



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

106

CWP-15338-2014

Date of Decision: 25.02.2025

Mohan

.....Petitioner(s)

Versus

Indira Gandhi University and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Vikram Sheoran, Advocate,
for the petitioner(s).

Mr. Naveen S. Bhardwaj, Advocate,
for respondent No.1.

Mr. Rajesh K. Sheoran and Mr. Ojasvi Taak, Advocate,
for respondent Nos.2 and 3.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of List of Short-listed Candidates for Computer Typing Test (Annexure P-7), Result of Computer Typing Test (Annexure P-8), List of Short-listed Candidates for interview (Annexure P-9) and Selection List (Annexure P-10).

2. The petitioner pursuant to Advertisement No.2/2014 applied for the post of Clerk under Backward Class Category. As per advertisement, 30 marks were prescribed for General Aptitude Test, 45 for Computer Typing (Practical) Test, 10 for Academic Qualifications and 15 for Interview. The selection criteria for the ready reference is reproduced as below:-

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“Selection Criteria for the post of Clerk (Direct Recruitment).

Selection Criteria for direct recruitment to the post of Clerk is given as under:

a) General Aptitude Test = 30 Marks

b) Computer Typing (Practical) Test = 45 Marks

c) Academic Qualifications = 10 Marks

1. Minimum essential qualifications

i) Graduation with less than 60% marks = 00 Marks

ii) Graduation with 60% and above = 04 Marks

2. Any two or three years degree course in Computer Science/I.T./Computer Engineering after graduation = 03 Marks

3. One year regular Diploma Course (Accountancy, Data Entry/Computer, Stenography, Secretarial Training etc.) = 03 Marks
From recognized University/Board (Govt./Semi.Govt.)

(In case a Diploma has been cumulated for a Degree Programme its weightage shall not be counted for these 03 marks.)

d) Interview = 15 Marks”

3. The respondent conducted general aptitude test on 21.06.2014. The petitioner participated in the written test.

4. The respondent declared category wise result of written test. As per terms and conditions of the advertisement, the respondent was supposed to invite candidates 10 times of advertised posts for computer typing (practical test). The respondent opted to call 36 times candidates for the typing test.

5. The grievance of the petitioner is that respondent instead of 10 times, called 36 times candidates for typing test. The act of respondent was bad in the eye of law. The selection of private respondents needs to be set aside.



6. *Per contra*, learned counsel for the respondents submit that in the advertisement, it was prescribed that 10 times candidates of advertised posts would be called for typing test. The respondent conducted written test and of qualified candidates typing test had to be conducted. The respondent found it appropriate to call as many as possible candidates for typing test. The object was to extend opportunity to as many candidates as possible. There was no *mala fide* intention. The selection process completed in 2014. The candidates joined in 2014 and since then they are working with respondent. The University had reserved its right to short list candidates on the basis of objective criteria including holding a screening test.

7. I have heard the arguments and perused the record.

8. The short grievance of the petitioner is that respondent instead of calling 10 times candidates of advertised posts called 36 times candidates for typing test who had qualified General Aptitude Test. The act of respondent was contrary to the advertisement. The respondent indubitably called for typing, more candidates than prescribed in the advertisement. It is not a case that respondent called lesser candidates than required to be whereas it is a case where respondent expanded the scope of participation. As per advertisement, 10 times candidates could be called for typing test. Accordingly, for the two posts meant for BC category, 20 candidates could be called whereas respondent called 72 candidates.

The private respondents joined in 2014 and since then they are working with respondent No.1. It is conceded by both sides that selected candidates fell within first 20 candidates who had cleared general aptitude test. It means no prejudice was virtually caused to petitioner by calling 72 candidates



for two posts instead of 20 candidates as prescribed by advertisement.

