marks was earmarked for interview. The candidates, who did not secure 50% of the marks in the written test was not called for interview. However, the cut off marks for the reserved category was lowered to 40%. No one from the OBC category to which the appellants belonging emerged successful. The appellant too secured only 2 marks out of 20 marks and in this manner, the total marks secured by him was 53 out of 100 marks. He also learnt that CCI had fixed the benchmark of 70 marks for General Category and 65 marks for the Reserved Category for being declared successful. Since the total marks secured by all the appellants were less than 65, none of them were selected. The respondents gave appointment only to those persons, who have secured 70 marks or above in the General Category and 65 marks or above in the Reserved Category. The appellant argued that changing the benchmark (cut off marks) amounts to changing the “rules of the game”. The Hon’ble Apex Court observed that fixing a fresh benchmark for giving appointment does not amount to changing the rules of the game, it is not a situation where securing of minimum marks were introduced, which was stipulated in the advertisement and as such is not a case of changing the rules of the game.

Para 14 of the judgment is quoted herein below for

easy reference:

“14. Instant is not a case where no minimum marks prescribed for viva voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the interview. Entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since benchmark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the “rules of the game”. The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of

game. On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed. Fixation of such a benchmark is permissible in law. This is an altogether different situation not covered by **Hemani Malhotra case.**”

29. It would open from bare reading of paragraph 14 of the judgment aforementioned that benchmark was fixed for appointment, which was enhanced. It is not the case that no benchmark was fixed for interview, as is the situation in the present case. In the selection process, once bench mark is fixed, it would be within the games and legally permissible to enhance or reduce the same, subject to meeting the list prescribed under Article 14 of the Constitution.

30. In backdrop of the foregoing discussions, in my considered viw, if cut off marks for interview is not provided in the advertisement or the booklet, prescribing the details of the selection process, the Recruitment Board/Bank could not have introduced cut off marks for the interview in the midst of selection process. The action of the respondents as such would amount to changing Rules of the game in midst of selection process which is impermissible in law. But if a bench mark or cut off marks is provided in the advertisement or at the beginning of selection process, it would be permissible for

the recruiting authority to fix a cut off marks for interview provided it meets the requirement and stands the test of Articles 14 and 16 of the Constitution of India.

31. Once I have held that it was no permissible for the Bank to fix cut off marks for interview in absence of any such stipulation in the advertisement or the booklet, the other issue would be as to what relief the petitioner would be entitled to.

(a) One of the options would be to set aside the entire result of 11,000 candidates of clerical cadre and direct fresh calculation of marks on the basis of written test and interview without excluding any candidate, whose marks have not been reckoned for computing the total marks on account of his/her failure to secure the minimum qualifying marks in the interview.

(b) The second option would be to direct for appointment of the petitioner in place of last candidate appointed in his category.

© The third option would be to direct the respondents to consider the case of the petitioner afresh against the existing vacancy of Clerk of his batch.

32. In my view, the exercise of first and second option would not be fair just in absence of any of the successful candidates, having been made party respondents, in view of the law

laid down in case of Ranjan Kumar etc. Vs. The State of Bihar & Ors., reported in 2014 (3) PLJR SC 128, particularly para. 12 is quoted herein below:

“12. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners.”

33. As it is not possible to displace any of the selected candidates so appointed, the exercise of third option remains would be the only viable alternative in the facts of its case, as in my view petitioner has justly been excluded from consideration. In the circumstances, if the petitioner approaches the respondents, they would consider his case for appointment against surviving vacancies of his batch within three months.

34. The writ application is accordingly disposed of.

(Samarendra Pratap Singh, J.)

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