

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1261 of 2015
IN
Civil Writ Jurisdiction Case No. 3249 of 2011**

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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, Corporate Centre, Tulsiani Chambers, West Wing, 212, Free Press Journal Marg, Nariman Point, Mumbai 400021.
 4. The Appropriate Officer, SBI Administrative Office, Sardar Vallabhbhai Patel Marg, Near Main Railway Station, Nagpur.

.... Appellant/s

Versus

Praveen Kumar, son of Shri Parmeshwar Sah, resident of village Faujdari Bazar, P.O. and P.S. Kasim Bazar, District Munger, present residing at U/455. Rental Flat Road, Kankarbagh Colony, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chittaranjan Sinha, Sr.Adv.
Mr. Binod Bihari Sinha, Adv.
Ms. Surya Nilambari, Adv.
For the Respondent/s : Mr. Mani Kant Mishra, Adv.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 12-09-2017

Heard learned counsel for the parties.

2. The State Bank of India and its authorities, being aggrieved by the judgment dated 30.03.2015 passed by a learned Single Judge of this Court in CWJC No.3249 of 2011, have invoked the intra-court appeal jurisdiction of this Court by way of Letters Patent Appeal.



3. The respondent no.1 in the present appeal moved this Court in its writ jurisdiction for a writ of mandamus directing the respondent-Bank and its authorities to appoint the petitioner on the post of Clerk in the Bank against the vacancies published vide Advertisement No.CRPD/CR/2009-10/04. The petitioner claimed that he, despite having secured 131 marks, was not appointed, whereas the last candidate who had only 121 marks out of the total marks of 235 got employment.

4. In order to claim his appointment, the petitioner raised an issue that the respondent-Bank in the midst of the selection process introduced a minimum qualifying marks in interview, therefore the respondents changed the selection procedure itself which amounts to changing the rules of game as has been held in several judicial pronouncements of the Hon'ble Supreme Court of India. The learned Single Judge has upheld the contention of the petitioner and allowed the writ application. We have been called upon to examine the legality and validity of the impugned judgment passed by the learned Single Judge.

Case of the Writ Petitioner

5. The brief facts as appearing from the records of the writ proceeding are as under:-

The Central Recruitment and Promotion Department



(in short 'CRPD') issued an advertisement bearing no. CRPD/CR/2009-10/04 dated 23.07.2009 for recruitment of clerical staff in the State Bank of India. A copy of the advertisement has been brought on record as Annexure-1 to the writ application. A glance over the advertisement would show that the vacancies were notified for each of the Circles and the States. The advertisement besides prescribing the educational qualification and age clearly lays down the selection procedure in paragraph 11 which is reproduced hereunder for ready reference:-

"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 ¼ 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.”

6. Admittedly, the petitioner having requisite qualification and age applied for and the CRPD while issuing him admit card showing his roll number, registration number and date of examination made him available a booklet known as “Acquaint Yourself Booklet” for Recruitment Of Clerical Cadre. This has been brought on record as Annexure-3 series to the writ application. This booklet prescribes the details of the tests for written examination and the passing marks. The relevant paragraph of the booklet which is relevant for this case is reproduced for sake of convenience here-in-below:-

“Passing Marks : The candidate MUST PASS in each of the objective type tests. The passing marks in each of the five tests will be decided by the Bank taken together on the basis of the performance of all the competing candidates taken together in



each test subject to a minimum required level. Candidates are also required to score a minimum of 40% (35% for SC/ST/PWD/XS Category) on aggregate. Candidates who pass in each test and on aggregate and rank sufficiently high on the basis of the aggregate marks in the objective tests as stated above will be called for Personal Interview. Bank reserves the right to change this cut-off. The number of such candidates would depend upon the number of vacancies to be filled in. Final selection will be on the basis of candidate's performance in the written examination, and Personal Interview." (emphasis supplied)

7. The petitioner obtained the passing marks in each of the objective type tests, much more than the minimum required level and having been placed sufficiently high on the basis of the aggregate marks in the objective test was called for personal interview. The call letter dated 05.04.2010 for interview is Annexure-4 to the writ application and the relevant contents of the same are being quoted hereinafter because contention of the appellants is somewhere based on the said call letter which inter alia says "your performance in the Interview will also carry weightage."

8. It is the case of the petitioner, not denied by respondents in writ that in the midst of the selection process minimum qualifying marks i.e. 14 marks for General/OBC out of the total 35 marks for which interview was held, was introduced by the respondents-appellants and the same was not brought to the notice of



the petitioner at any stage of the selection process. The petitioner being 'OBC' candidate secured 119 marks out of total 200 marks for which the objective type test had been held, but in the interview he was awarded only 12 marks whereas he should have obtained at least 14 marks which was set as minimum qualifying marks for OBC candidates, the category which the petitioner belongs to. Thus, the whole case of the petitioner is based on his contention that minimum qualifying marks in interview was introduced as an afterthought even though the advertisement and the 'Acquaint yourself booklet' clearly prescribed that the final selection will be made on the basis of candidate's performance in the written test and interview taken together. According to him, this is changing the rules of the game while the game is being played which is bad in law in view of the judicial pronouncements of the Hon'ble Supreme Court in the case of **K. Manjusree Vs. State of A.P., reported in (2008) 3 SCC 512** and again in the case of **Hemani Malhotra Vs. High Court of Delhi, reported in (2008) 7 SCC 11** wherein the Hon'ble Supreme Court has held that "it was not permissible for the employer to change the criteria of selection in the midst of selection process."

Stand of the Respondents

9. On behalf of the respondents-appellants a counter affidavit was filed before the learned Single Judge, the stands taken



in the counter affidavit are the reasons and grounds for which the present appeal has been filed. The respondents have reproduced Clause-11 of the advertisement and have also referred to the Booklet being known as “Acquaint Yourself.” Paragraph no.17 of the Booklet has been quoted which is reproduced hereunder:

“Bank Reserves the right to change cut-off. The number of such candidates would depend upon the number of vacancies to be filled in. Final selection will be made on the basis of candidate’s performance in the written examination, and Personal Interview.”

10. The stand of the respondents was that apart from the written test, 35 marks was fixed for personal interview for which requirement of minimum marks was stipulated by the Bank to ensure that the candidates possess the required attributes for the job which are not measurable in written test. It is their contention that in this view of the mater, the minimum qualifying marks in the interview was fixed as 12 marks for the category of ST/SC/PWD/XS and 14 marks for the General and OBC category out of total marks 35. The minimum qualifying marks, according to the respondents, were fixed for interview being applicable to all the candidates being called for interview and so there was no arbitrariness and unreasonableness on part of the Bank in fixing minimum qualifying marks for the interview. It is further submitted by the respondents-appellants that



in the call letter issued to the candidates for interview it was stated that their performance in the interview will also carry weightage and since the performance of the petitioner in the interview was less than the cut-off marks fixed for that so he was not found suitable for selection.

11. The learned Single Judge considered the submissions and upheld the contention of the petitioner and held that introduction of minimum qualifying marks for interview in the midst of selection process amounts to changing the rules of the game. Relying upon the judicial pronouncements of the Hon'ble Supreme Court mentioned and after a thorough discussion of those judgments in the facts of the present case the writ application was allowed vide the impugned judgment.

Submissions of the Respondents-Appellants

12. Learned senior counsel representing the appellants before us has once again reiterated the stand of the respondents. According to him, no doubt a concept of minimum qualifying marks in interview was introduced in the midst of the selection process without their being any notice to the candidates/petitioner, but it was introduced for a better selection and in fact it only amounts to raising the bar, a concept which has been discussed in detail by the Hon'ble Supreme Court in the case of



Yogesh Yadav Vs. Union of India & Ors., reported in (2013) 14 SCC 623: 2013(4) PLJR (SC) 121. Learned senior counsel points out that in a recent decision in the case of **Neha Sharma Vs. State of Bihar, reported in 2017(1) PLJR (H.C.) 431** decided by one of us (Hon'ble Mr. Justice Ajay Kumar Tripathi) the said judgment of the Hon'ble Supreme Court in the case of Yogesh Yadav has been followed and the same may be done here also. According to learned senior counsel, the petitioner though obtained 131 marks, which is much more than the last selected candidate, who has been appointed in the Bank, he could not get appointment because he had not obtained the minimum qualifying marks in interview. The learned senior counsel contends that the call letter for interview saying that the performance in interview shall carry weightage was sufficient to show the bona fide of the appellants in introducing the minimum qualifying marks in interview.

Submissions of the Writ Petitioner-Respondent no.1

13. On the other hand, learned counsel representing the respondent no.1 has vehemently contested the submissions of the learned senior counsel representing the appellants. According to learned counsel, the selection procedure has been clearly prescribed in the advertisement and in the Acquaint Yourself Booklet. Everywhere it is stated that final selection will be based on the



performance of the candidate in the written test and the interview taken together. He has placed before us a decision of a Division Bench of this Court in the case of **Shivanand & Anr. Vs. Development Commissioner-cum-Chairman of Board of Director, Bihar State Building Construction Corporation Ltd. & Ors., reported in 2017 (1) PLJR 358**, wherein this Court has reiterated the law on the subject and also following the judgments of the Hon'ble Supreme Court in **K. Manjusree (supra) and Hemani Malhotra (supra)** held that if there was to be a minimum qualifying marks for interview, the same ought to have either been mentioned in the advertisement itself or the candidates ought to have been notified in this regard before they were allowed to participate in the viva voce test. Learned counsel further submits that paragraph 17 of the booklet relied upon by the appellants is only a half hearted reliance because a reading of the complete paragraph would show that it refers to a minimum qualifying marks which were fixed in the written test. According to him, there is no denial by the respondents-appellants that neither the advertisement nor the booklet anywhere prescribes a concept of minimum qualifying marks in interview. Further, the respondents-appellants never claimed that minimum qualifying marks in interview was notified by any means to the candidates. According to him, the call letter saying that performance in interview



will also carry weightage by no stretch of imagination may be construed as a notification of the minimum qualifying marks in interview.

CONSIDERATION

14. We have heard the parties, perused the records and considered the abovementioned submissions. In our opinion, there is force in the submission of the learned counsel representing the private respondent no.1. To the contrary the submissions of the learned senior counsel that this is a case of raising the bar and will be covered by the judgment of the Hon'ble Supreme Court rendered in the case of **Yogesh Yadav Vs. Union of India & Ors., reported in (2013) 14 SCC 623** seems a misplaced submission only. The plea taken on the strength of the judgment in Yogesh Yadav's case has been duly considered by the learned Single Judge in paragraphs 27, 28 and 29 of the impugned judgment. We are in agreement with the learned Single Judge. It is not a case of raising the bar for selection. It is not a case where after adding the marks obtained by a candidate in written test and interview as per the advertisement a select list was prepared but because of introduction of a bench mark only those candidates who had secured more than the bench mark cut-off were offered appointment. In case of **Yogesh Yadav** (supra) the written test carried 80% marks and 20% marks were assigned for interview.



The selection was undertaken in accordance with the criterion which was laid down at the time of recruitment process. After interview, marks of both the tests were added, however since bench mark was not stipulated for giving appointment, a decision was taken to give appointment to only those candidates who had secured 70% marks or above in unreserved category and 65% or above in reserved category. It was held that in absence of any rule on this aspect at very first place, this does not amount to changing the rule of the game.

15. The judgment of the Apex Court has also been followed by one of us (Mr. Justice Ajay Kumar Tripathi) in the case of **Neha Sharma Vs. State of Bihar, reported in 2017(1) PLJR 431 HC**. In the said case, the appointment was being done on a highly expertised post and the persons to be appointed were required to be equipped with high level of skills and ability, a high level committee took a decision to introduce a bench mark in form of a cut-off marks in interview and overall cut-off marks were prescribed after the interview was already held. It was the plea of the State Government that it was not a routine exercise for hiring by a State agency or authority with a view to provide employment. These appointments were of people who are required to make a difference and they have to be different from others. In that background, a view was taken that it was a case of raising bar and not of changing the



rules of game in the midst of the selection process. The ratio of the said judgment would not apply in the facts of the present case. It is a case of appointment in a clerical cadre of the bank certainly with a view to provide employment in routine course. It is not a case of raising the bar.

16. A bare reading of the advertisement (Annexure-1) and the Acquaint Yourself Booklet (Annexure-3 series) would show that the candidates were given a clear understanding that the final selection shall be based on their performance in the written test and the interview taken together (emphasis supplied is mine). There was no whisper about any minimum qualifying marks in the interview. No intention has been shown in the Advertisement giving any impression to a candidate that a minimum qualifying marks shall be introduced in interview, and this being the admitted position that minimum qualifying marks in the interview was introduced in the midst of the selection process, which was never notified to the candidates/petitioner, we are coming to a conclusion that this case is squarely covered by the judgments of the Hon'ble Supreme Court in the cases of **K. Manjusree (supra)** and **Hemani Malhotra (supra)**. We also agree with the decision of a Division Bench of our own High Court in the case of **Shivanand & Anr. (supra)** which has been rendered in almost identical fact situation because in that case



also a similar kind of understanding was given to the candidates but later on qualifying marks for interview was brought in existence.

Paragraph 25 of the said judgment of this Court reads as under:-

“It is amply clear from the three decisions of the Supreme Court, as noted above, that if there was to be a minimum qualifying marks for interview, the same ought to have either been mentioned in the advertisement itself or the candidates ought to have been notified in this regard before they were allowed to participate in the viva voce test.”

17. Further the submissions of the learned senior counsel that the call letter for interview contained a stipulation that performance in interview shall carry weightage would also not persuade us to take a different view because there was no concept of providing weightage to the interview, it leads nowhere being completely vague and in no case it would be construed as a notification of introducing minimum qualifying marks in interview. The learned Single Judge has rightly allowed the writ application. We do not find any illegality or infirmity with the impugned judgment. We are of the view that appeal has not merit and it is required to be dismissed.

18. Before parting with this judgment, we would notice that vide order dated 28.02.2011 passed in CWJC No.3249 of 2011 while granting time to the respondent Bank to file counter



affidavit the learned Single Judge had directed that the authorities of the respondent-Bank shall keep one post reserved for the petitioner. The selection process was initiated in the year 2009-10 and since then 7 years have gone past in the present litigation which the petitioner has lost because of the ongoing litigations, we would, therefore direct the respondents-appellants to appoint the petitioner against the reserved post within a period of two months from the date of receipt of this order.

19. Appeal is dismissed. There will be no order as to cost.

(Rajeev Ranjan Prasad, J)

Ajay Kumar Tripathi, J.- I Agree.

Arvind/-

(Ajay Kumar Tripathi, J)

AFR/NAFR	AFR
CAV DATE	05.09.2017
Uploading Date	12.09.2017
Transmission Date	NA

