

Small Causes Court, Mumbai through ... Registrar and Anr.	Respondents
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**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

DATED : AUGUST 30, 2021.

PC. :

Heard the learned counsel for both the parties.

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

3. The petitioner herein pursuant to the advertisement dated 28th March 2018 issued by the Small Causes Court had applied for the post of 'Hamal'.

4. The petitioner belongs to the reserved category i.e. Scheduled Caste. The total 90 posts were reserved in the category of 'Hamal'. The petitioner had cleared the written examination. The

petitioner also cleared screening test/ test of activeness. The petitioner was called for the interview on 16th August 2018. The petitioner secured 3 marks out of 10 and hence he was declared as 'Fail'.

5. The main contention of the petitioner is that the authority i.e. Small Causes Court has not conducted the selection process as per the rules and therefore grave injustice is done to the petitioner. It is submitted that clause 39 of the advertisement reads thus '*the members committee would fix the benchmark for the category of selection. However, in the category in which the benchmark is not fixed for the selection it shall be 35% of the marks and there would be relaxation of 5% to the candidates belonging to the reserved category*'.

6. On 16th August 2018, the advisory committee had fixed the benchmark of interview as 40% for open category and 35% for other category. Thus for the interview, the benchmark was 3.5 out of 10. In the interview, the petitioner has obtained 3 marks out of 10 marks and hence he was declared as 'Fail'.

7. The learned counsel for the petitioner vehemently submits that the resolution dated 16th August 2018 was passed after the issuance of the advertisement. It was not brought to the notice of the candidates appearing for the interview. If the benchmark for the interview is not considered, then passing marks for open category candidates would be 3.5 out of 10 marks and the petitioner could claim 5% more relaxation for reserved category. Thus for him passing marks would be 3 out of 10. He is thus entitled to be selected for the

post of 'Hamal'.

8. The learned counsel for the respondent has submitted that only those candidates who had successfully gone through the stages of written examination and other stages were called for the interview. However, he has not successfully passed through the stage of interview.

9. It is also submitted that the passing of the resolution was not an after thought. It is submitted that before the interviews were conducted the advisory committee has passed the resolution at 11.00 a.m. on 16th August 2018 and the benchmark was fixed.

10. The learned counsel for the petitioner had placed reliance upon the judgment of the Apex Court in the case of '**K. Manjusree V/s. State of Andhra Pradesh and Another**¹'. In the said case the benchmark was fixed after the interview was conducted and therefore the Apex Court had observed as follows:-

‘.....introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible’.

11. In the facts of the case the said citation would be of no relevance in the present case because the benchmark of interview was fixed prior to conducting the interview. Out of 90 posts, the authority has selected 86 persons and had given them appointment, whereas 4 posts are reserved for physically handicapped persons.

¹ (2008) 3 SCC cases 512

12. From the above discussion, the petition being sans merits, deserves to be dismissed. However, the petitioner is at liberty to apply for the same post as and when fresh advertisement is published.

(SARANG V. KOTWAL, J)

(SMT. SADHANA S. JADHAV, J)