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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2022

DELIVERED ON : 12.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.Nos.10462 and 11835 of 2021

W.P.No.10462 of 2021:

S.Lawrence

.. Petitioner

Vs.

1.The Principal Secretary to
Government (FAC),
Public (Special.A) Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2.The Registrar General,
Madras High Court,
Chennai - 600 104.

3.The Registrar (Recruitment),
Madras High Court,
Chennai - 600 104.

.. Respondents

W.P.No.11835 of 2021:

V.Sundari

.. Petitioner

Vs.

1.The High Court of Madras,
rep. by Registrar-General,
High Court Buildings,
Chennai.



2.The Principal Secretary to Government,
Public (Special.A) Department,
Secretariat,
Chennai.

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3.The Registrar,
Recruitment Cell,
High Court Buildings,
Chennai.

.. Respondents

Prayer: W.P.No.10462 of 2021 filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for records relating to the first respondent's Notification No.2 of 2019 dated 12.12.2019 to quash the same in so far as fixing the minimum marks for Viva-Voce is concerned, as it overrides the dictum of law and the Statutory Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 2007 and to consequently direct the respondents to select and appoint the petitioner to the post of District Judge (Entry Level) based on the combined marks of 181.5 (151 marks in the Written Examination + 30.5 marks in the viva-voce) as obtained by the petitioner.

W.P.No.11835 of 2021 filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the first respondent to consider the marks of the petitioner both in the main examination and viva voce test together as qualifying marks as mentioned in Clause-6 of Annexure-I in Tamilnadu State Judicial Service (Cadre and Recruitment) Rules, 2007 and accordingly include her name in the select list for direct recruitment to the post of District Judge (Entry Level) in the Tamil Nadu State Judicial Service in the available vacancies notified under Notification No.2/2019 dated 12.12.2019 and to pass appropriate order of appointment to the said post to her on the basis of the combined marks secured by the petitioner in the main examination and viva voce test, ignoring the requirement of securing minimum marks in viva voce test and to pass appropriate orders for such inclusion and offer of appointment to the petitioner within the limited time frame.

For the Petitioner : Mr.L.Chandrakumar
in W.P.No.10462/2021

For the Petitioner : Mr.M.Ravi
in W.P.No.11835/2021



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For the Respondents

: Mrs.R.Anitha
Spl. Government Pleader
for respondent No.1 in
W.P.No.10462 of 2021
and respondent No.2 in
W.P.No.11835/2021

: Mr.B.Vijay
for respondent Nos.2 and 3
in W.P.No.10462 of 2021
and respondent Nos.1 and 3
in W.P.No.11835 of 2021

COMMON ORDER

MUNISWAR NATH BHANDARI, ACJ

The two writ petitions involve common question of law and rest on the same set of facts and, thus, were heard and decided by this common judgment, though the prayer in the two writ petitions is little different, but pertains to the recruitment to the post of District Judge (Entry Level) in reference to a notification dated 12.12.2019.

2. Learned counsel for the petitioners submit that the respondents issued an advertisement on 12.12.2019 inviting online applications for the post of District Judge (Entry Level), to fill up the posts notified therein. Pursuant to the aforesaid notification, the petitioners applied for the post. On being successful in the preliminary examination and the main written examination, the petitioners were called for viva-voce. The petitioners were hopeful to get appointment to the post of District Judge (Entry Level), but were denied on the ground that the petitioners failed to secure minimum marks in the viva-voce. Hence, these writ petitions have been filed to set aside the prescription of minimum marks to pass viva-voce and for appointment of the petitioners to the post of District Judge (Entry Level).

3. Learned counsel for the petitioners has made a reference to the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 [for brevity, "the Rules of 2007"], which Rules



govern the selection process, apart from the promotion, etc. The Rules of 2007 provide the method of appointment. It does not provide the minimum marks to be obtained in the viva-voce, rather that is barred under the Rules, yet the respondents not only introduced minimum marks for the viva-voce, but declared the petitioners to be unsuccessful on their failure to secure the minimum marks in the viva-voce. A specific reference to the Rules of 2007 has been given and it has been more especially for the posts to be filled by way of direct recruitment. The required qualification for the post has been indicated and such qualification is possessed by the petitioners.

4. The Rules of 2007 bifurcate the examination into three levels, which is given in Annexure-I under Rule 5 of the Rules of 2007. The method of selection contemplates preliminary examination at the first instance by setting objective type question paper, to be conducted either by way of online test or on-paper test (through OMR paper). It is followed by main examination and finally viva-voce. Paragraph (6) of Annexure-I provides final select list to be based on the combined marks secured by the candidate in the main examination and viva-voce. The maximum marks allotted to main examination and viva-voce is in the ratio of 75% to 25%. Annexure-I aforesaid does not prescribe minimum pass marks in the viva-voce for the cadre of District Judge, while it is so prescribed in Annexure-II for the post of Civil Judge by direct recruitment. Rule 4(c) of Annexure-II under Rule 5 of the Rules of 2007 provides minimum marks for viva-voce to the post of Civil Judge. Thus, it is submitted that when the legislature had not stipulated minimum marks for the viva-voce to the post of District Judge, the respondents have no authority to declare any candidate to be unsuitable based on a decision to prescribe minimum marks for the viva-voce. The challenge to the action of the respondents has been precisely on the aforesaid ground.

5. Learned counsel for the petitioners has further stated that selection process in question has been taken up by the High Court after several years and it was pursuant to the direction of the Apex Court. Thus, all the posts were required to be filled from and amongst the eligible candidates. The petitioners were not declared ineligible for appointment to the post of District Judge (Entry Level), rather declared to be unsuccessful in the absence of minimum marks in viva-voce. Considering the spirit of the directions of the Apex Court, the respondents should have filled all the posts and, accordingly, given appointment to the petitioners. However, since the respondents did not take into consideration the said aspect, the petitioners are left with no option but to challenge the action of the respondents by maintaining the present writ petitions.



6. Learned counsel for the petitioners to buttress the aforesaid argument relied on the judgment of the Apex Court in the case of Ramesh Kumar v. High Court of Delhi and another, (2010) 3 SCC 104, wherein the Apex Court had categorically held that there cannot be prescription of cut-off marks for viva-voce, when it is not so provided in the Rules and gave direction to the respondents to offer appointment to the petitioners therein. The prayer is, accordingly, to govern the present writ petitions by the judgment aforesaid. It is more so when the instructions contained in the notification to advertise the post are de hors the Rules of 2007 and, thus, could not have been invoked by the respondents to declare the petitioners to be unsuccessful despite having obtained aggregate marks to qualify in the selection and, accordingly, it is prayed that appointments should be given to the petitioners.

7. The petitioners were not required to raise a protest or make a representation against the notification prescribing minimum marks in the viva-voce when it is not so permissible as per the Rules of 2007. The writ petitions were, accordingly, filed after declaration of the final result. The prayer is to grant the relief as prayed for in the writ petitions.

8. The writ petitions have been vehemently contested by learned counsel appearing for the High Court and the State Government.

9. Learned counsel for the High Court gave reference to the Rules of 2007 as well as the notification inviting applications to the post of District Judge (Entry Level). Our attention has been drawn to Clause 6(C) of the notification dated 12.12.2019 to show the prescription of minimum marks in the viva-voce. For Schedule Caste, Scheduled Caste(A) and Scheduled Tribe candidates, the requirement was to secure minimum 35 marks out of 100. For Backward Class (BC), Backward Class (M) and Most Backward Class/Denotified Community candidates, the requirement was to obtain minimum 40 marks. For others (unreserved category), the requirement was to obtain minimum 45 marks out of 100. Such prescription of minimum marks for the viva-voce was, inter alia, to assess the suitability of the candidate for the cadre by judging their mental alertness, general knowledge, knowledge of law, grasp of procedural law and principles of law, clear and logical exposition. The minimum marks were thus provided for the object sought to be achieved. Despite specific provision in the notification to obtain the minimum marks, none of the candidates made a protest or challenged the said clause of the notification before declaring them to be unsuccessful. That apart, in paragraph 10 of the notification, it was clearly mentioned that the instructions would be strictly adhered to by the candidates and thereby the petitioners are bound by the



13. Learned counsel for the respondents has explained the judgment in the case of Ramesh Kumar (supra) and has even relied on other judgments to support his argument. It was submitted that the Apex Court in similar circumstances did not accept the prayer made by the unsuccessful candidates in the case of K.H.Siraj v. High Court of Kerala and others, (2006) 6 SCC 395, where, while dealing with a similar situation and argument, the Apex Court held that prescribing minimum marks for the written and oral test are for a specific purpose and then it even dealt with the absence of specific rule to provide cut-off marks or minimum marks for the main examination or the oral test. The Apex Court even dealt with the rights of an unsuccessful candidate to challenge the selection after declaration of result without protest to any of the condition of the notification made earlier. Reiterating the object behind prescription of minimum marks in the viva-voce, learned counsel for the High Court submitted that the Supreme Court in the case of K.H.Siraj (supra) had also noted the requirement of securing minimum marks in the interview for selection to the post in judicial service. The Apex Court had even given an illustration that if a candidate who secured highest mark in the main examination, but gets zero marks in the interview due to poor performance, is given appointment, then it will spell disaster to the standards to be maintained by the subordinate judiciary.

14. A further reference of the judgment in the case of Manish Kumar Shahi v. State of Bihar and others, (2010) 12 SCC 576 was given by the learned counsel for the High Court, where the similar issue was dealt with by the Apex Court and it was held that prescribing minimum marks for the viva-voce/interview, cannot be held to be illegal. A further reference to the recent judgment of the Apex Court in the case of State of Tamil Nadu v. G.Hemalathaa and another, 2019 SCC OnLine SC 1113 has been given. A specific reference to paragraph (8) of the said judgment has been given to support the argument. A prayer was made to dismiss the writ petitions considering the aforesaid.

15. We have considered the rival submissions of the parties and perused the records.

16. The facts of the case have been narrated while referring to the rival submissions of learned counsel for the parties, but, for the sake of clarity, we are referring to few



facts relevant to the case. The respondents issued a notification on 12.12.2019 inviting online applications for the post of District Judge (Entry Level). Pursuant to the notification aforesaid, the petitioners made applications and were, accordingly, called for preliminary examination. They remained successful in the preliminary examination and, thus, were called for the main examination and having secured the required marks to become eligible for viva-voce, they were called for the viva-voce. The petitioners failed to secure the minimum marks in the viva-voce and were, therefore, not given appointment. By these two writ petitions challenge is made to the action of the respondents to declare the petitioners to be unsuccessful on the grounds aforesaid. It is after referring to the Rules of 2007 which, according to the petitioners, provides a bar to prescribe minimum marks in the viva-voce.

17. To analyse the argument aforesaid, we would make reference of the Rules of 2007. The Schedule under Rule 5 of the Rules of 2007 specifies the categories of posts, method of appointment and qualification. For the post of District Judge (Entry Level), it is stipulated that 25 per cent of the total posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the preliminary examination, main examination and viva-voce. The relevant part of the Schedule under Rule 5 of the Rules of 2007 is quoted hereunder for ready reference:

THE SCHEDULE

Sl. No. (1)	Category (2)	Method of Appointment (3)	Qualification (4)
1	...	...	...
2	...	...	...



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Sl. No. (1)	Category (2)	Method of Appointment (3)	Qualification (4)
3	District Judge (Entry level)	(i) (ii) (iii) 25 per cent of the posts shall be filled by direct recruitment amongst the eligible advocates on the basis of the Preliminary Examination, Main Examination and Viva Voce Test prescribed and conducted by the High Court in accordance with the procedures prescribed in Annexure-I to these Rules.	... 1. Must possess a Degree in Law of a University in India established or incorporated by or under a Central Act or a State Act or an Institution recognized by the University Grants Commission, or any other equivalent qualification and got enrolled in the Bar Council of Tamil Nadu or in the Bar Council of any other State 2. Must be practising on the date of Notification as an advocate and must have so practised for a period of not less than seven years as on such date (see Annexure I) 3. Must have attained the age of 35 years and must not have attained the age of 48 years in the case of SC/ST and 45 years in the case of others as on 1st July of the year in which the notification for recruitment to the post was issued.



