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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 10/2018 & CM APPL. 35887/2019

PRASHANT PRANAV & ORS ..... Appellants

Through: Ms. S. Janani and Mr. Nishant, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Sanjay Kapur, Ms. Megha Karnwal and Mr. Harshal Narayan, Advocates for R-2 & 3.
Mr. Prasanna S., Ms. Vidya Subramanian and Mr. Rahul Rathy, Advocates for Private Respondents.
Ms. Abha Malhotra and Mr. Hitesh Chadha, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 03.02.2020

1. The Appellants who were Petitioners in the writ petition have assailed the order dated 26.12.2017 passed by the learned Single Judge in W.P.(C) 11598/2017. The said writ petition was filed to challenge the recruitment process of "Probationary Officer" in the State Bank of India issued vide

advertisement dated 06.02.2017. The advertisement as issued stipulated that each candidate must qualify in each of the "objective test" well as the "descriptive test" category before being considered eligible for the appointment. Under the advertisement, the main examination was to consist of objective test for 200 marks and descriptive test for 50 marks. These tests were to be held online. It was stipulated that the candidates are required to qualify each of the tests by securing passing marks "***to be decided by the Bank***". The different tests to which the candidates were subjected to were the following:

SL.	Name of Test	No. of Question	Marks	Duration
1.	Reasoning & Computer Aptitude	45	60	60 minutes
2.	Data Analysis & Interpretation	35	60	45 minutes
3.	General/Economy/ Banking Awareness	40	40	35 minutes
4.	English Language	35	40	40 minutes
	Total	155	200	3 hours

2. In relation to the descriptive test, which was to be of 30 minute duration with 50 marks, it was stipulated that the same would be a test of English language (letter writing and essay). The candidates were required to qualify the descriptive test by securing the passing marks "***to be decided by the Bank***". The advertisement also stipulated that penalty for wrong answers would be applicable to both the preliminary and the main examination. Petitioner's claim that the candidates who had secured zero in various

subjects/tests in the objective test had been considered for appointment by the Respondents which vitiated the entire selection process. Pertinently, the Petitioners had participated in the same selection process and had remained unsuccessful, meaning thereby that they rank lower in merit than those who are selected. The writ petition was dismissed by the learned Single Judge after noticing the submission of the Respondents. We reproduce the relevant extract from the impugned order which reads as follows:

> "*5. The learned senior counsel for respondent Nos. 2 and 3 has handed over a Note initiated by the General Manger, SBI, which it is alleged, was duly approved by the Deputy Managing Director and the Chief General Manager (HR) of the Central Human Resource Committee (CHRC) of respondent No. 2 and records that the earlier criteria followed by the respondent No. 2 was to have a cut off of 25% marks for the General Category in each subject and 40% in the overall. The same was 20% in each subject and 35% overall for the Reserved Category. In case sufficient number of candidates did not qualify the tests, a relaxation of up to maximum of 5% was also prescribed. In the current selection process, however, applying the above mentioned selection criteria only 138 candidates were found against the vacancy of 2313. As the general criteria is to have three times the number of vacancies to be called for interview, the question of relaxation was discussed with Institute of Banking Personnel Selection (IBPS) and several scenario were analyzed. It was eventually considered not to stipulate any qualifying marks in each individual objective test for all categories and reduce the aggregate qualifying marks by 10% for each category. It was only upon adopting such relaxed norms that the respondent No. 2 could finally get a pool of 6327 candidates for the purposes of selection. It is further pointed out by the learned senior counsel for respondent Nos. 2 & 3 that even the petitioners were beneficiaries of such relaxed norms as otherwise, they would not have qualified for interview if the respondent Nos. 2 & 3 had insisted upon the norms that were earlier fixed.*

6. I have considered the submissions made by the counsel for the parties. It is to be noted that the advertisement did not prescribe any minimum qualifying marks for each of the subjects/tests in the "Objective Test"or "Descriptive Test". The advertisement merely mentioned that the candidates have to qualify in each of the test by securing passing marks "to be decided by the Bank". Such decision at a later stage necessarily meant that the respondent No. 2 wanted to retain a discretion for itself to determine the qualifying marks based on the overall result of the examination and keeping in mind the criteria that around 3 times the number of vacancies have to be called for the purposes of interview.

7. In the present case, it is evident from the Note initiated by the General Manager of respondent No. 2 and as approved by the CHRC that, leave alone adequate number of candidates, even a minimal number of candidates could not have been qualified as per the earlier followed norms of respondent No. 2. This necessarily required the respondent No. 2 to relax the norms or to re-initiate the entire selection process, which would have resulted in delay and may not have been administratively feasible for respondent No. 2. Petitioners were also beneficiaries of such decision, though may have eventually failed to make the selection.

8. Once it is seen that the advertisement did not prescribe any minimum qualifying marks and the decision which has been taken by the respondent No. 2 takes relevant criteria into account and no mala fide in that decision can be attributed to respondent Nos. 2 and 3, I find no substance in the challenge.

9. It is correct that once the selection process is initiated, normally, the recruiting authority is not allowed to change the selection criteria, however, the said principle would have no application to the facts of the present case as no such criteria was, in fact, stated in the advertisement itself .

10. Though the learned counsel for the petitioners made attempt to attract some mala fide on respondent No. 2 by alleging that candidates securing lower marks in such Objective and Descriptive test have been granted higher marks in the interview, I find the same was not the basis of filing of the present petition.

11. In view of the above, I find no merit in the present petition. The same is accordingly dismissed with no order as to costs."

3. On 25.04.2019, when this appeal came up for preliminary hearing, this Court has passed the following order:

"*1. The short issue that arises for consideration in the present appeal is the reasonableness of the decision taken by the Central Human Resource Committee ('CHRC') of the State Bank of India ('Bank') as regards the fixing of qualifying standards for the written examination conducted for recruitment to the post of Probationary Officers pursuant to the advertisement on 6th February 2017.*

2. In particular, the decision taken by the CHRC on the recommendations of the Institute of Banking Personnel Selection ('IBPS') inter alia of not stipulating 'any qualifying norm' in each individual objective test for all categories i.e. Reasoning and Computer Aptitude, Data Analysis and Interpretation, General/Banking Awareness and English language have been questioned by the present Appellants who are 20 in number.

3. The above recommendation of the IBPS was accepted by the CHRC on the reasoning that in terms of the earlier stipulated minimum cut off norms only 138 of the 44511 candidates who appeared for the main examination (online) qualified for the next stage of interview. Pursuant to the acceptance of the above recommendations of the IBPS by the CHRC, it transpired that the number who would be called for interview would increase to 6327.

4. The short question that has been raised by the Appellants is whether under the garb of exercising its discretionary power to fix 'passing marks,' for each of the individual objective tests, the Bank could fix '0' (zero) marks as a qualifying/'passing mark' in any of the individual objective test papers? According to the Appellants some of those appointed may have either got negative marks or zero mark in some of the individual papers in the objective test.

5. After considering the submissions of counsel, the Court directs as under:

(i) The Bank will produce before the Court on the next date the relevant records for perusal.

(ii) The Bank will prepare and file, at least two weeks prior to the next date of hearing, a tabulated chart indicating, in respect of each of the selected and appointed candidates, the actual marks secured by each of them in each of the individual objective test papers.

(iii) The Bank will explain in a note, to be filed at least two weeks prior to the next date of hearing, how the selection of the candidates appointed was made by applying the relaxed nonn in respect of each selected candidate. The Bank will also indicate in the note what the scenario might have been in terms of the number of candidates called for interview if some minimum qualifying marks say 1,2 or any mark above that were to be prescribed for each individual objective type paper.

(iv) The list of appointed candidates with their full particulars shall be provided to this Court by the Bank within one week, with an advance copy to counsel for the Appellants. The said appointed candidates are, on the oral prayer of the counsel for the Appellants, impleaded as Respondents in this appeal. Within a week of the complete list of appointed candidates being filed in this Court by the Bank, the counsel for the Appellants shall file the amended memo of parties.

(v) Notice is used in this appeal, without process fee, to the newly

added Respondents returnable on the next date. One proforma copy of the notice will be handed over dasti by the registry to the counsel for the Bank.

(vi) The Bank will inform, by a common circular enclosing the above proforma notice, each of the appointed candidates of the pendency of the present LPA and of the order passed by this Court on 8' January 2018 to the effect that 'the appointments made by Respondent Nos.2 and 3 shall be subject to the outcome of the appeal'

(vii) The Bank will individually inform each of the appointed candidates that they can participate in the present appeal either individually or collectively to make submissions on the next date.

