

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.1769 of 2020(O&M)
Date of decision: January 23, 2020

Harkirat Singh Ghuman

...Petitioner

Versus

Punjab and Haryana High Court and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Harkirat Singh Ghuman, - petitioner in person.

Harinder Singh Sidhu, J. :

1. The petitioner has filed this petition impugning the result of the Punjab and Haryana Superior Judicial Services Main Written Examination-2019 (Annexure P-5). He has also prayed that the result be declared afresh after removing the discrepancies/anomalies as pointed out in the writ petition. He has further prayed that the respondents be restrained from conducting interview/ viva voce as per schedule uploaded on the website of Punjab and Haryana High Court on 18.12.2019.

2. The petitioner is a practising Advocate of this Court. Vide notification dated 30.05.2019 (Annexure P-1) applications were invited for filling up 08 vacancies for appointment to Punjab Superior Judicial Service by way of direct recruitment from amongst eligible Advocates through competitive examination under Rule 7(3)(c) of Punjab Superior Judicial Service Rules, 2007 (for short 'the Punjab Rules'). Vide notification dated 07.08.2019 (Annexure P-2) applications were invited for selection against

11 vacancies of Haryana Superior Judicial Service by way of direct recruitment from amongst eligible Advocates through competitive examination under Rule 6(1)(c) of the Haryana Superior Judicial Service Rules, 2007 (for short 'the Haryana Rules').

3. The petitioner applied for appointment to both Punjab and Haryana Superior Judicial Services. He appeared in the main written examination for both Punjab and Haryana Superior Judicial Services, 2019 conducted from 29.11.2019 to 01.12.2019. The result of the main written examination was uploaded on the website of the Punjab and Haryana High Court on 18.12.2019 (P-5). The interviews are to be conducted in January 2020.

4. The petitioner has raised a three-fold grievance. (i) In the Punjab Rules and the Haryana Rules, there is no condition regarding securing minimum marks in the Main Written Examination. Contrary to the Rules, in the advertisements (Annexures P- 1 and P-2)) a condition of securing minimum 40% or more marks in each paper for qualifying for the viva voce has been laid down. This being contrary to the Rules is illegal and impermissible. (ii) At the commencement of Paper-IV (Criminal Law), the question paper handed over to the candidates was incomplete. The questions contained in that Paper were only for 160 marks instead of 200 marks. When this discrepancy was brought to the notice of the Invigilators, a supplementary question paper containing 04 questions was given by the Invigilators. By then half time had already elapsed. This created a panic amongst candidates. No extra time was given for answering the additional

questions. (iii) Despite repeated requests, the respondents have not provided the details of marks obtained in each paper/subject to the petitioner and the other candidates. The information has not been disclosed even after he had filed an application under the RTI Act.

5. Having heard the petitioner we find there is no merit in the petition.

6. At the outset it may be necessary to set out the relevant provision of the Punjab Rules and the Haryana Rules which deal with direct recruitment from among eligible Advocates.

Rule 11 of the Punjab Superior Judicial Service Rules, 2007 is reproduced below:

“11. Test for direct appointment.- (1) The High Court shall, before making recommendations to the Governor, invite applications by advertisement and may require the applicants to give such particulars as it may prescribe and may further hold written examination test and viva-voce for appointment under rule 7, in the following manner, namely:-

*(i) Written Test 750 Marks; and
(ii) Viva-Voce 250 Marks.”*

Rule 7 of the Haryana Superior Judicial Services deals with the procedure for direct recruitment . It is as under:

“7. Procedure for direct recruitment.

The High Court shall before making recommendations to the Governor invite applications by advertisement and may require the applicants to give such particulars as it may specify and may further hold written examination and viva voce test for recruitment in terms of rule 6(c) above and the maximum marks shall be in the following manner:

*(iii) Written Test 750 Marks;
(iv) Viva-Voce 250 Marks.”*

7. The impugned conditions in the notifications Annexure P-1 and P-2 are as under:-

Competitive Examination For Direct Appointment to Punjab Superior Judicial Service-2019

“6. SYLLABUS AND FORMAT OF EXAMINATION :

...

(iv) Only the candidates securing 40% or more marks in each paper will be called for viva-voce. But merely securing 40% or more marks would not confer any right to be called for viva voce. The High Court of Punjab and Haryana, Chandigarh shall have the discretion to shortlist the candidates equal to three times the number of vacancies for viva-voce. Further, no candidate will be considered to have successfully qualified the Punjab Superior Judicial Service Examination unless he/she obtains 50% marks (read 45% marks for the SC/BC/PH (Differently Abled Persons) category candidates) in the aggregate out of the total marks fixed for the written test and viva-voce. It is also made clear that no candidate will get the right to be appointed even if he/she obtains 50% marks (read 45% marks for the SC/BC/PH (Differently Abled Persons) category candidates) in the aggregate of the written test and viva-voce. However, candidates will be appointed strictly in the order of merit (category wise) in which they are placed after the result of written test and viva-voce.”

Competitive Examination For Direct Appointment to Haryana Superior Judicial Service-2019

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category candidates) in the aggregate of the written test and viva-voce. However, candidates will be appointed strictly in the order of merit (category wise) in which they are placed after the result of written test and viva-voce.”

8. The first contention of the petitioner regarding the validity of the condition of securing minimum marks in the written examination for being eligible for the viva voce cannot be accepted in view of a decision of a Division Bench of this Court in **Sudeepti Sharma v. State of Punjab (P&H)(D.B.) 2014(1) S.C.T. 451.**

9. In that case also the condition of securing minimum marks laid down in the advertisement inviting applications for Punjab Superior Judicial Service had been challenged as being contrary to the Punjab Rules. This contention was rejected. Firstly on the ground of estoppel. It was held that the petitioners therein having taken the examination without questioning the condition could not lay challenge to the condition after having taken a chance and failed. Secondly it was held that the condition was not contrary to the Rules, but only supplemented the Rules and hence was legal and valid.

The relevant extract from the judgment is as under:-

“17. The argument that condition of obtaining 40% marks to appear in the viva voce is excessive for the reserved categories such as Scheduled Castes, Backward Classes and Physically Challenged is devoid of any merit. The condition of obtaining 40% marks in the written examination has been applied to all categories and was known to all the petitioners, who appeared in the written examination. They had not disputed such condition before appearing in the written examination. They have taken a chance and having failed to qualify, have sought to dispute such condition. The petitioners are estopped to challenge such condition by way of the writ petitions after the declaration of the result.

18. Still further, the petitioners were aware of such condition in the advertisement, but have appeared in the selection process. Having remained unsuccessful, the petitioners are estopped to challenge such condition. Reference may be made to Full Bench judgment of this Court reported as *Gurleen Kaur v. State of Punjab*, (2009) 3 RCR (Civil) 324, wherein it was observed as under:

"207. .Since the aforesaid precondition for eligibility was depicted in the prospectus itself, and since all the petitioners applied for admission under the Sikh minority community quota, without raising any contest or protest against the aforesaid precondition, they cannot now be allowed to contest the validity of the same when the entire process of selection is over, after their claim has been rejected on the ground, that they do not fulfil the aforesaid precondition. This contention was advanced during the course of hearing, by Shri Chetan Mittal, Additional Advocate General, Punjab, who inter-alia relied on the judgment rendered by the Supreme Court in *Madan Lal v. State of J & K*, 1995 (2) SCT 880 : 1995 (3) SCC 486, wherein the Apex Court held as under:-

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not

properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285: AIR 1986 SC 1043, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

208. Reliance was also placed on the judgment rendered by a Full Bench of the Madras High Court in Dr. R. Murali v. Dr. R. Kamalakkannan, 2000 (2) SCT 371, wherein the question posed in paragraph 36, was to the following effect:-

"36. Learned counsel Mr. C. Selvaraj submitted that fixation of quota is in the nature of concession and writ petitioners have with open eyes applied for admission on the basis of prospectus and also have written examination are incompetent to challenge that policy, once they were not selected. Counsel submitted that principle of estoppel bars writ petitioners from challenging the same."

