

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

**CWP No.16828 of 2013 (O&M)
Date of decision : 07.01.2020**

Sarika

.... Petitioner

VERSUS

State of Haryana and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. N.R. Dahiya, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Vikas Chatrath, Advocate for respondent No.2.

Mr. H.N. Mehtani, Advocate for respondent No.3.

ARUN KUMAR TYAGI, J.

This petition is filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the result dated 24.02.2012 (**Annexure P-7**) of the Haryana Civil Service (Judicial Branch) Main Examination, 2011 and the subsequent Notification dated 21.05.2012 (**Annexure P-9**) of appointment, being violative of the rules and regulations and the law laid down by Hon'ble Supreme Court in **Ashok Kumar Yadav Vs. State of Haryana : 1985(4) SCC 417**. The petitioner has further prayed for the issuance of a writ in the nature of mandamus, directing the respondents to consider and appoint the petitioner as a Civil Judge (Junior Division) in the Haryana Civil Service (Judicial Branch) on the basis of notification dated 21.05.2012 (**Annexure P-9**) whereby the petitioner was

declared successful in the Haryana Civil Service (Judicial Branch) Main Examination 2011.

2. The erstwhile Punjab Government, vide notification No.3010-G-51/1-6094 dated 26.10.1951, enacted the Punjab Civil Service (Judicial Branch) Rules, 1951 regulating the recruitment and conditions of service of persons appointed thereto. The said Rules were adopted by the Haryana Government. The 1951 Rules were amended from time to time and were last amended vide notification No.GSR 5/Const.Art.234 & 309/2011 dated 27.05.2011 whereby rule 7-B in part A and rules in “Part C-Examination of Candidates” were substituted which read as under:-

- “7-B (1) Notwithstanding anything to the contrary contained in these rules, appointment to eighty actual posts presently lying vacant and twenty eight anticipatory/unforeseen posts of Civil Judges (Junior Division) shall be made by the State Government through special recruitment on the recommendations of a Selection Committee constituted for the purpose in the manner hereinafter laid down.
- (2) The Selection Committee referred to in sub-rule (1) shall consist of the following members, namely:-
- (i) three Judges of the High Court of Punjab and Haryana nominated by the Chief Justice, of whom the senior-most shall be the Chairman;
 - (ii) the Chief Secretary to Government, Haryana;
 - (iii) the Chairman/Acting Chairman of the Haryana Public Service Commission; and
 - (iv) the Advocate General, Haryana.

PART C-EXAMINATION OF CANDIDATES

PART C-COMPETITIVE, EXAMINATION

1. The examination shall be conducted in three stages, namely:-
 - (i) Preliminary examination;
 - (ii) Main examination; and
 - (iii) Viva-Voce.
2. The Selection Committee shall hold a preliminary examination on the basis of which candidates not more than ten times of the advertised posts shall be shortlisted in order of merit for appearing in the main written examination.

3. The main examination shall be held at such place and on such date, as may be notified in the Official Gazette.
4. Fee for admission to the examination shall be such, as the State Government may, from time to time, notify in the Official Gazette, which shall be payable to Government Treasury or by way of postal order payable to the Secretary, Haryana Public Service Commission.
5. The Selection Committee shall set up the question papers, evaluate the answer sheets and conduct the viva-voce. All the ancillary/incidental steps in respect of setting up of the question papers and evaluation of answer sheets shall be undertaken by the Selection Committee. The recruitment process such as inviting and screening the applications, issuing the roll numbers and admit cards to the candidates shall be undertaken by the Haryana Public Service Commission.
6. The candidate shall produce the admission certificate at the time of the examination.
7. The main examination shall consist of six papers (five written and one viva-voce test). The description of papers and syllabi shall be as under:-

Paper-I Civil Law-I	Code of Civil Procedure, Punjab Courts Act, Indian Contract Act, Indian Partnership Act, Sale of Goods Act, Specific Relief Act and Indian Evidence Act.	200 Marks
Paper-II Civil Law-II	Hindu Law, Mohammadan Law and Customary Law, Law of Registration and Limitation.	200 Marks
Paper-III Criminal Law	Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act.	200 Marks
Paper-IV English	The English paper shall be of 200 marks and shall consist of the following:-	
	1. English Essays (1000-1100 words)	100 Marks
	2. Precis	25 Marks
	3. Words and Phrases (make sentences of the given words and phrases)	25 Marks
	4. Comprehension	25 Marks
	5. Corrections	25 Marks
Paper-V Language	Hindi [in Devnagri Script]	100 Marks
Paper-VI Viva- Voce	To judge the personal qualities of the candidates. The viva-voce test shall relate to the matters of general	200 Marks

interest and is intended to test the candidates alertness, intelligence and general outlook. It shall be conducted in English.

Note:

- (i) only bare copies of legislative enactments shall be supplied.
- (ii) Each written paper shall be of three hours duration.
- (iii) The standard of the language paper shall be that of Matriculation Examination of the Board of School Education, Haryana. Language paper (v) shall comprise the following:-
 - (a) Translation of an English passage into Hindi 20 Marks
 - (b) Explanation of Hindi passage in prose and poetry in the same language. 30 Marks
 - (c) Composition [Essay, idioms and correction etc.] 50 Marks

Total 100 Marks

- 8. No candidate shall be credited with any marks in any paper unless he obtains at least thirty three percent marks in it.
- 9. No candidate shall be called for the viva-voce test unless he obtains at least fifty percent qualifying marks in the aggregate of all the written papers. However, for the candidates belonging to the categories of Scheduled Castes/Scheduled Tribes and Backward Classes, the qualifying marks shall be forty five percent:

Provided that the number of candidates to be called for viva-voce test in order of the marks obtained in the written examination shall not exceed three times the number of vacancies advertised. However, if the last candidate to be called for interview is bracketed with the candidates exceeding three times by obtaining equal marks then all the bracketed candidates shall be called for interview, inspite of the fact that the number of candidates to be called for interview exceeds three times:

Provided further that only those candidates shall be eligible to be recruited as Civil Judges/Judicial Magistrates who secure fifty percent or more marks (forty five percent for the Scheduled Castes/Scheduled Tribes and Backward Classes candidates) in aggregate of marks secured in the main written examination and the viva-voce.

10. The result of the examination shall be published in the Official Gazette.
11. Candidates shall be selected for appointment strictly in the order in which they have been placed by the Selection Committee:

Provided that in the case of candidates belonging to the Scheduled Castes/Scheduled Tribes and Backward Classes, Selection Committee shall have a right to select in order of merit a candidate who has merely qualified irrespective of the position obtained by him in the examination:

Provided further that the selection of candidates belonging to the Scheduled Castes/Scheduled Tribes and Backward Classes in the order of merit inter-se shall be made against the vacancies reserved for them and in the manner to be adopted by the Selection Committee.

12. After the examination, each selected candidate shall produce a certificate of medical fitness for the Government service from such standing Medical Board, as may be arranged by the Director General, Health Services, Haryana.

The Standard of medical fitness required of the candidates is given in Appendix C to these rules.”

3. The respondent No.3, vide advertisement No.3, published on 20.06.2011, invited applications from the eligible candidates to fill up 108 posts of Civil Judge (Junior Division) including 26 posts of Scheduled Castes category, as mentioned below:-

Existing Vacancies : 80

Sr. No.	Category	No. of posts	Remarks
1.	General	40	Nil.
2.	Scheduled Castes of Haryana	20	Out of these posts, 7 posts are being advertised for second time.
3.	Backward classes of Haryana	07	Nil
4.	Ex-Servicemen of Haryana	07	Out of these posts 3 posts are being advertised for the third time and 1 post is being advertised for the second time.
5.	Physically Handicapped persons of	06	a. Two posts for persons with low vision (found fit for discharging the duties of a Civil Judge by the

	Haryana		Medical Board constituted under the Rules). b. Two posts for Hearing impaired (found fit for discharging the duties of a Civil Judge by the Medical Board constituted under the Rules). c. Two posts for Locomotors disability. Note:- Out of these 4 posts are being advertised for third time.
Total		80	

Two (02) posts (one from General Category and one from Backward Classes Category) were kept reserved in view of the order dated 05.02.2009 passed by this Court in CWP No.3584 of 2008 titled as Neha Yadav Vs. Punjab and Haryana High Court. Four (04) posts from General Category were kept reserved in compliance with the orders dated 05.02.2009 passed by this Court in CWP No.20315/2008.

Anticipated/Unforeseen Vacancies :28

Sr. No.	Category	No. of posts	Remarks
1.	Unforeseen	18	Though total number of unforeseen/anticipated vacancies as on date was 20 but in view of the law laid down by the Hon’ble Supreme Court in Malik Mazhar Sultan and Another Versus U.P. Public Service Commission and Others 10% of the sanctioned posts were kept in this category, which came to 28. (These posts were likely to occur on account of promotion of Civil Judges (Senior Division)/Chief Judicial Magistrates which could not be identified/categorized at that stage. The selected candidates had no legal right against these 28 posts in case these posts did not become actually available. Candidates were to be offered appointments against the category to which they belonged in case the posts of that category became available.)

Vide corrigendum dated 02.09.2011, 28 unforeseen vacancies of Civil Judge (Junior Division) were bifurcated category-wise as under:-

General category	-	18
SC category of Haryana	-	6
BC category of Haryana	-	3
ESM category of Haryana	-	1

4. It was also mentioned in the advertisement that the examination will be conducted in accordance with the provisions contained in the 1951 Rules as applicable to the State of Haryana as amended from time to time and the amendments made vide notification No.GSR 5/Const.Art.234 & 309/2011 dated : 27.05.2011.

5. The petitioner, who belongs to the Scheduled Castes category, had applied for the post of Civil Judge (Junior Division) in her category as per the abovesaid advertisement. The petitioner qualified the preliminary and main examinations but failed to secure 45% marks in the aggregate of written examination and viva voce test due to which her name was not recommended for appointment to the post of Civil Judge (Junior Division). Aggrieved from the same the petitioner has filed the present writ petition.

6. Briefly stated, the writ petition has been filed on the grounds that the selection process has been carried out by the High Court committee by usurping the power of the Haryana Public Service Commission. Instead of Chief Secretary, the Special Secretary Personnel was included in the Selection Committee in violation of the statutory provisions which is not permissible as held in **Malik Mazhar Sultan and another Vs. U.P. Public Service Commission and others : 2008 (17) SCC 703** and **Raki Ray and others Vs. High Court of Delhi and others : 2010(2) SCC 637**. Allocation of 200 marks for viva-voce test against the written examination of 900 marks was

arbitrary, unjustified, violative of the recommendations made by the Shetty Commission and Kothari Committee and numerous decisions of Hon'ble Supreme Court, specially in **Ashok Kumar Yadav's Case (Supra)**. Conversion of marks of viva-voce into the Grade system was not permissible. The criteria adopted by the Selection Committee was arbitrary. There are patent anomalies in the amended rules which have resulted in denial of rights to 70% candidates who qualified for the main examination. In Clause 7 of the instructions and information supplied by the Haryana Public Service Commission it has been provided that the examination is to be conducted in the three stages of (i) Preliminary examination, (ii) Main Examination and (iii) Viva-voce but in Clause 13 thereof the viva-voce has been treated as 6th paper and has been included in the second stage of the examination. There could not be any third stage and there could not be the condition of achieving 50% or 45% marks in the written examination. In view of Rule 8 securing of 33% marks was mandatory for the viva-voce paper as well. Four candidates Sh. Imanbir Singh Dhaliwal, Sh. Ashutosh, Ms. Meenakshi Gupta, and Ms. Neha Goel, who did not qualify the preliminary examination, were permitted to appear in the main examination provisionally and Sh. Imanbir Singh Dhaliwal and Sh. Ashutosh were considered and given appointment under interim orders passed by the Division Bench of this Court without final adjudication of Civil Writ Petitions filed by them challenging the result of preliminary examination on ground of irregularities which was not permissible. Names of Sh. Avinash Yadav, Sh. Anil Kumar, Mrs. Neha Yadav, Sh. Hemant Kumar and Sh. Amandeep who did not secure 33% marks in the viva-voce, have been wrongly recommended for appointment while Ms. Gitanjali Yadav, Mr. Ram Kishan and Sh. Sidharth Kumar, who secured more

than 33% marks in viva-voce, have been wrongly denied the appointment. One of the candidates under the ESM category having Roll No.935 has been selected though he has not obtained 50% marks in the written examination. Ms. Mohini, a Backward Class category candidate having roll No.512, who has obtained 448 marks out of 900 marks, less than the requisite minimum 50% marks in the written examination for the General Category and had obtained the benefit of reservation in Backward Class category at the first stage of the examination, has been wrongly placed under the General category. Name of Ms. Surinder Pal Kaur, having roll No.1039, who did not appear in the viva-voce paper and was marked absent, has been placed in the merit-wise final result. The petitioner had successfully qualified the preliminary and main examinations and was at Sr.No.20 in the merit-wise final result of the Scheduled Castes category candidates against 29 posts. In view of the provisos to Rule 11 in Part-C-Examination of candidates of the 1951 Rules the candidates belonging to Scheduled Castes/Scheduled Tribes/Backward Classes were to be given appointment in order of merit on qualifying the examination irrespective of the position obtained by such candidates in the examination. The petitioner could not be refused appointment and her name had to be recommended by the Selection Committee. The Selection Committee violated the directions given in the case of **Miss Neelima Shangla Vs. State of Haryana and others : AIR 1987 SC 169** by not recommending entire merit list of 29 candidates to the State Government. The respondents also surpassed the law by putting conditions in the instructions and information for the candidates by mentioning therein in Clause 25 that no separate request by any candidate or any other person on their behalf shall be entertained under the RTI Act for re-checking of the

answer sheets which is also violative of the statutory provisions. Since the respondents failed to address the grievances of the petitioner on the administrative side, the petitioner having no other equally efficacious remedy has approached this Court.

7. The petition has been contested by the respondents who have controverted the grounds of challenge and prayed for the dismissal of the petition.

8. In its written statement, respondent No.1 has pleaded that on being pointed out by respondents No.1 and 3, the Registrar (Recruitment) of respondent No.2 replied that the judgement rendered in **Ashok Kumar Yadav's Case (Supra)** is not applicable to the recruitments made to Haryana Civil Service (Judicial Branch) and the marks allocated to viva-voce were not required to be altered. Respondent No.1 sent a requisition for 80 (General 40, SC 20, BC 07, ESM 07, PH 06) actual and 28 (General 18, SC 6, BC 3, ESM 1, PH) anticipated/unforeseen vacancies to respondent No.3 on 02.06.2011. The Selection Committee/Haryana Public Service Commission after following the due process recommended the names of 89 candidates (General 58, SC 18, BC 10, ESM 02 and PH 01). After checking the documents and getting the options from the 14 candidates out of which 1 candidate was from the waiting list, who was selected in the State of Punjab also opted for appointment in the State of Punjab. 11 candidates were offered appointment from the waiting list, 1 candidate from select list after the decision of Hon'ble Court and one candidate of Backward Class category appointed in General category due to his own merit. The appointment letters were issued to 89 candidates including 18 candidates of Scheduled Castes and posting orders were issued to them by the respondent No.2. Since the petitioner had not obtained qualifying 45%

marks, her name was not recommended by the Selection Committee/Haryana Public Service Commission due to which the petitioner could not be considered for appointment.

9. In its written statement, respondent No.2 has taken preliminary objections that the petitioner accepted the terms and conditions laid down in the statutory rules as well as notification/advertisement for the recruitment and did not challenge the same in the present writ petition and that after having participated in the selection process and having failed to qualify, the petitioner is estopped from challenging the selection criteria. In its written statement, reply on merits, respondent No.2 has controverted the grounds of challenge and pleaded that notification dated 27.05.2011 empowering the Selection Committee to conduct the examination was issued by the Government of Haryana. Allocation of 200 marks for viva-voce was not arbitrary or against the settled principles of law and the same could not be said to be a tool for oppression and rejection of the petitioner or the other similarly placed candidates belonging to Scheduled Castes/Scheduled Tribes category. Conversion of marks of viva-voce into grades was not violative of the notification or Article 14 of the Constitution of India. The Selection Committee graded the candidates by consensus on the basis of their performance in the interview and only those candidates who fared extremely poor were awarded 'G' grade. Marks were awarded by all the six members of the Selection Committee in accordance with the grade given to each candidate. There are no anomalies or contradictions in the rules. The examination was conducted in three stages (i) preliminary examination, (ii) main examination and (iii) viva-voce and only five written papers comprised the main written examination which constituted the second stage of the

examination and viva-voce was not part of the main written examination. Only those candidates who secured 50% marks in case of General category or 45% marks in case of Scheduled Castes/Scheduled Tribes/Backward Classes category in aggregate of all the written papers were eligible to be called for viva-voce. Candidates equal to three times of the number of advertised posts were to be called for viva voce. There was no condition of securing minimum marks of 33% in viva-voce. Names of Shri Avinash Yadav, Shri Anil Kumar, Ms. Neha Yadav, Shri Hemant Kumar and Shri Amandeep, who secured less than 33% marks in the viva voce, were recommended for appointment as they secured requisite 50% or 45% marks in aggregate of main examination and viva-voce. Ms. Gitanjali Yadav, Mr. Ram Krishan and Mr. Sidharth Kumar, who secured more than 33% marks in the viva-voce, were not arbitrarily denied appointment as the final merit-list was prepared after aggregating the marks obtained by the candidates in main written examination and viva-voce. Four candidates Shri Imanbir Singh Dhaliwal, Shri Ashutosh, Ms. Meenakshi Gupta and Ms. Neha Goel, who did not qualify the preliminary examination, were allowed to appear in the main examination and Shri Imanbir Singh Dhaliwal and Shri Ashutosh were considered for and given appointment under orders of Division Bench of this court which had attained finality. All these candidates belonged to the General category and their result did not affect the petitioner in any manner. Sh. Shankar Singh Yadav, Roll No.935, who had secured only 492 marks less than requisite 50% minimum qualifying marks for appointment in ESM category, was not considered/recommended for appointment. Ms. Mohini, who had secured 623.5 marks out of 1100 which were more than the marks secured by the last candidate of General category, was given appointment against General category post as per settled law. Name

of Surinder Pal Kaur, Roll No.1039, figured in the complete merit list of all the candidates who were called for viva-voce but She was shown to have secured '0' (Zero) marks in viva-voce and has not been given appointment. The petitioner had secured 436 marks in the main examination and 53.67 marks in the viva-voce totalling 489.67 marks and failed to secure minimum 45% marks i.e. 495 marks out of 1100 in aggregate of the written examination and viva-voce required for selection. The petitioner is not entitled to recommending of her name for appointment. Absence of provision for re-checking is not violative of any fundamental rights of the petitioner and the 1951 Rules and did not vitiate the selection process.

10. In its written statement, respondent No.3-Haryana Public Service Commission has also taken objection as to estoppel and pleaded that on being pointed about judgment of Hon'ble Supreme Court in **Ashok Yadav's Case (Supra)** Registrar (Recruitment) of respondent No.2 conveyed regarding inapplicability thereof to recruitment to Haryana Civil Service (Judicial Branch). The petitioner was not selected as marks secured by her were less than 45% as required by the rules. There is no infringement of any fundamental rights of the petitioner and violation of the 1951 Rules.

11. We have heard learned Counsel for the parties and gone through the record.

12. Mr. N.R. Dahiya, learned Counsel for the petitioner has argued that the selection process has been carried out by the High Court Committee by usurping the power of the Haryana Public Service Commission. As per the 1951 Rules as amended in 2011, the Selection Committee consisted of 3 Judges nominated by the Hon'ble Chief Justice, Chief Secretary to Government of Haryana, Chairman of Haryana Public Service Commission

and Advocate General, Haryana. A perusal of the result shows that instead of Chief Secretary, the Special Secretary Personnel was included in the Selection Committee which is violation of the statutory provisions. Deviation from statutory rules was not permissible as held by Hon'ble Supreme Court in **Malik Majhar Sultan's Case (Supra)** and **Raki Ray's Case (Supra)**.

13. Learned counsel for the petitioner has further argued that in **Ashok Kumar Yadav's Case (Supra)** Hon'ble Supreme Court while considering the question as to what should be the proper percentage of marks to be allocated for the viva-voce test for the General category observed that the allocation of 12.2% marks for the viva-voce test by the Union Public Service Commission in case of selections to the Indian Administrative Services and other allied service has been found to be fair and just, as striking a proper balance between the written examination and the viva-voce test and it would be prudent and safe to follow the percentage of interview marks as adopted by the U.P.S.C. for selection to Indian Administrative Service and other allied services and accordingly directed that whatever selections are made by the Haryana Public Service Commission in the future shall be on the basis that the marks allocated for the viva-voce test shall not exceed 12.2% in case of candidates belonging to the General category. The Kothari Committee had recommended that percentage of marks allocated for viva-voce test in competitive examination for the Indian Administrative Service and other allied services must not be more than 12.2%. The Shetty Commission prescribed only 50 marks for the viva-voce as also noticed by Hon'ble Supreme Court in Para 9 of its judgment in **Hemani Malhotra's Case (Supra)**. Prior to 2011 amendment 120 marks were prescribed for viva-voce for Haryana Civil Service (Judicial Branch). Another Committee of Judges of

respondent No.2 had recommended 100 marks for viva-voce for recruitment to the Punjab Civil Service (Judicial Branch). Allocation of 200 marks for viva-voce against the written examination of 900 marks is arbitrary, unjustified, violative of the recommendations made by the Shetty Commission and Kothari Committee and numerous decisions of Hon'ble Supreme Court in **Ashok Kumar Yadav's Case (Supra); Ajay Hasia Vs. Khalid Mujib : 1981 (1) SCC 732** and **Malik Mazhar Sultan's Case (Supra)**. The criteria adopted by the Selection Committee comprising of 14 Grades and marks assigned to them : A+ (191-200), A (181-190), B+ (171-180), B (161-170), C+ (151-160), C (141-150), D+ (131-140), D (121-130) E+ (111-120), E (101-110), F+ (91-100), F (81-90), G+ (71-80) and G (Below 70) was arbitrary. The method of giving of marks as per consensus in the range of grade decided was meant to toe down other three members of the Selection Committee for agreeing with the Judges-members of the Selection Committee. Conversion of marks of viva-voce into the Grade system was not permissible. There was very wide variation in marks awarded in interview. Ms. Meenakshi Yadav having Roll No.502 secured highest 555 (61.6%) marks in the written examination but Sh. Vikramjit Singh having Roll No.1100 was awarded highest 185 (92.5%) marks in the viva-voce whereas the petitioner was awarded 53.67 (26.83%) marks in the viva-voce. The entire selection process with respect to viva-voce suffered from the vice of gross arbitrariness. Allocation of 200 marks for the viva-voce has turned out as a tool for the oppression and rejection of the petitioner and similarly situated Scheduled Castes category candidates.

14. Learned counsel for the petitioner has further argued that there are patent anomalies in the amended rules. As per Rule 1 of the 1951 Rules as

amended in 2011 and Clause 7 of the instructions and information supplied by the Haryana Public Service Commission the examination was to be conducted in three stages of (i) Preliminary examination, (ii) Main Examination and (iii) Viva-voce but as per Rule 8 of the 1951 Rules as amended in 2011 and Clause 13 of the instructions and information supplied by the Haryana Public Service Commission main-examination was of 1100 marks and viva-voce was specified to be 6th paper of the main-examination and was included in the second stage of the examination. Rule 8 of the 1951 Rules as amended in 2011 and Clause 14 of the instructions and information supplied by the Haryana Public Service Commission provided that no candidate shall be credited with any marks in any paper unless he obtains at least 33 marks in it. Clause 15 prescribes that the candidate shall not be called for viva-voce unless he obtains 50% marks in case of General category and 45% marks in case of reserved category in the aggregate of all the written papers. There could not be any third stage and there could not be the condition of achieving 50% or 45% marks. This anomaly has resulted in denial of rights to 70% candidates who qualified for the main examination.

15. Learned Counsel for the petitioner has further argued that the condition of securing 33% marks was mandatory for the viva-voce being 6th paper as well. Sh. Avinash Yadav (General Category), Sh. Anil Kumar, Ms. Neha Yadav, Sh. Hemant Kumar (Backward Class Category) and Sh. Amandeep (Scheduled Caste Category) who appeared under Roll Nos.163, 89, 597, 330 and 42 respectively did not secure 33% marks in the viva-voce and the marks of viva-voce could not be credited to their aggregate marks in view of Rule 8. The Selection Committee had wrongly recommended their names and they have been wrongly given appointment. Ms. Gitanjali Yadav,

Sh. Ram Kishan and Sh. Sidharth Kumar who appeared under Roll Nos.278, 768 and 962 respectively had secured more than 33% marks in viva-voce but their names have not been recommended and they have been wrongly denied the appointment.

16. Learned Counsel for the petitioner has argued that four candidates namely Sh. Imanbir Singh Dhaliwal, Roll No.04221, Sh. Ashutosh, Roll No.01892, Ms. Meenakshi Gupta, Roll No.06251 and Ms. Neha Goel, Roll No.07253, who did not qualify the preliminary examination as they did not score cut-off 344 marks and scored 323 marks, 336 marks, 342 marks and 338 marks respectively, were allowed to appear in the written examination provisionally under orders passed in Civil Writ Petitions filed by them and as per the result produced in the Court, they were placed in the merit at Sr. No.25, 36, 92 and 144 respectively against the select list for the General category which ended up at 58th rank with waiting list upto 77th rank. Sh. Imanbir Singh Dhaliwal and Sh. Ashutosh, who did not qualify the preliminary examination but made it to the select list, were wrongly considered and given appointment under interim orders of the Division Bench passed in writ petitions which were dismissed as withdrawn. As the final order did not grant any relief when the case was finally dismissed as withdrawn, the interim order as a result of which they got the relief, stood automatically vacated. The interim order merged in the final order and did not exist by itself and result brought about by the interim order was nonest in the eyes of law. In support of his arguments learned Counsel for the petitioner has placed reliance on the observations in **Shiv Shankar and others Vs. Board of Directors, U.P.S.R.T.C. and another : 1995 (7) SLR 85 (SC); The State of Orissa Vs. Madan Gopal Rungta : AIR 1992 SC 12; Ram Charan Vs. Pyare Lal :**

AIR 1975 Allahabad 280 and Shyam Lal Vs. State of U.P. and others :
AIR 1968 Allahabd 139.

17. Learned Counsel for the petitioner has further argued that one of the candidates under the ESM category having Roll No.935 was selected though he had not obtained 50% marks in the written examination. Ms. Mohini d/o Sita Ram, one of the candidates in the Backward Class category having Roll No.512, who had obtained the benefit of reservation at the first stage of the examination as she obtained 448 marks out of 900 marks and did not secure the minimum 50% marks, was wrongly given appointment in the General category. Ms. Surinder Pal Kaur d/o Tehal Singh who appeared in the examination under Roll No.1039 in the General category did not appear in the viva-voce paper and was marked absent in the notification but her name was placed in the merit-wise final result.

18. Learned Counsel for the petitioner has also argued that the respondents also surpassed the law by putting conditions in the instructions and information for the candidates by mentioning therein in Clause 25 that no separate request by any candidate or any other person on their behalf shall be entertained under the RTI Act for re-checking of the answer sheets which is also violative of the statutory provisions.

19. Learned counsel for the petitioner has argued that the petitioner having Roll No.896 qualified the preliminary examination as well as main examination. The petitioner secured 436 marks in main-examination and 53.67 marks in viva-voce aggregating 489.67 out of total 1100 marks and the same being 44.51% of the total 1100 marks should have been treated as 45%. In support of his arguments learned counsel for the petitioner has placed reliance on the judgments in **State of Orissa and another Vs. Damodar**

Nayak and another : 1997(4) SCC 560; Rupashree Choudhary Vs. State of Orrisa: 2010 (1) ILR Cuttack 145; Asha Mehta Vs. State of Punjab : 1993(3) RSJ 1 and Raj Deep Singh Vs. State of Punjab : 1996 (2) RSJ 780.

20. Learned Counsel for the petitioner has also argued that the petitioner came at Sr.No.20 in the merit-wise final result of the Scheduled Caste category candidates against 29 posts. In view of the provisos to Rule 11 in Part-C-Examination of candidates of the 1951 Rules as amended vide notification dated 27.05.2011, name of the petitioner was required to be recommended by the Selection Committee and the petitioner could not be refused appointment. The Selection Committee has wrongly interpreted the second proviso to Rule 11 and committed an error and violated the judgment in **Neelima Shangla's Case (Supra)** and others by not recommending list of all 29 qualifying candidates arranged in the order of merit to the State Government.

21. Learned Counsel for the petitioner has accordingly prayed for quashing of the result dated 24.02.2012 (**Annexure P-7**) of the Haryana Civil Service (Judicial Branch) Main Examination, 2011 and subsequent appointment Notification dated 21.05.2012 (**Annexure P-9**) and directing the respondents to consider and appoint the petitioner as Civil Judge (Junior Division) in the Haryana Civil Service (Judicial Branch) on the basis of notification dated 21.05.2012 (**Annexure P-9**).

22. On the other hand, Ms. Kirti Singh, learned State Counsel for respondent No.1, Mr.Sanjeev Sharma, learned Sr. Advocate with Mr. Vikas Chatrath, learned Counsel for respondent No.2 and Mr. H.N. Mehtani, learned Counsel for respondent No.3 have argued that in the present case the petitioner has not challenged the rules and the selection process conducted in

accordance with the same cannot be faulted. Further the petitioner, after having participated in the selection process but failed to qualify the same, is estopped from challenging the selection criteria and is not entitled to any relief. In support of these arguments learned counsel for the respondents have placed reliance on judicial precedents reported as **Sudeepti Sharma Vs. State of Punjab : 2014 (1) SCT 451; Madan Lal Vs. State of J. & K. : (1995) 3 SCC 486; Dhani Ram Chaudhary Vs. State of Haryana and another : 2005 (1) PLR 453; State of Haryana and others Vs. Jagroop Singh 2003(2) SCT 226 and Dr. Ashwani Kumar Dalal Vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others : 2010(4) SCT 753.**

23. While referring in detail to the observations judgments rendered in **Manish Kumar Shahi Vs. State of Bihar and others : 2010(12) SCC 576; Ramesh Kumar Vs. High Court of Delhi : 2010(3) SCC 104; All India Judges' Association and others Vs. Union of India and others : 2002 (4) SCC 247; Anu Radha Vs. State of Haryana : 2009 (3) SCT 477; Lila Dhar Vs. State of Rajasthan : 1981 AIR (SC) 1777; Anzar Ahmad Vs. State of Bihar : 1994 (1) SCT 483; A.P. State Financial Corporation Vs. C.M. Ashok Raju : 1994 (4) SCT 585; CWP No.10141 of 2008 titled Varun Vir Vs. UHBVNL, decided on 04.03.2010 (PHHC) and K.H. Siraj Vs. High Court of Kerala : 2006 (3) SCT 146**, learned Counsel for respondent No.2 has argued that allocation of 200 marks against 900 marks is not arbitrary and unreasonable and violative of Article 15 and 16 of the Constitution of India. The selection process is not vitiated due to allocation of 200 marks for viva-voce and the same could not be said to be a tool for oppression and rejection of the petitioner or other similarly placed candidates.

24. Learned Counsel for respondent No.2 has further argued that notification dated 27.05.2011 empowering the Selection Committee to conduct the examination was issued by the Government of Haryana and the Selection Committee cannot be said to have usurped the power of the Haryana Public Service Commission. The Special Secretary Personnel was not included in the Selection Committee instead of the Chief Secretary and there was no violation of the statutory provisions. The conversion of marks of viva-voce in to grades was not violative of the notification or Article 14 of the Constitution of India. After interviewing the candidates, the interview board graded the candidates by consensus on the basis of their performance in the interview and only those candidates who fared extremely poor were awarded 'G' grade. Marks were awarded by all the six members of the Selection Committee in accordance with the grade given to each candidate by the Selection Committee. The final score was determined on the basis of average of the marks awarded by each member of the Selection Committee in terms of the criteria adopted by the Selection Committee. Variation in marks awarded for viva-voce was due to performance of the candidates and does not justify and substantiate plea of arbitrariness in awarding of marks for viva-voce.

25. Learned Counsel for respondent No.2 has further argued that there were no anomalies in Part C of the 1951 Rules as amended vide notification dated 27.05.2011. Only five written papers comprised the main written examination constituting the second stage of the examination. Rule 8 which prescribes that no candidate shall be credited with any marks in any paper unless he obtains at least thirty three percent marks in it did not apply to viva voce. The Shetty Commission also did not make any recommendation and Hon'ble Supreme Court has not given any direction regarding securing of

any prescribed minimum percentage of marks in viva-voce as reiterated in **Ramesh Kumar's Case (Supra)**. Only those candidates were eligible to be recruited as Civil Judges/Judicial Magistrates who secured fifty percent (45% for the Scheduled Castes/Scheduled Tribes and Backward Classes candidates) or more marks in aggregate of marks secured in the main written examination and the viva-voce. Final merit list was prepared on the basis of aggregate of marks secured in the main written examination and viva-voce. Names of Sh. Avinash Yadav, Sh. Anil Kumar, Ms. Neha Yadav, Sh. Hemant Kumar and Sh. Amandeep, who appeared under Roll Nos.163, 89, 597, 330 and 42 respectively and fulfilled the above criterion, were rightly recommended for appointment and the names of Ms. Gitanjali Yadav, Mr. Ram Kishan and Mr. Sidharth Kumar, who appeared under Roll Nos.278, 768 and 962 respectively, were rightly not recommended by the Selection Committee for appointment as they were below the cut off marks in the select-list.

26. Learned Counsel for respondent No.2 has further argued that four candidates Sh. Imanbir Singh Dhaliwal, Roll No.04221, Sh. Ashutosh, Roll No.01892, Ms. Meenakshi Gupta, Roll No.06251 and Ms. Neha Geol, Roll No.07253 did not qualify the preliminary examination but they were allowed to appear in the main examination in pursuance of the Court order passed in the writ petitions filed by them and Shri Imanbir Singh Dhaliwal and Shri Ashutosh, who made to the select list, were considered and given appointment in compliance of the orders passed by the Division Bench of this Court which had attained finality and could not be challenged. In any case all these candidates belonged to the General category and their result did not affect the petitioner in any manner. No candidate of the ESM category candidate securing less than 50% marks in aggregate of the main examination and viva-

voce was selected. Name of Sh. Shankar Singh Yadav having Roll No.935, who failed to qualify for appointment in the ESM category as he had secured only 492 marks which were less than requisite 50% minimum qualifying marks for this category, was not considered/recommended for appointment. Candidate Ms. Mohini having Roll No.512 was given appointment against General category post as per settled law as she had secured 623.5 marks out of 1100 which were more than the marks secured by the last candidate of General category. Ms. Surinder Pal Kaur having Roll No.1039 did not appear in the interview and was accordingly shown to have secured '0' (Zero) marks in viva-voce. Her name figured in the complete merit list of all the candidates who were called for viva-voce and she was not given appointment.

27. Learned Counsel for respondent No.2 has further argued that in the preliminary examination the petitioner had secured 365 marks while she had secured 436 marks in the main examination and 53.67 marks in the interview totalling 489.67 marks being 44.51% of total 1100 marks. There is no provision in the 1951 Rules for rounding of and giving of grace marks. In the absence of enabling provision and in view of Judgment of Hon'ble Supreme Court in **Bhanu Pratap Vs. State of Haryana and others : 2011(15) SCC 304** marks of the petitioner cannot be rounded off as 45%. The petitioner was not given appointment as she failed to secure 45% marks i.e. 495 marks out of 1100 in aggregate of written examination and viva-voce. The petitioner was not entitled to be recommended for appointment only on the ground that she stood 20th in merit against 26 posts of Scheduled Caste Category. The 8 posts of Scheduled Caste category have been left vacant as the other candidates could not secure the requisite 45% marks in aggregate of main written examination and viva-voce and the Selection Committee did not

commit any error by not sending the entire merit list of 29 candidates of Scheduled Caste category to the State Government for appointment.

28. Learned Counsel for respondent No.2 has further argued that the entire selection process has been conducted strictly in accordance with the PCS (JB) Rules 1951 as applicable to the State of Haryana. No grounds have been made out by the petitioner for issuance of writ of certiorari quashing the result dated 24.02.2012 (**Annexure P-7**) of the Haryana Civil Service (Judicial Branch) Main Examination, 2011 and subsequent appointment notification dated 21.05.2012 (**Annexure P-9**) and for issuance of writ of mandamus to consider and appoint the petitioner as Civil Judge (Junior Division) in the Haryana Civil Service (Judicial Branch) on the basis of notification dated 21.05.2012 (**Annexure P-9**). Therefore, the writ petition may be dismissed with costs.

29. On due consideration of the submissions made by learned Counsel for the parties and careful analysis of the material on record referred to by them, we are of the considered view that the selection process has been conducted in accordance with the 1951 Rules and no grounds are made out for setting aside of the final result and recommending appointment of the petitioner.

30. In the present case the petitioner has merely sought quashing of the result dated 24.02.2012 (**Annexure P-7**) of the Haryana Civil Service (Judicial Branch) Main Examination, 2011 and subsequent appointment notification dated 21.05.2012 (**Annexure P-9**) as being violative of the rules and regulations and the law laid down by Hon'ble Supreme Court in **Ashok Kumar Yadav's Case (Supra)** but the petitioner has not challenged the notification dated 27.05.2011 and the amended rule 7 in "Part C-Competitive

Examination” which prescribed 200 marks for “Paper-VI viva-voce” as being ultra vires the Constitution or violative of the directions given by Hon’ble Supreme Court in catena of judgments especially **Ashok Kumar Yadav’s Case (Supra)**. The petitioner thereby accepted the aforesaid rule as it existed at the time of initiation of the selection process and could not therefore have any grievance against compliance by the respondents with the same. This view of ours finds full support from the judgments of Hon’ble Supreme Court in **Jagroop Singh’s Case (Supra)** and **Ramesh Kumar’s Case (Supra)** and also judgment of the Division Bench of this Court in **Dhani Ram Chaudhary’s Case (Supra)**.

31. Further, after having taken part in the process of selection knowing fully well that 200 marks have been earmarked for viva-voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, she would not have even dreamed of challenging the selection. She has invoked jurisdiction of this Court under Article 226/227 of the Constitution of India only after she found that her name does not figure in the merit list prepared by the Commission. After having participated in the process of selection and not making it to the selection list, the petitioner cannot be permitted to turn around and challenge the selection criteria. The conduct of the petitioner clearly disentitles her from questioning the selection and the petition is liable to be dismissed on this ground alone. For judicial precedents in this regard reference may be made to the judgments in **Madan Lal’s Case (Supra)**; **Marripati Nagaraja Vs. Government of Andhra Pradesh and others : (2007) 11 SCC 522**; **Dhananjay Malik and others Vs. State of Uttaranchal and others : (2008) 4 SCC 171**; **Amlan Jyoti Borooah Vs. State of Assam :**

(2009) 3 SCC 227; K.A. Nagamani Vs. Indian Airlines and others :(2009) 5 SCC 515; Sudeepti Sharma's Case (Supra) and Dr. Ashwani Kumar Dalal's Case (Supra).

32. Even otherwise, the vital question which arises for determination in the present case is whether the prescription of 200 marks for the viva-voce test is ultra vires the constitution or violative of the directions of the Hon'ble Supreme Court.

33. Judicial Service is not just an employment comparable to other administrative services and is widely recognised as partaking the character of an opportunity as well as divine duty to serve the people by exercise of sovereign powers of the State necessitating different qualities of head and heart and resulting in strenuous working conditions. In **Delhi Bar Association Vs. Union of India & Others : 2002(1) SCT 238** Hon'ble Supreme Court observed as under;-

“...what has to be seen is the potential in the candidate : Whether a person is intelligent and will in due course of time become a good Judge. It may not be necessary for him to be academically brilliant or knowing all the law at the time when the process of selection is undertaken. What has to be seen is, as we have already observed, whether the candidate has the attributes of becoming a good Judicial Officer, namely, integrity, honesty, basic knowledge of law and robust common sense.”

34. In **K.H. Siraj Vs. High Court of Kerala : 2006 (3) SCT 146** Hon'ble Supreme Court further specified the requisite qualities of a Judicial Officer as under:-

“The qualities which a Judicial Officer would possess are delineated by this Court in *Delhi Bar Association v. Union of India & Ors.*, 2002(1) SCT 238 : (2002)10 SCC 159. A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy irrelevant arguments and the like.....”

35. While the written examination tests the candidates' academic knowledge, viva-voce alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a judicial officer. Reference in this regard may be made to **K.H. Siraj's Case (Supra)** and **Ramesh Kumar's Case (Supra)**.

36. In **Ashok Yadav' Case (Supra)** Hon'ble Supreme Court while considering the inevitability and importance of viva-voce/interview to selection process in such like posts and the weight to be attached to the same observed as under:-

“24. It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by a viva voce test, much depending on the constitution of the interview Board.

25. Glenn Stahl has pointed out in his book on Public Personnel Administration that the viva voce test does suffer from certain disadvantages such as the difficulty of developing a valid and reliable oral test, the difficulty of securing a reviewable record of an oral test and public suspicion of the oral test as a channel for the exertion of political influence and, as pointed out by this Court in *Ajay Hasia case (supra)*, also of other corrupt, nepotistic or extraneous considerations, but despite these acknowledged disadvantages, the viva voce test has been used increasingly in the public personnel testing and has become an important instrument whenever tests of personnel attributes are considered essential. Glenn Stahl proceeds to add that "no satisfactory written tests have yet been devised for measuring such personnel characteristics as initiative, ingenuity and ability to elicit cooperation, many of which are of prime importance. When properly employed, the oral test today deserves a place in the battery used by the technical examiner." There can therefore be no doubt that the viva voce test performs a very useful function in

assessing personnel characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination. Now if both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them. "In the case of admission to a college for instance", as observed by Chinnappa Reddy, J. in Liladhar's case, "where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later file, greater weight has perforce to be given to performance in the written examination" and the importance to be attached to the viva voce test in such a case would therefore necessarily be minimal. It was for this reason that in Ajay Haisa's case this Court took the view that the allocation of as high a percentage of marks as 33.3% to the viva voce test was "beyond all reasonable proportion and rendered the selection of the candidates arbitrary". But, as pointed out by Chinnappa Reddy, J., "in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way subject to basic and essential academic and professional requirements being satisfied". There may also be services "to which recruitment is made from younger candidates whose personalities are on the thresh hold of development and who show sings of great promise" and in case of such services where sound selection must combine academic ability with personality promise, some weight has to be given to the viva voce test. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in Liladhar's case "exaggerated weight has been given with proven or obvious oblique motives."

37. In **Ashok Kumar Yadav' Case (Supra)** Hon'ble Supreme Court while holding allocation for the viva-voce test of 33.3 marks in case of ex-service officers and 22.2 marks in case of other candidates to be excessive, also considered the question as to what should be the proper percentage of marks to be allocated for the viva voce test and observed as under:-

"29. Now if the allocation of such a high percentage of marks as 33.3 in case of ex-service officers and 22.2 in case of other

candidates, for the viva voce test is excessive, as held by us, what should be the proper percentage of marks to be allocated for the viva-voce test in both these cases. So far as candidates in the general category are concerned we think that it would be prudent and safe to follow the percentage adopted by the Union Public Service Commission in case of selections to the Indian Administrative Service and other allied services. The percentage of marks allocated for the viva voce test by the Union Public Service Commission in case of selections to the Indian Administrative Services and other allied service is 12.2 and that has been found to be fair and just, as striking a proper balance between the written examination and the viva voce test. We would therefore direct that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consists of a written examination followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2 per cent of the total marks taken into account for the purpose of selection. We would suggest that this percentage should also be adopted by the Public Service Commissions in other States, because it is desirable that there should be uniformity in the selection process throughout the country and the practice followed by the Union Public Service Commission should be taken as a guide for the State Public Service Commissions to adopt and follow. The percentage of marks allocated for the viva voce test in case of ex-service officers may, for reasons we have already discussed, be somewhat higher than the percentage for the candidates belonging to the general category. We would therefore direct that in case of ex-service officers, having regard to the fact that they would ordinarily be middle aged persons with personalities fully developed the percentage of marks allocated for the viva voce test may be 25. Whatever selections are made by the Haryana Public Service Commission in the future shall be on the basis that the marks allocated for the viva voce test shall not exceed 12.2 per cent in case of candidates belonging to the general category and 25 per cent in case of ex-service officers.”

38. However, the question whether the marks prescribed for viva-voce test/interview are excessive has also been considered by Hon’ble Supreme Court in several cases decided thereafter. No straightjacket formula has been judicially evolved for determining whether the prescription of particular percentage of marks for viva voce test/interview introduces an element of arbitrariness in the process of selection or gives unbridled power to the recruiting authority/agency to select less meritorious candidates and Hon’ble Supreme Court has not found any Constitutional infirmity in

prescribing of higher percentage of marks for viva voce test/interview for recruitment to judicial services, administrative services and the like.

39. In **Lila Dhar's Case (Supra)**, a three-Judge Bench, while rejecting the petitioner's challenge to the recruitment to Rajasthan Judicial Service on the ground that the marks prescribed for interview (25%) were highly excessive, observed as under:

"Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twin shall meet" for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. That was what was decided by this Court in ***Periakaruppan v. State of Tamil Nadu, (1971) 1 SCC 38***, ***Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SC (L&S) 258*** and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview-test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview-test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission.

In this background, let us now examine the situation presented by the Rajasthan Rules. The Rajasthan Judicial Service Rules have been made by the Governor of Rajasthan in consultation with the High Court of Rajasthan and the Rajasthan Public Service Commission. The High Court may be expected to know the precise requirements of the judicial service of the State and the calibre of the available source- material, while the Public Service Commission is an expert body thoroughly conversant with recruitment policies and selection methods. Both the High Court and the Public Service Commission are independent bodies, outside executive control, occupying special positions and enjoying special status under the Constitution. Neither is an outside agency. Both are well-acquainted with the particular needs of their State and the people. If the Governor, in consultation with the High Court and the Public Service Commission of the State makes rules stipulating seventy-five per cent of the marks for the written examination and twenty-five per cent for the interview-test, on what basis can a court say that twenty-five per cent for the interview-test is on the high side? It must not also be forgotten that the interview test is generally conducted and was, in the present case, conducted by a body consisting of a Judge of the High Court, the Chairman and a Member of the Public Service Commission and a special invitee expert. There can surely be no legitimate grievance or hint of arbitrariness against this body. Yet another factor worthy of consideration is that the candidates expected to offer themselves for selection are not raw graduates freshly out of college but are persons who have already received a certain amount of professional training. The source-material is such that some weightage must be given to the interview-test and can it possibly be said that twenty-five per cent of the total marks is an exaggerated weightage. We may add here that it has been made clear by the Chairman, Rajasthan Public Service Commission on whose behalf a counter-affidavit has been filed before us that the marks obtained by the candidates at the written examination were not made available to the members of the Interview Board either before or at the time of the interview. We are unhesitatingly of the view that the selection cannot be struck down on the ground that more than due weightage was given to the interview-test."

40. In **Mehmood Alam Tariq and others Vs. State of Rajasthan and others** : (1988) 3 SCC 241, Hon'ble Supreme Court distinguished the earlier judgments in **Ajay Hasia's Case (Supra)**, **Ashok Kumar Yadav's Case (Supra)**, relied upon **Lila Dhar's Case (Supra)** and held that prescription of 33% marks for interview for recruitment to the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive

Examinations) Rules, 1962, Rajasthan Administrative Service Rules, 1954, Rajasthan Police Service Rules, 1954, Rajasthan Forest Service Rules, 1962 and Rajasthan Forest Subordinate Service Rules, 1963 is not violative of Articles 14 and **16 of the** Constitution.

41. In **Anzar Ahmad's Case (Supra)** selection by allocating 50% marks for academic qualifications and 50% marks for interview for the post of Unani Medical Officer was upheld. In **K.A. Nagamani's Case (Supra)** Selection by prescribing 50% marks for interview and 50% marks for other evaluations and ACRs for the managerial post of higher responsibility was held to be valid. In **A.P. State Financial Corporation's Case (Supra)** allocation of 25% marks for interview for promotion to the post of Manager and above was upheld. In **Varun Vir's Case (Supra)** allocation of 25 marks for interview against 50 marks for academic qualifications out of 75 marks was held to be not arbitrary and unreasonable.

42. In **Manish Kumar Shahi's Case (Supra)** earmarking of 200 marks for viva-voce test as against 850 marks for written examination was challenged on the ground that the marks prescribed for viva-voce test were excessive and contrary to the law laid down by the Hon'ble Supreme Court in **Ashok Kumar Yadav's Case (Supra)**; **Mohinder Sen Garg Vs. State of Punjab : 1991 (1) SCC 662**; **Ashok alias Somanna Gowda Vs. State of Karnataka : 1992 (1) SCC 28**; **Raj Kumar and others Vs. Shakti Raj and others : 1997(9) SCC 527** and **Vijay Syal Vs. State of Punjab and others : 2003(9) SCC 401**. Hon'ble Supreme Court while referring to **Lila Dhar's Case (Supra)**; **Mehmood Alam Tariq's case (Supra)**; **Anzar Ahmad's Case (Supra)**; **P. Mohanan Pillai Vs. State of Kerala and others (2007) 9 SCC 497** and **K.A. Nagamani's Case (Supra)** and analysing the law on the

subject held that earmarking of 200 marks for viva voce test against 850 marks for written examination does not violate the doctrine of equality embodied in Articles 14 and 16 of the Constitution.

43. In view of the law laid down in the above referred judgments, We are of the considered view that earmarking of 200 (18.18%) marks for viva voce test as against 900 (81.82%) marks for written examination does not violate the doctrine of equality embodied in Articles 14 and 16 of the Constitution and observations in **Ashok Kumar Yadav's Case (Supra)**; **Ajay Hasia's Case (Supra)** and **Malik Mazhar Sultan's Case (Supra)** are not of any help to the petitioner.

44. The question which next arises is whether the Selection Committee usurped the powers of the Haryana Public Service Commission and the selection process and viva voce in particular suffered from the vice of arbitrariness and is violative of Articles 14 and 16.

45. Rule 7-B of the 1951 Rules as amended vide notification dated 27.05.2011 constituted Selection Committee consisting of three Judges of the High Court of Punjab and Haryana nominated by the Chief Justice the senior-most being the Chairman; the Chief Secretary to Government, Haryana; the Chairman/Acting Chairman of the Haryana Public Service Commission; and the Advocate General, Haryana and empowered the State Government to appoint 80 actual posts presently lying vacant and 28 anticipatory/unforeseen posts of Civil Judges (Junior Division) through special recruitment on the recommendations of the Selection Committee notwithstanding anything to the contrary contained in the 1951 Rules. Rule 5 of the 1951 Rules mandated the Haryana Public Service Commission to undertake the recruitment process such as inviting and screening the applications, issuing the roll numbers and

admit cards to the candidates and empowered the Selection Committee to set up the question papers, evaluate the answer sheets and conduct the viva-voce and undertake all the ancillary/incidental steps in respect of setting up of the question papers and evaluation of answer sheets. The Selection Committee conducted the selection process in accordance with notification dated 27.5.2011 empowering the Selection Committee to conduct the examination and the Selection Committee cannot be said to have usurped the power of the Haryana Public Service Commission. There is nothing on record to show that instead of Chief Secretary, the Special Secretary Personnel was included in the Selection Committee at any material point of time and there was any violation of the statutory rules in this regard. The observations of Hon'ble Supreme Court in **Malik Majhar Sultan's Case (Supra)** and **Raki Ray's Case (Supra)** as to impermissibility of deviation from rules, relied upon by learned Counsel for the petitioner in this regard, are not applicable to facts of the case and are not of any help to the petitioner.

46. In the present case the viva voce was conducted by the Selection Committee consisting of three Judges of the High Court, the Chief Secretary to Government, Haryana; the Chairman of the Haryana Public Service Commission; and the Advocate General, Haryana. The criteria adopted by the Selection Committee comprised of 14 Grades and marks assigned to them : A+ (191-200), A (181-190), B+ (171-180), B (161-170), C+ (151-160), C (141-150), D+ (131-140), D (121-130) E+ (111-120), E (101-110), F+ (91-100), F (81-90), G+ (71-80) and G (Below 70). Conversion of marks of viva-voce into the Grade system cannot be said to be impermissible. In its written statement respondent No.2 has mentioned that as a matter of fact, the marks were awarded in accordance with the grade given to each candidate by the

Interviewing Board. After interviewing the said candidate, the Interview Board by consensus graded the candidates. Thereafter, all the six members of the Board awarded the marks out of 200 as per the grading of the candidate and the final score was determined on the basis of average of the marks awarded by each member of the Board in terms of the criteria adopted by the Selection Committee. The method of giving of marks as per consensus in the range of grade decided cannot be said to be a camouflage to toe down other three members of the Selection Committee, who were highly positioned independent functionaries, for agreeing with the Judges-members of the Selection Committee. Surely, there cannot be any legitimate grievance of improper constitution or hint of arbitrariness against the same. No doubt, there was variation in marks awarded in interview as Ms. Meenakshi Yadav having Roll No.502 secured highest 555 (61.6%) marks in the written examination but Sh. Vikramjit Singh having Roll No.1100 was awarded highest 185 (92.5%) marks in the viva-voce whereas the petitioner was awarded 53.67 (24.26%) marks in the viva-voce but there is no dispute that the marks obtained by the candidates at the written examination were not made available to the members of the Selection Committee either before or at the time of the interview. Marks for the viva-voce were evidently awarded on the basis of performance of the candidates and the candidates who fared extremely poor were awarded G grade. There is no cogent material showing that exaggerated weight has been given for oblique motives. In these facts and circumstances the entire process of conducting viva voce cannot be said to suffer from any arbitrariness.

47. The questions which next arise are whether there are any anomalies in the 1951 Rules and whether there is any mandatory requirement of obtaining of 33% marks in the viva-voce for recruitment as Civil Judge.

48. Rules 1 and 7 of the 1951 Rules which are stated to be in conflict read as under:-

“1. The examination shall be conducted in three stages, namely:-

- (i) Preliminary examination;
- (ii) Main examination; and
- (iii) Viva-Voce.

“7. The main examination shall consist of six papers (five written and one viva-voce test). The description of papers and syllabi shall be as under:-

Paper-I Civil Law-I	Code of Civil Procedure, Punjab Courts Act, Indian Contract Act, Indian Partnership Act, Sale of Goods Act, Specific Relief Act and Indian Evidence Act.	200 Marks
Paper-II Civil Law-II	Hindu Law, Mohammadan Law and Customary Law, Law of Registration and Limitation.	200 Marks
Paper-III Criminal Law	Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act.	200 Marks
Paper-IV English	The English paper shall be of 200 marks and shall consist of the following:-	
	1. English Essays (1000-1100 words)	100 Marks
	2. Precis	25 Marks
	3. Words and Phrases (make sentences of the given words and phrases)	25 Marks
	4. Comprehension	25 Marks
	5. Corrections	25 Marks
Paper-V Language	Hindi [in Devnagri Script]	100 Marks
Paper-VI Viva- Voce	To judge the personal qualities of the candidates. The viva-voce test shall relate to the matters of general interest and is intended to test the candidates alertness,	200 Marks

intelligence and general outlook. It shall be conducted in English.”

49. Undoubtedly there is an apparent conflict in Rule 1 which provides that the examination shall be conducted in three stages, namely (i) Preliminary examination; (ii) Main examination; and (iii) Viva-voce and Rule 7 which provides that the main examination shall consist of six papers-five written and one viva-voce. In the very nature of things, viva-voce cannot, by any stretch of imagination, be said to be and treated as a paper and the stage of viva voce, being dependent on and an outcome of main examination and also distinct and separate from the same, cannot be said to form part of the second stage of the main examination.

50. In **Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd. and others**, AIR 1962 SC 1543, Hon’ble Supreme Court observed as under:-

"The words used in a section must be given their plain grammatical meaning. Where the Court is dealing with two sub-sections of a section (for example, Section 76, Companies Act, 1956) it is necessary that the two sub-sections must be construed as a whole 'each portion throwing light, if need be, on the rest: The two sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided."

51. In **Sri Venkataramana Devaru and others v. State of Mysore and others**, AIR 1958 SC 255, Hon’ble Supreme Court observed as under :-

"The rule of construction is well-settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction."

52. In the facts and circumstances of the case we are of the view that Rule 7, being in direct conflict with rule 1, has to be harmoniously and rationally construed with the same and has to be read in the context of and subject to Rule 1 and viva-voce has to be treated as third stage of the examination. Rule 8, which provides that no candidate shall be credited with any marks in any paper unless he obtains at least thirty three percent marks in it, when read in the context of Rule 7 appears to lay down the requirement of securing 33% marks in viva voce as well but Rule 8 has also to be read in the context of Rule 9 which provides that no candidate shall be called for the viva-voce test unless he obtains at least fifty percent qualifying marks (forty five percent for the Scheduled Castes/Scheduled Tribes and Backward Classes candidates) in the aggregate of all the written papers. The context and setting of Rule 8 un-mistakably restrict applicability thereof to evaluation of written papers in the second stage of the main examination and due to viva-voce not being a paper, rule 8 will not be applicable to the same. It may also be observed in this context that in **All India Judges Association and others Vs. Union of India : 2004(2) SCC 247** Hon'ble Supreme Court accepted recommendations of the Shetty Commission that there should be no requirement of securing the minimum marks in interview and this position of law was also reiterated by Hon'ble Supreme Court in **Ramesh Kumar's Case (Supra)**. The final merit list was prepared after aggregating the marks obtained by the candidates in main written examination and viva-voce and only the candidates who had thereupon secured 50% marks in case of General category or 45% marks in case of Scheduled Castes/Scheduled Tribes/Backward Classes category were considered to be eligible for appointment. Accordingly, the five candidates Sh. Avinash Yadav Roll

No.163, Sh. Anil Kumar Roll No.89, Ms. Neha Yadav Roll No.597, Sh. Hemant Kumar Roll No.330 and Sh. Amandeep Roll No.42, who had secured less than 33% marks in the viva-voce but had secured 50% marks in case of General category or 45% marks in case of Scheduled Castes/Scheduled Tribes/Backward Classes category in aggregate of written examination and viva-voce, were rightly recommended for appointment. No doubt, the three candidates namely Ms. Gitanjali Yadav Roll No.278, Mr. Ram Kishan Roll No.768 and Mr. Sidharth Kumar Roll No.962 had secured more than 33% marks in the viva-voce and more than minimum 45% marks in aggregate of written examination and viva-voce required for backward classes candidates but they had secured lesser marks than the marks secured by the last of the 10 candidates recommended for appointment against 10 posts of the Backward Classes Category and also the three candidates of the Backward Classes Category kept in the waiting-list and therefore, their names were rightly not recommended by the Selection Committee for appointment.

53. The petitioner has challenged the final result also on the ground of wrongful recommending of names of some other candidates for appointment by the Selection Committee and lack of provision for re-evaluation of the answer sheets and the question which arises is whether the selection process is vitiated due to material illegalities in selection of such candidates or lack of provision for re-evaluation.

54. Admittedly, four candidates namely Sh. Imanbir Singh Dhaliwal, Roll No.04221, Sh. Ashutosh, Roll No.01892, Ms. Meenakshi Gupta, Roll No.06251 and Ms. Neha Goel, Roll No.07253 did not qualify the preliminary examination. However, they were allowed to appear in the preliminary examination in pursuance of the court order passed in CWP No.21701 of 2011

titled as Imanbir Singh versus State of Haryana, CWP No.21812 of 2011 titled as Neha Goel and others versus State of Haryana, CWP No.21904 of 2011 titled as Meenakshi Gupta versus State of Haryana and CWP No.21808 of 2011 titled as Ashutosh and others versus State of Haryana. The above-said candidate appeared in the main written examination as well as viva-voce but their result was not declared and was produced in sealed cover as per the directions given by this Court, according to which they were placed in the merit list at Sr.No.25, 36, 92 and 144 respectively against the select list for General category ending up at 58th rank with waiting list upto 77th rank. Only two candidates namely Shri Imanbir Singh Dhaliwal and Shri Ashutosh made to the select list. This court vide order dated 23.03.2012 passed in CWP No.21701 of 2011 titled as Imanbir Singh versus State of Haryana and CWP No.21808 of 2011 titled as Ashutosh and others versus State of Haryana directed that the above-said two candidates be considered for appointment and dismissed the writ petitions as withdrawn. Shri Imanbir Singh Dhaliwal and Shri Ashutosh were given appointments on the basis of order passed by the Division Bench of this court which was not challenged by filing of any appeal and became final.

55. **In Abhimanyoo Ram Vs. State of UP : 2008 (17) SCC 73**

Hon'ble Supreme Court observed as under :-

“5. Any attempt by a litigant to retain the benefit of the interim order by avoiding final adjudication, requires to be deprecated. In fact, it requires to be dealt with sternly. Courts should bestow caution while dismissing cases where interim relief had been granted, as not pressed or as withdrawn. The courts cannot proceed on the assumption that all concerned would know about the legal consequences of dismissal and therefore, it is not necessary to make any order in regard to the interim relief already granted. Even though the legal effect of dismissal on withdrawal, is vacation of the interim order, the concerned respondents not being aware of the legal consequences, will not take consequential action but continue the benefit extended to

the petitioner by the interim order, unless there is a specific direction spelling out the consequences. Sometimes, the concerned departmental officials, on account of collusion with the petitioners who had obtained the interim relief, will not withdraw or reverse the benefit granted to the petitioner in pursuance of the interim order, when the petition is withdrawn or dismissed as not pressed. Therefore, appropriate consequential directions cancelling or vacating the interim order should be passed so as to restore status quo ante. In cases where the prayer for dismissal (as not pressed or withdrawn) is made even before the respondent is served, then the order vacating the interim order should be communicated to the authority against whom the interim order was issued, so that any benefit extended as a consequence of the interim order, can be withdrawn or reversed. **The only exception is where the respondents agree for the continuance of the interim order as a final relief, or agree that the benefit of the interim order already granted need not be disturbed, in which event, the court should record such submission and pass appropriate consequential orders.**" (emphasis supplied)

56. In the present case in the writ petitions filed by Shri Imanbir Singh Dhaliwal and Shri Ashutosh the respondents agreed to the continuation of the interim order as a final relief and agreed that the benefit of interim order already granted need not be disturbed on which the Division Bench of this Court accordingly dismissed the writ petitions as withdrawn without disturbing continuance of the interim relief already granted. Therefore, dismissal of the writ petitions as withdrawn did not imply any consequential order of vacation of interim relief granted. The matter having attained finality cannot be re-opened and adjudicated upon in the present writ petition. There is no dispute with the proposition of law laid down in **Shiv Shankar and others Vs. Board of Directors, U.P.S.R.T.C. and another : 1995 (7) SLR 85 (SC); the State of Orissa Vs. Madan Gopal Rungta : AIR 1992 SC 12; Ram Charan Vs. Pyare Lal : AIR 1975 Allahabad 280 and Shyam Lal Vs. State of U.P. and others : AIR 1968 Allahabd 139** relied upon by the learned Counsel for the petitioner but the facts of the present case are evidently

different and therefore, observations made therein are not applicable and are not of any help to the petitioner.

57. The claim of the petitioner that one candidate namely Sh. Shankar Singh Yadav having Roll No.935 of the BC-ESM category has been selected even though he secured only 492 marks and did not secure 50% marks in aggregate of the written papers is factually wrong as due to his failure to qualify for appointment in the ESM category by securing requisite minimum 50% qualifying marks, his name was not considered/recommended for appointment.

58. It is now well settled that if a reserved category candidate secures more marks than the General category candidate then such reserved category candidate has to be considered for appointment in the General category. Reference in this regard may be made to judgements rendered in cases **Jitendra Kumar Singh and another Vs. State of U.P. and Others : 2010(3) SCC 119; Kulwant Singh Vs. Punjab University, Chandigarh : 1995(1) S.C.T. 495; Parveen Kumar Vs. State of Punjab and others : 2017(1) Law Herald 615 and Vishal Vs. Punjab University, Chandigarh : 1995(2) S.C.T. 461.** In **Jitendra Kumar Singh's Case (Supra)** it was held by Hon'ble Supreme Court that reserved category candidates having availed relaxation of age, are not disqualified to be adjusted against open category seats. Since Ms. Mohini had secured 623.5 marks out of 1100 which were more than the marks secured by the last candidate of General category, she was rightly given appointment against General category post as per settled law and availing of relaxation at earlier stage did not disqualify her to be adjusted against General Category post.

59. Though the name of candidate Ms. Surinder Pal Kaur having Roll No.1039, who did not appear in the viva-voce, figured in the complete merit list of all the candidates who were called for viva-voce but she was shown to have secured '0' (Zero) marks in viva-voce and her name was not recommended for appointment by the Selection Committee.

60. In these facts and circumstances, there is no material illegality in selection of any candidate and the selection process is not vitiated and liable to be set aside on this ground.

61. The petitioner or other similarly situated candidates have no legal much less fundamental right to re-evaluation of their answer sheets and the selection process cannot be said to be violative of Articles 14 and 21 of the Constitution due to lack of provision for re-evaluation of the answer sheets.

62. Admittedly, the petitioner had secured 436 marks in the main written examination and 53.67 marks in the viva-voce test aggregating 489.67 marks being 44.51% of the total 1100 marks and the question which arises is as to whether the same can be treated as requisite 45% of the total 1100 marks.

63. In **Damodar Nayak's Case (Supra); State of UP and another Vs. Pawan Kumar Tiwari and another : 2005 (2) SCC 10** and **Bhudev Sharma Vs. District Judge, Bulandshahr and another : 2008 (1) SCC 233**; Hon'ble Supreme Court held that if the fraction is 0.5 or above, it has to be rounded off so as to read as '1'. In **Rupashree Choudhary Vs. State of Orrisa : 2010 (1) ILR Cuttack 145**, Orrisa High Court directed 44.93% marks secured by the petitioner to be rounded off to 45%. In **Asha Mehta's Case (Supra)** a Single Bench of this Court directed the Punjab Public Service Commission to treat 33.2% marks as 33%. In **Raj Deep Singh Vs. State of**

Punjab : 1996 (2) RSJ 780 a Division Bench of this Court treated 99.5 marks secured by the petitioner in the entrance test out of total 200 marks as 100 marks. However, in **Bhanu Pratap's Case (Supra)** the petitioner, who secured 508 marks being 49.8% of total 1020 marks just 2 marks short to make up the requisite 50%, filed writ petition for rounding off his 49.8% marks as 50%. The petitioner having remained unsuccessful before the Single Bench and Division Bench filed appeal before Hon'ble Supreme Court. While dismissing the appeal Hon'ble Supreme Court observed in para 15 of its judgment as under:-

“15. There is no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation.”

64. There is no rule in the 1951 Rules permitting rounding of or giving of grace marks so as to bring up a candidate to the minimum requirement. In the absence of any rule permitting rounding of or giving of grace marks, marks of the petitioner cannot be rounded off as 45% or the petitioner cannot be given any grace marks.

65. The question which next arises is whether candidates belonging to the Scheduled Castes/Scheduled Tribes and Backward Classes, who have not obtained 45% marks in aggregate of marks secured in the main written examination and the viva-voce can be said to have qualified the examination and are entitled to be selected in order of merit irrespective of the position obtained by them in the examination and the Selection Committee erred in not

recommending the name of the petitioner and similarly situated candidates for appointment.

66. Rule 9 and Rule 11 in Part C-Examination of the Candidates of the 1951 Rules read as under:-

- “9. No candidate shall be called for the viva-voce test unless he obtains at least fifty percent qualifying marks in the aggregate of all the written papers. However, for the candidates belonging to the categories of Scheduled Castes/Scheduled Tribes and Backward Classes, the qualifying marks shall be forty five percent:

Provided that the number of candidates to be called for viva-voce test in order of the marks obtained in the written examination shall not exceed three times the number of vacancies advertised. However, if the last candidate to be called for interview is bracketed with the candidates exceeding three times by obtaining equal marks then all the bracketed candidates shall be called for interview, inspite of the fact that the number of candidates to be called for interview exceeds three times:

Provided further that only those candidates shall be eligible to be recruited as Civil Judges/Judicial Magistrates who secure fifty percent or more marks (forty five percent for the Scheduled Castes/Scheduled Tribes and Backward Classes candidates) in aggregate of marks secured in the main written examination and the viva-voce.

11. Candidates shall be selected for appointment strictly in the order in which they have been placed by the Selection Committee:

Provided that in the case of candidates belonging to the Scheduled Castes/Scheduled Tribes and Backward Classes, Selection Committee shall have a right to select in order of merit a candidate who has merely qualified irrespective of the position obtained by him in the examination:

Provided further that the selection of candidates belonging to the Scheduled Castes/Scheduled Tribes and Backward Classes in the order of merit inter-se shall be made against the vacancies reserved for them and in the manner to be adopted by the Selection Committee.”

67. On cursory reading there appears to be some conflict in Rule 9 and Rule 11 due to the later being couched in over reaching wider language but a conjoint reading of the same leaves no room for doubt and dispels all

confusion and amply makes it clear that obtaining of 45% or more marks by the Scheduled Castes/Scheduled Tribes and Backward Classes candidates in aggregate of marks secured in the main written examination and the viva-voce is a condition precedent for eligibility to recruitment as Civil Judge and Rule 11 has to be read subject to Rule 9 and both the provisos to Rule 11 have to be read with second proviso to Rule 9. The use of expression “a candidate who has merely qualified irrespective of the position obtained by him in the examination” in first proviso to Rule 11 refers to the candidate who has qualified by securing 45% or more marks in aggregate of marks secured in the main written examination and the viva-voce. Therefore, candidates belonging to the Scheduled Castes/Scheduled Tribes and Backward Classes, who have not obtained 45% or more marks in aggregate of marks secured in the main written examination and the viva-voce cannot be said to have qualified the examination and are not entitled to be selected in order of merit irrespective of the position obtained by them in the examination.

68. Since the petitioner and other candidates belonging to the Scheduled Castes/Scheduled Tribes and Backward Classes candidates failed to secure minimum 45% marks in aggregate of the marks secured in the main examination and the viva-voce their names could not be and were not rightly so recommended for appointment by the Selection Committee which cannot be said to have violated the dictum in **Neelima Shangla’s Case (Supra)** in any manner.

69. It follows from the above discussion that the entire selection process has been conducted strictly in accordance with the 1951 Rules as applicable to the State of Haryana and no grounds have been made out by the petitioner for quashing the result dated 24.02.2012 (**Annexure P-7**) and

subsequent appointment Notification dated 21.05.2012 (**Annexure P-9**) and directing the respondents to consider and appoint the petitioner as Civil Judge (Junior Division).

70. The writ petition is, therefore, devoid of any merit and is accordingly dismissed with no order as to costs.

(**RAKESH KUMAR JAIN**)
JUDGE

(**ARUN KUMAR TYAGI**)
JUDGE

07.01.2020
kothiyal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No