

\$~20

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

% Date of Decision: 29th May, 2023

+ W.P.(C) 5524/2019

UTPAL OJAH

..... Petitioner

Through: Mr. Pranaynath Jha, Advocate

versus

RAJYA SABHA SECRETARIAT & ORS Respondents

Through: Mr. Sandeep Kumar Mahapatra,
Advocate for R-1 and R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

"a) Writ of Certiorari or any other Writ, Order or Direction, quashing the recommendation of the named successful candidate for appointment to the Post of Parliamentary Interpreter (Assamese) under Advt. 1/2016 notified vide impugned List of Candidates dated 12.10.2018 by Respondent No.2 and quash any offer of appointment issued pursuant to such recommendation and consequently recommend the name of Petitioner as having fulfilled the eligibility conditions under the Advt. No.1/2016;

b) Writ of Mandamus or any other Writ, Order or Direction, holding the named candidate recommended for appointment to the Post of Parliamentary Interpreter (Assamese) under Advt. 1/2016 not having met the eligibility conditions under Advt. No.1/2016 as the candidate does not have Assamese language upto degree level i.e 10+2+3;

c) Writ of Mandamus or any other Writ, Order or Direction, to the Respondent No.2 to appoint the Petitioner to the Post of Parliamentary Interpreter (Assamese) under Advt. 1/2016 as having fulfilled all the eligibility conditions by issuing offer of appointment;

d) Writ of Mandamus or any other Writ, Order or Direction, directing the Respondent No. 2 to verify the complete educational documents of the recommended candidate reflecting Assamese as a language at each level i.e. 10th, 12th and graduation."

2. Factual score to the extent necessary is that the Rajya Sabha

Secretariat/Respondent No. 2 issued an Advertisement No. 1/2016

Signed By: KAMAL KUMAR

Signing Date: 20.06.2023
22:06:48

W.P.(C) 5524/2019

Page 1 of 9

inviting application for various posts and the opening date for online submission of forms was 18.07.2016 while the closing date was 29.08.2016. Considering himself eligible and possessing the requisite qualification as also being an Ex-serviceman, Petitioner applied for the post of Junior Parliamentary Interpreter (Assamese) in the unreserved ('UR') category. Only 1 vacancy was advertised for the said post. Schedules of examination for various stages were notified from time to time, as per which the Oration Test was scheduled for 19.12.2016, Written Test for 30.06.2017 and Simultaneous Interpretation Test was fixed for 12.04.2018. The essential qualification prescribed for the post of Junior Parliamentary Interpreter (Assamese) was Masters degree in any discipline with Assamese up to degree level.

3. It is averred in the petition that the examination scheme contemplated four stages of tests as follows:-

S. No.	Examination	Marks	Minimum Qualifying Marks
1.	Oration Test	100	SC/ST 40%, OBC 45%, UR 50%
2.	Written Test	260	SC/ST 40%, OBC 45%, UR 50%
3.	Simultaneous Interpretation Test	100	SC/ST 40%, OBC 45%, UR 50%
4.	Interview	40	SC/ST 40%, OBC 45%, UR 50%

4. It is stated that Petitioner appeared for the first three stages i.e. Oration Test, Written Test-I and II and Simultaneous Interpretation Test and scored the highest marks i.e. 315.25 out of 460. Thereafter, Petitioner appeared for the Interview on 12.10.2018 but scored 18 marks out of 40, which according to him were the lowest marks amongst all candidates who had appeared for the Interview and was therefore not recommended for appointment.

5. Challenging the non-selection, learned counsel for the Petitioner broadly raises three contentions. It is contended that the essential qualification mentioned in the Advertisement for the post of Junior Parliamentary Interpreter (Assamese) is 'Masters degree in any discipline with Assamese up to degree level' and the only interpretation that can be given to the expression 'up to' is that the candidate was required to have studied Assamese at all levels i.e. 10+2+3 and this interpretation falls in place with the job profile of an Interpreter who requires high degree of proficiency and therefore the requirement of having studied Assamese not only at the degree level but at the school level up to class 12th was envisaged in the Advertisement. This interpretation is sought to be fortified by pointing out that under the same Advertisement, Respondent No. 2 had invited applications for the post of Translators wherein the essential qualification was 'Masters degree in Hindi with English as a subject at the degree level or Masters degree in English with Hindi as a subject at the degree level' and the use of two different expressions 'up to' for the post of Interpreter and 'at the' for the post of Translators shows that for the latter the requirement was of having English/Hindi as a subject at the degree level only and not at the school level in contrast to the post of Interpreter, where the requirement of having studied Assamese as a subject was both at the school and the degree level.

6. This interpretation is sought to be canvassed to bring home the grievance that in violation of the essential qualification laid down in the Advertisement, Respondent No. 2 illegally recommended the name of Respondent No. 4, who did not fulfill the eligibility condition since she has not studied Assamese as a subject at +2 level as required under the Advertisement, where the expression used is 'up to', as against the Petitioner who has studied Assamese at each level i.e. 10+2+3.

7. The second contention on behalf of the Petitioner is that Petitioner was the highest scorer at all the three levels of examination but was deliberately given low score of 18 out of 40 in the interview as a result of which he was unable to qualify the threshold of qualifying 50% marks in the interview out of 40 and was excluded from the selection. This was deliberately done to accommodate Respondent No. 4 since she was known to someone working in the Rajya Sabha Secretariat.

8. The third contention is that prescribing a minimum qualifying percentage for interview was illegal and arbitrary and did not fit in the scheme of examination as this would amount to diluting the entire effort and merit of a candidate who has achieved highest scores in the earlier three stages in the examination scheme. Prescription of 50% qualifying marks for interview is also contrary to the judgment of the Supreme Court in *K. Manjusree v. State of Andhra Pradesh and Another, (2008) 3 SCC 512*, wherein the Supreme Court held that minimum marks for interview should be prescribed before the commencement of the selection process and rules of the game cannot be changed once the game has begun by prescribing the minimum either during the selection process or after the process. This is also against the judgments of the Supreme Court wherein it is held that marks allocated towards viva-voce/interview should not be excessively high as this leaves a huge discretion in the hands of the Interview Board and can be detrimental to candidates who have otherwise scored well in the written examination.

9. Opposing the writ petition, counsel for Respondents No. 1 and 2 submits that the examination scheme for appointment to the post of Junior Parliamentary Interpreter (Assamese) involves four stages i.e. Oration Test with maximum 100 marks, Written Test with 260 marks, Simultaneous Interpretation Test with 100 marks and Interview with

maximum 40 marks. The final selection is made on the basis of overall marks obtained in all the four stages i.e. out of the total of 500 marks. The scheme clearly provides that the candidates appearing for selection to the post will require to obtain minimum prescribed percentage of marks as qualifying at every stage in order to clear each stage of the examination. The minimum qualifying percentage of marks for Interview was 40% for SC/ST, 45% for OBC and 50% for General (UR).

10. It is further submitted that the statement of marks of all candidates who had appeared at different stages was uploaded on the website at the time of declaration of result at each successive stage. Candidates were eliminated if they did not secure the minimum qualifying marks at a given stage and from those who qualified each stage the final list was made on the overall marks obtained out of 500. In the present case, the final list of recommended candidates was uploaded on 10.12.2018. In all, a total of three candidates were recommended for appointment to the post of Junior Parliamentary Interpreter, one for Urdu (UR), one for English/Hindi (OBC and PwD) and one for Assamese (ST). Petitioner had applied for the post of Junior Parliamentary Interpreter (Assamese) under 'General' category and scored more cumulative marks than the selected candidate, however, he was not recommended for appointment as he failed to secure minimum qualifying marks i.e. 50% of 40 at the Interview stage. Petitioner admittedly secured only 18 marks and had to be eliminated from the final merit list. Respondent No. 4 qualified the minimum marks for interview as she secured 16 out of 40 since she was ST candidate and was required to secure 40% of 40 marks.

11. It is submitted that it is not correct for the Petitioner to even urge that rules of the game were changed midstream by prescribing the minimum qualifying marks for the Interview, as these were

prescribed in the examination scheme prior to the commencement of the process and were well-known to the Petitioner. In fact, having participated in the selection process it is not even open to the Petitioner to challenge the examination scheme.

12. Insofar as the essential qualifications are concerned, it is contended by the learned counsel that the interpretation placed by the Petitioner on the words 'up to' is wholly incorrect. The only manner in which the expression can be interpreted is that the candidate should have studied Assamese language at the degree level. Had it been the intention that the candidate was required to study the language at the school level the same would have separately prescribed in the Advertisement.

13. I have heard the learned counsels for the parties and examined the aforesaid contentions.

14. Broadly understood, Petitioner has raised three-fold contentions challenging his non-selection and simultaneously assailing the appointment of Respondent No. 4. Since the Petitioner did not qualify the stage of Interview, in my view, it would be important and relevant to deal with this contention first as only if the Petitioner succeeds on this aspect, the others would become relevant. *Pithily put*, the scheme of examination pertaining to the stage of Interview is challenged on two grounds: (a) Petitioner has been deliberately awarded low marks in the Interview i.e. 18 out of 40 despite having scored the highest in all the other three stages; and (b) prescribing 50% as minimum qualifying marks for the Interview is illegal and arbitrary as the percentage is on the higher side and secondly the criteria was introduced once the selection process had begun. Having given a thoughtful consideration to both the submissions, this Court is unable to find any merit in the same. There is no material placed on record by the Petitioner which even remotely suggests that he was deliberately

given low marks in the Interview. Reading of the pleadings in the writ petition does not indicate that the Petitioner has levelled allegations against the Selection Committee and/or any other person in the Rajya Sabha Secretariat who was either favourably disposed to the selected candidate or was biased against the Petitioner. No person has been impleaded as a party against whom any allegation has been levelled. It is a settled law that if *malafides* are alleged then mere assertion or a vague or bald statement is not sufficient. Burden to establish *malafides* is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof in that regard, both of which are conspicuously absent in the present writ petition. Additionally, when allegations of *malafides* are made, persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. A judicial pronouncement declaring an action to be *malafide* is a serious indictment of the person concerned and can lead to adverse civil consequences against him. Courts have to be therefore slow in drawing conclusions when it comes to holding that allegations of *malafide* are proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of *malafides* that the Court should record a finding to that effect. [*Ref. Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Others, (2013) 1 SCC 524*].

15. Coming to the second aspect of the matter, it is not correct for the Petitioner to argue that the prescription of minimum qualifying marks in the Interview was introduced after the selection process had commenced. This submission is factually flawed as the Advertisement would indicate that in the scheme of examination it was clearly mentioned that the minimum qualifying percentage of marks for any

stage/paper shall be notified prior to the conduct of that stage of the examination. Respondent No. 2 has stated on affidavit that the examination scheme for recruitment to the post of Junior Parliamentary Interpreter (Assamese) was available on the website at the time of issuance of the Advertisement as also commencement of the recruitment process. No rejoinder has been filed by the Petitioner to refute this categorical asseveration in paras 10 and 11 of the counter affidavit.

16. As far as the argument that 50% minimum qualifying marks was on the higher side is concerned, suffice would it be to state that the prescription of the minimum qualifying percentage was known to the Petitioner before he applied against the Advertisement and it is a settled law that having participated in a selection process it is not open to a candidate to challenge the same. The hurdle therefore that the Petitioner needs to cross to succeed in the writ petition is to show that the Petitioner secured the prescribed 50% minimum qualifying marks at the stage of Interview, which he has failed to show. Admittedly, Petitioner has secured 18 marks out of 40 which is below the minimum threshold of 50% and therefore the Petitioner was rightly excluded/eliminated on having failed to qualify the minimum threshold marks. In this view of the matter, it cannot be held that any illegality was committed by Respondents No. 1 and 2 in not including the Petitioner in the final merit list.

17. Respondents No. 1 and 2 have stated on an affidavit that Respondent No. 4 had scored higher than the minimum qualifying marks at all stages including at the Interview stage, as she has secured 40% of 40 marks, which she was required to secure being an ST candidate. Since the Petitioner has failed to qualify the stage of Interview, in my view, the contentions pertaining to essential qualification of having studied Assamese up to the degree level is

irrelevant and only academic and this Court does not feel the necessity to delve into the said argument in the present petition.

18. For all the aforesaid reasons, this Court finds no merit in the writ petition and the same is accordingly dismissed.

JYOTI SINGH, J

MAY 29, 2023/kks/shivam