209. After referring to various judgments of the Apex Court, including Kumari Chitra Ghosh v. Union of India, (1969) 2 SCC 228 : AIR 1970 SC 35, State of U.P. v. Pradip Tandon, (1975) 1 SCC 267 : AIR 1975 SC 563, Om Parkash Shukla v. Akhilesh Kumar Shukla, 1986 SCC (Supp) 285, Dinesh Kumar v. Moti Lal Nehru Medical College, Allahabad, (1986) 3 SCC 727 : AIR 1986 SC 1877, Mohan Kumar Singhania v. Union of India, 1992 (1) SCT 546 : 1992 Supp (1) SCC 594 : AIR 1992 SC 1, Dr. Preeti Srivastava v. State of Madhya, 1994 (4) SCT 133 (SC), Ritesh R. Sah v. Y.L. Yamul, 1996 (2) SCT 524. (1996) 3 SCC 253 : AIR 1996 SC 1378, Union of India v. N. Chandrasekaran, 1998 (1) SCT 631 : 1998 (3) SCC 694, the Full Bench in paragraph 55 answered the question by holding that the "writ petitioners are not entitled to challenge the selection process after having participated in the written examination on the principle of estoppel." Reliance was also placed on a judgment rendered by a Division Bench of this Court in Yoginder Singh Yadav v. State of

Haryana, 2002 (2) SCT 281, wherein it was, inter-alia, held as under:-

"In the circumstances, the petitioners appear to have raised grievance to assail the result of the entrance test only when they did not find the result favourable to them. It is well settled that a candidate who has submitted to the selection process and has participated and was considered cannot challenge the same if subsequently the result of the selection is not favourable to him. It has been so held in the decision of the Supreme Court in Madan Lal v. State of J & K, (1995) 3 SCC 486 : AIR 1995 SC 1088 and Mohan Lal Aggarwal v. Bhubaneswari Prasad Mishra, JT 2001 (9) SC 21."

210. We are in agreement with the view expressed by Shri Chetan Mittal, Advocate. We are satisfied that it is not open to the petitioners to raise the instant issue at this stage, as they acquiesced to the precondition for eligibility under the Sikh minority community quota. It does not lie now in their mouth to raise a challenge thereto, having been found unsuccessful."

19. We do not find any merit in the fourth argument that the condition of eligibility to appear in the viva voce is not part of the Rules, therefore, the advertisement stipulating such condition is illegal. The Punjab Superior Judicial Services Rules do not contemplate the qualifying marks to be eligible to appear in the viva voce. The Rules can be supplemented by executive instructions. The law prohibits supplanting of the Rules by executive instructions. Reference may be made to Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910, where the Constitutional Bench held to the following effect:

"7. We proceed to consider the next contention of Mr. N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf

the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed".

Later, in a judgment reported as District Registrar v. M.B. Koyakutty, (1979) 2 SCC 150, the Court held to the following effect:

"22. There can be no quarrel with the proposition that if the statutory rules framed by the Governor or any law enacted by the State Legislature under Article 309 is silent on any particular point, the Government can fill up that gap and supplement the rule by issuing administrative instructions not inconsistent with the statutory provisions already framed or enacted. The Executive instructions in order to be valid must run subservient to the statutory provisions. In the instant case, however, it could not be said that there was a gap or a void in the statutory provisions in the matter of promotion from the cadre of Lower Division Clerks to that of Upper Division Clerks."

20. In view of the settled legal principles, the condition in the advertisement, which is not contrary to the Rules, cannot be said to be illegal and un-enforceable.

10. In respect of the second grievance regarding the Criminal Paper-IV all that needs be said is that there is no material that the petitioner raised the issue before the invigilator or submitted any representation immediately thereafter. He cannot be permitted to raise the grievance after the declaration of the result of the examination when he has failed to qualify.

11. Regarding the third grievance of the petitioner it is clear from the order of the Public Information Officer dated 06.01.2020 (Annexure P-9) that the information has been denied to the petitioner relying on Rule 4(2) of the High Court of Punjab and Haryana Right to Information Rules,

2007. The communication clearly states that if the petitioner is not satisfied with the response, he has a remedy to file an appeal under Section 19 of the RTI Act, 2005 to the Ist Appellate Authority within 30 days of the issue of the order. The said 30 day period has not yet expired. It would be open to the petitioner to approach the Ist Appellate Authority against the order declining the information sought.

This petition is accordingly disposed of.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 23, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No