9. A five Judge Constitution Bench in ***Sivanandan C.T. and others Vs. High Court of Kerala and others 2023 SCC OnLine SC 994*** adverted to validity of appointment of District and Sessions Judges. High Court of Kerala in 2015 invited applications for appointment as District and Sessions Judges in the Kerala State Higher Judicial Services by direct recruitment from the Bar. The notification stipulated that the selection would be on the basis of a competitive examination consisting of a written examination and viva-voce. The total marks assigned for the written examination were 300 comprising of two papers, each carrying 150 marks. Paragraph 5 of the notification stipulated that “the merit list of successful candidates will be prepared on the basis of the total marks obtained in the written examination and viva voce.” After the viva-voce was conducted, the Administrative Committee of the High Court passed a resolution by which it decided to apply the same minimum cut-off marks which were prescribed for the written examination as qualifying criteria in the viva-voce. In coming to this conclusion, the Administrative Committee was of the view that since appointments were being made to the Higher Judicial Service, it was necessary to select candidates with a requisite personality and knowledge which could be ensured by prescribing a cut-off for the viva-voce in terms similar to the cut-off which was prescribed for the written examination. The Full Court of the High Court of Kerala approved the resolution of the Administrative Committee. The final merit list of the successful candidates was also published on the same day. The decision of the Full Court to apply minimum cut-off marks for the viva voce and the resultant promulgation of the list of successful candidates came to be challenged before Apex Court under Article 32 of the Constitution. On



account of application of cut off marks in the viva-voce, many candidates were ousted though they secured higher marks than many of the candidates who were selected on the consideration of the aggregate of marks in the written examination and the viva-voce. Hon'ble Court while adverting to the principle of legitimate expectation concluded that consistency and predictability are part of rule of law. The Court noticed its earlier judgments including judgment in ***State of Bihar v. Shyama Nandan Mishra, 2022 SCC OnLine SC 554*** wherein it was held that regularity, predictability, certainty and fairness are important facets of governance. These are necessary concomitants of government gestures. In a constitutional system rooted in the rule of law, the discretion available with public authorities is confined within clearly defined limits. The primary principle underpinning the concept of rule of law is consistency and predictability in decision making. A decision of a public authority taken without any basis in principle or rule is unpredictable and is therefore, arbitrary and antithetical to the rule of law. The rule of law promotes fairness by stabilizing expectation of citizens from public authorities. Since, the citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.

Though the Court held that appointment of Judicial Officer by Kerala High Court was bad in law, however, did not disturb appointment on the ground that already appointed officers have already served for nearly six years



and gained experience. It would deprive the State and its citizens the benefit of experienced judicial officers. The relevant extracts of the judgment read as:

“60. The following are our conclusions in view of the above discussions:

(i) The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being termed as arbitrary and violative of Article 14;

(ii) An individual who claims a benefit or entitlement based on the doctrine of substantive legitimate expectation has to establish the following : (i) the legitimacy of the expectation; and that (ii) the denial of the legitimate expectation led to a violation of Article 14;

(iii) A public authority must objectively demonstrate by placing relevant material before the court that its decision was in the public interest to frustrate a claim of legitimate expectation;

(iv) The decision of the High Court of Kerala to apply a minimum cut-off to the viva voce examination is contrary to Rule 2(c)(iii) of the 1961 Rules.

(v) The High Court's decision to apply the minimum cut off marks for the viva voce frustrates the substantive legitimate expectation of the petitioners. The decision is arbitrary and violative of Article 14.

(vi) In terms of relief, we hold that it would be contrary to public interest to direct the induction of the petitioners into the Higher Judicial Service after the lapse of more than six years. Candidates who have been selected nearly six years ago cannot be unseated. They were qualified and have been serving the district judiciary of the state. Unseating them at this stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding



judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest.”

10. In the wake of above-cited judgment of Supreme Court and considering the fact that private respondents have joined respondent-University in 2014 and have been working continuously since then, this Court does not find it suitable to set aside their selection. This Court is of the considered opinion that no prejudice was caused to petitioner by calling 72 candidates for 2 posts instead of 20 candidates as all the selected candidates were first 20.

11. In the backdrop, instant petition is hereby dismissed.

25.02.2025
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes