[2024] 2 S.C.R. 217 : 2024 INSC 97

Sushil Kumar Pandey & Ors.
v.
The High Court of Jharkhand & Anr.

(Writ Petition (Civil) No. 753 of 2023)

01 February 2024

[Aniruddha Bose and Sanjay Kumar, JJ.]

Issue for Consideration

High Court whether justified in altering the selection criteria after the performance of individual candidates was assessed for selection to the posts of District Judge Cadre in the State of Jharkhand.

Headnotes

Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules, 2001 – rr.14, 18, 21 – Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Regulation, 2017 – Selection to the posts of District Judge Cadre in the State of Jharkhand – Alteration in selection criteria after the performance of individual candidates was assessed – Higher aggregate marks prescribed in deviation from the statutory rules – By way of Full Court Resolution, High Court introduced securing 50 per cent marks in aggregate (combination of marks obtained in main examination and viva-voce) as the qualifying criteria for being recommended to the posts of District Judge – Impermissibility:

Held: Under r.18, the task of setting cut-off marks was vested in the High Court but this was to be done before the start of the examination – Stipulations contained in r.21 for making the select list were breached by the High Court administration in adopting the impugned resolution – Plea that applying a higher aggregate mark was not barred under the Rules or Regulations, not accepted – The very expression "aggregate" means combination of two or more processes and in the event the procedure for arriving at the aggregate has been laid down in the applicable Rules, a separate criteria cannot be carved out to enable change in the manner of making the aggregate marks – If the High Court is permitted to alter the selection criteria after the performance of individual

candidates is assessed, that would constitute alteration of the laid down Rules – Plea of the High Court administration that r.14 permits them to alter the selection criteria after the selection process is concluded and marks are declared is not proper exposition of the said provision – r.14 empowers the High Court administration in specific cases to reassess the suitability and eligibility of a candidate in a special situation by calling for additional documents –High Court administration cannot take aid of this Rule to take a blanket decision for making departure from the selection criteria specified in the 2001 Rules – High Court to make recommendation for those candidates who were successful as per the merit or select list, for filing up the subsisting notified vacancies without applying the Full Court Resolution that requires each candidate to get 50 per cent aggregate marks – The part of the Full Court Resolution of the Jharkhand High Court by which it was decided that only those candidates who secured at least 50% marks in aggregate shall be qualified for appointment to the post of District Judge is quashed [Paras 20, 22-24]

Service jurisprudence – Change in the rule midway – Discussed.

Case Law Cited

Sivanandan C.T. & Ors. v. High Court of Kerala, [2023] 11 SCR 674 **: (2023) INSC 709 – followed.**

State of Haryana v. Subash Chander Marwaha & Ors., [1974] 1 SCR 165 **: (1974) 3 SCC 220;** *Ram Sharan Maurya and Ors. v. State of U.P. and Ors.*, [2020] 12 SCR 466 **: (2021) 15 SCC 401 – distinguished.**

K.Manjusree v. State of Andhra Pradesh and Anr., [2008] 2 SCR 1025 **: (2008) 3 SCC 512;** *Hemani Malhotra v. High Court of Delhi,* [2008] 5 SCR 1066 **: (2008) 7 SCC 11 – relied on.**

Tej Prakash Pathak & Ors. v. Rajasthan High Court and Others: **(2013) 4 SCC 540 – referred to.**

List of Acts

Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules, 2001; Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Regulation, 2017; Constitution of India.

List of Keywords

District Judge Cadre; Altering the selection criteria; Higher aggregate mark; Qualifying criteria; Cut-off marks; Departure from selection criteria.

Case Arising From

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.753 of 2023

(Under Article 32 of The Constitution of India)

With

Writ Petition (Civil) No.921 of 2023

Appearances for Parties

Arunabh Chowdhury, Sr. Adv./A.A.G., Vinay Navare, K Karpagavinagagam, Dushyant Dave, Ms. Meenakshi Arora, Jayant K. Sud, Jaideep Gupta, Sr. Advs., Mahesh Thakur, Ms. Neha Singh, Mrs. Geetanjali Bedi, Ranvijay Singh Chandel, Shivamm Sharrma, Ms. Shivani, Prithvi Pal, Sanjay Kumar Yadav, Manoj Jain, Ms. Kiran Bhardwaj, C Aravind, K V Mathu Kumar, Ms. Geeta Verma, Syed Imtiyaz, Usman Khan, Ms. Madhurima Sarangi, Naeem Ilyas, Towseef Ahmad Dar, Danish Zubair Khan, Dr. Lokendra Malik, Surya Nath Pandey, Durga Dutt, Rohit Priyadarshi, Upendra Narayan Mishra, Satyendra Kumar Mishra, Ms. Rashi Verma, Somesh Kumar Dubey, Kartik Jasra, Prannit Stefano, Shivam Nagpal, Ms. Susmita Lal, Ms. Racheeta Chawla, Kamakhya Srivastava, Rajiv Shanker Dvivedi, Ms. Tulika Mukherjee, Karma Dorjee, Dechen W. Lachungpa, Beenu Sharma, Venkat Narayan, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

In these two writ petitions, we are to address the legality of the selection process of District Judge Cadre in the State of Jharkhand initiated in the year 2022. An advertisement bearing No. 01/2022 was published on 24th March, 2022, inviting applications from the eligible candidates for the said posts. The vacancies specified in the advertisement itself were twenty-two. Appointment procedure to

the said posts is guided by the Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules, 2001 ('the 2001 Rules'). In the year 2017, the Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Regulation, 2017 ("the 2017 Regulation") was framed in terms of Rule 11 and Rule 30 of the 2001 Rules for this purpose.

2. On the basis of cut-off marks specified in the advertisement as also in the 2001 Rules, select list of sixty-six persons was published, applying the 1:3 ratio as there were twenty-two published vacancies.

3. The High Court on its administrative side, however, recommended only thirteen candidates for appointment though the vacancies declared were twenty-two. A resolution to that effect was taken in a Full Court meeting held on 23.03.2023. We shall quote relevant provisions from the 2001 Rules in subsequent paragraphs of this judgment along with the relevant extracts from the advertisement. In the advertisement, the relevant portions for adjudication of the subject dispute were contained under the heading 'Eligibility and Conditions'. The following criteria for selection was specified therein:-

"Preliminary Entrance Test

(1) The Preliminary Entrance Test shall consist. Of:-

i. General English

ii. General Knowledge(including Current Affairs).

iii. C.P.C.

iv. Cr.P.C.

v. Evidence Act

vi. Law of Contract.

vii. IPC

(2) The Preliminary Entrance Test shall be of 100 in aggregate

(3) Duration of Preliminary Entrance Test shall be of two hours.

(4) There shall be negative marking of -1 mark (minus one)for each wrong answer.

Main Examination

(1) The Main Examination shall consist of:-

Paper -I

Part- I Language (English) *50 Marks*

(Essay, Precis, Preposition and Comprehension etc,)

Part- II

(i) *Procedural Law (Cr.P.C. & C.P.C)*

(ii) *Law of Evidence*

(iii) *Law of Limitation* *50Marks*

Paper- II

Substantive Law *100 Marks*

(i) *Constitution of India*

(ii) *Indian Penal Code*

(iii) *Law of Contract*

(iv) *Sale of Goods Act*

(v) *Transfer of Property Act*

(vi) *Negotiable Instrument Act*

(vii) *Law relating to Motor Vehicle Accident Claim*

(viii) *Jurisprudence.*

(ix) *Santhal Pargana Tenancy Act*

(x) *Chhotanagpur Tenancy Act*

(xi) *Protection of Children from Sexual Offences Act (pocso)*

(xii) *Prevention Of Corruption Act (xiii) SC & ST Act*

(xiv) *Electricity Act*

(xv) *Narcotic Drugs and Psychotropic Substances Act (NDPS Act)*

(2) Examination shall be held in two sittings of three hours duration for each paper.

Viva-Voce Test

(1) There shall be Viva-Voce Test of 40 marks.

(2) The marks obtained in Viva-Voce Test shall be added to the marks obtained in Main Examination and the merit list shall be prepared accordingly.

(3) No candidate irrespective of the marks obtained by him in the Main Examination, shall be eligible for selection for appointment, if he obtains less than 20 marks out of aggregate of 40 in the Viva-Voce. Test.

Note:- Every differently abled candidate will be allowed "compensatory time" of 20 minutes for each hour of written examination."

4. So far as the selection process involved in these proceedings is concerned, no preliminary entrance test was held, but that question is not in controversy before us. The main examination comprising of Paper-I and Paper-II carried a total of 200 marks. As per the advertisement, the marks allocated for viva-voce test was 40 as would appear from the preceding paragraph. A candidate irrespective of the marks obtained by him in the main examination was required to get at least 20 marks out of the aggregate 40 in the viva-voce test.

5. As per the 2001 Rules, the provisions relevant are Rules 14, 18, 21 and 22. These Rules read:-

"14. Notwithstanding anything contained in the foregoing Rule, it shall be open to the High Court to require the candidate at any stage of the selection process or thereafter, to furnish any such additional proof or to produce any document with respect to any matter relating to his suitability and/or eligibility as the High Court may deem necessary.

18. Before the start of the examination, the High Court may fix the minimum qualifying marks in the Preliminary Written Entrance Test and thereafter minimum qualifying marks in the main examination. Based on such minimum qualifying marks, the High Court may decide to call for viva-voce such number of candidates, in order of merit in written examination, depending upon the number of vacancies available as it may appropriately decide:

Provided that in the case of candidates belonging to scheduled castes and scheduled tribes and candidates belonging to other reserved categories, such minimum qualifying marks may not be higher than 45% of the total aggregate marks :

Provided also that in determining the suitability of a particular candidate based on both the minimum qualifying marks as well as in order of merit, the total marks obtained in the examination as a whole and the marks obtained in any individual paper, both shall also be taken into consideration, depending upon any guidelines that the High Court may issue in this behalf in the Regulations to be framed for this purpose.

