

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WA.No. 1752 of 2014 (A) IN WP(C).530/2014

AGAINST THE JUDGMENT IN WP(C) 530/2014 of HIGH COURT OF KERALA
DT.13/8/2014

APPELLANT/PETITIONER:

ANIL KUMAR V.K.
VELLAMKUZHIYIL, THAIKKATTUKARA P.O., AMBATTUKAVU
ALUVA-683106.
ERNAKULAM DIST.

BY ADVS. SRI.T.M.RAMAN KARTHA
SMT.O.A.NURIYA
SMT.SYAMA MOHAN

RESPONDENTS/RESPONDENTS:

1. HINDUSTAN MACHINE TOOL LIMITED
REPRESENTED BY THE MANAGING DIRECTOR
HMT COLONY P.O., KALAMASSERY, ERNAKULAM
KOCHI-683503.

2. HINDUSTAN MACHINE TOOL LIMITED
REPRESENTED BY THE GENERAL MANAGER, HMT COLONY P.O.
KALAMASSERY, ERNAKULAM, KOCHI-683503.

R1 & 2 BY ADV. SRI.SAJI VARGHESE
R1 & 2 BY ADV. SMT.MARIAM MATHAI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

W. A. No.1752 of 2014

Dated this the 1st day of June, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Interference declined by the learned single Judge as to the reliefs sought for in the writ petition, to direct the respondent Company to appoint the petitioner as a 'Company Trainee', is under challenge in this writ appeal.

2. The case of the appellant/petitioner is that, Ext.P1 notification was issued by the Company way back in 2010, inviting applications for the post of Company Trainee in the 'workman cadre' under various disciplines such as Turner, Machinist/Machinist Grinder, Fitter, Sheet Metal Worker, Pattern Maker etc. The issue involved in this case is with reference to the post of 'Pattern Maker', where the vacancies notified were '14', however, with a 'note', that the number of posts indicated above were tentative and that the actual

requirement may however vary, based on further assessment. The appellant was an aspirant to be selected in respect of the trade 'Pattern Maker' and he submitted his application accordingly. Selection procedure as given in Ext.P1 was based on an initial screening, followed by a written test and interview. It is stated that the appellant succeeded in the written test and he was called for the interview. But the fact remains that the appellant was never selected, who hence approached this Court by filing a writ petition seeking for a positive direction from this Court. The Company filed a statement to the effect that the appellant/petitioner had secured qualifying marks in the written test, based on which he was called for the interview. But, in the interview, he could secure only '12 marks' out of 50; whereas the minimum mark stipulated by the management was '15' out of 50. After hearing both the sides, interference was declined by the learned single Judge and the writ petition was dismissed, holding that there was no merit in the contentions advanced by the

appellant/petitioner.

3. Heard the learned counsel for the appellant/petitioner as well as the learned Standing Counsel for the respondent Company.

4. The crux of the contentions raised by the learned counsel for the appellant is that, the respondent Company is not justified in relying on any 'cut-off mark', as no such cut-off mark was ever prescribed either for the written test or for the interview. It is also stated that the appellant was the sole candidate who submitted the application in respect of the trade 'Pattern Maker' and as such, there was no rhyme or reason to deny the chance to the appellant/petitioner. Reliance is also sought for placed on the judgment of Apex Court in **Barot Vijaykumar Balakrishna v. Modh Vinaykumar Dasrathlal [2011 (3) KLT SN 55 (C. No.53 SC)]**, to the effect that the selection procedure pursued by the management, referring to cut-off marks for the interview/viva-voce, without prescribing the same is wrong and in violation of the statutory rule governing the selection.

The submission of the appellant is sought to be rebutted by the learned Standing Counsel for the Company pointing out that, it is not a case where something new has been introduced, after commencement of the selection procedure. The Company had already prescribed the 'cut-off marks', both for the written test as well as for the interview in respect of the selection process, as per the proceedings No.MTL/HRM/ R.16/13 dated 25/03/2013, vide Annexure-R1 (b) produced in the writ appeal. This was very much prior to the written test, which was on 06/04/2013, followed by the interview on 23/07/2013. No prejudice has been caused to the appellant/petitioner in any manner and the Company has considered all the aspirants/ candidates in an equal manner. Similarly, no undue advantage has been extended to anybody who participated in the selection process.

5. After hearing both the sides and going through the materials on record, this Court finds that the contention of the appellant/petitioner that no other candidate was there and as such, the candidature of the appellant ought to have

been accepted, does not much impress this Court. Admittedly, the petitioner could secure only '47' marks, out of the total of 100 in the written test, which reflected the level of understanding merit. In the interview, the appellant got only '12' marks out of 50. There is no challenge with regard to the awarding of marks, nor is there any plea or substantiation of an instance of mala fides, if any. Merely for the reason that the appellant happened to be the sole candidate, a writ of mandamus is not liable to be issued to the respondent Company to appoint the appellant/petitioner, unless the party proves the merit to have him appointed in terms of the recruitment rules/norms. The law has been declared by a Constitution Bench of the Apex Court as per the decision reported in **Shankarsan Dash v. Union of India [(1991) 3 SCC 47]** to the effect that, the candidates do not acquire any vested right to be appointed merely by applying for selection or even after selection, solely by virtue of inclusion in the select list.

6. Coming to the prescription of cut-off marks, the

verdict rendered by the Apex Court in **K.Manjusree v. State of Andhra Pradesh and another [(2008) 3 SCC 512]** and sought to be relied on by the appellant reads as follows (relevant portion only):

“33..... 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 wants 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.”

7. In **Barot Vijaykumar Balakrishna v. Modh Vinaykumar Dasrathlal** (cited supra), the Apex Court, after referring to the facts and circumstances, observed that, in view of the omission to prescribe cut-off mark for the viva-voce, there were only two courses open. One course was to carry on with the selection process and to complete it

without fixing any cut-off mark for the viva-voce and to prepare the select list on the basis of the aggregate of marks obtained by the candidates in the written test and the viva-voce, which was held as clearly wrong and in violation of the statutory rule governing the selection. The other course was to fix cut-off mark for the viva-voce and to notify the candidates called for interview about it; which course was pursued by the Commission therein and hence, the Apex Court found that the said selection was in compliance with the rules and did not cause any prejudice to the candidates, by virtue of which no illegality was found in respect of the selection process.

8. Learned counsel for the appellant submits that Annexure-R1(b) produced along with the statement dated 23/03/2015 in the writ appeal was not in existence at the time of issuance of Ext.P1 notification, though it was there before the date of the written test conducted on 06/04/2013 and the interview scheduled on 23/07/2013. It is true that such stipulation was issued only after the notification. But

this is not in respect of any change in qualification to be possessed by the candidate and the same does not have any relevance or significance in so far as there is no case for the appellant/petitioner to the effect that anybody else has been selected or identified for the trade/post of 'Pattern Maker', so as to have caused any prejudice to the appellant/petitioner. The only course open is to have the post re-notified, if at all the post is actually in existence and if the respondent Company is desirous of selecting a person to the post in question. Only thing is that, the rights and interests of all prospective candidates including the appellant/ petitioner have to be protected, if at all any further process of selection is pursued by the respondent Company in the due course.

9. The appellant has not substantiated the contention with respect to the 'prejudice', if any, caused to him because of non-fixation of the cut-off mark for the interview. There is no case that anybody else, having scored more marks than the cut-off marks, has been selected or appointed by the

Company. It is stated by the learned counsel for the appellant that nobody has been selected or appointed in respect of the post of 'Pattern Maker'. It was open to the employer to fix the norms, considering the job requirement, with respect to qualification, level of skill, knowledge and experience. No interference is possible so long as the process is transparent. In the instant case, since nobody has been admittedly selected or appointed as 'Pattern Maker' after the written test, no prejudice has been caused to the appellant. If at all the respondent Company is desirous of selecting any 'Pattern Maker' having requisite qualification and credentials, it is for the Company to issue a fresh notification. The learned Standing Counsel for the respondent Company submits that the Company does not have any objection at all in notifying the cut-off marks as well, in the advertisement itself, if and when selection to the trade 'Pattern Maker' is notified, so as to enable the appellant/petitioner to be better equipped as contended by him. It is open for the appellant to respond to such

notification as and when the same is issued.

In the facts and circumstances, this Court finds that no interference is possible with regard to the verdict passed by the learned single Judge. No tenable ground has been raised so as to sustain the reliefs sought for. The appeal is dismissed accordingly.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE