



# IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.09.2022

+ **W.P.(C)13881/2019****KARAN SINGH MEENA**

.....Petitioner

versus

**THE REGISTRAR GENERAL, DELHI HIGH COURT & ANR.**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr Amit Sharma and Mr Neeraj Dev Gaur, Advocates.

For the Respondents : Mr Ankit Jain, Standing Counsel for DHC along with Mr Abhay Pratap Singh and Mr Aditya Chauhan, Advocates.

**CORAM****HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT****VIBHU BAKHRU, J**

1. The petitioner has filed the present petition impugning his *viva voce* test result for appointment to the post of a “Junior Judicial Assistant/Restorer (Group-‘C’)”. The petitioner was unsuccessful in qualifying for the appointment to the said post as his *viva voce* result was below the minimum qualifying threshold, as stipulated. The petitioner claims that the criteria of fixing the minimum qualifying marks in a *viva voce*, is impermissible.

2. Respondent no.1 (hereafter ‘DHC’) had issued a notice dated 12.06.2017 inviting online applications from Indian citizens for filling



up the posts of “Junior Judicial Assistant/Restorer (Group-‘C’)” and preparing a panel for a total of 124 (one hundred and twenty four) vacancies out of which 11 (eleven) number of vacancies were reserved for candidates belonging to the Scheduled Tribes (ST).

3. The DHC had prescribed a multi-tier test for selection of the candidates. In terms of the said scheme, as published, eligible candidates were required to appear in an objective type test for two hours, based on the pattern of multiple-choice questions. The minimum qualifying marks for the preliminary examination was specified as 90 (that is, 50% of the maximum of 180 marks) for the General Category candidates and 81 (that is, 45% of the maximum of 180 marks) for the Reserved Category.

4. Those candidates who qualified the preliminary objective examination were required to appear in a comprehensive/essay writing test. The qualifying mark was stipulated as 50 (fifty) marks for the said examination. The successful candidates from the General Category were required to secure an aggregate of 50% of the maximum marks and those from the Reserved Category were required to secure 45% of the maximum marks. The qualifying candidates were then required to appear for a typing test in English. The test duration was stipulated to be ten minutes and the requisite typing speed was stipulated as forty words per minute.

5. The candidates, who qualified the typing test, would be admitted to an interview. The maximum marks for the interview was stipulated



as 35 (thirty-five) and the candidates from the General Category were required to secure minimum of 11 (eleven) marks in the interview and those belonging to the Reserved Category were required to secure minimum of 9 (nine) marks. It was specified that the final merit list of the successful candidates would be prepared on the basis of the aggregate of their performance in all the examinations.

6. The above scheme was clearly set out in the notice inviting applications that was issued on 12.06.2017.

7. Admittedly, the petitioner, a reserved category candidate, appeared in the preliminary examination held on 27.08.2017 and secured 83.75 marks, which was above the minimum qualifying marks (81), as stipulated for the Reserved Category candidates. He appeared for the Essay Writing Test on 10.12.2017 and secured 31 marks out of a maximum of 50 marks, which was above the minimum qualifying threshold. The petitioner also qualified the typing test, which was held on 30.04.2018.

8. The petitioner appeared for his interview on 10.06.2018. However, he secured only 6.6 (six point six) marks, which was below the minimum qualifying marks stipulated as 9 (nine) out of 35 (thirty-five).

9. The interview marks were computed by averaging the marks awarded by the interview panel comprising of three officers.



10. The petitioner secured a total of 121.42 marks in aggregate, which the petitioner claims was above the aggregate marks of some of the selected candidates. As noted above, he was unsuccessful in being selected solely for the reason that he had not secured the minimum qualifying marks in the interview.

11. It is also material to note that the petitioner was the only candidate from the ST Category, who had qualified to appear for the interview.

12. Mr Amit Sharma, learned counsel appearing for the petitioner, submitted that the petitioner could not be rejected solely on the grounds of not securing the minimum marks as specified for the interview as there is no provision in the relevant rules envisaging the same. He referred to the Delhi High Court Establishment (Appointment and Conditions Service) Rules, 1972 (hereafter '**the Rules**') and submitted that the Rules did not stipulate that the selection of a candidate would be based on the candidate securing any minimum marks in the interview. He also referred to the decision in the case of **Ramesh Kumar v. High Court of Delhi & Anr.: (2010) 3 SCC 104** and on the strength of the said decision, contended that where the rules do not stipulate the qualifying criteria to secure the minimum marks in an interview, a candidate could not be eliminated from the selection process on the said basis.