21. A candidate, irrespective of the marks obtained by him in the Preliminary Written Entrance Examination and/or the Main Written Examination shall not be qualified to be appointed unless he obtains a minimum of 30% marks in the viva-voce test. The marks obtained at the viva voce test shall then be added to the marks obtained by the candidate at the main written examination. The names of the candidates will then be tabulated and arranged in order of merit. If two or more candidates obtain equal marks in the aggregate, the order shall be determined in accordance with the marks secured at the main written examination. If the marks secured at the main written examination of the candidates also are found equal then the order shall be decided in accordance with the marks obtained in the Preliminary Written Entrance Test. From the list of candidates so arranged in order of merit the High Court shall prepare a select list and have it duly notified in a manner as prescribed in the regulations. Such select list shall be valid for a period of one year from the date of being notified.

22. From out of the aforesaid select list, depending upon the number of vacancies available or those required to be filled up, the High Court shall recommend to the Government the names for appointment as Additional District Judge."

6. There appears to be one inconsistency in relation to minimum marks prescribed between the content of Rule 21 of the said Rules and paragraph 12 of the 2017 Regulation. The said paragraph of the Regulation stipulates:-

"(12) No candidate irrespective of the marks obtained by him in the Main Examination, shall be eligible for selection for appointment, if he obtains less than 20 marks out of aggregate of 40 in the Viva-Voce Test."

7. We have already quoted Rule 21 of the 2001 Rules where minimum of 30% marks in the viva-voce has been prescribed as the qualification criteria. But that question also does not arise in the present two writ petitions as none of the parties before us has raised this point. We also find it to be a safer course to go by the provisions of paragraph 12 of the 2017 Regulation, as the advertisement also prescribed minimum 20 marks out of aggregate of 40 in the Viva Voce test.

8. Admitted position is that the 9 candidates who have been left out from being recommended for appointment, had found place in the select list in terms of Rule 21 of the 2001 Rules.

9. In Writ Petition (Civil) No. 753 of 2023, altogether seven petitioners have joined in questioning the exclusion of the 9 candidates by the Full Court Resolution. The said resolution introduces securing 50 per cent marks in aggregate (combination of marks obtained in main examination and viva-voce) as the qualifying criteria for being recommended to the said posts. This resolution against Agenda No. 1 of the Full Court Meeting held on 23rd March, 2023 records:-

SL.No.	*AGENDA*	*RESOLUTIONS*
1.	*To consider the matter over recruitment process of District Judge [U/r 4(a) directly from Bar] with regard to Final Result against advertisement no.01/2022/Apptt.*	*Considered.* *The Full Court resolves to approve the final result list of 63 Candidates who have appeared for viva voce (list enclosed with this resolution and marked at Flag "X")* *Further, Full Court observes that candidates at Sl.No.7 & 8 have got the same total marks, but on careful consideration it transpires that candidate at Sl.No.8 has got higher marks in written examination. Hence in view of Rule 21 of Jharkhand Superior Judicial (Recruitment, Appointment and Conditions of Service) Rules, 2001, candidate at Sl.No.8 is placed at higher place/ rank.*

		Further after due deliberation, keeping in view the responsibility that will be vested upon the candidates who qualify for appointment of District Judges and to maintain the high standard of Superior Judicial Services, the Full Court resolves that only those candidates who have secured at least 50% marks in aggregate, shall be qualified for appointment to post of District Judge. *It is hereby resolved to recommend the names of following 13 top (merit wise) candidates to the State Government for issuance of necessary notification/s for their appointment to the post of District Judge after completing/undertaking the investigation/enquiry relating to the candidates credentials as per Rule 23 & 24 of Jharkhand Superior Judicial (Recruitment, Appointment and Conditions of Service) Rules, 2001:*

S.No.	*Roll No.*	*Name*
1	*10369*	*NAMITA CHANDRA*
2	*10956*	*SHWETA DHINGRA*
3	*10343*	*PARAS KUMAR SINHA*
4	*10388*	*KUMAR SAKET*
5	*10519*	*SHIVNATH TRIPATHI*
6	*10218*	*BHUPESH KUMAR*
7	*11577*	*AISHA KHAN*
8	*10294*	*BHANU PRATAP SINGH*
9	*10592*	*NEETI KUMAR*
10	*10371*	*PRACHI MISHRA*
11	*10109*	*PAWAN KUMAR*

12	*11061*	*RAJESH KUMAR BAGGA*
13	*10587*	*NARANJAN SINGH*
Registrar General is directed to upload the names of above mentioned 13 successful candidates to the official website of this Court.		

10. This Resolution has been disclosed in the reply to the Rejoinder affidavit filed on behalf of the High Court of Jharkhand, affirmed by Registrar General of that Court.

11. There are two impleadment applications registered as I.A. No. 173928 of 2023 taken out by 'Purnendu Sharan' and I.A. No. 10383 of 2024 taken out by 'Ashutosh Kumar Pandey', both of them being aggrieved by the procedure adopted by the Full Court.

12. Another set of candidates have filed the second writ petition registered as Writ Petition (Civil) No. 921 of 2023. In this writ petition, altogether five candidates have sought substantially the same relief asked for in the Writ Petition (Civil) No. 753 of 2023.

13. The petitioners have been represented before us by Mr. Dushyant Dave, Mr. Vinay Navare and Mr. Jayant K. Sud, learned senior counsel whereas the High Court of Jharkhand has been represented by Mr. Jaideep Gupta, learned senior counsel. Mr. Rajiv Shanker Dvivedi, learned Standing Counsel for the State of Jharkhand has appeared for the State. State has taken a non-committal stand before us. Counter affidavit has been filed by the State in which also no definitive stand has been taken on the legality of the Resolution in the Full Court meeting of the High Court. It has however been submitted by the State that certain amendments need to be carried out in Rule 21 of the 2001 Rules. That plea does not come within the scope of the present proceedings.

14. The petitioners' main case rests on two planks. First one is that the decision of the Full Court on the administrative side goes contrary to the Recruitment Rules, Regulations and the Terms contained in the advertisement. The second plank of the submissions advanced by the petitioners is that in any event, after the performance of each of the candidate is known and the marks obtained by them in the two forms of the examination are disclosed, it was impermissible for the High Court Administration to introduce fresh cut-off marks. On this point, the authority relied upon by Mr. Dave is a judgment of a Constitution Bench comprising of five Hon'ble Judges of this

Court in the case of ***Sivanandan C.T. & Ors. Vs. High Court of Kerala*** [(2023) INSC 709)] decided on 12th July, 2023. This judgment narrates the factual background of that case in paragraph '7' thereof and the ratio of this decision would emerge from paragraphs '52' to '57' of the said judgment. These passages from the judgment are quoted below:-

> *"7. On 27 February 2017, 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 th e written examination as a qualifying criterion 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. On 6 March 2017, 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.*
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> *x x x*
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> *52. The statutory rule coupled with the scheme of examination and the 2015 examination notification would have generated an expectation in the petitioners that the merit list of selected candidates will be drawn on the basis of the aggregate of total marks received in the written examination and the viva voce. Moreover, the petitioners would have expected no minimum cutoff for the viva voce in view of the express stipulation in the scheme of examination. Both the above expectations of the petitioners are legitimate as they are based on the sanction of statutory rules, scheme of examination, and the 2015 examination notification issued by the High Court. Thus, the High Court lawfully committed itself to preparing a merit list of successful candidates on the basis of the total marks obtained in the written examination and the viva voce.*

ii. Whether the High Court has acted unlawfully in relation to its commitment?

53. *The Administrative Committee of the High Court apprehended that a candidate who performed well in the written examination, even though they fared badly in the viva voce, would get selected to the post of District and Sessions Judge. The Administrative Committee observed that recruitment of such candidates would be a disservice to the public at large because they possessed only "bookish" knowledge and lacked practical wisdom. To avoid such a situation, the Administrative Committee of the High Court decided to apply a minimum cut-off to the viva voce examination. The decision of the Administrative Committee was approved by the Full Bench of the High Court.*

54. The Constitution vests the High Courts with the authority to select judicial officers in their jurisdictions. The High Court, being a constitutional and public authority, has to bear in the mind the principles of good administration while performing its administrative duties. The principles of good administration require that the public authorities should act in a fair, consistent, and predictable manner.

55. The High Court submitted that frustration of the petitioner's substantive legitimate expectation was in larger public interest – selecting suitable candidates with practical wisdom for the post of District Judges. Indeed, it is in the public interest that we have suitable candidates serving in the Indian judiciary. However, the criteria for selecting suitable candidates are laid down in the statutory rules. As noted above, the High Court did amend the 1961 Rules in 2017 to introduce a minimum cut-off mark for the viva voce. The amended Rule 2(c) is extracted below:

"2. Method of appointment – (1) Appointment to the service shall be made as follows:

[…]

(c) Twenty five percent of the posts in the service shall be filled up by direct recruitment from the members of the Bar. The recruitment shall be on the basis of a competitive

examination consisting of a written examination and a viva voce. […] Maximum marks for viva voce shall be 50. The General and Other Backward Classes candidates shall secure a minimum of 40% marks and Scheduled Caste/ Scheduled Tribe candidate shall secure a minimum of 35% marks for passing the viva voce. The merit list of the selected candidates shall be prepared on the basis of the aggregate marks secured by the candidate in the written examination and viva voce."