18. Annexures-I and II are appended to the Rules of 2007. Annexure-I pertains to the District Judge (Entry Level) by direct recruitment. Paragraph 6 of Annexure-I has been referred by the petitioners to show a bar to provide minimum marks in the viva-voce. In view of the above, paragraph 6 of Annexure-I is quoted hereunder:

"(6) From the candidates who have appeared for viva voce test, the final selection of the candidates shall be made based on the combined marks secured by the candidates in the Main Examination and viva voce test. The maximum marks allotted for the Main Examination and viva voce test shall be 75% and 25% respectively."

19. A further reference to paragraph 3(c) of Annexure-II has been given to indicate that for appointment to the cadre of Civil Judges by direct recruitment, the minimum marks for the viva-voce has been provided. The said provision is also quoted hereunder:

"3(c). Viva-voce (Maximum marks 60)

The candidate's General Knowledge and Knowledge of Law, grasp of Procedural Laws and Principles of Law and his suitability for appointment as Civil Judge shall be tested. The minimum marks for a pass in the viva-voce for all categories of candidates shall be 18."

20. In reference to the aforesaid Rules of 2007, learned counsel for the petitioners submit that when the Rules are silent as to the prescription of minimum marks for the viva-voce to the cadre of District Judge (Entry Level) by direct recruitment, while issuing the notification, the respondents could not have stipulated minimum marks for the viva-voce. The argument aforesaid would be analysed after considering the rival submissions, but for ready reference, Clause 6(C) of the notification is quoted hereunder:

"6. SCHEME OF EXAMINATIONS/SELECTION:-

(A) ...

(B) ...

(C) VIVA-VOCE TEST:

- For Viva voce Test, the candidates will be short listed, as per merit, based on the marks secured in the Main Examination, in the ratio of 1:2 or 1:3 or such number as may be decided by the Hon'ble High Court with reference to the number of vacancies, from and out of the qualified candidates in the Main Examination, following the rule of reservation for each category separately.
- However, if more than one candidate secure



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identical cut-off marks, as may be fixed by the High Court, all such candidates will be called upon to appear for viva voce test.

- Maximum marks for the viva voce test is 100. The minimum qualifying marks to be secured by the candidates, in the viva voce test, shall be as follows:

1	For Scheduled Caste, Scheduled Caste (A) and Scheduled Tribe Candidates belonging to the State of Tamil Nadu	35
2	For Backward Class (BC), Backward Class (M) and Most Backward Class/Denotified Community candidates belonging to the State of Tamil Nadu.	40
3	For Others (unreserved category) / candidates belonging to other States/UTs.	45

1. The object of viva-voce test is to assess the suitability of the candidate for the cadre by judging their mental alertness, general knowledge, knowledge of law, grasp of procedural laws and principles of law, clear and logical exposition, balance of judgment, attitude, ethics, power of assimilation, power of communication, character, intellectual depth, the like of the candidate, his/her tact and ability to handle various situations in the Court, Administrative and Management Skills.

2. Since 'Character' and 'Suitability' of a Candidate are of utmost importance for being considered, for appointment to the Tamil Nadu State Judicial Services as District Judge (Entry Level). The Character and Suitability of the candidate would be enquired into and verified by the Competent Authority, prior to or after the Viva-Voce Test."

21. Learned counsel for the High Court has made further reference to paragraph 10 of the notification, which is also extracted hereunder:

"10. 'Instructions to the candidates' relating to qualification, disqualification and other instructions for the examination/filling up of application form etc., shall form part and parcel of this notification and shall be strictly adhered to by the candidates."



22. A reference to the relevant Rules of 2007 as well as the notification has been given to analyze the rival arguments of the parties. It is not in dispute that the Rules of 2007 do not prescribe minimum marks for viva-voce for direct recruitment to the post of District Judge (Entry Level), but the argument that it even imposes a bar on prescription of minimum marks for a pass in viva-voce is not acceptable, if paragraph 6 of Annexure-I is taken note of. Paragraph 6 bifurcates maximum marks for the main examination vis-a-vis viva-voce and provides for combined marks to be taken for the determination of the final selection list. Merely for the reason that final list is to be made based on the marks obtained in the main examination and viva-voce, it cannot be construed that there exists a bar to prescribe minimum marks for a pass in the viva-voce. In view of the above, we are not in agreement with learned counsel for the petitioners that paragraph 6 of Annexure-I imposes a bar to prescribe minimum marks for a pass in the viva-voce.

23. The facts now remain as to whether the respondents were within their rights to prescribe minimum marks for the viva-voce while issuing the notification inviting applications for the post of District Judge (Entry Level). A reference of the notification has been given and quoted to indicate the requirement of minimum passing marks in the viva-voce. It was made known to each candidate, rather with a specific direction that candidates would adhere to the conditions of the notification for selection to the post. Despite the aforesaid notification providing minimum marks for the viva-voce, no protest to the condition was made by the petitioners at any stage of the selection, rather it was made only after declaration of the results. A candidate cannot choose to appear in the selection process knowing about the procedure involved in it and challenge the said procedure on remaining unsuccessful. Such practice has not been accepted by the Apex Court. The candidate is estopped to challenge the procedure on the ground that it was illegal and thus should not have been applied for the recruitment. Such challenge has been permitted by the Apex Court only when a protest or objection is made prior to declaration of the result. A candidate cannot choose to sit on the fence to challenge the procedure adopted only after declaration of the result. To fortify the said conclusion, a reference to the judgment of the Apex Court is made, especially to paragraphs 9 and 10 of the judgment in Madan Lal and others v. State of J & K and others, (1995) 3 SCC 486, which are reproduced hereunder:

"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



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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.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews."

The proposition laid down in Madan Lal (supra) has been reiterated in the subsequent decision of the Apex Court in Dhananjay Malik and others v. State of Uttaranchal and others, (2008) 4 SCC 171.

24. In yet another decision of the Apex Court in Sadananda Halo and others v. Momtaz Ali Sheikh and others, (2008) 4 SCC 619, on the principle of estoppel, it was held as under:

"59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100] where one of us (Sinha, J.) was a party. This was a case where different cut-off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribe candidates. This Court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the



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cut-off marks which power was neither denied nor disputed and further that the cut-off marks were fixed on a rational basis and, therefore, no exception could be taken. The Court also referred to the judgment in *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285] where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment [Ed.: *Chandra Prakash Tiwari v. Shakuntala Shukla*, (2002) 6 SCC 127 at p. 149] to the effect : [*Union of India v. S. Vinodh Kumar*, (2007) 8 SCC 100], SCC p. 107, para 19)

"19. ... '34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, 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 there was some lacuna in the process.' "

In para 20 this Court further observed that there are certain exceptions to the aforementioned rule. However, the Court did not go into those exceptions since the same were not material."

25. The Apex Court in *Vijendra Kumar Verma v. Public Service Commission*, (2011) 1 SCC 150, held as under:

"24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that



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they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

25. In this connection, we may refer to the decision of the Supreme Court in G. Sarana (Dr.) v. University of Lucknow [(1976) 3 SCC 585 : 1976 SCC (L&S) 474] wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus: (SCC p. 591)

'15. ... He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.'

26. In P.S. Gopinathan v. State of Kerala [(2008) 7 SCC 70 : (2008) 2 SCC (L&S) 225] this Court relying on the above principle held thus: (SCC p. 84, para 44)

'44. ... Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992. The application of



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principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being G. Sarana (Dr.) v. University of Lucknow [(1976) 3 SCC 585 : 1976 SCC (L&S) 474]'

27. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] in SCC at para 18 it was held that: (SCC p. 107)

'18. ... It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.'

28. Besides, in K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395 : 2006 SCC (L&S) 1345] in SCC paras 72 and 74 it was held that the candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel."

26. The aforesaid aspect goes to the root of the case, because the petitioners having full knowledge of their rights did not raise a finger against the selection process adopted by the respondents. Having failed to obtain the minimum marks in the viva-voce, a challenge is raised to the conditions stipulated in the notification. The notification inviting applications explicitly mandated securing of minimum marks in the viva-voce. Thus, we find substance in the argument of learned counsel for the respondents in resisting the challenge to the notification as well as the declaration of the results.

27. The Court is further required to examine the judgment in the case of Ramesh Kumar (supra) and the legality of minimum marks prescribed by the respondents despite the finding recorded in the preceding paragraphs about the maintainability of the challenge to the process of selection by the petitioner, who were unsuccessful, after declaration of results.

28. To address the issue in reference to the minimum marks prescribed by the respondents in the viva-voce, we have referred the judgments relied by the respective parties. At the outset, it is appropriate to reproduce the significance of holding an interview test, as has been held by the Apex Court in Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159 at paragraph 6:



"6. ... the written examination assesses the man's intellect and the interview test the man himself and the 'twain shall meet' for a proper selection."
[emphasis supplied]

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29. Learned counsel for the petitioners has relied on the judgment of the Apex Court in the case of Ramesh Kumar (supra). A specific reference to paragraphs 6 to 10, 14, 15, 17 and 18 was given and those paragraphs are quoted hereunder:

"6. The advertisement dated 19.5.2007 provided that selection process would be in two stages as it would comprise of written examination carrying 750 marks and Viva-Voce carrying 250 marks. Respondent No. 1, the Delhi High Court furnished detailed information about the pattern of selection process in the instructions annexed to the application form. It provided 50% minimum qualifying marks in the written examination as well as in the interview for General Category candidates and 45% for Scheduled Castes and Scheduled Tribes candidates.

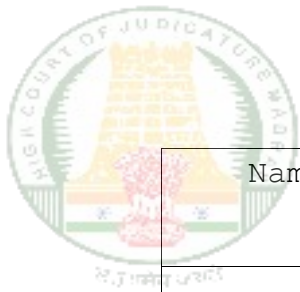
7. The relevant part of the said instruction reads as under:

'A candidate shall be eligible to appear in the viva-voce only in case he secures 50% marks in the written examination i.e. aggregate of both parts (objective/descriptive) in the case of general category, and 45% marks in the case of reserved category.

Interview/viva-voce will carry 250 marks. A candidate of general category must secure a minimum of 50% marks and a candidate of reserved category must secure a minimum, of 45% marks in the viva-voce."

It was also provided that final merit list will be drawn up from among the candidates who have secured the stipulated minimum marks in the written examination and also the stipulated minimum marks in the viva-voce by adding up the marks in the written examination and the viva-voce.'

8. Result of the petitioners remained as under:



Name	Marks obtained in written test	Marks obtained in interview	Grand total	Result
	Out of 750	Out of 250	Out of 1000	
Ramesh Kumar	357.50	105.00	462.50	Not qualified in interview
Desh Raj Chalia	341.50	83.00	424.50	Not qualified in interview

It is thus evident that the petitioners were found unsuitable on the ground that they failed to secure minimum Bench Marks i.e. 112.50 in interview.

9. As per the submissions advanced by the learned Counsel for the Respondent No. 1, the High Court of Delhi had fixed the said criteria being empowered by the statutory provisions contained in The Delhi Higher Judicial Service Rules, 1970 (hereinafter called 'the Rules'). Rule 10 thereof reads as under:

'The High Court shall before making recommendations to the Administrator invite applications by advertisement and may require the applicants to give such particulars as it may prescribe and may further hold such tests as may be considered necessary.'

(emphasis added)

10. The aforesaid statutory provision undoubtedly does not fix any particular criteria or minimum benchmarks either in the written test or in interview for the purpose of selection. Rule 10 provides that the High Court may hold such tests as may be considered necessary, it impliedly provides for requirement necessary for assessment of suitability of a candidate. There is no challenge to the validity of Rule 10 in these writ petitions. The question does arise as to whether the Rules enabled the High Court to fix the minimum benchmarks for interview?

....

14. Similarly, in K Manjusree v. State of AP, (2008) 3 SCC 512 this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The



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rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

15. Thus, law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum Bench Marks for written test as well as for viva voce.

17. The view taken hereinabove is in conformity with the law laid down by this Court in *Nand Kishore v. State of Punjab*, (1995) 6 SCC 614, wherein it has been observed as under:

"17. ... '... Their Lordship's decisions declare the existing law but do not enact any fresh law, is not in keeping with the plenary function of the Supreme Court under Article 141 of the Constitution, for the Court is not merely the interpreter of the law as existing but much beyond that. The Court as a wing of the State is by itself a source of law. The law is what the Court says it is."

18. These cases are squarely covered by the judgment of this Court in *Hemani Malhotra v. High Court of Delhi*, (2008) 7 SCC 11, wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in *All India Judges' case* (supra) had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview.



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In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact-situation, the question of acquiescence would not arise."

[emphasis supplied]

30. Paragraph 15 of the judgment in the case of Ramesh Kumar (supra), apart from other paragraphs, would be relevant. The law on the issue has been summarised in paragraph 15 to hold that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence and in case no process is prescribed by the rules and there is no bar in the law, the competent authority while laying down the norms for selection may prescribe for the tests and may further specify the minimum benchmarks for the written test as well as the viva-voice. In paragraph 18 of the judgment, taking note that the statutory provision does not provide minimum marks in the interview, the direction for appointment was given. We find that in paragraph 15 a finding has been recorded to hold that if there is no bar under the rules, the competent authority can provide minimum marks in the interview. In the instant case, we have already held that there is no bar under the Rules of 2007 to prescribe minimum marks in the viva-voce. The judgment in the case of Ramesh Kumar (supra) is required to be further analyzed based on the judgment cited by learned counsel for the respondents.

31. In the case of K.H.Siraj (supra), an issue of similar nature was considered and decided by the Apex Court. Paragraphs 24, 49, 50 and 57 of the said judgment are quoted for ready reference:

"24. According to Mr. L.N. Rao, the following questions which are posed for the consideration of this Court in these appeals/petitions are as under:

1. In the absence of specific legislative mandate under Rule 7(i) of the Kerala Judicial Service Rules, 1991 prescribing cut off marks in oral examination whether the fixing of separate minimum cut off marks in the interview of further elimination of candidates after a comprehensive written test touching the required subjects in detail in violating of the statute.



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for the oral examination is in any manner irrelevant or not having any nexus to the object sought to be achieved. The merit of a candidate and his suitability are always assessed with reference to his performance at the examination and it is a well accepted norm to adjudge the merit and suitability of any candidate for any service, whether it be the Public Service Commission (I.A.S., I.A.F. etc.) or any other. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition in Rule 10 of the Notification dated 26.3.2001. The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as bench mark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high powered body like High Court to evolve its own procedure as it is the best Judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high powered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in MANU/SC/0139/2006 : AIR2006SC789 wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper.

...

57. The qualities which a Judicial Officer would possess are delineated by this Court in Delhi Bar Association v. Union of India, (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. Existence of such capacities can be brought out only in an oral interview. It is imperative that only persons with a minimum of such capacities should be selected for the judiciary as otherwise the standards would get diluted and substandard stuff may be getting into the judiciary. Acceptance of the contention of the



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appellants/ petitioners can even lead to a postulate that a candidate who scores high in the written examination but is totally inadequate for the job as evident from the oral interview and gets 0 marks may still find it a place in the judiciary. It will spell disaster to the standards to be maintained by the subordinate judiciary. It is, therefore, the High Court has set a bench mark for the oral interview, a bench mark which is actually low as it requires 30% for a pass. The total marks for the interview are only 50 out of a total of 450. The prescription is, therefore, kept to the bare minimum and if a candidate fails to secure even this bare minimum, it cannot be postulated that he is suitable for the job of Munsif Magistrate, as assessed by five experienced Judges of the High Court."

[emphasis supplied]

32. If the facts of the case in K.H.Siraj (supra) are taken note, on the basis of which the issues were framed at paragraph 24 quoted above, it would become clear that the issue as raised in these writ petitions was the issue before the Apex Court in that case also. Thirty per cent minimum cut-off marks for oral examination was stipulated therein. The Apex Court while considering the issue held that the notification dated 26.3.2021 was issued by the High Court to evolve a procedure to choose the best available talent and it cannot for a moment be stated that prescription of minimum pass marks for the written examination or for the oral examination is in any manner irrelevant or not having nexus to the object sought to be achieved. Giving not only the justification to the prescription of minimum marks for selection to the judicial service, the Apex Court even endorsed the action of the High Court to provide minimum marks. A specific illustration in paragraph 57 of the judgment in K.H.Siraj (supra) has been given as to the consequences if minimum qualifying marks in viva-voice is not prescribed. The judgment aforesaid covers the issue raised herein on all fours.

33. It would be relevant to note that the judgment in the case of K.H.Siraj (supra) was cited in the case of Ramesh Kumar (supra), but not referred elaborately by learned counsel for the parties.

34. The other judgment relied by learned counsel for the High Court is in the case of Manish Kumar Shahi (supra). The facts in that case again show similarity of the issue and thereby paragraphs 9 and 16 of the said judgment are quoted hereunder:



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"9. The question whether the marks prescribed for viva voce test/interview are excessive and selection made in accordance with the criteria like the one specified in Rule 14 read with Appendix-C and para (vi) of the advertisement issued by the Commission has been considered by this Court in several cases including those upon which reliance has been placed by Learned Counsel for the Petitioner. Although, no straitjacket 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, by and large, the courts have 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.

...

16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% 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, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the Judgments in *Madan Lal v. State of J&K*, (1995) 3 SCC 486, *Marripati Nagaraja v. Government of A.P.*, (2007) 11 SCC 522, *Dhananjay Malik and v. State of Uttaranchal*, (2008) 4 SCC 171, *Amlan Jyoti Borooah v. State of Assam*, (2009) 3 SCC 227 and *K.A.Nagamani v. Indian Airlines*, (2009) 5 SCC 515."

[emphasis supplied]

Paragraph 16 of the aforesaid decision evolves a proposition of law to deny a challenge to the selection by the candidate who failed to raise an objection or protest to any of the conditions of the advertisement/notification inviting applications for the post.



"8. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers Under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission, M.Vennila v. Tamil Nadu Public Service Commission, (2006) 3 Mad.LJ 376."

The Apex Court in the aforesaid paragraph categorically held that the instructions of the Commission given in the advertisement were to be applied in strict terms and the power of the High Court to modify or relax the instructions was not accepted. In the instant case, the notification was issued with elaborate disclosure of the procedure for selection and it provided minimum marks for the viva-voice. As a necessary corollary, such instruction needs to be strictly adhered to, as has been mandated in the paragraph (10) of the notification itself.

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For the foregoing reasons, finding no merits, we dismiss these writ petitions. There will be no order as to costs. Consequently, W.M.P.Nos.11064 and 11065 of 2021 are closed.

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Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

sasi

To:

1.The Principal Secretary to Government (FAC),
Public (Special.A) Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2.The Registrar General,
Madras High Court,
Chennai - 600 104.

3.The Registrar (Recruitment),
Madras High Court,
Chennai - 600 104.

+1 cc to Mr.L.Chandrakumar, Advocate Sr.NO. 2696

+1cc to the Government Pleader, S.R.No.3104 [29/04/2022]

W.P.Nos.10462 and 11835 of 2021

SSI(CO)
A.SK(20.01.2022)