

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.464 of 2016**

Noshad Mohd. Khan, S/o Late Mohd. Sharif Khan, aged about 47 years, R/o 42-A, Friends Colony, Behind Police Station Ashoka Garden, Bhopal, Madhya Pradesh

---- Appellant**versus**

1. The High Court of Chhattisgarh at Bilaspur, Chhattisgarh, through Registrar General
2. State of Chhattisgarh, through Chief Secretary, Secretariat, Mahanadi Bhawan, Police Station and Post Rakhi, New Raipur, District Raipur, Chhattisgarh
3. The Selection Committee, Higher Judicial Services, through Registrar General, High Court of Chhattisgarh at Bilaspur, Chhattisgarh
4. Jaideep, S/o Shri Satyendra Kumar Garg,
5. Santosh Kumar Tiwari, S/o Vidyadhar Tiwari,
6. Manvendra Singh, S/o Vijay Singh,
7. Rajbhan Singh, s/o Mahadeo Singh

Respondents No.4 & 7 through Registrar General, High Court of Chhattisgarh at Bilaspur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Devesh G. Kela, Advocate
For State/Respondent No.2	:	Shri Prafull N. Bharat, Additional Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per Deepak Gupta, Chief Justice****28.9.2016**

1. Heard on I.A. No.1 of 2016 for condonation of delay of 161 days in filing the appeal. On due consideration, the interlocutory application is allowed and delay is condoned.
2. This appeal is directed against the judgment dated 18.2.2016 delivered by the Learned Single Judge of this Court dismissing Writ Petition (S) No.247 of 2016 filed by the Petitioner.
3. Briefly stated the facts of the case are that pursuant to an advertisement issued by the High Court of Chhattisgarh, the

Petitioner/Appellant applied for being appointed as a District Judge in the quota of direct recruits. It is not disputed that the Petitioner/Appellant qualified the written examination. He appeared in the viva-voce test. In the viva-voce test, he secured only 9 marks out of 20. The rules prescribed that a person should have secured at least 50% marks in the viva-voce test. The Learned Single Judge held that recruitment has to be done as per the rules and since the rules have prescribed securing of minimum 50% marks in viva-voce test, the Petitioner/Appellant has no case. The main challenge by the Petitioner/Appellant is that the Justice Shetty Commission in its recommendations relating to the procedure of selection has made the following recommendation:

“(iv) The viva-voce Test should be in a thorough and Scientific Manner and it should be taken anything between 25 and 30 minutes for each candidate. The viva-voce shall carry 50 marks. There shall be no cut off marks in viva-voice Test.

(v) The merit list will be prepared on the basis of marks/grades obtained both in the Written Examination and viva-voce.”

4. The Petitioner/Appellant submits that these recommendations of the Justice Shetty Commission have been accepted by the Apex Court in **All India Judges' Association v. Union of India, AIR 2002 SC 1752**. He, therefore, submits that there should have been no minimum marks in the viva-voce test. We are unable to accept this argument for two reasons. Firstly, the Apex Court in **Syed T.A. Naqshbandi v. State of Jammu & Kashmir, (2003) 9 SCC 592**, **Ramesh Kumar v. High Court Delhi, (2010) 3 SCC 104** and **Sasidhar Reddy Sura v. State of Andhra Pradesh, (2014) 2 SCC 158** has clearly held that till the rules are amended in line with the Justice Shetty Commission's recommendations, the rules have to be followed and the recommendations of the Justice Shetty Commission cannot override

the rules.

5. The next ground on which we do not agree with the Petitioner/Appellant is that he appeared for the test knowing fully well that 50% minimum marks have to be obtained in the viva-voce test. Now, after taking his chance, he cannot turn around, and urge that this condition is violative of the recommendations made by the Justice Shetty Commission.
6. Therefore, we find no merit in the appeal, which is accordingly dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE