

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10143 OF 2019

Shivshankar Dattatraya Shinde ...Petitioner
vs.
Registrar (Legal & Research)
Bombay High Court and Another ...Respondents

Mr. S.D. Shinde, the Petitioner in person.
Mr. Rahul Nerlekar, for Respondent No. 1
Mr. R.P. Kadam, AGP for Respondent No. 2.

**CORAM : S.S. SHINDE &
N.B. SURYAWANSHI, JJ.**

DATE : OCTOBER 14, 2019

ORDER (*Per N.B. Suryawanshi, J.*)

. The Petitioner party in person is a practicing advocate who was unsuccessful in the process of selection of the District Judges, challenges the corrigendum dated 21st August, 2019 on the ground that once the game begins the rules cannot be changed in the midst of the game.

2. Rule. Rule made returnable forthwith. Heard with consent of the parties.

3. Heard the Petitioner party in person and the learned advocate appearing for Respondent No. 1 and learned AGP for Respondent No. 2.

4. It is argued by the Petitioner that the Registrar General of the Bombay High Court invited online applications for filling up six posts of District Judges by nomination from 25% quota for the advocates. The Petitioner in pursuance of the same, submitted application. On 21st June, 2019. A notice was published on the High Court website declaring that the preliminary examination will be held on 21st May, 2019 at Mumbai, Nagpur and Aurangabad centers simultaneously.

5. The Petitioner was held provisionally eligible for the main written examination. Vide notice dated 29th July 2019, eligible candidates were informed that the main written examination will be conducted on 24th and 25th August, 2019 at Mumbai center. The written examination

will be of two papers based on Civil law and Criminal law carrying 100 marks. The candidates were called upon to remain present on 2nd and 3rd August, 2019 for submission of the documents.

6. On 7th August, 2019 the Registrar published/uploaded notice dated 3rd August, 2019 regarding pattern of the paper of main written examination. The said notice stated that in paper (I) of Civil Law Question No. 1 shall be regarding judgment writing carrying 40 marks and the candidates shall be supplied with the paper book of Civil case and they would be expected to write judgment on the basis of paper book. So far as in paper (II) of Criminal Law, Question No. 1 shall be in respect of judgment writing carrying 40 marks and the candidates shall be supplied paper book of criminal matter and they would be expected to write judgment on the basis of paper book.

7. It is the case of the Petitioner that he prepared

himself for main written examination as per the previous years paper pattern that is main written examination held on 16th and 17th January, 2016. It is the grievance of the Petitioner that vide impugned corrigendum dated 21st August, 2019 annexed at Exhibit L the pattern of the question paper was changed. The corrigendum reads thus:

“In continuation of the earlier notice dated 3rd August, 2019 regarding pattern of paper of the main written examination for the post of District Judge, by nomination scheduled to be held on 24th and 25th August, 2019, it is to inform that for judgment writing, the paper book will not be supplied separately as mentioned in Question No. 1 of paper – I and paper – II. The problem on which the judgment to be written, shall be part of Question Booklet only”.

8. The Petitioner argued that the corrigendum was published on 23rd August, 2019 and the Petitioner could not prepare, particularly for judgment writing on Criminal matter within such a short period, the change in the paper pattern, has resulted into gross injustice to him which according to him is change in the rule of game when the game had already began. The Petitioner was not informed by message etc. about the said change. The Petitioner in

both the papers has secured 111 marks and was fixed at 115 marks as cut off merit The Petitioner was shown at Sr. No. 56 in the merit list. The Petitioner therefore, challenged such corrigendum also on the ground that the Maharashtra Judicial Service Rules, 2008 does not prescribe or contain any procedure or do not have any rule which authorize the Registrar to change the paper pattern from time to time as per his wish. In support of his contention the Petitioner relied upon the judgment in the case of **Hemani Malhotra vs. High Court of Delhi reported in 2008 AIR (SC) 2103** and the judgment of the Apex Court in the case of **Tej Prakash Pathak and Ors. vs. Rajasthan High Court and Ors. passed in Civil Appeal No. 2634 of 2013 dated 20th March, 2013.**

9. In reply, the learned advocate appearing for Respondent No. 1 contends that the entire selection process was conducted in pursuance of the judgment of the Hon'ble Apex Court in Civil Appeal No. 1867 of 2006. The

learned counsel further contended that the selection process is already complete and the Full Court on 9th September, 2019 has approved the select list. It is further argument that there is no change in the pattern of the examination and instead of giving paper book, the problem on which the judgment was to be written was given in detail, in the question booklet itself. So it cannot be said to be a change of pattern. The learned counsel therefore argued that the Writ Petition has no merits and the same has become infructuous now in view of the approval of the select list, the selection process is complete.

10. The learned AGP adopted the arguments of the learned counsel for Respondent No. 1.

11. It is well settled legal position by now that the candidate having participated in the selection process unsuccessfully, is not entitled to challenge the same. The Petitioner has participated in the selection process and

has given the written examination without any objection. The Petitioner could not succeed in the process. In this view of the matter, we are unable to accept the challenge raised by the Petitioner.

12. The challenge of the Petitioner to the corrigendum on the ground that the pattern of the paper was changed is without any substance. The corrigendum only informs the aspiring candidates that no separate paper book will be supplied for judgment writing for question No.1 of paper (I) and paper (II). It only clarifies that the problem on which the judgment is to be written, shall be part of the question booklet only. Thus, it cannot be said that the pattern was changed. Only instead of giving the problem in the paper book, the same was made part of the question booklet. Hence, there is no substance in the said contention of the Petitioner that the pattern of the written examination was changed. For the same reason, we are unable to accept the argument that the rules of the game

were changed when the game had already commenced.

13. The next contention of the Petitioner that the rules do not permit Respondent No.1 to change the pattern of examination. Rules only provide essential qualification for post, method of selection and in absence of rules procedure has to be formed and followed by the recruiting authority. Since the pattern of the examination was not changed, the said argument of the Petitioner is devoid of any substance.

14. The reliance placed by the Petitioner in the authorities cited supra is misplaced and misconceived. In the matter of Hemani Malhotra (supra), that was a case where Delhi High Court issued an advertisement inviting applications from eligible candidates for 16 vacant posts to be filled up by direct recruitment. The Petitioners therein participated in the selection process. Without declaring the result of written examination, viva-voce test was conducted and final merit list was drawn on the basis of

combined result of written examination and interview and according to the Petitioners, final merit list was not drawn on the basis of combined result of written examination and interview. Admittedly, in that case, at the beginning of the selection process no minimum cut off marks for viva-voce were prescribed for Delhi Higher Judicial Service Examination, 2006. Hence, it was the case of the Petitioners that prescribing minimum marks for viva-voce was not permissible at all after written test was conducted. The Hon'ble Apex Court has held that since the minimum marks were not prescribed for the viva-voce before the commencement of selection process, the authority concerned cannot either during selection process or after selection process add additional requirement/ qualification that the candidate should also secure minimum marks in the interview and held that the minimum marks by the Respondent at viva-voce test was illegal. The facts of the case in hand are totally different and the ratio in the above judgment is not applicable to the present case.

15. In the second authority relied upon by the Petitioner in the case of Tej Prakash Pathak (supra), the ratio is as follows :-

“..... the rules of the game the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced”.

“..... changing the rules of the game after the game was played is clearly impermissible”.

There cannot be any dispute about the ratio, however the same is inapplicable in the facts of the present case. There was no change in the rules criteria a pattern of question, after the selection process began.

16. We have perused the question paper booklet annexed by the Petitioner in the present paper book which in detail gives so far as Civil side is concerned, what is the Plaintiff's case, Defendant's case, evidence laid down & the arguments of the Plaintiff and Defendant. By considering the same, the candidate was expected to write judgment.

17. Similarly, on Criminal side, the facts in which the

offence was committed are stated, the evidence of the prosecution witnesses is given in nutshell, the arguments of the prosecution and the defence are narrated and the candidate is asked to write judgment on the same.

18. We find no substance in the argument advanced by the Petitioner that the pattern of the question paper was changed and or the rules were changed during the course of the game, which caused prejudice to the Petitioner. Since, the Petitioner without any protest participated in the selection process, in which he was unsuccessful. The selection process is now concluded, hence, we are not inclined to entertain this Writ Petition in our extraordinary jurisdiction under Article 226 of the Constitution of India. Hence, the following order :-

19. The Writ Petition is hereby dismissed.

20. Rule is discharged.

21. There shall be no order as to costs.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)