(viii) The Bank will, within four weeks from today, provide to each appointed candidate a password controlled access to a link on a exclusive portal the soft (scanned) copy (in a pdf format) of the entire paperbook in the present appeal, including the orders passed by the Court.

6. List on 23rd July 2019.

7. Not to be treated as part-heard."

4. In pursuance of the said order, the Respondents had filed their detailed affidavit dated 08.07.2019. The Respondents have pointed out that a total number of 9.33 lac candidates appeared for the preliminary examination. As per the advertisement, twenty times the number of vacancies were called for Phase-II. Accordingly, 47,991 candidates were shortlisted for Phase-II i.e. the main examination. Out of the 47,991 candidates shortlisted for the main examination, 44,511 appeared for the examination held on 04.06.2017. The cut off marks were not specified in the advertisement and it was stated that the qualifying marks for each of the tests and descriptive paper ***"would be***

decided by the Bank". The Respondents have stated that since only 138 candidates were qualifying the standard criteria for evaluation of descriptive paper- which was to be evaluated only in respect of those candidates who qualified in the main examination i.e. the objective test, in order to have a sufficient basket of candidates (category wise) for the evaluation of descriptive paper, the Bank had to fix relaxed criteria of minimum aggregate score in the objective tests at 25% for general category and 20% for the reserved category and not stipulate any sectional qualifying marks. The Respondents have given the rationale in the affidavit for proceeding in a manner that they have adopted, in the following words:

> "*D. After the main examination was conducted, a report was obtained from IBPS regarding the number of candidates qualifying standards laid down/fixed for each tests and aggregate, for evaluation of Descriptive Paper. It was found that only 138 candidates qualified the above detailed criteria for evaluation of descriptive paper.*
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> *E. In view of the above, the different qualifying counts at various relaxed qualifying criteria were obtained by the bank from IBPS.*
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> *It may be added that, prior to finalisation of qualifying criteria, the Bank is not privy to the candidates' scores. The Bank only obtains the report from IBPS regarding different qualifying numbers at standard/ various relaxed qualifying criteria. The Bank decides (on the basis of IBPS report) the least relaxed qualifying criteria at which maximum/ optimum basket of category wise candidates are available for evaluation of Descriptive Paper and final shortlisting for Group Exercise & Interview.*
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> *F. In order to select candidates as per the category wise*

vacancies, Bank is required to select sufficient number of candidates (three times category-wise vacancies) for evaluation in Group Exercise & Interview. In the instant case it was found that, even when the minimum qualifying marks in each individual paper is kept at 10% for General category (& 5% for Reserved Categories), the Bank was not getting sufficient number of candidates in all categories. Further, 5% is too low and in absolute terms it is as good as zero. It was therefore considered appropriate not to prescribe any qualifying marks for individual papers, particularly keeping in mind that these candidates have already cleared the Preliminary Examination.

G. It may be noted that these candidates had already scored more than the minimum qualifying marks for each of the three papers of Preliminary Examination viz. English Language, Qualitative Aptitude and Reasoning Ability. Additionally, these 47,991 candidates, who had appeared in the Main Examination, were the top merit listed candidates (category wise) out of 9.33 lacs candidates who had appeared in the Preliminary Examination.

H. The matter was also discussed with IBPS officials - who are experts in conducting the examination and evaluating the written test papers. IBPS is an autonomous body and one of the leading institutions that caters to the talent identification needs of its clients. It is engaged in assessment and selection of personnel and provides services to SBI, all Public Sector Banks, RBI, NABARD, SIDBI, LIC, Insurance Companies, Public Sector Undertakings, Government Departments, Universities and Management Institutes etc.

The Governing Board of IBPS consists of nominees of RBI, Ministry of Finance, Government of India, Representatives of Public Sector Banks and Academicians. IBPS has on its panel academicians, bankers and trained test administrators.

I. A meeting was held on 12.06.2017 with IBPS Officials - who had inter-alia opined as under:

i. The cut off levels depend on difficult level of question - which is a subjective parameter and cannot be quantified on a scale. As such a pre fixed qualifying percentage cannot be construed as a measure of suitability of otherwise of a candidate;

ii. Considering the application of negative marking for wrong answers, the low cut offs do not essentially indicate unsuitability of a candidate;
iii. All other banks (including RBI) have not stipulated any minimum percentage of qualifying marks. However, a cut off is fixed depending upon the performance of the whole group and requisite number of candidates, out of those above that dynamic cut off are shortlisted in Order of descending scores.

J. After analysis and discussion, it was found that even if no qualifying marks are prescribed in each of the individual objective paper and the minimum aggregate score for Main Examination Objective Tests is relaxed to 25% for General Category &20% for reserved categories (as finally approved in the present recruitment exercise), only 10,555 candidates were available for evaluation of descriptive test.

K. As per the advertisement, marks obtained in the main examination, both in Objective Paper and Descriptive Paper, were to be added. The standard minimum qualifying marks for aggregate Main Examination score is 40% for General Category (35% for Reserved Categories). At this criteria a total of 1,676 category wise candidates could qualify. However, as per the policy, candidates numbering three times the number of vacancies were required to be Called for Group Exercise 85 Interview. Accordingly, a scenario analysis had to be done after which the minimum aggregate qualifying score were relaxed to 30% for General Category & 25% for Reserved categories at which 6376 candidates were available for GE 85 Interview. The zero marks in any objective test section indicates Zero or less than Zero marks. Less than Zero marks are because of negative marking for wrong answer and are treated as Zero.

L. It may not be out of place to mention that Bank is a service provider and periodic recruitment of officers/staff is carried out by the Bank for replenishment of manpower attrition for business continuity. The exercise for recruitment of Probationary Officers is carried out at all India level, wherein the Respondent Bank spends huge public money to the tune of Rs 50.00 crores (approximately) for each such recruitment exercise. It is relevant to point out that a lot of manpower is involved in conducting these exams on all India basis. Apart from the staff of IBPS, around 1,000 employees of SBI alone are additionally involved in overall supervision and monitoring. The three phases of the exercise is spread over more than 6 months and a very large amount of manpower is expended by the Bank in the recruitment exercise. Additionally, a large number of aspirants invest a lot of their time and efforts in the recruitment process. Any impairment in the exercise would be unfair to those candidates who have performed well. Further, the candidates would not only have suffered a loss of one year but some of the candidates would have become ineligible."

5. From the aforesaid, it would be seen that the decision taken by the Respondents was firstly well within their power and domain to take, in as much as the advertisement itself had made it clear that the Respondents would fix the cut off marks/ bench marks. Secondly, it would be seen that the decision taken by the Respondents was based on germane consideration. Significantly, Respondents have incurred a huge expenditure of public money to the tune of Rs. 50 crores approximately in conducting the examination. The amount of time undertaken to conduct with the recruitment process to fill up a very large number of vacancies is also substantial. It goes without saying that delay in recruitment of the persons who qualified the public examination would hamper the functioning of the

State Bank, which is a public sector Bank.

6. The submission of learned counsel for the Appellant is that the Respondents have admitted that they have even converted less than zero marks that a candidate may have secured on account of negative marking into zero marks and that is impermissible. The Respondents have placed on record, the marks scored by the candidates, category wise. We have perused the said result and it appears that though theoretically speaking, candidate with zero or even negative marks may figure in the merit list, as a matter of fact, that is not the position. Pertinently, the Petitioners were also candidates who did not qualify despite adoption of the relaxed standards. Thus, the Petitioners are those candidates who fared worse than even last selected candidate. The Respondents have stated in their affidavit as follows:

> *"It is further submitted that the cut-off marks secured by the last rank selected candidates in SC/ ST/ OBC/GEN/ OH/ VI/ HI were 38.95/ 28.88/ 40.83/ 46.59/37.24/ 46.11/ 32.95 respectively. However, none of the appellants scored (aggregate normalised scores of Main Examination and GE 85 Interview) more than the cut-off marks and were, therefore, not selected.*
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> *It is also submitted that none of the appellants qualified the original minimum standards/ qualifying marks and were called for Group Exercise & Interview only on the benefit of the relaxed qualifying standards. Hence no prejudice was caused to the Appellants."*

7. In these circumstances, we are not inclined to interfere with the impugned order. We may observe that it is not for the Courts to lay down the qualification criteria in public examinations and it is for the agencies which

are involved in the recruitment process and the entity for whom the recruitment process is undertaken to lay down the qualifying criteria.

8. The appeal is accordingly dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 03, 2020/*nk*