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

% **Date of decision: 20.04.2021**

+ W.P.(C) 7122/2020 & CM APPL. 24183/2020

ABHISHEK KUMAR Petitioner

Through: Mr. Ajay Garg, Advocate

versus

OFFICE OF DISTRICT AND SESSIONS

JUDGE (HQ) & ANR. Respondents

Through: Ms. Avnish Ahlawat, Standing
Counsel DSJ with Mr. N.K. Singh
& Ms. Palak Rohmetra, Advocates

AND

+ W.P.(C) 11136/2020 & CM APPL. 34758/2020

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CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (Oral)

1. Present writ petitions have been preferred by the Petitioner challenging the impugned action of the Respondents whereby, the descriptive test of 100 marks has been dispensed with and consequently,

the marks of the interview have been reduced during the process of recruitment to the posts of Junior Judicial Assistant (hereinafter referred to as ‘the JJA’) and Data Entry Operator (Grade-A) (hereinafter referred to as ‘DEO (Grade-A)’). As the Petitioner had applied in the General/Unreserved category, these petitions pertain only to the said category. Since common questions are involved in both the writ petitions, they are being disposed of by a common judgment and facts to the extent they are different in the two writ petitions are being separately narrated hereinafter.

W.P. (C) 7122/2020

2. Respondent No.1/Office of District & Sessions Judge (HQs) issued a combined Vacancy Notice/Advertisement on 14.09.2020 inviting applications for recruitment to the vacant posts of Senior Personal Assistant, Personal Assistant, Junior Judicial Assistant and Data Entry Operator for the Office of District & Sessions Judge (HQs) Delhi and Office of Principal Judge, Family Courts (HQs) Delhi. Present petition is confined to the post of JJA for which, total 161 vacancies were advertised, out of which 62 were in the Unreserved Category.

3. Scheme of the examination delineated the selection into four phases/Tiers, as follows:-

Tier I:

Objective test with 120 questions for total 120 marks.

Tier II:

Skill test (typing test): Candidates who scored 50% marks (General Category) i.e. 60 marks (50% of 120) in Tier I (MCQ test) or 25 times of the total vacancies (whichever will be the minimum number) were to be called for the skill test @ 40 w.p.m. The skill test was qualifying in nature.

Tier III:

Descriptive test: Candidates who qualified the skill test were to be called for the descriptive test in English Language with total 100 marks. The test included Essay, Grammar and Translation with minimum passing marks in General Category being 50% i.e. 50 marks out of 100 marks.

Tier IV:

Interview of 30 marks (for maximum of 10 times of the total vacancies). The minimum passing marks for General category candidates were 40% of 30 marks i.e. 12 marks.

4. It was notified in the advertisement that the selection of the candidates shall be in accordance with 'Delhi District Courts Establishment (Appointment & Conditions of Service) Rules, 2012 (hereinafter referred to as '**the Recruitment Rules**'). Final merit list of successful candidates was to be prepared on the basis of marks obtained in aggregate of the performance in objective test (MCQ), descriptive test and interview.

5. Petitioner fulfilled the eligibility criteria and submitted his application for the post of JJA in the Unreserved Category on 21.01.2019. His application was found to be in order and an E-admit card was issued to him on 23.11.2019. Petitioner appeared for the objective test on 29.11.2019 and the result thereof was declared in January, 2020.

6. As per the Petitioner, there were 1677 candidates who qualified the objective test for appearing in the skill test. Petitioner also qualified with 87.5 marks with a rank of 1606. On 21.01.2020, the skill test was conducted in which the Petitioner participated. Result of the test was published in February, 2020 and 191 candidates in the Unreserved Category qualified the skill test. Petitioner also qualified the test with a speed of 48.90 w.p.m.

7. On 05.08.2020, Petitioner came across a notice informing the candidates that on-line interview, through Video Conferencing, was scheduled to commence from the last week of August, 2020, with no mention of the Tier-III descriptive test. On 19.08.2020, a circular was issued by the Respondents in continuation of the earlier notice dated 05.08.2020, intimating the dates for the on-line interview as 30.08.2020 and 12.09.2020 and that the descriptive test was dispensed with. Revised criteria of interview marks was also notified, which was as follows:-

<i>Examination of JJA</i>	<i>Revised Interview Marks</i>	<i>Qualifying Marks</i>
<i>Interview</i>	<i>12 Marks (i.e. 10% of 120 marks)</i>	<i>Unreserved/General Category-05 Marks (rounded off 4.8) i.e. 40% SC/ST/OBC/PwD Category-04 marks (rounded off 4.2) i.e. 35%</i>

8. On 03.09.2020, another circular was issued by the Respondents calling upon the candidates from far flung areas to give their willingness for interviews to be conducted on 27.09.2020. Through a circular dated 18.09.2020, Petitioner was informed that his interview shall be conducted on 27.09.2020 at his native place Patna, Bihar.

9. As per the Petitioner, the change in the selection procedure and the scheme of the examination, by dispensing with the descriptive test and reducing the marks of the interview, was arbitrary and unfair and the Petitioner, through an e-mail, sent a representation dated 21.09.2020 to the Respondents challenging the said action. It was also stated in the representation that the Petitioner will be participating in the interview, scheduled on 27.09.2020, under protest and without prejudice to his rights and remedies in law.

10. Petitioner appeared for the interview on the scheduled date, under protest, and thereafter, as no response was received to his representation, he approached this Court by way of the present petition seeking the following reliefs:-

a. to quash the Circular dated 19-08-2020 and the previous and subsequent circulars of the respondents inviting the candidates directly for Interview by bypassing/dispensing with the Descriptive Test of 100 marks and reducing the Interview to 12 Marks being illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and prevalent rules and advertisement issued by the respondents and quash all subsequent steps taken by the respondent thereto; and

b. direct the respondents to conduct as well as complete the examination and selection process as per the notified scheme

and selection procedure given in the said Advertisement dated 14-09-2020 and prevalent Rules as applicable.

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11. A combined Advertisement/Vacancy Notice was issued by Respondent No. 1 on 14.09.2019. Since the selection to the post of DEO (Grade-A) is through the same advertisement as for the post of JJA above, details of the advertisement are not being repeated for the sake of brevity. The narrative of facts hereinunder is only to the extent they are different and specific to the present petition.

12. 14 posts of DEO (Grade-A) were advertised, out of which, 9 were in the Unreserved Category. The scheme of examination was the same as for the post of JJA, referred to above; the difference only being with respect to the interview marks. The interview marks were 35 (for maximum of 10 times of the total vacancies) and the minimum passing marks in the Unreserved Category were 14 i.e. 40% of 35 marks.

13. Petitioner applied for the Post of DEO (Grade-A) in the Unreserved Category on 21.09.2019, being eligible for the post. He appeared for the objective (MCQ) examination on 31.01.2020 and the result was declared in January, 2020. 97 candidates in total qualified in the Unreserved Category for the skill test. Petitioner also qualified with 81.50 marks and his rank was 29 out of 97 candidates.

14. Computer based skill test was held on 23.10.2020 and the result was published in November, 2020. 19 candidates under the Unreserved

Category successfully qualified the skill test including the Petitioner, who achieved a typing speed of 54.08 w.p.m. and according to him, he was the second best in the skill test.

15. On 07.12.2020, notice was issued by the Respondents informing that on-line interviews, through Video Conferencing, were scheduled on 21.12.2020 and that the descriptive test had been dispensed with. Revised criteria of marks for the interview was also notified as follows:-

<i>Examination of DEO</i>	<i>Modified Interview Marks</i>	<i>Qualifying Marks</i>
<i>Interview</i>	<i>12 Marks (i.e. 10% of 120 marks)</i>	<i>UR/General-05 Marks (rounded off 4.8) i.e. 40% SC/ST/OBC/PwD Category-04 (rounded of 4.2) (i.e. 35%)</i>

16. Aggrieved by the change in the selection process and the scheme of examination, Petitioner represented to the Respondents on 17.12.2020 and on failure to get redressal, the present writ petition was filed seeking the following reliefs:-

a. quash the Notice dated 07-12-2020 of the respondents inviting the candidates including petitioner directly for Interview by bypassing/dispensing with the Descriptive Test of 100 marks and reducing the Interview to 12 Marks being illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and applicable rules 2012 and advertisement issued by the respondents and quash all subsequent steps/actions taken by the respondent in pursuance thereto in the recruitment of Data Entry Operator; and

b. direct the respondents to conduct as well as complete the examination and selection process as per the notified scheme and selection procedure given in the said Advertisement dated 14-09-2020 and prevalent Rules as applicable.

17. The contention of learned counsel for the Petitioner, Mr. Ajay Garg, assailing the impugned action is that it was not open to the Respondents to dispense with the Tier III descriptive test of 100 marks and reduce the interview marks from 30 to 12 for the post of JJA and from 35 to 12 for the post of DEO (Grade-A), calculated at 10% of 120 marks allocated for the objective test. He contends that this action of the Respondents is violative of the Vacancy Notice/Advertisement as the detailed scheme of examination had already been prescribed. It is submitted that the Advertisement clearly delineated the process of selection under the scheme of examination into four phases/Tiers, viz., objective test, skill test, descriptive test and interview. By dispensing with the descriptive test of as many as 100 marks, Respondents have changed the rules of the game after it started. He submits that law in this regard is no longer *res integra* that rules of the game cannot be changed in the midst of the game. Reliance is placed for this proposition on the judgment of the Supreme Court in the cases of Maharashtra SRTC vs. Rajendra Bhimrao Mandve, (2001) 10 SCC 51; K.Manjusree vs. State of Andhra Pradesh, (2008) 3 SCC 512; and judgments of this Court in the cases of Hemani Malhotra vs. High Court of Delhi, (2008) 7 SCC 11 and Ramesh Kumar vs. High Court of Delhi (2010) 3 SCC 104.

18. It is next contended that the impugned action of dispensing the descriptive test in Essay, Grammar and Translation, in order to test the

academic knowledge as well as writing skills, is in violation of the Recruitment Rules in question. Rule 4 of the Recruitment Rules provides the method of recruitment and qualification, etc., wherein, it is stipulated that for posts specified in Column (2) of Schedule B, the method of recruitment shall be as specified in corresponding entries in Columns (3) & (4) thereof. The method of recruitment, as provided in Schedule B for the post of JJA, is by direct recruitment to 80% of the posts and is through a written test and interview; while that for the post of DEO (Grade-A), is through direct recruitment by an open competitive examination and skill test. Thus, under the Recruitment Rules, selection can only be by a 'written test' which connotes a descriptive test, as was rightly prescribed in the scheme of examination, when the Advertisement was issued. Written test cannot be an objective test, based on Multiple Choice Questions.

19. In order to substantiate this point, learned counsel for the Petitioner submits that wherever the Rule making Authority intended that the method of recruitment was to be through the mode of an objective test and interview, it was so specifically stipulated in the Recruitment Rules. As an illustration, it is pointed out that for the posts of Process Server, Peon, Chowkidar and Mali, the method of recruitment, as notified, is through an objective test and interview. However, wherever the intent was to recruit through an examination, other than objective, words were carefully drafted and 'written test' was prescribed. As against the two posts in question in the present petition, Recruitment Rules clearly prescribe 'written test' and 'competitive examination' as method of

recruitment and therefore, the Respondents cannot equate 'written' test with 'objective' test. It is therefore contended that the impugned action is arbitrary, illegal and void *ab initio*, being against the Recruitment Rules and thus the process of selection, post the skill test, vitiates and deserves to be quashed.