(emphasis supplied)

56. Under the unamended 1961 Rules, the High Court was expected to draw up the merit list of selected candidates based on the aggregate marks secured by the candidates in the written examination and the viva voce, without any requirement of a minimum cut-off for the viva voce. Thus, the decision of the Administrative Committee to depart from the expected course of preparing the merit list of the selected candidates is contrary to the unamended 1961 Rules. It is also important to highlight that the requirement of a minimum cutoff for the viva voce was introduced after the viva voce was conducted. It is manifest that the petitioners had no notice that such a requirement would be introduced for the viva voce examination. We are of the opinion that the decision of High Court is unfair to the petitioners and amounts to an arbitrary exercise of power.

57. The High Court's decision also fails to satisfy the test of consistency and predictability as it contravenes the established practice. The High Court did not impose the requirement of a minimum cut-off for the viva voce for the selections to the post of District and Sessions Judges for 2013 and 2014. Although the High Court's justification, when analyzed on its own terms, is compelling, it is not grounded in legality. The High Court's decision to apply a minimum cut-off for the viva voce frustrated the substantive legitimate expectation of the petitioners. Since the decision of the High Court is legally untenable and fails on the touchstone of fairness, consistency, and predictability, we hold that such a course of action is arbitrary and violative of Article 14."

15. There is an earlier judgment of this Court comprising of three Hon'ble Judges in the case of **K. Manjusree -vs- State of Andhra Pradesh and Anr.** [(2008) 3 SCC 512] in which the change of recruitment criteria mid-way through the selection process has been held to be impermissible. We quote below paragraphs '27' and '36' of that judgment from the said report:-

> *"27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier Resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of 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. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them - P. K. Ramachandra Iyer v. Union of India[1], Umesh Chandra Shukla v. Union of India[2], and Durgacharan Misra v. State of Orissa[3].*
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> *x x x*
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> *36. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the*

1 *(1984) 2 SCC 141: 1984 SCC (L &S) 214*

2 *(1985) 3 SCC 721: 1985 SCC (L&S) 919*

3 *(1987) 4 SCC 646: 1988 SCC (L & S) 36: (1987) 5 ATC 148*

current selection process and the earlier selections. As the Full Court approved the Resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible."

16. The same view has later been taken by a Coordinate Bench of this Court in the case of **Hemani Malhotra -vs- High Court of Delhi** [(2008) 7 SCC 11]. In a later decision, **Tej Prakash Pathak & Ors. -vs- Rajasthan High Court and Others** [(2013) 4 SCC 540], a three Judge Bench of this Court expressed a view which is different from that taken in the case of **K. Manjusree** (supra) and referred the matter to the Hon'ble the Chief Justice of India for being considered by a larger Bench. There is no decision yet from a larger Bench and until the principle laid down in the case of **K. Manjusree** (supra) is overruled by a larger Bench, we shall continue to be guided by the same as "no change in the rule midway" dictum has become an integral part of the service jurisprudence.

17. The next point urged by Mr. Gupta is that the ratio of the three judgments on which reliance has been placed by Mr. Dave would not apply in the facts of the present case. His argument is that in those three authorities, the marking in viva-voce was the subject of dispute whereas in the present writ petitions, it is on aggregate marking that the High Court administration has raised the bar. One of the authorities on which Mr. Gupta has relied on is **State of Haryana -vs- Subash Chander Marwaha & Ors.** [(1974) 3 SCC 220]. In paragraphs 7 and 12 of the said report, it has been held and observed by a Bench of two Hon'ble Judges of this Court:-

"7. In the present case it appears that about 40 candidates had passed the examination with the minimum score of 45%. Their names were published in the Government Gazette as required by Rule 10(1) already referred to. It is not disputed that the mere entry in this list of the name

of candidate does not give him the right to be appointed The advertisement that there are 15 vacancies to be filled does not also give him a right to be appointed. It may happen that the Government for financial or other administrative reasons may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have a right to be appointed. The list is merely to help the State Government in making the appointments showing which candidates have the minimum qualifications under the Rules. The stage for selection for appointment comes thereafter, and it is not disputed that under the Constitution it is the State Government alone which can make the appointments. The High Court does not come into the picture for recommending any particular candidate. After the State Government have taken a decision as to which of the candidates in accordance with the list should be appointed, the list of selected candidates for appointment is forwarded to the High Court then will have to enter such candidates on a Register maintained by it. When vacancies are to be filled the High Court will send in the names of the candidates in accordance with the select list and in the order they have been placed in that list for appointment in the vacancies. The High Court, therefore, plays no part except to suggest to the Government who in accordance with the select list is to be appointed and in a particular vacancy. It appears that in the present case the Public Service Commission had sent up the rolls of the first 15 candidates because the Commission had been informed that there are 15 vacancies. The High Court also in its routine course had sent up the first 15 names to the Government for appointment. Thereupon the Chief Secretary to Government, Haryana wrote to the Registrar of the High Court on May 4, 1971 as follows:

"I am directed to refer to Haryana Government endst No. 1678-1 GS, II—71/3802, dated April 22, 1971, on the subject noted above, and to say that after careful consideration of the recommendations of the Punjab and Haryana High Court for appointment of first fifteen candidates to the Haryana Civil Service (Judicial Branch),

the State Government have taken the view that it would be appropriate that only the first seven candidates should be appointed to the Haryana Civil Service (Judicial Branch) and a notification has been issued accordingly. The reason is that in the opinion of the State Government, only those candidates who obtained 55% or more marks in the Haryana Civil Service (Judicial Branch) Examination, should be appointed as that will serve to maintain a minimum standard in the appointments to the Service. It may be mentioned that the last candidate appointed against un-reserved vacancies out of the merit list prepared on the basis of the Haryana Civil Service (Judicial Branch) Examination held in May 1969, secured 55.67% marks.

The State Government have also received information that the Punjab and Haryana High Court themselves recommended to the Punjab Government that in respect of P.C.S. (Judicial Branch) Examination held in 1970, candidates securing 55% marks or more should be appointed against un-reserved vacancies. Thus, the decision taken by Haryana Government is in line with the recommendations which the High Court made to the Punjab Government regarding recruitment to the P.C.S. (Judicial Branch) on the basis of the Examination held in 1970, and a similar policy in both the cases would be desirable for obvious reasons."

12. It was, however, contended by Dr Singhvi on behalf of the respondents that since Rule 8 of Part C makes candidates who obtained 45% or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55% as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who

is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for more eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. That the Punjab Government later on fixed a lower score is no reason for the Haryana Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who got less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened Rule 8 of Part C."

18. Mr. Gupta has also cited the case of **Ram Sharan Maurya and Ors. Vs. State of U.P. and Ors.** [(2021) 15 SCC 401]. It has been held in this judgment:-

"72. In terms of Rule 2(1)(x) of the 1981 Rules, qualifying marks of ATRE are such minimum marks as may be determined "from time to time" by the Government.

Clause (c) of Rule 14 of the 1981 Rules lays down that a candidate must have "passed Assistant Teacher Recruitment Examination conducted by the Government". Thus, one of the basic requirements for being considered to be appointed as an Assistant Teacher under the 1981 Rules is passing of ATRE with such minimum marks as may be determined by the Government. Unlike para 7 of the Guidelines for ATRE 2018 which had spelt out that a candidate must secure minimum of 45% or 40% marks (for "General" and "Reserved" categories respectively) for passing ATRE 2018, no such stipulation was available in G.O. dated 1-12-2018 notifying ATRE 2019. Though, the minimum qualifying marks were set out in the Guidelines for ATRE 2018, it is not the requirement of the 1981 Rules that such stipulation must be part of the instrument notifying ATRE. By very nature of entrustment, the Government is empowered to lay down minimum marks "from time to time". If this power is taken to be conditioned with the requirement that the stipulation must be part of the instrument notifying the examination, then there was no such stipulation for ATRE 2019. Such reading of the rules will lead to somewhat illogical consequences. On one hand, the relevant Rule requires passing of ATRE while, on the other hand, there would be no minimum qualifying marks prescribed. A reasonable construction on the relevant rules would therefore imply that the Government must be said to be having power to lay down such minimum qualifying marks not exactly alongside instrument notifying the examination but at such other reasonable time as well. In that case, the further question would be at what stage can such minimum qualifying marks be determined and whether by necessity such minimum qualifying marks must be declared well before the examination.

73.K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] and Hemani Malhotra [Hemani Malhotra v. High Court of Delhi, (2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203] were the cases which pertained to selections undertaken to fill up posts in judicial service. In these cases, no minimum qualifying marks in interview

were required and the merit list was to be determined going by the aggregate of marks secured by a candidate in the written examination and the oral examination. By virtue of stipulation of minimum qualifying marks for interview, certain candidates, who otherwise, going by their aggregate would have been in zone of selection, found themselves to be disqualified. The stipulation of minimum qualifying marks having come for the first time and after the selection process was underway or through, this Court found such exercise to be impermissible.

74. These were cases where, to begin with, there was no stipulation of any minimum qualifying marks for interview. On the other hand, in the present case, the requirement in terms of Rule 2(1)(x) read with Rule 14 is that the minimum qualifying marks as stipulated by the Government must be obtained by a candidate to be considered eligible for selection as Assistant Teacher. It was thus always contemplated that there would be some minimum qualifying marks. What was done by the Government by virtue of its orders dated 7-1-2019 was to fix the quantum or number of such minimum qualifying marks. Therefore, unlike the cases covered by the decision of this Court in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841], where a candidate could reasonably assume that there was no stipulation regarding minimum qualifying marks for interview, and that the aggregate of marks in written and oral examination must constitute the basis on which merit would be determined, no such situation was present in the instant case. The candidate had to pass ATRE 2019 and he must be taken to have known that there would be fixation of some minimum qualifying marks for clearing ATRE 2019.

75. Therefore, there is fundamental distinction between the principle laid down in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] and followed in Hemani Malhotra [Hemani Malhotra v. High Court of Delhi, (2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203] on one hand and the situation in the present case on the other.

76. We are then left with the question whether prescription of such minimum qualifying marks by order dated 7-1-2019 must be set aside merely because such prescription was done after the examination was conducted. At this juncture, it may be relevant to note that the basic prayer made in the leading writ petition before the Single Judge was to set aside the order dated 7-1-2019. What could then entail as a consequence is that there would be no minimum qualifying marks for ATRE 2019, which would run counter to the mandate of Rule 2(1)(x) read with clause (c) of Rule 14. It is precisely for this reason that what was submitted was that the same norm as was available for ATRE 2018 must be adopted for ATRE 2019. In order to lend force to this submission, it was argued that Shiksha Mitras who appeared in ATRE 2018 and ATRE 2019 formed a homogeneous class and, therefore, the norm that was available in ATRE 2018 must be applied. This argument, on the basis of homogeneity, has already been dealt with and rejected.

77. If the Government has the power to fix minimum qualifying marks "from time to time", there is nothing in the Rules which can detract from the exercise of such power even after the examination is over, provided the exercise of such power is not actuated by any malice or ill will and is in furtherance of the object of finding the best available talent. In that respect, the instant matter is fully covered by the decisions of this Court in MCD v. Surender Singh [MCD v. Surender Singh, (2019) 8 SCC 67 : (2019) 2 SCC (L&S) 464] and Jharkhand Public Service Commission v. Manoj Kumar Gupta [Jharkhand Public Service Commission v. Manoj Kumar Gupta, (2019) 20 SCC 178] . In the first case, the power entrusted under Clause 25 of the advertisement also provided similar discretion to the Selection Board to fix minimum qualifying marks for each category of vacancies. While construing the exercise of such power, it was found by this Court that it was done "to ensure the minimum standard of the teachers that would be recruited". Similarly, in Jharkhand Public Service Commission [Jharkhand Public Service

Commission v. Manoj Kumar Gupta, (2019) 20 SCC 178], the exercise of power after the examination in Paper III was over, was found to be correct and justified.

78. If the ultimate object is to select the best available talent and there is a power to fix the minimum qualifying marks, in keeping with the law laid down by this Court in State of Haryana v. Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 : 1973 SCC (L&S) 488], State of U.P. v. Rafiquddin [State of U.P. v. Rafiquddin, 1987 Supp SCC 401 : 1988 SCC (L&S) 183], MCD v. Surender Singh [MCD v. Surender Singh, (2019) 8 SCC 67 : (2019) 2 SCC (L&S) 464] and Jharkhand Public Service Commission v. Manoj Kumar Gupta [Jharkhand Public Service Commission v. Manoj Kumar Gupta, (2019) 20 SCC 178], we do not find any illegality or impropriety in fixation of cut-off at 65-60% vide order dated 7-1-2019. The facts on record indicate that even with this cut-off the number of qualified candidates is more than twice the number of vacancies available. It must be accepted that after considering the nature and difficulty level of examination, the number of candidates who appeared, the authorities concerned have the requisite power to select a criteria which may enable getting the best available teachers. Such endeavour will certainly be consistent with the objectives under the RTE Act.

79. In the circumstances, we affirm the view taken by the Division Bench of the High Court and conclude that in the present case, the fixation of cut-off at 65-60%, even after the examination was over, cannot be said to be impermissible. In our considered view, the Government was well within its rights to fix such cut-off."

19. In these two writ petitions, we are not, however, only concerned with the "midway change of the Rule" Principle. But on that count also, the ratio of the decisions cited by Mr. Gupta are distinguishable. The three Judge Bench in **Tej Prakash Pathak** (supra) had referred to the judgment in the case of **Subhas Chandra Marwaha** (supra) to express doubt over correctness of the judgment in the case of **K. Manjusree** (supra). As we have already observed, the ratio of **K.**

Manjusree (supra) still holds the field. In the case of **Ram Sharan Maurya** (supra), the Rules guiding recruitment empowered the Government to stipulate qualifying marks of the particular selection process to be such minimum marks as may be determined from time to time by the Government. In this decision, the judgment itself takes note of the decisions of this Court in **K. Manjusree** (supra) and **Hemani Malhotra** (supra) and finds that the course for selection to the posts involved in that case was different from that which was found to be impermissible in **K. Manjusree** (supra) and **Hemani Malhotra** (supra).

20. We find from Rule 18 of the 2001 Rules, the task of setting cut-off marks has been vested in the High Court but this has to be done before the start of the examination. Thus, we are also dealing with a situation in which the High Court administration is seeking to deviate from the Rules guiding the selection process itself. We have considered the High Court's reasoning for such deviation, but such departure from Statutory Rules is impermissible. We accept the High Court administration's argument that a candidate being on the select list acquired no vested legal right for being appointed to the post in question. But if precluding a candidate from appointment is in violation of the recruitment rules without there being a finding on such candidate's unsuitability, such an action would fail the Article 14 test and shall be held to be arbitrary. The reason behind the Full Court Resolution is that better candidates ought to be found. That is different from a candidate excluded from the appointment process being found to be unsuitable.

21. Stipulations contained in Rule 21 of the 2001 Rules for making the select list were breached by the High Court administration in adopting the impugned resolution. The ratio of the decision in the case of **Ram Sharan Maurya** (supra) would not apply in the facts of this case and we have already discussed why we hold so.

22. Mr. Gupta's stand is that applying a higher aggregate mark is not barred under the said Rules or Regulations. We are, however, unable to accept this submission. The very expression "aggregate" means combination of two or more processes and in the event the procedure for arriving at the aggregate has been laid down in the applicable Rules, a separate criteria cannot be carved out to enable change in the manner of making the aggregate marks.

23. So far as the ratio of the decision in the case of **K. Manjusree** (supra) is concerned, that authority deals with change of the Rules mid-way. In the case before us, in our opinion, if the High Court is permitted to alter the selection criteria after the performance of individual candidates is assessed, that would constitute alteration of the laid down Rules. We refer to paragraphs Nos. 14 and 15 of the judgment of the Constitution Bench in the case of **Sivanandan C.T.** (supra), which lays down the principle of law on this point. We reproduce below the said passages from this authority:-

> *"14. The decision of the High Court to prescribe a cut-off for the viva-voce examination was taken by the Administrative Committee on 27 February 2017 after the viva-voce was conducted between 16 and 24 January 2017. The process which has been adopted by the High Court suffers from several infirmities. Firstly, the decision of the High Court was contrary to Rule 2(c)(iii) which stipulated that the merit list would be drawn up on the basis of the marks obtained in the aggregate in the written examination and the viva-voce; secondly, the scheme which was notified by the High Court on 13 December 2012 clearly specified that there would be no cut off marks in respect of the viva-voce; thirdly, the notification of the High Court dated 30 September 2015 clarified that the process of short listing which would be carried out would be only on the basis of the length of practice of the members of the Bar, should the number of candidates be unduly large; and fourthly, the decision to prescribe cut off marks for the viva-voce was taken much after the viva-voce tests were conducted in the month of January 2017.*
>
> *15. For the above reasons, we have come to the conclusion that the broader constitutional issue which has been referred in Tej Prakash Pathak (supra) would not merit decision on the facts of the present case. Clearly, the decision which was taken by the High Court was ultra vires Rule 2(c)(iii) as it stands. As a matter of fact, during the course of the hearing we have been apprised of the fact that the Rules have been subsequently amended in 2017 so as to prescribe a cut off of 35% marks in the viva-voce examination which however was not the prevailing legal position when the present process of selection was initiated on 30 September 2015. The Administrative Committee of the High Court*

decided to impose a cut off for the viva-voce examination actuated by the bona fide reason of ensuring that candidates with requisite personality assume judicial office. However laudable that approach of the Administrative Committee may have been, such a change would be required to be brought in by a substantive amendment to the Rules which came in much later as noticed above. This is not a case where the rules or the scheme of the High Court were silent. Where the statutory rules are silent, they can be supplemented in a manner consistent with the object and spirit of the Rules by an administrative order."

24. The ratio of this authority is squarely applicable in the facts of this case. Submission on behalf of the High Court administration that Rule 14 permits them to alter the selection criteria after the selection process is concluded and marks are declared is not proper exposition of the said provision. The said Rule, in our opinion, empowers the High Court administration in specific cases to reassess the suitability and eligibility of a candidate in a special situation by calling for additional documents. The High Court administration cannot take aid of this Rule to take a blanket decision for making departure from the selection criteria specified in the 2001 Rules. The content of Rule 14 has the tenor of a verification process of an individual candidate in assessing the suitability or eligibility.

25. We, accordingly, allow both the writ petitions by directing the High Court to make recommendation for those candidates who have been successful as per the merit or select list, for filing up the subsisting notified vacancies without applying the Full Court Resolution that requires each candidate to get 50 per cent aggregate marks. The part of the Full Court Resolution of the Jharkhand High Court dated 23.03.2023 by which it was decided that only those candidates who have secured at least 50% marks in aggregate shall be qualified for appointment to the post of District Judge is quashed.

26. We expect the exercise of recommendation in terms of this judgment to be completed as expeditiously as possible.

27. We do not find any reason to address the impleadment applications as this judgment will cover the entire recommendation process.

Headnotes prepared by: Divya Pandey

Result of the case: Writ petitions allowed.