A SIVANANDAN C.T. & ORS.

v.

HIGH COURT OF KERALA & ORS.

(Writ Petition (Civil) No. 229 of 2017)

B NOVEMBER 14, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Service Law – Judicial Service – Kerala Higher Judicial Service – Selection of District & Sessions Judges – As per C *notification dated 30-09-2015, the selection was to be conducted by written examination and viva-voce – It was stipulated that those general and OBC candidates who secured 50 per cent in the written examination without any separate minimum and SC/ST who secured 40 per cent were qualified to participate in the viva-voce – However, in terms of the resolution of the Full Court dated 13-12-2012 there* D *should be no minimum cut-off marks for the interview and merit list of successful candidates to be prepared on the basis of total marks obtained in the written examination and viva-voce – Appointment of candidates as per merit list drawn by Administrative Committee on the basis of minimum marks in viva-voce – Challenge to, on* E *ground that introduction of requirement of the minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible – Held: Matter referred to larger bench to be heard alongwith* **Tej Prakash** case.

F **Referring the matter to the larger Bench, the Court**

HELD: 1. The decision in K. Manjusree v. State of Andhra Pradesh and another squarely applies to the facts of this case. In that case, a Bench of three Judges of this Court held that "introduction of the requirement of the minimum marks for G **interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible". [Para 4] [229-A; C-D]**

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2. In the case of Tej Prakash Pathak and others v. Rajesthan High Court and others the Court has, however, specifically doubted the correctness of Manjusree on the point whether "....changing the rules of the game after the game was played.... is clearly impermissible" and has made a Reference to a larger Bench for an authoritative pronouncement. It is also relevant in this context to note that in Salam Samarjeet Singh v. High Court of Manipur At Imphal and Anr. which dealt with almost a similar issue was heard by a three Judge Bench in view of the difference of opinion and it has also since been posted along with Tej Prakash. Hence, it is only appropriate to refer this matter also to the larger bench to be heard along with Tej Prakash. [Para 5] [229-E-G]

K. Manjusree v. State of Andhra Pradesh and another **(2008) 3 SCC 512 : [2008] 2 SCR 1025 ;** *Tej Prakash Pathak and others v. Rajasthan High Court and others* **(2013) 4 SCC 540 ;** *Salam Samarjeet Singh v. High Court of Manipur At Imphal and Anr.* **(2016) 10 SCC 484 : [2016] 9 SCR 771 – referred to.**

Case Law Reference

[2008] 2 SCR 1025	**referred to**	**Para 4**
(2013) 4 SCC 540	**referred to**	**Para 5**
[2016] 9 SCR 771	**referred to**	**Para 5**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 229 of 2017.

Under Article 32 of the Constitution of India

WITH

W. P. (C) Nos. 232, 379 and 618 of 2017.

V. Giri, Jaideep Gupta, R. Basant, Amarendra Sharan, Dr. K. P. Kylasanatha Pillay, Thomas P. Joseph, Sr. Advs., P. V. Dinesh, Ms. Sindhu T. P., Rajendra Beniwal, Ms. Arushi Singh, Abhishekh Thakur, Bineesh K., C. N. Sree Kumar, Amit Sharma, Raghenth Basant, Mithun Verghis, Ms. Liz Mathew, T. G. Narayanan Nair, K. N. Madhusoodhanan, Sajith. P. Warrier, Ms. Nazia Hasan, Mohd. Monish, Ms. Rajitha Th, P. A. Noor Muhamed, Giffara S., G. Prakash, Jishnu M. L., Ms. Priyanka Prakash, Mrs. Beena Prakash, Vijay Shankar V. L, Prasanth P, Nebil Nizar, Ranjith K. C, Advs. for the appearing parties.

A The following Order of the Court was passed :

ORDER

1. The selection of District & Sessions Judges in the Kerala Higher Judicial Service in the year 2015 has given rise to this litigation. As per the Notification dated 30.9.2015 the selection was to be conducted by
B written examination and viva-voce. The written examination of two papers carried 300 marks (150 marks for each paper). The viva-voce was for 50 marks. It was stipulated that those general and OBC candidates who secured 50 per cent in the written examination without any separate minimum and SC/ST who secured 40 per cent were qualified to
C participate in the viva-voce.

2. In terms of the Resolution of the Full Court dated 13.12.2012, there should be no minimum cut-off marks for the interview. The final merit list was to be prepared in the following manner:-

> "..The merit list of successful candidates will be prepared on the
D basis of the total marks obtained in the written examination and viva-voce."

As a matter of fact, two selections were held in the years 2013 and 2014 without cut-off marks for the viva-voce. As per the Resolution dated 13.12.2012, after publishing the result of the examination, the
E candidates were interviewed by the Selection Committee. However, after the viva-voce, the Administrative Committee (consisting of the same members as the Selection Committee) resolved to draw up a list of successful candidates on the basis of same separate minimum percentage of marks in the viva-voce as in the written examination. According to
F the Administrative Committee, the fixing of the minimum marks for the viva-voce was not a deviation from the approved scheme since "*it was never the intention of the Full Court to select persons who do not attain the minimum required bench mark for such a responsible post*". The merit list thus drawn by the Administrative Committee on the basis of the minimum marks in the viva-voce was approved by the Full Court
G and those candidates were appointed accordingly. That selection is challenged in these cases.

3. The main contention is that the rules of the game could not have been changed after the game is played and the result of the game is known to the selectors.

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4. Though several other contentions are raised by both sides, we find that the decision in **K. Manjusree v. State of Andhra Pradesh and another**[1], squarely applies to the facts of this case. In **Manjusree** (supra), 75 marks were allotted for the written examination and 25 marks for the interview. The aggregate governed the merit. However, the written examination was conducted for 100 marks. When the Full Court noticed this, a sub-committee was appointed to make the arithmetical correction to scale down the marks in the written examination to 75 instead of 100. The sub-committee did two things – (1) it made the arithmetical correction (2) it introduced the same cut-off percentage for the interview as in the written examination and thus revised the merit list, which was approved by the Full Court. In the process, a few candidates were removed from the original merit list including Manjusree. A Bench of three Judges of this Court held that "*introduction of the requirement of the minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible*". The Bench specifically noted that the Resolution of the Full Court to not specifically stipulate minimum marks for viva-voce was still in force. Yet, when the sub-committee introduced the change, the same was approved by the Full Court.

5. **Tej Prakash Pathak and others v. Rajesthan High Court and others**[2] has, however, specifically doubted the correctness of **Manjusree** (supra) on the point whether "*....changing the rules of the game after the game was played.... is clearly impermissible*" and has made a Reference to a larger Bench for an authoritative pronouncement. It is also relevant in this context to note that **Salam Samarjeet Singh v. High Court of Manipur At Imphal and Anr.**[3] which dealt with almost a similar issue was heard by a three Judge Bench in view of the difference of opinion and it has also since been posted along with **Tej Prakash** (supra) by order dated 10.08.2017. Hence, it is only appropriate to refer this matter also to the larger bench to be heard along with **Tej Prakash** (supra). Ordered accordingly.

Ankit Gyan Matter referred to larger Bench

[1](2008) 3 SCC 512
[2](2013) 4 SCC 540
[3](2016) 10 SCC 484