20. Learned counsel places reliance on the judgment of the Supreme Court in Renu & Ors. vs. District & Sessions Judge, Tis Hazari Courts, Delhi, **(2014) 14 SCC 50**, for the proposition that vacancies for any post, either in the High Court or in Courts subordinate to the High Court, must be filled in strict compliance of the Statutory Rules in question and any appointment made in contravention of the Statutory Rules would be void *ab initio*.

21. It is next argued that the Respondents do not have the power to relax the Recruitment Rules, except for Rule 44 but even that is with respect to serving Officers, and in any event, it is not the case of the Respondents that the change in the selection process was in exercise of power of relaxation under Rule 44. In the case of P.K. Ramachandra Iyer vs. Union of India, reported as **(1984) 2 SCC 141**, the Supreme Court has held that once there is no power to relax the essential qualifications, the entire process of selection in contravention of the Advertisement and the Rules, is illegal and vitiated. Reliance is also placed on the judgment of the Supreme Court in Secretary A.P. Public Service Commission vs. B. Swapna, **(2005) 4 SCC 154** for the same proposition.

22. It is argued that it is no longer *res integra* that the Selection Committee does not have any inherent jurisdiction to lay down the norms

for selection in addition to what are prescribed under the Rules. To substantiate the argument, reliance is placed on the judgments in Umesh Chandra Shukla vs. Union of India, (1985) 3 SCC 721; Durgacharan Misra RC v. State of Orissa (1987) 4 SCC 646; and Krushna Chandra Sahu (Dr.) v. State of Orissa, (1995) 6 SCC 1.

23. The impugned action is also assailed by contending that every action of the State or its Instrumentality should be fair, legitimate, above board and without any aversion or discrimination and nepotism as held by the Supreme Court in State of Orissa vs. Mamta Mohanty, (2011) 3 SCC 436, where it was observed that if the procedure adopted by an Authority offends fundamental fairness or shocks the conscious, the same stands vitiated.

24. It is further contended argued that the Supreme Court has clearly held in Ramjit Singh Kardam vs. Sanjeev Kumar, (2020) SCC Online SC 448 that dispensing with written examination will have the effect of downgrading and lowering the merit in a selection process and had accordingly quashed the order dispensing with the written examination. Similarly, in the present case, by dispensing with the written examination of 100 marks, Respondents have lowered the ultimate standard in selection and compromised merit. It is a written test which testifies a candidate's academic knowledge, writing skills and knowledge of language and translation, which are *sine qua non* for the posts in question. It is also argued that even this Court has in the past conducted written examinations for the Post of JJA and did not dispense with the same even

though in the year 2017-2018, very few candidates had qualified in the skill test.

25. *Per contra*, Ms. Avnish Ahlawat learned counsel for the Respondents opposes the petitions and argues that it is a settled law that if a candidate has consciously participated in a selection process, he or she cannot turn around and challenge the process. Reliance is placed on the judgment of the Supreme Court in Madan Lal and Ors. vs. State of J & K & Ors., (1995) 3 SCC 486 and in Anupal Singh & Ors. vs. State of UP & Ors., (2020) 2 SCC 173, wherein reliance was in turn placed on the judgments in N.T.Devin Katti vs. Karnataka Public Service Commission, (1990) 3 SCC 157 and Union of India vs. Ravi Prakash Gupta, (2010) 7 SCC 626. It is argued that the Petitioner had participated in the selection process upto the stage of skill test, i.e., Tier II, without raising any grievance or objection to the advertisement, clearly stipulating that the District & Sessions Judge could dispense with any stage of the selection, subject of course to the conditions mentioned therein. He has taken a calculated risk and only because he did not ultimately succeed in achieving marks required to come in the merit list, above the cut-off, the present petitions were filed assailing the selection process and the writ petitions deserve to be dismissed on this ground alone.

26. Without prejudice to the said contention, with respect to the post of JJA, it is submitted that it is true that when the Advertisement was published, the scheme of examination prescribed four Tiers, which included a descriptive test of 100 marks. Total 24,173 number of candidates had applied on-line for the post of JJA. 4471 candidates

qualified in the written test, out of total of 14,256, who had appeared. Petitioner's name was at serial number 1606 having secured 87.5 marks in Unreserved Category, the highest being 115 in the said category.

27. In view of the urgency in recruitment of Ministerial Staff, the Recruitment Committee in its meeting dated 06.01.2020, decided to dispense with the descriptive test, subject to approval of District and Sessions Judge (HQs), which approval was granted. Candidates 25 times of total vacancies, who had secured minimum cut-off marks, were called for the skill test. In the Unreserved Category candidates upto serial number 1677 with cut-off marks 86.75, were called for the skill test.

28. Computerized skill test, which was only qualifying in nature, was conducted on 21.01.2020 and 3775 candidates in all categories had appeared, out of which only 460 candidates qualified the skill test. In the meeting held on 14.02.2020, the Recruitment Committee, resolved to reduce the interview marks to 12 in terms of Rule 11(1) of the Recruitment Rules, with a direction to upload the decision to dispense with the descriptive test as well as the revised criteria of the interview marks, on the website of the District Court. Several representations were received from the candidates as a consequence of this and were duly considered and decided. The decision to reduce the interview marks was taken in consonance with the recommendations of a Committee of this Court constituted to look into the Recruitment Rules of the staff of Delhi High Court and District Courts, conveyed vide letter dated 05.12.2016. As per the recommendations, while filling up the vacancies, the criterion of weightage to the interview was to be capped at 15%. Initially, while

formulating the scheme of examination, 30 marks were prescribed for the interview as this was not more than 15% of 220 marks, i.e., 120 for MCQ test and 100 for descriptive test. However, once a decision was taken on 06.01.2020 to dispense with descriptive test, the total marks reduced to 120 and keeping in view the recommendations of this Court, the interview marks were scaled down to 12 so as to ensure that the weightage does not exceed 15%.

29. It is further submitted that due to Pandemic Covid-19 further selection process was delayed. With the approval of this Court to hold virtual interviews for various posts, on 05.08.2020 notice was issued for holding interviews and a tentative schedule was published. In continuation, another notice was issued on 19.08.2020 informing the candidates that 460 candidates were eligible for the interview, out of which, 405 are residents of Delhi and NCR and 55 are from other parts of India. 30.08.2020 and 12.09.2020 were intimated to be the dates for interview for those residing in Delhi and NCR. Vide the same notice, candidates were informed that descriptive test was dispensed with and accordingly, 12 marks were allocated towards interview under the revised criteria, being 10% of 120 marks. Vide circulars dated 03.09.2020 and 18.09.2020, interview was notified for 27.09.2020, for candidates from far flung areas.

30. Petitioner objected to the change of criteria on 21.09.2020 alleging arbitrariness and violation of the scheme of examination. Representation was considered and rejected on 22.09.2020 by the Recruitment Committee. Final result was declared for 63 posts in the Unreserved

Category on 13.12.2020 and the last selected candidate in the said category secured 103.494 marks in MCQ written test and 7 marks in interview, totaling to 110.494 marks. Petitioner secured only 87.5 marks in the MCQ test and 5 in the interview, totaling to 92.5 marks and is well below the cut-off. The last candidate in the Unreserved Category in the wait list has secured 109.43 marks.

31. With respect to the post of DEO (Grade-A), it is submitted that 14 posts of DEO (Grade-A) were advertised and the scheme of examination was the same as for JJA, except for the interview marks, which were 35 instead of 30. 183 candidates qualified the MCQ test and were called for the skill test, out of which 33 qualified the skill test. The Recruitment Committee, with the approval of Respondent No. 1, dispensed with the descriptive test in its meeting held on 02.12.2020 and notified the dispensing of the test as well as the revised criteria of the marks for the interview, by a notice published on the website of the District Courts, on 07.12.2020. Petitioner represented against the same on 17.12.2020 and the representation was rejected, after due consideration.

32. After the interview, merit list has been published. Petitioner has secured 81.50 marks in the MCQ test and 05 marks in the interview making the total to 86.5. The last candidate selected has secured 96.25 marks and the merit of the Petitioner is far below the cut-off. Successful candidates are undergoing the process of medical examination/ antecedents verification for appointments against both the posts in question.

33. Responding to the contentions of the Petitioner, Ms. Avnish Ahlawat learned counsel for the Respondents argues that there is no change in the rules of the game by dispensing with the descriptive test. As a matter of fact, while issuing the Advertisement itself it was mentioned therein that the District & Sessions Judge (HQs) reserves the right to modify or dispense with any stage of the selection process, if deemed appropriate, especially in view of the number of applications received and as may be permissible under the Recruitment Rules. The Advertisement was published on 14.09.2020 and none of the candidates challenged the same including the Petitioner. On the contrary, Petitioner participated in the selection process upto Tier II, without any protest or demur and without laying a challenge to the Advertisement.

34. It is contended that the decision to dispense with the descriptive test was taken in the meeting held on 06.01.2020 in accordance with the stipulation in the Advertisement for the reason that there was an administrative urgency and exigency. The Office of District & Sessions Judge (HQs) was facing severe crunch of ministerial staff and in addition the induction training of approximately 125 Judicial Officers in the cadre of DJS was likely to be completed by March, 2020. In the absence of ministerial staff, it was impossible to conduct the Courts. Further, recruitment process of 75 DJS Officers and 30 DHJS Officers was underway. Conducting and evaluation of a descriptive test is a time-consuming process and thus looking at the urgency, a conscious decision was taken to dispense with it.

35. The argument of the Petitioner that dispensing the descriptive test is contrary to the Recruitment Rules is misconceived. The term 'written test', prescribed in the Recruitment Rules cannot connote only a descriptive test, as alleged by the Petitioner. It cannot be argued that an objective test based on Multiple Choice Questions is not a written test and the Petitioner has been unable to show any law which supports the interpretation placed by the Petitioner. Objective test in the form of Multiple Choice Questions is a 'written test' and certainly tests the academic knowledge of a candidate as only those who are well versed with the subject would be in a position to attempt the MCQ paper and answer the correct option. The entire scheme of the Recruitment Rules envisages that it is the Recruitment Committee which is empowered to decide the nature and pattern of the examination, in accordance with the Recruitment Rules and the Rules do not qualify the words written test as objective or subjective, it is purely in the domain of an employer to fix the criteria of recruitment/selection and Courts should be slow in interfering in the examination processes. The impugned action is not arbitrary and test has been dispensed with, uniformly for all candidates and except for the Petitioner no candidate has challenged the said action.

36. Distinguishing the judgments relied upon by the Petitioner, learned counsel for the Respondents submits that there is no violation of the Recruitment Rules applicable to the present selection as the objective test has been held and the same is a 'written test' under the Recruitment Rules. The judgment in Renu & Ors. (supra) would thus not apply as the Advertisement specifies the number of posts, qualifications, eligibility

criteria etc. as per the provisions of the Recruitment Rules. The judgment in Hemani Malhotra (supra) does not help the Petitioner as there is no change in the rules of the game and in the Advertisement itself the contingency of dispensing with any stage of selection was categorically mentioned. The judgment in Ramjit Singh Kardam (supra) does not apply as the facts of the present case are totally different. In the said case, a written examination was prescribed and held but eventually cancelled and finally the selection was held purely on the basis of interviews.

37. Mr. Garg learned counsel for the Petitioner, arguing in rejoinder, submits that the Petitioner is not estopped from challenging the selection process inasmuch as he had challenged the process before he participated in the interview and the participation was under protest, which was duly communicated to the Respondents by e-mail dated 21.09.2020. Further, as results were not declared so far, he could not be called an unsuccessful candidate.

38. In response to the argument that the descriptive test has been dispensed with uniformly for all candidates, it is argued that once the impugned action has resulted in lowering the standard of selection, by dispensing with a test by which the writing, translation and comprehension skills of the candidates were to be tested, it is of no consequence that the criteria was applied uniformly. Respondents are heavily relying on the stipulation in the Advertisement that the District & Sessions Judge (HQs) had the power to dispense with any stage of the process, ignoring the fact that this was with the caveat that the action must be in consonance with the Recruitment Rules. Moreover,

Respondents have not given any plausible and satisfactory explanation as to why the Respondents had dispensed with the test and the ground of ‘urgency’ is not sufficient justification.

39. I have heard the learned counsels for the parties and examined their rival contentions.

40. The facts with regard to the issue of the Advertisement for recruitment to the posts of JJA and DEO (Grade-A) and the scheme of the examination prescribed in the Advertisement are not in dispute between the parties. It is equally undisputed that initially the scheme of examination provided four Tiers of examination, which included a descriptive test of 100 marks followed by an interview with 30 marks for the post of JJA and 35 marks for the post of DEO (Grade-A). However, subsequently, descriptive test was dispensed with and there was a consequent reduction in the interview marks, which the Respondents claim is on account of a direction by this Court to peg the weightage of the interview marks at 15%.

41. The real bone of contention between the parties is dispensing the descriptive test and the reduction in the interview marks.

42. First and foremost, the contention of the Respondents is that having participated in the selection process, it is not open to the Petitioner to challenge the selection procedure viz. dispensing the descriptive test and reduction in the interview marks. While there may be merit in the contention of the Petitioner that he had participated in the interview ‘under protest’, after he had made a representation to the Respondents

aggrieved with the impugned action, however, the argument of the Respondents has a different complexion. What is argued by the Respondents is that once the Advertisement itself stipulated that the District & Sessions Judge (HQs) could modify or dispense with any stage of the selection process, it was known to the candidates that such an eventuality or contingency could occur in the future. Thus, not having challenged this unambiguous and categorical stipulation in the Advertisement and having taken the calculated risk of participating in the first two phases of the selection process, Petitioner cannot challenge the action taken pursuant to the discretion exercised by the Recruitment Committee and approved by the Competent Authority. At this stage, I may extract hereinunder the relevant portion of the Scheme of Examination:

“The Descriptive test will be conducted for the posts of Sr. Personal Assistant, Personal Assistant, Junior Judicial Assistant, & Data Entry Operator. However, District & Sessions Judge (HQ), Delhi reserves the right to modify or dispense with any stage of the selection process, if deemed appropriate especially in view of the number of applications received for any particular post and as may be permissible under Delhi District Court (Establishment) Rules, 2012.”
(emphasis added)

43. I am in complete agreement with the Respondents on this aspect. Having known that any stage of the selection process could be dispensed with, petitioner admittedly did not challenge the Advertisement and participated upto the skill test, without a demur. Perhaps the exclusion of the Petitioner from the merit list on account of scoring marks below the cut-off, was a trigger to the representation and filing of the present

petitions. Though, the participation in the interview was under protest but it cannot be overlooked that the Advertisement and the power of the Competent Authority to dispense with any stage of a selection process was never assailed.

44. Proposition of law that a candidate who participates in a selection, taking a calculated chance, cannot turn around and challenge the criteria, is well settled. In Madan Lal (supra), the Supreme Court held as under:-

“9.It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

45. The said proposition has been reiterated and reaffirmed by the Supreme Court in several judgments, to quote a few, K.A. Nagamani vs. Indian Airlines and Ors., (2009) 5 SCC 515; Manish Kumar Shahi vs. State of Bihar and Ors., (2010) 12 SCC 576; Madras Institute of Development Studies and Ors. vs. K. Sivasubramaniyan and Ors., (2016) 1 SCC 454; and Ashok Kumar and Ors. vs. State of Bihar and Ors., (2017) 4 SCC 357.

46. Reliance of the Petitioner on the judgment in Ramjit Singh (supra), in my view, is misplaced in the facts of the present case. In the said case the Supreme Court noticed as a matter of fact that the initial criteria published by the Commission, on three occasions, was given up step by step and no criteria was published for holding an interview. It was held that when the Commission did not publish any criteria on the basis of which candidates were going to be selected and they had no knowledge of the criteria, they cannot be shut out from challenging the process when they ultimately learn of the same. Relevant para of the judgment is as follows:-

“39...The criteria, which was published by the Commission on 28.12.2006, 11.06.2008 and 11.07.2008 were given up step by step and no criteria was published for interview, which was scheduled to take place in from 2 September to 17 October, 2008. When Commission had not published any criteria on the basis of which candidates were going to be subjected for selection process and the candidates participated in the selection without knowing the criteria of selection, they cannot be shut out from challenging the process of selection when ultimately they came to know that Commission step by step has diluted the merit in selection. When candidate is not aware of the criteria of selection under which he was subjected in the process and the said criteria for the first time is published along with final result dated 10.04.2010, he cannot be estopped from challenging the criteria of selection and the entire process of selection....”

47. Thus, in my view, having known the stipulation in the Advertisement, that any stage of the selection process could be dispensed with and having failed to challenge the same, coupled with participation in the process, Petitioner is not entitled to lay challenge to the process.

48. *Albeit* this ground is sufficient to dismiss the petition, however, since parties have addressed arguments on other grounds, I may address them. The argument that the impugned action violates the Recruitment Rules is not tenable on a mere reading of the Rules. Relevant part of the Recruitment Rules for the posts of JJA and DEO (Grade-A), respectively, are as under:-

“4. Method of recruitment and qualification etc.-

In respect of each category of posts of the Service specified in column (2) of Schedule B, the method of recruitment and minimum qualification, shall be as specified in the corresponding entries in columns (3) and (4) thereof.

Schedule B

<i>Srl. No.</i>	<i>Name of the Post</i>	<i>Method of Recruitment</i>	<i>Qualification etc.</i>	<i>Appointing Authority</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
23.	Junior Judicial Assistant PB-I-5200-20200 + 2800/-	a) 80% of posts by direct recruitment on the basis of written test and interview. b) 20% of the vacant posts by promotion from Head Jamadar/Daftri/Book Binder/Peon/Or	a) Graduate with typing speed of not less than 40 words per minute on Computer. b) By promotion from members of the Establishment of this Court: (i) Matriculation pass or equivalent from a recognized board from the category of Head Jamadar/Daftri	District Judge

		<i>derly/Dak Peon/Frash/Frash-cum-Dak Messenger/Chowkidar/Maal i/ Sweeper/Safai Karamchari on the basis of written test and interview.</i>	<i>(ii) Matriculation pass or equivalent from a recognized board having five years service from the categories of Book Binder/Peion/Orderly/Dak Peon/ Frash/Frash-cum-Dak Messenger/Chowkidar/Maal i/Sweeper/Safai Karamchari.</i> <i>They should have knowledge of English and speed of not less than 35 w.p.m. in typewriting.</i>	
28.	<i>data Entry Operator (Grade-A) PB-I-5200-20200 + 2400/-</i>	<i>By Direct recruitment through an open competitive examination and skill test</i>	<i>a) 12th standard pass from a recognized Institution/board or equivalent (preference will be given to Graduates)</i> <i>b) Diploma/Certificate course in IT/Computer field (Preference will be given to Graduates)</i> <i>b) Diploma/Certificate course in IT/Computer field (Preference will be given to 'O' Level Certificate)</i> <i>c) Knowledge of Data Entry/Computer Operation.</i> <i>(Candidate should have minimum of one year experience in Data Entry Operations).</i>	District Judge

49. The mode of recruitment for the post of JJA is 80% by direct recruitment on the basis of written test and interview and for the post of DEO (Grade-A) is direct recruitment through an open competitive examination and skill test. Thus, what is prescribed is ‘written test’ and ‘competitive examination’, respectively. Significantly, the words used in the Recruitment Rules have not been qualified as objective or descriptive or subjective. Without a doubt, the objective of selecting persons into any public service has always been to select the best and the most suitable person. Justice O. Chinnappa Reddy, J. in Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159 had observed as follows:-

“4. The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.

“The ideal in recruitment is to do away with unfairness.

Competitive examinations were the answer to the twin problems represented by democracy and the requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency.... By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved.

Open competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has ‘pull’; everyone stands on his own feet. The system is not only highly democratic, it is fair and equitable to every competitor. The same rules govern, the

same procedures apply, the same yardstick is used to test competence.”

50. In para 5 of the same judgment, the Supreme Court had interestingly gone in the question as to how a competitive examination is to be devised and had referred to Kothari Committee on Recruitment Policy and Selection Methods and I quote:-

“5. How should the competitive examination be devised? The Kothari Committee on Recruitment Policy and Selection Methods in their report said:

“A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow.... We venture to suggest that our recruitment procedures should be such that we can select candidates who can not only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems.”

It is now well-recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview-test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview-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

may be evaluated, perhaps with some degree of error, by an interview-test, much depending on the constitution of the Interview Board.”

51. In the case of Ashok Kumar Yadav vs. State of Haryana, (1985) 4 SCC 417, Supreme Court considered the merits of a written examination and held as under :

*“23. This Court speaking through Chinnappa Reddy, J. pointed out in Lila Dhar v. State of Rajasthan that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services. **But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case.....**”.* (emphasis added)

52. The question that arises is whether by dispensing with the descriptive test, Respondents have violated the Recruitment Rules, as alleged by the Petitioner. First and foremost, the nomenclature ‘written test’ does not connote or imply only a descriptive/subjective test, speaking, generally and broadly. The words are commonly and interchangeably used to refer to both, objective and subjective tests. In this regard, I may refer to a few judgments, where, although this question was directly not in issue but the facts enable one to understand what the words ‘written test’ imply and are commonly understood and used in the context of a recruitment process. In the cases referred below, the

advertisements referred to the examination as 'written test', but the actual mode of recruitment was by an objective test based on Multiple Choice Questions. This is evident from the following paras in Rajesh vs. Union of India being **O.P. No. 13548 of 2001**, decided on 20.12.2001:

"2. CBI. Invited applications for appointment to 134 post of Constable Male/Female which are available for direct recruitment in various branches located all over India. Qualifications prescribed for the post of Constable (motor Transport) are:

- a) Secondary School Examination Pass or equivalent from a recognized Broad/Matriculate/10th Class pass.*
- b) Possession of valid Driving Licence for Light/Heavy four wheeler vehicles and experience in driving of the vehicle.*

*Age limit prescribed was between 18 to 27 years as on 24.4.2000. Upper age limit is relaxable by five years for SC/ST and three years for OBC. Candidates are subjected to physical efficiency test, **written test** as well as interview. Candidates who come in merit will have to undergo medical examination and to determine medical fitness for appointment. **Written examination proposed was of objective type multiple choice questions.** Candidates will have choice to write the examination either in Hindi or in English language. Written examination consists of subjects such as 'General Studies' and 'Elementary Mathematics. Questions in General Studies consist of History,*

Geography, Civics, Current Affairs and General Knowledge as expected of a Class X (CBSE) student. Questions in Elementary Mathematics consist of Arithmetic, Algebra and Geometry as expected of a Class X (CBSE) student and only those candidates would be permitted to appear in the interview who score not less than 40% (forty percent) marks in the written examination. Candidates who qualify in the written examination will have to appear for an interview before an

Interview Board. Interview would be of 20 marks. The entire selection process would be completed within four days.”
(emphasis added)

53. Madras High Court in K. R. Shanthi vs The Secretary to Government, Education Department, being **W.P. No. 21170/2012 & Ors.**, decided on 01.10.2012, observed as under:

*“2. As per the scheme of the examination, the **written examination** consists of a single paper of three hours duration with 150 marks. **The question paper is of objective type with multiple-choice questions.** The marks allotted to the main subject, Educational Methodology and General knowledge are 110 marks, 30 marks and 10 marks respectively. Based on the written examination, the candidates will be short-listed for certificate verification and finally the results will be published through press/media. If more than one candidate secures the lowest or same cut-off mark for the particular communal turn, all such candidates will be called for certificate verification and so the number of candidates called for certificate verification will be slightly higher than the number of vacancies.”*
(emphasis added).

