

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2462 OF 2017

Satish Prabhakar Joshi

... Petitioner.

V/s.

State of Maharashtra and Ors.

... Respondents.

Mr. Dhairya Sheel Sutar, Advocate for the Petitioner.

Mr. S. B. Kelal, AGP for Respondent Nos. 1 and 2.

**CORAM : V.M. KANADE AND
P. R. BORA, JJ.**

DATE : 06th MARCH, 2017.

P.C. :

1 Heard the learned counsel appearing on behalf of the Petitioner and the learned AGP appearing for the State.

2 The Petitioner had appeared for preliminary written examination held on 05.06.2016 by Respondent No.2 for the post of Civil Judge, Junior Division and Judicial Magistrate, First Class. The Petitioner passed the said examination and become eligible for the main examination. On 09.10.2016, the petitioner appeared for the main examination and secured 51 marks each in both the papers i.e. civil law and criminal law of 100 marks each and thus secured total 102 marks.

3 It is the contention of the petitioner that as per the advertisement issued by Respondent No.2, the candidate was required to secure minimum 50% marks in each of the papers so as to qualify him for viva-voce test. According to the petitioner since he had secured 51 marks each in both the papers, he was eligible to be called for the viva-test. It is the grievance of the petitioner that in spite of his securing the minimum marks, as prescribed in the advertisement, he has been declared not qualified to be called for viva-voce. The petitioner has, therefore, prayed for a direction against the respondents to call him and permit him to appear for viva-voce in pursuance of the advertisement dated 18.08.2016.

4 We are, however, unable to accept the contentions raised on behalf of the Petitioner. It is true that as provided under Rule 6 (1)(e)(i) of the Maharashtra Judicial Service Rules, 2008, the candidate applying for being appointed to the post of Civil Judge, Jr. Division, who secures not less than 50 marks in each papers, shall be eligible for viva-voce. However, the second proviso to the said sub- clause (e) further provides that the recruiting authority shall call the candidates for viva-voce in the ratio of 1 : 3 (1 as to 3) of the available vacancies out of the successful candidates.

5 In view of the aforesaid proviso, having regard to the number of vacancies, the recruiting authority i.e.

respondent no.2 has fixed 105 marks, as cut-off marks and has called the candidates who have secured not less than 105 marks for viva-voce. In view of the specific rule as referred hereinabove, the recruiting authority was well within its power in fixing the cut-off marks. The Petitioner since has secured less than the cut-off marks has been declared not qualified to be called for the viva voce though he has secured the minimum marks, as prescribed in rule 6(1)(e) of the Maharashtra Judicial Service Rules, 2008 in each paper. It does not appear to us that any error has been committed by Respondent No.2 in declaring the petitioner as not qualified to be called for viva-voce.

6 For the reasons stated above, the Petition is rejected. No costs.

(P.R. BORA, J)

(V.M. KANADE,J)

.....