

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: October 13, 2017

Judgment delivered on: October 25, 2017

+ W.P.(C) 4797/2015 & CM. No. 8671/2015

PANKAJ NAILWAL AND ANR.

..... Petitioners

Through: Mr. Sanjeev Goyal, Adv.

versus

SECRETARY GENERAL, SUPREME COURT
OF INDIA

..... Respondent

Through: Mr. Kirtiman Singh, (CGSC) Mr.
Waize Ali Noor, Adv. and
Mr. Prateek Dhanda, Adv.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioners with the following prayers:-

“a) Issue a writ of certiorari/Mandamus or any other appropriate writ or orders to call the records relating to selection process of Junior Court Assistant advertised vide Advertisement dated by the respondent & direct the Respondent to comply with terms of Advertisement while making appointment to post of Junior Court Assistant and/or

b) issue a writ of mandamus or any other appropriate writ directing the respondent to consider the petitioner for appointment to the post of Junior Court Assistant on the basis of aggregate marks obtained by him,

in compliance of the terms of advertisement/Instructions dated 31.10.2012 issued by the Respondent;

c) Issue such other writ or writs, direction or directions, order or orders, as may be deemed fit and proper to meet the end of justice.”

2. The facts as noted from the writ petition are, the respondent issued an Advertisement on October 31, 2012 inviting applications from eligible candidates for recruitment to the post of Junior Court Assistant ('JCA' in short). It is stated that the Advertisement had not provided for any reservation for reserved category candidates contrary to the constitutional obligation. It is the petitioners case that, being eligible to apply for the post of JCA, they had submitted their applications and pursuant to which they were called for the written examination and were successful in the same. It is their case that they also qualified the typing test and the objective computer test and were called for the interview. The petitioners appeared in the interview and performed well in the same. However, the petitioners' names were not found in the final result declared by the respondent on its website. The respondent declared only names on the website without disclosing the marks obtained by each of the selected candidates. It is averred that the petitioners had made RTI application and sought information about the Selection Procedure/Criteria, event wise marks obtained by the petitioners, event wise marks of the selected candidates, event wise cut off marks of the last candidate.

3. It is averred that the respondent had replied to their RTI application and had for the first time stated that the candidates appearing in JCA examination had not been considered, who had scored minimum 50 marks out of 100 marks in the written test, 13 marks out of 25 marks in objective type computer knowledge test, 25 marks out of 50

marks in typing speed test and 13 marks out of 25 marks in interview. It is their case that the respondent further disclosed that the petitioner No.1 obtained 70 marks out of 100 marks in written test, 15 marks out of 25 marks in objective type computer knowledge test, 40 marks out of 50 marks in typing test on computer and 7 marks out of 25 marks in interview, total being 132 marks. With regard to the petitioner No.1, the respondent disclosed that cut off marks for all categories are same as disclosed in reply to RTI application of petitioner No.1 and further disclosed that the petitioner No.2 got 9 marks out of 25 marks in the interview. However, the respondent refused to disclose the marks of all selected candidates under the garb of Section 8(1)(j) of the RTI Act, 2005. Aggrieved by the aforesaid refusal of the Public Information Officer, petitioners preferred appeal before the Appellate Authority. It is their case that the first Appellate Authority also rejected the appeal for disclosure of marks obtained by the selected candidates on misconceived notion. Aggrieved by the arbitrary change of procedure, the petitioners on May 28, 2014 represented to the Hon'ble Chief Justice of India stating that the respondent had failed to adhere to the procedure prescribed in the Advertisement and Rules of the game have been changed either during the game or after the game was played without informing the players. It is stated that their appeal before the CIC is still pending. The reply received on the representation dated December 12, 2014 was a vague one.

4. The respondent in their counter affidavit/additional affidavit has stated, in terms of Article 146 of the Constitution, which provides for the appointment of Officers and servants of the Supreme Court, the power is conferred on the Hon'ble Chief Justice of

India in respect of appointment of Officers and servants on the establishment of the Supreme Court. Subject to certain conditions prescribed in Article 146, absolute power of recruitment, appointment and control of the staff of the Supreme Court is conferred on the Hon'ble Chief Justice of India. The approval of the President is necessary insofar as it relates to matters specified in proviso to Clause 2 because the budget has to be provided by the Central Government. It is their case that the unequivocal purpose and intention of the framers of the Constitution in enacting Article 146 is that in matters of appointment of Officers and servants of the Supreme Court, Hon'ble Chief Justice of India is the Supreme Authority. In terms of Article 146 of the Constitution, read with Supreme Court Officers and Servants (Conditions of Service and Conduct) Rules, 1961 ('Rules of 1961' in short) all administrative powers have been conferred on the Hon'ble Chief Justice of India for determining the work structure of the Court, the Registry and also setting up the ministerial side of the Court. Rule 4 of the Rules of 1961 provides for method of recruitment of staff. Rule 5 provides for the qualification required for appointment of various categories of posts specified in Column 2 of the Schedule attached to the Rules. Rule 6 stipulates, the Hon'ble Chief Justice of India is the Appointing Authority in the Supreme Court. Rule 9 provides for conditions of service. Similarly, Rule 47 provides for residuary powers. The respondent has also referred to Rule 48 of the Rules, which provides, if any dispute as to the interpretation of the Rules arises, the interpretation put by the Hon'ble Chief Justice of India shall be final.

5. It is also averred that in the present case, the Hon'ble Chief Justice of India exercising his power under Article 146 of the Constitution and under the Rules of 1961

formulated guidelines/norms for allocation of marks for test and interview for selection to the post of JCA as far back in the year 1994 and these have been consistently followed since then. The post of JCA was earlier termed as Junior Clerk and renamed as Junior Court Assistant vide Office Order dated February 02, 2007. It is also the stand of the respondent that the qualifying criteria for each stage of examination viz written test, objective type computer knowledge test, typing speed test on computer and interview was fixed and duly approved by the Hon'ble Chief Justice of India prior to the issuance of the Advertisement for the post of JCA in the year 2012. The interview component has been made an essential and inseparable part of selection process for the said post since 1994 pursuant to a policy then approved by the Hon'ble the Competent Authority. It is also stated that the Advertisement clearly stipulated that those candidates, who are declared qualified in written examination will be called for typing speed test on computer and objective type computer knowledge test and the candidates who are declared qualified in written examination, typing test on computer and objective type computer knowledge test will be called for interview. It is stated that the petitioners had scored only 7 and 9 marks respectively as against minimum qualifying 13 marks out of maximum 25 marks prescribed for the interview and as such they were not selected for appointment to the post of JCA and their names were not empanelled. There were around 628 other candidates, who could not score minimum 13 marks in interview and they were not selected for appointment to the post of JCA. It is agreed that Advertisement/instructions issued did not specify the minimum qualifying marks for various tests but entire selection process was totally consistent with the

administrative policy on the subject and the final merit list was prepared on the basis of aggregate of marks in various tests and interview and while doing so, having regard to the approved policy, the minimum qualifying standard in prescribing test and interview had to be and was taken into consideration for formation of the panel of selected candidates. It is also stated that the guidelines, norms, parameters for allocation of marks for test and interview for selection to the post of JCA were formulated with the approval of the Hon'ble Chief Justice of India. It is only after the approval of the Competent Authority for allocation of maximum marks to various stages of examination and minimum qualifying criteria for such stages of examination that open Advertisement inviting applications for the general public was published in the year 2012.

6. Mr. Sanjeev Goyal, learned counsel for the petitioners would make only one submission by drawing my attention to the Advertisement, that the same did not stipulate the interview to be a qualifying component of the selection process. In other words, it is his submission that the stipulations in the Advertisement reveal that the other components, being written examination, typing test on computer and objective type computer knowledge test were qualifying examination. A candidate need to score particular qualifying marks for being qualified for the next stage of the selection process but not in the interview for being included in the final merit. This, according to him, is changing the Rules of the game after the game has started i.e after the issuance of the Advertisement as the respondent has prescribed minimum 13 marks out of maximum 25 marks as the qualifying marks to be achieved in the interview process. He would also

state, if the petitioners were notified the qualifying marks for interview as 13, the petitioners could have taken training/prepared well to face the Interview Board, which could have resulted in the petitioners scoring better marks for them to qualify. He would rely upon the following judgments in support of his contentions:-

- (i) ***(2014) 14 SCC 50 Renu and Others v. District and Sessions Judge, Tis Hazari Courts, Delhi and Another;***
- (ii) ***2013 (138) DRJ 475 Vikas Singh and Ors v. Airport Authority of India;***
- (iii) ***2015 SCC OnLine Del 13413 Airports Authority of India v. Vikas Singh and Ors and connected appeals;***
- (iv) ***2011 SCC OnLine Del 292 Shikha Arora v. DSSSB and Anr.;***
- (v) ***AIR 1985 SC 1351 Umesh Chandra Shukla v. Union of India and Others and connected petitions.***

7. On the other hand, Mr. Kirtiman Singh, apart from reiterating the stand taken by the respondent in their counter affidavit/additional affidavit, has drawn my attention to the official records, more particularly the note sheet dated March 11, 1994 wherein it was specifically decided that for Junior Clerk, there would be a component of interview, in which the candidate need to secure 13 marks out of maximum of 25 marks. It is also his submission that in terms of note dated October 19, 2012, before the issuance of Advertisement, the Hon'ble Chief Justice of India- the Competent Authority had decided in the Scheme of Examination to include the following:-

	<i>Subjects</i>	<i>Duration</i>	<i>Maximum Marks</i>	<i>Minimum Qualifying Marks</i>
1.	<i>Written Test</i> <i>Objective Type Question paper with multiple choice answers containing 100 questions (consisting of 50 General English questions including</i>	<i>1 ½ hours</i>	<i>100</i>	<i>50</i>

	<i>comprehension section, 25 General Aptitude questions and 25 General Knowledge questions)</i>			
2.	<i>Typing on Computer Typing (English) test on Computer with minimum speed 35 w.p.m. (mistakes allowed 2%)</i>	<i>10 minutes</i>	<i>50</i>	<i>25</i>
3.	<i>Objective Type Computer Knowledge Test</i>	<i>30 minutes</i>	<i>25</i>	<i>13</i>
4.	<i>Interview</i>		<i>25</i>	<i>13</i>

8. In other words, it is his submission that the plea of the learned counsel for the petitioners that the qualifying marks of 13 for the interview were fixed after the issuance of Advertisement or after the game has started, is incorrect. The respondent has rightly adhered to the cutoff of 13 marks in the interview for the purpose of preparing a panel for appointment to the post of JCA, in view of the decision taken much before the Advertisement. That apart, it is his submission that 628 candidates were found disqualified on account of not scoring minimum 13 marks in the interview. Hence, it is not a case where the petitioners only have been disqualified on that count. Any order passed by this Court in favour of the petitioners would have repercussion on the other 628 cases as well. He states, in any case the validity of the panel having expired/not continued, no relief as prayed for can be granted. He would rely upon the following judgments in support of his contention:-

- (i) *Moti Kumari v. Secretary General, Supreme Court of India W.P.(C) No. 314/2016 decided on February 15, 2016;***
- (ii) *Ms. Madhu Kukreti v. Union of India and Ors. MANU/DE/08510/2011;***
- (iii) *K.H. Siraj v. High Court of Kerala and others (2006) 6 SCC 395;***
- (iv) *Union of India and Ors v. Kali Dass Batish and Another (2006) 1 SCC 779;***

(v) *Hemani Malhotra v. High Court of Delhi with Vineeta Goyal v. High Court of Delhi* (2008) 7 SCC 11;

(vi) *Yogesh Yadav v. Union of India and Ors* (2013) 14 SCC 623;

(vii) *Mahinder Kumar and Ors v. High Court of Madhya Pradesh* (2013) 11 SCC 87.

9. Having heard the learned counsel for the parties, the only question, which arises for consideration is whether the respondent has fixed the cutoff marks of 13 out of maximum marks of 25 for the interview component of the selection process to the prejudice of the petitioners. It is the case of the petitioners, as canvassed by Mr. Sanjeev Goyal and also noted from the writ petition that the respondent has erroneously changed the criteria for selection to the post of JCA at the end of recruitment process, just before declaration of the select list which is contrary to the judgment of the Supreme Court in *K. Manjusree v. State of A.P. AIR (2008) SC 1470* and *Hemani Malhotra v. High Court of Delhi AIR 2008 SC 2103*. The said stand is factually incorrect in view of the stand of the respondent in its counter affidavit and also as per the note sheets produced for the perusal of the Court. Suffice to state, a policy decision was taken by the Competent Authority-Hon'ble Chief Justice of India in terms thereof, the cutoff marks for the interview were fixed as 13 marks out of maximum marks of 25 way back in the year 1994. It is the stand of the respondent that the said criteria continued in the subsequent selection(s). That apart, before the issuance of Advertisement, the Scheme of Examination as decided by Hon'ble Chief Justice of India, which has been reflected above clearly stipulates minimum qualifying marks of 13 for the interview and it is this decision, which has been adhered to by the Interview Committee while assessing the candidates. The petitioners have secured 7 and 9 marks

respectively, which are less than 13 marks. The consequence thereof being that the petitioners having not qualified the interview, could not have been part of the panel prepared for making appointments to the post of JCA. Hence, the submission made by Mr. Goyal is fallacious in the facts of this case. If that be so, the reliance placed by Mr. Goyal on the judgment of the Supreme Court in the case of ***Hemani Malhotra (supra)*** is also misplaced as the same is not applicable to the facts of this case for the reason, in the said judgment, the Supreme Court in clear terms in para 15 has held as under:-

“15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal.”

10. From the perusal of the aforesaid para, it is noted what the Supreme Court has held that if the minimum marks are not prescribed for viva-voce before the commencement of the selection process, the Authority concerned cannot during the selection process or after the selection process, add an additional requirement/qualification, that the candidate should also secure minimum marks in the interview. In the case in hand, as noted above, the decision of the Hon’ble Chief Justice of India i.e the Competent Authority to put cutoff marks of 13 for the interview being before the issuance of the Advertisement, the judgment has no applicability in the case in hand.

11. Similarly, in *K. Manjusree (supra)*, the Supreme Court in para 33 has held as under:-

“33. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. 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 want 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.”

12. From the above, it is clear that the Supreme Court held if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of the selection process. The minimum cutoff marks of 13 having been prescribed before the commencement of the selection process, this judgment has also no applicability in the facts of this case.

13. The reliance placed by Mr. Goyal on the judgment of this Court in the case of *Airports Authority of India v. Vikas Singh and Ors and connected appeals (supra)* is concerned, the said appeals were filed by the Airports Authority of India challenging the order of the learned Single Judge, who had allowed the writ petition filed by the respondents namely Vikas Singh and others. Suffice to state, the Appellate Court has dismissed the appeals and upheld the order of the learned Single Judge. The factual finding of the learned Single Judge in the said case was that the respondent did not fix the eligibility criteria/passing marks for the candidates before the recruitment process had commenced and the same was/were decided only after written test and interview were concluded. If that be so, the judgment of the learned Single Judge and also of the Division Bench are distinguishable on facts and are not applicable.

14. In *Umesh Chandra Shukla (supra)*, in which reliance was placed by Mr. Goyal on para 14 of the judgment, it is noted that the contention on behalf of the petitioner before the Supreme Court was that High Court had no power to eliminate names of candidates who had secured less than 600 marks in the aggregate after the viva-voce test. Reference was made to Rule 17 and 18 of the Rules, which provided that the Selection Committee shall call for viva-voce test only such candidates who are qualified at the written test as provided in the appendix and that the Selection Committee shall prepare a list in the order of merit after viva-voce test. A stand was taken in the counter affidavit that the Selection Committee has inherent power to select candidates who, according to it are suitable for appointment by prescribing the minimum marks, which a candidate should obtain in the aggregate in order to get into Delhi Judicial Service. The

Supreme Court was of the view that the Selection Committee had no power to prescribe the minimum marks, which a candidate should obtain in the aggregate different from the minimum marks already prescribed by the Rules in its appendix. Suffice to state, the judgment is not applicable in the facts of this case as the issue, which fell for consideration before the Supreme Court was different from the one, which falls for consideration of this Court in this writ petition.

15. Insofar as the judgment of the Coordinate Bench of this Court in the case of *Shikha Arora (supra)*, as relied upon by Mr. Goyal is concerned, the issue, which fell for consideration of this Court was that the petitioner was aggrieved by non consideration of her case for recruitment to the post of Assistant Teacher (Primary) in Directorate of Education pursuant to an Advertisement issued on July 22, 2006. It was the case of the petitioner that the provisions of fixing cutoff marks for both Part-I and Part-II examination of 45% was not mentioned in the Advertisement inviting applications for recruitment. It was contended that the aforesaid criteria of cutoff marks was set down only on March 30, 2007 by respondent No.1 i.e after the Part-I examination has already been held on March 25, 2007. In short, the case of the petitioner was that once the recruitment process has started and the examination itself has been conducted, it was not open to the respondents to thereafter prescribe any additional criteria with regard to the recruitment. Having noted the case as above, the judgment has no applicability in the facts of this case as the High Court relied upon the judgment of the Supreme Court in *Hemani Malhotra (supra)* and *K. Manjusree (supra)*, which have been distinguished in the earlier paragraphs. Suffice to state, in the

case in hand, the cutoff marks of 13 were prescribed much before the selection process was initiated i.e before the issuance of the Advertisement.

16. Insofar as the judgment in the case of *Renu and Others (supra)* is concerned, there the Supreme Court has said that the public appointments should be transparent and should prevent arbitrariness and to avoid change of criteria for selection after the selection process has commenced, unjustly denying someone at the cost of others. The judgment has no applicability in the facts of this case and in view of my conclusion above.

17. That apart, the submission of Mr. Kirtiman Singh that there are 628 candidates who had secured less than 13 marks in the interview, who have been disqualified and any order in favour of the petitioners by this Court would have a repercussion in those cases, is also appealing. The plea of Mr. Goyal, that, had the petitioners been notified about the cutoff marks in the interview, they would have taken training to enhance their performance is not appealing, being an afterthought as they were unsuccessful.

18. In view of my above discussion, I do not see any merit in the petition. The same is dismissed. No costs.

CM. No. 8671/2015

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 25, 2017/ak