13. Mr Ankit Jain, learned counsel appearing for DHC, countered the aforesaid submissions. He also relied on the decision of the Supreme



Court in ***Ramesh Kumar v. High Court of Delhi & Anr.*** (*supra*) and contended that in cases where no procedure was prescribed by the relevant rules, a competent authority could prescribe norms for selection including specifying a minimum benchmark for the *viva voce*. He also referred to the decisions of the Supreme Court in ***Ashok Kumar and Anr. v. State of Bihar and Ors.*** (2017) 4 SCC 357 and contended that it was not open for the candidate to challenge the selection criteria after participating in the selection process.

14. As noted above, the notice dated 12.06.2017 inviting online applications for vacancies to the post of Junior Judicial Assistant/Restorer (Group-‘C’) clearly stipulated the scheme of the examination. The notice clarified that those candidates, who qualified for appearing in the interview, were required to secure a minimum of 11 marks out of 35 for the General Category and 9 marks out of 35 for the Reserved Category. The petitioner being a candidate of the Reserved Category was, thus, required to secure at least 9 marks in the interview. However, his performance in the interview was below the threshold, as specified.

15. Schedule-II to the Rules specified the minimum qualification and the mode of appointment to various posts. The minimum qualification and the mode of appointment for the post of Junior Judicial Assistant, as prescribed under the Rules, is set out below:

“SCHEDULE – II (SEE RULE – 7)



| S. No. | CATEGORY OF POST          | MINIMUM QUALIFICATIONS PRESCRIBED FOR APPOINTMENT TO THE POSTS                                                                                                                                                                                                                                                                                                                                                                                         | MODE OF APPOINTMENT |                                                                                                                                                                                                                                                  |
|--------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| XX     | XX                        | XX                                                                                                                                                                                                                                                                                                                                                                                                                                                     | XX                  | XX                                                                                                                                                                                                                                               |
| 19.    | Junior Judicial Assistant | <p>a. Graduate with typing speed of not less than 40 words per minute on Computer.</p> <p>b. By promotion from members of the Establishment of the High Court Matriculation or equivalent having five years service in any of the posts of categories 24-A to 32 of Class – IV mentioned in Schedule – I. They should have knowledge of English and speed of not less than 35 w.p.m. in typewriting which would be desirable though not essential.</p> | <p>a.</p> <p>b.</p> | <p>80% of posts by direct recruitment on the basis of written test and interview.</p> <p>20% of the vacant posts by promotion from categories 24-A to 32 of Class-IV mentioned in Schedule – I on the basis of written test and interview.:”</p> |

16. The Rules clearly specified that 80% of the posts would be filled by direct recruitment on the basis of written test and interview. However, the Rules do not prescribe the manner or the mode of conducting the written test or the interview. The Rules also do not prescribe the minimum qualifying criteria in the written test or the interview.

17. In the present case, the competent authority had set out the scheme of examination including stipulating the minimum qualifying marks in the notice inviting applications.



18. It is material to note that the petitioner had neither challenged the Rules nor the notice inviting applications. The only relief that the petitioner has sought in this petition is setting aside his result in the interview. However, as noted above, the substance of the contentions advanced on behalf of the petitioner is to, essentially, challenge the fixing of minimum qualifying marks for the interview. According to the petitioner, the same is impermissible in view of the law laid down by the Supreme Court in ***Ramesh Kumar v. High Court of Delhi*** (*supra*).

19. The decision in ***Ramesh Kumar v. High Court of Delhi*** (*supra*) was rendered in the context of appointment to the post of District Judges. The advertisement for appointment to the said post stipulated that the selection process would be in two stages. It comprised of a written examination carrying 750 marks and *viva voce* carrying 250 marks. The instructions annexed to the application form stipulated 50% as the minimum qualifying marks for the written examination as well as for the interview for the General Category candidates and 45% for the Reserved Category candidates. The petitioner, in that case, was not selected as he had failed to secure the minimum qualifying marks in the interview. He challenged his non-selection by filing a petition under Article 32 of the Constitution of India. The Supreme Court found that the relevant rule (Rule 10 of the Delhi Higher Judicial Service Rules, 1970) did not provide any particular procedure or criteria for holding the test but left it for the High Court to prescribe the criteria.



20. The Court noted that in its earlier judgment in ***All India Judges' Association & Ors. v Union of India & Ors.: AIR 2002 SC 1752***, the Supreme Court had accepted Justice Shetty Commission's Report in regard to holding of the relevant test. The said report had recommended that minimum marks should not be fixed for the interview. The Supreme Court, in the said decision, observed that the existing statutory rules may be amended to give effect to the said decision but till the amendment is carried out, the vacancies would be filled as per the existing rules. In view of the decision of the Supreme Court in ***All India Judges' Association's case (supra)***, to accept Justice Shetty Commission's Report, the Court held that there should not be any requirement for securing minimum marks in the interview and the same ought to have been given effect to. In the said context, the Court allowed the petition in ***Ramesh Kumar v. High Court of Delhi (supra)***.

21. It is clear that the decision of the Supreme Court in ***Ramesh Kumar v. High Court of Delhi & Anr. (supra)*** was based on an earlier decision in respect of appointment of District Judges and Justice Shetty Commission's Report recommending that there should not be any requirement for securing minimum marks in an interview, was accepted.

22. In ***K. Manjusree v. State of Andhra Pradesh & Anr.: AIR 2008 SC 1470***, the Supreme Court had held as under:

“33. ...We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules,



the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview...”

23. In ***Ramesh Kumar v. High Court of Delhi*** (*supra*), the Supreme Court referred to its earlier decision in ***K. Manjusree v. State of Andhra Pradesh & Anr.*** (*supra*) and clarified that if there is no restriction in the statutory rules, the competent authority is fully competent to prescribe the minimum qualifying marks for the examination. Paragraphs 14 and 15 of the decision in ***Ramesh Kumar v. High Court of Delhi & Anr.*** (*supra*) case are relevant and set out below:

“14. Similarly, in *K Manjusree v. State of Andhar Pradesh & Anr. AIR 2008 SC 1470*, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The 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.”

[emphasis added]

24. In the present case, the Rules expressly provided that selection to 80% of the posts would be made on the basis of written test and interview. The Rules do not prescribe the manner or the mode of conducting the written tests and interview. There is no provision in the Rules, which proscribes fixing of minimum qualifying marks. Thus, this Court is unable to accept that it was impermissible for the DHC to fix minimum qualifying marks for the interview.

25. It is also relevant to emphasise that the petitioner had not challenged the scheme of the examination at the material time. The petitioner had participated in the examination unreservedly. It is well settled that it is not open for a candidate, who participated in the selection process, to subsequently challenge the same once he has been declared unsuccessful. The law on this subject is discussed



comprehensively in the recent decision of the Supreme Court in *Ashok Kumar and Anr. v. State of Bihar and Ors.* (*supra*). We need to do no more but to quote the following extract from the said decision:

- “12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.
13. The law on the subject has been crystallised in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla* [*Chandra Prakash Tiwari v. Shakuntala Shukla*, (2002) 6 SCC 127 : 2002 SCC (L&S) 830] , this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar* [*Union of India v. S. Vinodh Kumar*, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] , this Court held that : (SCC p. 107, para 18)

“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. (See



Munindra Kumar v. Rajiv Govil [Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)”

14. The same view was reiterated in Amlan Jyoti Borooah [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.
15. In Manish Kumar Shahi v. State of Bihar [Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , the same principle was reiterated in the following observations : (SCC p. 584, para 16)

“16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2009) 4 SLR 272] 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* [*Madan Lal v. State of J&K*, (1995) 3 SCC 486 : 1995 SCC (L&S) 712] , *Marripati Nagaraja v. State of A.P.* [*Marripati Nagaraja v. State of A.P.*, (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , *Dhananjay Malik v. State of Uttaranchal* [*Dhananjay Malik v. State of Uttaranchal*, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 : (2008) 3 PLJR 271] , *Amlan Jyoti Borooah v. State of Assam* [*Amlan Jyoti Borooah v. State of Assam*, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and *K.A. Nagamani v. Indian Airlines* [*K.A. Nagamani v. Indian Airlines*, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57] .”

16. In *Vijendra Kumar Verma v. Public Service Commission* [*Vijendra Kumar Verma v. Public Service Commission*, (2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21] , candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.
17. In *Ramesh Chandra Shah v. Anil Joshi* [*Ramesh Chandra Shah v. Anil Joshi*, (2013) 11 SCC 309 : (2011) 3 SCC (L&S) 129] , candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written



examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p. 318, para 18)

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In Chandigarh Admn. v. Jasmine Kaur [Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521 : 6 SCEC 745] , it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey [Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493: (2015) 3 SCC (L&S) 274] , this Court held that : (SCC p. 500, para 17)

“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears



that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K. Sivasubramaniyan [Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164 : 7 SCEC 462].”

26. The petitioner having participated in the selection process cannot challenge the same after he has been declared unsuccessful.

27. In view of the above, no relief can be granted to the petitioner. The petition is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**SEPTEMBER 26, 2022**  
**RK/gsr**