54. A reading of the judgments aforementioned shows that the term ‘written test’ is interchangeably used and includes an objective examination as well. The word competitive examination in any case calls for no interpretation as it is a common knowledge that they are objective as well as subjective. With the advancement of technology more and more competitive examinations are being held ‘on-line’ as objective tests, based on MCQs, while the nomenclature used in the Advertisements is ‘written test’ or ‘competitive examination’.

55. Coming to the present case, the Recruitment Rules prescribe a written test. The word ‘written’ only means and connotes something

which is not oral or spoken and is transcribed on a paper or with the increasing technology, digitally. Objective test would certainly qualify to be a written test. This Court cannot read words into the Recruitment Rules, which do not exist and in this background the contention of the Petitioner that the Recruitment Rules mandate a descriptive test only cannot be sustained. Admittedly Respondents have held an Objective test and thus it cannot be said that written test was not held.

56. The position taken by the Petitioner that this Court as well as the Subordinate Courts have been holding descriptive tests in the past for filling up the posts of JJAs, is certainly uncontroverted. However, in my view, the norms and practice cannot be a sufficient ground for this Court to read the Recruitment Rules differently from the way are drafted. Most certainly it is open to the Respondents to test candidates through a descriptive test, but the action of dispensing cannot be held violative of the Rules.

57. I have independently examined the Minutes of the Recruitment Committee to ascertain the reason for dispensing with the descriptive test. The Minutes placed before this Court fortify the stand of the Respondents, taken elaborately in the counter-affidavit, that the descriptive test was dispensed with on account of urgency. Respondents have satisfactorily explained that on account of the induction training of Judicial Officers as well as recruitment of fresh Judicial Officers, both in the DJS and the DHJS, there was an urgent need of ministerial staff in the office of the District & Sessions Judge (HQs), which was otherwise facing a severe crunch of the Ministerial staff, it was decided to dispense with the

descriptive test. The process was undoubtedly time consuming and cumbersome and would have prolonged the recruitment. The Competent Authority, in its wisdom and discretion, took a well considered decision, in the exigency and interest of administration and suffers from no arbitrariness, calling for interference by this Court.

58. It is a well settled law that it is the domain of the employer to fix the criteria of recruitment/selection to the posts that are intended to be filled. As observed by the Supreme Court, it is the employer who is best suited to decide the requirements of the post depending on the nature of work and also decide the evaluation/selection mechanisms or scheme of an examination, so as to ensure that the candidates selected meet the threshold of efficiency required to carry out the job requirement of a post. It is neither the domain of the Court to determine the method/criteria of selection nor does the Court have the necessary expertise to decide which criteria would be best suited to the job requirement. Supreme Court and various High Courts have repeatedly held that the Courts should not interfere in the examination processes with respect to requisite qualifications etc. and, in my view, this restraint and restrictions on the Courts shall apply with greater force to interference in the scheme of the examination, of course with a caveat that the applicable Statutory Rules are not violated.

59. In this context I may quote two passages from the judgment of the Supreme Court in Ran Vijay Singh vs. State of U.P., **(2018) 2 SCC 357**, a reading of which shows that Constitutional Courts must exercise restraint in matters relating to examinations. Paras 31 and 32 are as follows:-

"31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse -- exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination-- whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a

state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

60. I also find force in the contention of the Respondents that the criteria of selection has been uniformly applied to all the candidates and it is not as if a descriptive test has been dispensed with only *qua* the petitioner. The Supreme Court in Bhupinder Singh Negi and Ors. vs. Airport Authority of India and Anr., **2013 SCC Online Del 4524** has held that once the evaluation method is uniformly applied to all candidates, no fault can be found with the selection process.

61. Though subtly, Mr. Garg had also argued that if the Respondents had not dispensed with the descriptive test of as many as 100 marks, there were chances that the Petitioner would have found place in the merit list. Suffice would it be to state that selection processes cannot be challenged on mere presumptions and conjectures. In the objective test as well as the interview, the Petitioner has achieved low scores and is far below the cut-off in the merit list. Therefore, to contend that he would have scored high marks in the descriptive test is no more than a conjecture and the contention only deserves to be rejected.

62. Learned counsel for the Petitioner had relied on the judgments in K. Manjusree (supra); Maharashtra SRTC (supra) and judgments of this Court in Hemani Malhotra (supra) and Ramesh Kumar (supra). In my view, the said judgments do not come to the rescue of the Petitioner as there is no change in the rules of the game in the midst of the game in the present case. The rules of the game were clearly set before the game started by an unambiguous stipulation in the Advertisement that the rules

could be changed at any stage of the game, which is unassailed. The judgment in Renu & Ors. (supra) also does not inure to the advantage of the Petitioner for the reason that there is no violation of the Recruitment Rules, as held above and holding of the objective test is in conformity with the provisions of the Recruitment Rules.

63. In so far as Ramjit Singh Kardam (supra) is concerned, in fact, the said judgment supports the stand of the Respondents and the view taken above by this Court. The Supreme Court has categorically dealt with a written test comprising of Multiple Choice Questions and has held that the MCQ test was a well thought screening test, easy to conduct and easy to evaluate. I may quote para 55 of the judgment in this regard as under:-

“55. As per advertisement dated 20.07.2006, the Commission had published the criteria for selection on 28.12.2006 which was implemented also, hence, there was no occasion to give up the merit selection in midway. Further, when no reasons are forthcoming to support the so called ‘administrative reasons’ in the decision dated 30.06.2008 which was so stated by Chairman for the scrapping the written test, we have to hold the said decision arbitrary and without reason. The written test consisting of 100 objective type of multiple choice questions out of which 60 questions relating to academic knowledge of the respective subjects including skill and method of teaching ability and 40 questions relating to general knowledge, general English and Hindi upto matric standard was well thought screening test, easy to conduct and easy to evaluate. The Commission being recruiting body abdicated its obligation of screening out the best candidates; The competitive examination, are means by which equality of opportunity was to be united with efficiency. By the above method favouritism was to be excluded and the goal of securing the best man for the job was to be achieved. We, thus, conclude that decision dated 30.06.2008 for not holding the written examination and steps

taken consequent thereto were all arbitrary decisions, unsustainable in law.”

64. The reason why, in the said case, the Supreme Court upheld the orders of the High Court scrapping the examination is not far to seek. Relevant paras are as under:-

“45. The above sequence of events indicates that in accordance with the “special instruction” extracted above the Commission decided the criteria for calling the candidates for the selection as holding of written examination of 200 marks and interview for 25 marks which was the perfect criteria looking to the number of the candidates i.e. 20836 who had applied in pursuance of the advertisement for the post of PTI. The criteria was implemented by holding a written test on 21.07.2007 which was cancelled due to some complaints. The written test was again notified for 20.07.2008 which was withdrawn by notice published on 30.06.2008, the earlier criterion was given a go bye by another notification dated 11.07.2008. The above indicates that the standard on which candidates are to be screened for selection was downgraded by Chairman of his own. When the number of candidates who applied against certain posts are enormously large, short-listing has always been treated as an accepted mode to correctly value the work and merit of the candidate. The Division Bench of the High court on the alteration of the mode of selection as noticed above has made following observation in paragraph 37 of the judgment:

“(37) Thus, even accepting the appellants’ plea that ‘selection criteria’ or ‘mode of selection’ can be altered midstream to short-list the candidates with higher merit, here is a case where the alterations have been designed with the sole object of downgrading and not upgrading the standards of selection to public employment.

Was the Chairman competent to take policy decisions like ‘selection criteria’ or ‘mode of selection’?”

XXX

XXX

XXX

“57. We having held that change in criteria of selection was never notified by the Commission and about the change in process of selection candidates were kept in total dark and for the first time the criteria applied in selection process was published along with result dated 10.04.2008, the writ petitioners cannot be estopped in challenging the arbitrary criteria so applied. The submission of Shri Sibal cannot be accepted. The petitioners have never questioned the criteria which was published on 28.12.2006 i.e. written test of 200 marks and viva voce of 25 marks, merely because they participated in the process of selection after the change of criteria, their right to challenge the arbitrary change cannot be lost. Estopping the petitioners from challenging the change of criteria will be giving seal to arbitrary changes affected by Chairman as noted above.

58. In view of the foregoing discussions, we answer point Nos.3, 4 and 5 in following manner:—

Ans. 3:

The decisions dated 30.06.2008, 11.07.2008 and 31.07.2008 were arbitrary decisions without any reason to change the selection criterion published on 28.12.2006 which have effect of downgrading the merit in the selection.

Ans.4:

The Commission being a multi-member body, all decisions pertaining to mode of selection and criteria was to be taken by the Commission itself, there being no rules or resolution delegating the said power to Chairman or any other member.

The decision of not holding written examination dated 30.06.2008, decision to screen on the basis of eight times of vacancies and percentage of marks dated 11.07.2008 and decision dated 31.07.2008 to call all eligible candidates, were all decisions taken by the Chairman himself, which decisions cannot be said to be decisions of the Commission.”

65. As far as the reduction in the interview marks is concerned, I find no infirmity with the said decision either. The action has been taken pursuant to recommendations of the Examination Committee of this Court that the weightage of the interview should not exceed 15%. When the total marks under the scheme of the examination were 220, which included the objective test of 120 marks and descriptive test of 100 marks, the interview marks were 30 and 35, respectively, with due weightage at 15%. However, once the descriptive test was dispensed with, the total marks came down to 120 and rightly, the interview marks were scaled down to 12 to keep the ceiling of 15% intact. The Supreme Court has held in several cases that excessive and undue weightage should not be given to the interview in comparison to a written test and, in my opinion, the decision to peg the weightage at 15% is in keeping with the ethos of the said line of judgments. However, it has also been held in several judgments that allocation of marks for interview will depend on facts of each case and this is the prerogative of the Authority conducting the interview and Courts do not have the expertise to determine the same. In this context, I may refer to a passage from judgment in Ashok Kumar Yadav (supra) as under:-

“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 [(1981) 1 SCC 722 : 1981 SCC (L&S) 258 : AIR 1981 SC 487 : (1981) 2 SCR 79] , 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 personal 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 personal 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 Lila Dhar case [(1981) 4 SCC 159 : 1981 SCC (L&S) 588 : AIR 1981 SC 1777 : (1982) 1 SCR 320] , “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 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 Hasia case [(1981) 1 SCC 722 : 1981 SCC (L&S) 258 : AIR 1981 SC 487 : (1981) 2 SCR 79] this Court took the view that the allocation of as high a percentage of marks as 33.3 per cent 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 threshold of development and who show signs 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 Lila Dhar case [(1981) 4 SCC 159 : 1981 SCC (L&S) 588 : AIR 1981 SC 1777 : (1982) 1 SCR 320] "exaggerated weight has been given with proven or obvious oblique motives".

66. For all the aforesaid reasons, this Court finds no ground to interfere in the process of recruitment which is at the fag end of medical examinations/antecedent verifications of the candidates selected on merit. There is no merit in the petitions and the same are accordingly dismissed, along with the pending applications.

JYOTI SINGH, J

APRIL 20, 2021

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