Supreme Court of India Madan Lal & Ors vs The State Of Jammu & Kashmir And Ors on 6 February, 1995 Equivalent citations: 1995 AIR 1088, 1995 SCC (3) 486 Author: M S.B. Bench: Majmudar S.B. (J) PETITIONER: MADAN LAL & ORS.

Vs.

RESPONDENT: THE STATE OF JAMMU & KASHMIR AND ORS.

DATE OF JUDGMENT06/02/1995

BENCH: MAJMUDAR S.B. (J) BENCH: MAJMUDAR S.B. (J) VERMA, JAGDISH SARAN (J)

CITATION: 1995 AIR 1088 1995 SCC (3) 486 JT 1995 (2) 291 1995 SCALE (1)494

ACT:

HEADNOTE:

JUDGMENT: 1. This petition by to petitioners has brought in challenge the process of selection of Munsiffs in the State of Jammu and Kashmir undertaken by Jammu and Kashmir Public Service Commission (hereinafter referred to as Commission), pursuant to an advertisement notice, inviting applications in the months of July and August, 1993. The said selection of the concerned successful respondents has been challenged on diverse grounds to which we will make a reference a little later. 2. Now a glance at a few introductory facts. An advertisement notice issued by 1993, invited applications from eligible candidates for filling up posts of Munsiffs in the State of Jammu and Kashmir. The petitioners being eligible for competing for the said advertised posts submitted their applications to the Secretary of the Com- mission. Similarly, the concerned respondents who are selected for the said posts also submitted their applications. The Commission conducted the written exami- nation in July and August, 1993 and thereafter vide notification dated 27th April, 1994 candidates mentioned in the notification were declared to have qualified for viva voce test. In all 79 candidates were found qualified for the viva voce test. 'Mat included the petitioners and the contesting respondents. Under the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules of 1967 (hereinafter referred to as rules') examination for selection of Munsiffs consists of written examination and viva voce test. The Commission, respondent no. 2 accordingly conducted the said viva voce test under rule 10 of the aforesaid rules. On the request of the Commission the Chief Justice of the High Court is to nominate a Judge to act as an expert on the Commission for the purpose of conducting the viva voce test. In pursuance of this rule a viva voce test was conducted by four Members of the Commission and an expert (sitting Judge of the High Court) Mr. Justice B.A. Khan. The Chairman of the Commission respondent no. 3 and one member, namely, respondent no. 4 did not participate in the viva voce test on the ground that one of the candidates selected as per the result of written test, namely, respondent no. 13 - Zaneb Shams is a daughter of respondent no. 3 and daughter-in-law

of respondent no. 4. 3. According to the petitioners in the they were called for oral interview. According to them they also fared well in the viva voce test but they were kept guessing as to the result of this test. They came to know that concerned respondent nos. 618 and some others who had appeared at the test were given confidential information to appear before Medical Board for medical test while no such intimation was sent to the petitioners. 'Mat gave them a cause for apprehension that they may have been illegally left out of selection for the said posts and that is why the present petition is filed. The main prayers in the petition read as under:- a) Call for the records of the examination conducted by Respondent No.2 for scrutiny by this Hon'ble Court; b) Issue an appropriate writ order or direction in the nature of certiorari quashing the viva voce test of the said examination as being invalid, arbitrary and against the principles of natural justice and quashing the candidature of the respondents IO & 13. c) Issue an appropriate writ order or direction in the nature of Mandamus commanding the Respondent No. 2 to declare the result of the written test of the candidates and may give selections on the basis of the written test alone and in the alternative to conduct fresh viva voce test after removing defects in it and for assessing the merits of the candidates objectively. d) To issue an appropriate Writ Order or direction in the nature of prohibition restraining the Respondents No, 1 & 2 and 5 from issuing the appointment letters to the Selected Candidates whose list has not been published as yet till the filing of this Writ Petition, but are required to undergo medical test vide Annexure- 4. A mere look at the prayers makes it clear that the attack of the petitioner on the manner and method of conducting' viva voce test and result thereof So far as the result of written test is concerned not only the petitioners have no grievance the same but they rely on the same. Their main contention is that viva voce test was so manipulated that only preferred candidates, by inflating their marks in the viva voce test, were permitted to get in the select list. It may be mentioned at this stage as revealed from the record of this case, that the second respondent prepared a select list of twenty successful candidates in the order of merit on the basis of the aggregate of marks obtained by them in written as well as viva voce test. The said merit list of candidates recommended by respondent no. 2 for appointment as Munsiffs consists of two parts. The first part at annexure-C collectively deals with the general category candidates. Sixteen such candidates have been included in the general category merit list while there is also a waiting list of five such candidates. At annexure-C collectively is also found merit list of Scheduled Castes and Scheduled Tribes candidates who have been recommended for appointment as Munsiffs pursuant to aforesaid selection. Two candidates belonging to Scheduled Caste and two candidates belonging to Scheduled Tribe are found to have been listed in reserved category as seen from the said annexure. It thus becomes clear that sixteen candidates from general category and two candidates each from reserved categories of Scheduled Caste and Scheduled Tribe, in all twenty candidates are so recommended. 5. After petitioners moved this petition, it was admitted to final hearing and the stay of the appointments of concerned selected candidates was also granted. 6. At the final hearing of this petition the learned senior counsel for the petitioners

raised the following contentions in support of the petition. 1) The impugned viva voce test conducted by the respondent no. 2, Commission is patently illegal as there is nothing to show that the Members who conducted the test had assigned separate marks faculty-wise for assessing the performance of the concerned candidates as per rule 10 of the rules. 2) The expert, namely, the sitting Judge of the High Court was entitled to award only 60 marks for viva voce test while the remaining 80 marks were per- mitted to be given by other members of the Commission and that affected the overall assessment of the candidates in the viva voce test which as a whole comprised of 140 marks. 3) There is nothing to show that any tape-recording was done regarding the questions put to candidates and the answers given by them at the viva voce test and that has vitiated the said test. 4) The petitioners fared very well in the written test as compared to the selected candidates, respondents herein and still at the viva voce test they were pushed down by assigning very low marks as compared to contesting respondents and thus they were treated unfairly at the said viva voce test. 5) The viva voce test was conducted in an unfair manner only with a view to select candidates belonging to a particular community as the list of candidates recommended shows. Therefore, the entire test is vitiated being totally arbitrary and lopsided. 6) Respondent No. IO and respondent no. 13 whose names were included in the impugned list of recommended candidates were not eligible to be appointed as Munsiffs as they failed to satisfy the eligibility requirement of rule 9 of the rules in as much as they had not put in 2 years of actual practice at the bar by the date on Which he or she submitted his or her application for such recruitment and hence their names should be eliminated from the merit list of open category candidates. 7) In any case respondent no. 13 being daughter of the Chairman of the Commission and daughter-in-law of another Member thereof was given a special favourable treatment by unduly inflating her marks in the viva voce test so that any how she would get selected for the advertised post and hence her selection is bad in law. 8) That preparation of the merit list of 16 candidates from general category and 4 candidates from reserved category, in all 20 is in any case bad and violative of rule 41 of the rules as the vacancies for which the advertisement was issued by the Commission were only 11 and requisition was sent by the Govt. for selection of suitable candidates through the Commission for those vacancies. 7. The learned counsel for the contesting respondents comprising of selected candidates as well as the State of Jammu & Kashmir and the Commission have resisted these contentions and have submitted that there was nothing wrong with the selection process so far as viva voce test was concerned and that the petition is devoid of merits and is required to be dismissed. 8. It is now time for us to deal with the contentions canvassed by the learned senior counsel in support of the petition. We shall deal with these contentions seriatim. 9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dis- pute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the

Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner. 10. Therefore, 'the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee. 11.In the light of the aforesaid settled legal. position let us see whether there is any substance in the contentions canvassed before us by the learned senior counsel for unsuccessful candidates at the oral interview. 12.So far as the first contention is concerned learned senior counsel for petitioners submitted that rule 10 of the rules lays down that the examination for selection of candidates shall consist of written examination as well as viva voce test. So far as written examination is concerned it is not challenged before us as noted earlier. So far as viva voce test is concerned rule 10(1)(b) lays down as under:- " 'The object of viva-voce examination is to assess the candidates' intelligence, general knowledge, personality, aptitude and suitability." The learned senior counsel for petitioners submitted that when a candidates is orally interviewed, the members of the committee should assign separate marks for the different faculties of the concerned candidate namely, intelligence, general knowledge, etc, as laid down in the rule and that does not appear to have been done by the interviewing committee and hence the entire viva voce test is vitiated. In this connection, reliance was placed on the decision of this Court in Minor A. Peeriakaruppan & Sobha Joseph v. State of Tamil Nadu and Ors. (1971 (1) SCC 38). 13.It is not possible to agree with this contention. So far

as rule 10(1)(b) is concerned it does not provide for any separate assessment of marks for candidates at viva voce examination faculty-wise, that is on intelligence, general knowledge, etc. listed in the said rule. On the contrary, it appears that as per the said rule, while conducting viva voce examination the Committee has to keep in view the main object of assessing such candidates in the light of the guidelines given therein. In other words, the interviewing committee has to keep in view the overall performance of the candidates at the oral inter-view and while doing so their intelligence, general knowledge, personality, aptitude and suitability have to be kept in the centre. The rule merely lays down the object of assessing such candidates in the viva voce examination. It is a general guideline given to the interviewing committee members. Therefore,.it is not possible to agree with the submission of the senior counsel for petitioners that the members of the interview committee must separately assess and give marks on different listed topics faculty-wise as per the said rule. So far as the decision of this Court in Minor A. Peeriakaruppan v. State of Tamil Nadu and Ors. is concerned it has to be kept in view that this Court was dealing with admissions to M.B.B.S. course in the State of Tamil Nadu. The selection committee was constituted for assessing the merits of the concerned applicants for such admissions at oral interview after written test. 75 marks were assigned for oral interview. The selection committee was. asked to award these marks on the basis of following five tests 1. Sports of National Cadet Corps ac- tivities; 2. Extra curricular special services; 3. General physical condition and endurance; 4. General ability; and 5. Aptitude. 14.Now it becomes at once clear that when 75 marks were to be assigned to a candidate called for oral interview on the basis of the aforesaid five types of performances by the candidate, the assessment on first three tests would depend upon documentary evidence regarding his career record which the candidates can furnish to the interview committee while the last two tests will depend upon his performance at the interview. In view of this hybrid type of tests for which assessment was to be made at the oral intervire, 75 marks assigned for all these five tests necessarily had to be split up and from the carrier record of the candidate, separate marks had to be assigned for first three tests and that necessarily required separate assessment of marks on the remaining two heads of tests. It is in the light of this requirement of peculiar type of marking at the oral inter- view that it has been observed in para 16 & 17 of the report that it was clearly illegal to give marks in a lumpsum and that the committee had not divided the marks under various heads nor on the basis of item-wise. It is also to be kept in view that while selecting a student for admission in M.B.B.S. course, what is more important is his performance in the written test and even at the oral interview his past record of performance has its own weight. A student while undertaking study is not required to perform any duty of a public office. But in the case of recruitment to the posts of Munsiffs he is required to work at the grass-root level of State Judiciary. For candidates aspiring to be appointed in such a judicial office, apart from the written test, his overall performance at oral interview is more important and consequently split up of the marks on various sub-heads at oral interview of such a candidate may not be strictly necessary unless the concerned rule regulating such a viva

voce test expressly provides to that effect. As we have, seen earlier rule 10(1)(b) does not so prescribe and hence it was open to the members of the committee to make an overall assessment of the interviewed candidates keeping in view the various factors for such assessment as laid down by the said rule. 'Mat is precisely what has been done in the present case as stated by Dr. Girija Dhar a member of the interview committee in para 3 of her affidavit in reply. It is stated by her that the only considerations which the Members of the Interview Board had during the viva voce test were to judge the candidates on the basis of their intelligence, general knowledge, personality, aptitude and suitability as required by rule 10(1)(b) of the recruitment rules, that all the question directed at the viva voce test to the candidates were with this object in view and the assessment had been made of the candidates at the viva voce test accordingly. As a matter of fact, the particulars furnished by the candidates in their applications in pursuance of the advertisement only had been placed before the Members of the Interview Board. The results of the candidates at the written examination were not placed before the Members of the Interview Board. Nothing has been pointed out by the learned counsel for petitioners to disbelieve this version. No bias is also alleged against her or any other member who made the selection. It cannot therefore be said that rule 10(1)(b) was violated by the interview committee while conducting viva voce test. It may also be mentioned at this stage that decision of this Court in Minor A. Peeriakaruppan v. State of Tamil Nadu and Ors. (supra) (1971 (1) SCC 38) was later considered by this Court in the case of Lila Dhar v. State of Rajasthan (1981 (4) SCC 159). in Lila Dhar's case this Court distinguishing the ratio in Peeriakaruppan's case (supra) observed as under:- "It is true that in Peeriakanippan case (AIR 1971 SC 2303) the Court held that the non- allocation of marks under various heads in the interview test was illegal but that was because the instructions to the Selection Committee provided that marks were to be awarded at the interview on the basis of five distinct tests. It was thought that the failure to allocate marks under each head or distinct test was an illegality. But in the case before us, the rule merely and generally indicates the criteria to be considered in the interview test without dividing the interview test into distinct, if we may so call them, sub-tests..... The aforesaid decision in Lila Dhar's case was approved by a Constitution Bench of this Court speaking through Bhagwati, J. as he then was in Ashok Kumar Yadav v. State of Haryana (1985 (4) SCC 417). This aspect was also considered later by a Division Bench of this Court speaking through Chinnappa Reddy, J. in Dr. Keshav Ram Pal v. UP. Higher Education Services Commission, Allahabad & Ors. (AIR 1986 SC 597). An identical contention concerning viva voce test conducted by the interview board which had not sub- divided the total marks into sub-heads was rejected in that case. Chinnappa Reddy, J. speaking for the Division Bench observed that interview board was not under any obligation to sub-divide the marks under various heads. The Court noted that the basis of selection in that case was to assess the candidates academic attainments, technical experience, administrative experience and suitability for the -post of Principal. In the light of that-rule it was held by this Court in the aforesaid decision that the interview board was

not under any obligation to sub-divide the marks under vari- ous heads. Almost an identical position obtains in the present case. Consequently, it must be held that there was no obligation for the members of the Commission to give separate marks under various heads faculty-wise as mentioned in rule 10(1)(b). The first contention therefore fails and is rejected. 15. So far as contention no. 2 is concerned it is difficult to appreciate how it can be urged that expert was allotted only 60 marks for assessment while the remaining assessment was done by the other members. There is no factual basis on the record of this case for supporting this contention. On the other hand, the averments made by Dr. Girija Dhar in the reply affidavit clearly shows that all the members of the interview committee participated in the process of selection of candidates at the oral interview keeping in view the re- quirement of rule 10(1)(b). The second contention therefore also, being devoid of any factual basis, stands rejected. 16.It is difficult to appreciate this contention. Rule 10(1)(b) to which we made reference earlier nowhere provides that tape-recording should be kept of questions put by the members of the committee and the answers given by the concerned candidates at the oral interview and that in the absence of such tape-recording the interview process would fail. The learned senior counsel for the petitioners in this connection invited. our attention to a Constitution Bench decision of this Court in the case of Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors. (1981 (1) SCC 722). That was a case in which the Constitution Bench dealt with the claim of petitioners for admission in B.E. course. The candidates had appeared in written test and then they were called for oral interview. Rejecting the contention of the petitioner that the oral test was defective, it was observed that oral interview is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and caliber of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. However, in the matter of admission to college or even in the matter-of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification. It is to be kept in view that Bhagwati, J. as he then was, speaking for the Court in that case ultimately dismissed the petitions subject to certain general observations and directions. So far as tape-recording is concerned, as one of the contentions of the petitioners was that the oral interview was held in an arbitrary and slip sort manner, an observation was made in para 20 of the report to the effect that it would also be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee. These observations cannot be read to mean that in the

absence of tape-recording of questions and answers the interview process would fail or the result of the interview would get vitiated. In the very writ petitions decided by the Constitution Bench, even though were was no tape-recording of questions and answers, interview test was upheld. It appears that the aforesaid observation only suggests a better method for insulating oral interviews against possible future attacks of arbitrariness and nothing more. Consequently, it cannot be said that merely because there is nothing on the record to show that any tape-recording of questions and answers at the interview was done, the viva voce test should on that score fail. Therefore, this contention also stands rejected. 17.In the light of what is stated above, while dealing with contention no. 1, this contention also must fail. The petitioners subjectively feel that as they had fared better in the written test and had got more marks-therein as compared to concerned selected respondents, they should have been given more marks also at the oral interview. But that is in the realm of assessment of relative merits of concerned candidates by the expert committee before whom these candidates appeared for the viva voce test. Merely on the basis of petitioners apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the members of the interview committee against the petitioner. They have also not alleged any mala fides on the part of the interview committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to the petitioners or to the concerned respondents. It cannot be the subject matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned. In the light of the affidavit in reply filed by Dr. Girija Dhar to which we have made reference earlier, it cannot be said that the expert committee had given a deliberate unfavorable treatment to the petitioners. Consequently, this contention also is found to be devoid of any merit and is rejected. 18.This contention is equally devoid of any merit. The submission of the learned senior counsel for the petitioners is that a mere look at annexure-C will show that the merit list of open category candidates recommended for appointment comprises of majority of candidates belonging to one community only and therefore the committee has shown special liking for such candidates who are preferred by inflating their marks in the oral interview. To say the least, it is a mere conjecture on the part of the petitioners. The very first candidate in the order of merits is roll no. 100 who does not belong to the other community. He is one Sh. Vinod Chatterji. Similarly, there are also other candidates in the said merit list of 16 candidates who do not belong to the other community' Once the interview process is found to be proper and justified and not being vitiated by any mala fides, the result of the viva voce test may project a picture in which more candidates from one community may get selected on merits but that is neither here nor there. The validity of viva voce test cannot be

judged simply on the basis of the result thereof unless there is anything to show that the entire selection process was vitiated on account of mala fides or bias or that the interview committee, members had acted with an ulterior motive from the very beginning and the whole selection process was a camouflage. No such allegations have been made by the petitioners against the selectors who sat in the interview committee. Consequently even this contention is found to be devoid of any factual basis and stands rejected. 19. So far as this contention is concerned the submission of learned senior counsel for the petitioners is that as per rule 9 of the rules a candidate for recruitment to the service must have put in at least two years actual practice at the bar by the date on which he submits his application for such recruitment and must produce a certificate to this effect from the District Judge within the local limits of whose jurisdiction he has practiced at the Bar. It is submitted that neither respondent no. IO nor respondent no. 13 had Out in two years of actual practice at the bar. This contention is sought to be repelled by the respondents. They submitted that the District Judge of Jammu has issued requisite certificates to both these candidates showing that they had put in at least 2 years of actual practice at the bar. It may be noted that learned counsel for the peti- tioners submitted that so far as the certificate issued by District Judge to respondent no. 10 is concerned he had nothing more to say but according to him, there is nothing on record to show that such a certificate was available to respondent no. 13. During the course of arguments learned counsel for respondents showed to us a certificate issued to respondent no. 13 by the District Judge, Jammu. That was shown to the learned counsel for the petitioners who thereafter did not pursue this objection further. However, he submitted that according to him this certificate may not be correct as atleast respondent no. 13 was stationed in Leh where her husband was a police officer. This contention is controverted by the respondents. Even apart from that the rule requires production of certificate by District Judge within whose local limits of jurisdiction the concerned advocate should have practiced at the bar. The Commission would be justified in not going behind the certificate issued by the concerned District Judge and in not holding any further enquiry into the extent of actual practice put in by such candidate at the bar for being permitted to appear at the written and viva voce test. As both these candidates are armed with certificates which clearly indicated that before 28th December '92, being the last date for submitting applications by concerned candidates for such recruitment, these candidates had completed atleast 2 years of actual practice at the bar as certified by their District Judge, it cannot be urged with any emphasis that still they are not eligible to compete for the said posts. 20.It was next vehemently contended by the petitioners that actual practice would mean that the concerned candidates should have appeared before courts and conducted cases during these two years. It is difficult to accept this contention. A member of the bar can be said to be in actual practice for 2 years and more if he is enrolled as an Advocate by the concerned Bar Council since 2 years and more and has attended law courts during that period. Once the Presiding Officer of the District Court has given him such a certificate, it cannot be said that only because as an ad- vocate he has put in less number

of appearances in courts and has kept himself busy while attending the courts regularly by being in the law library or in the bar room, he is not a member of the profession or is not in actual practice for that period. The words 'actual practice' as employed in rule 9 indicate that the concerned advocate must be whole time available as a professional attached to the concerned court and must not be pursuing any other full time avocation. To insist that the terms 'actual practice' should mean continuous appearances in the court would amount to rewriting the rule when such is not the requirement of the rule. There is no substance even in this additional aspect of the matter canvassed by the learned senior counsel for the petitioners. It must therefore be held that respondent no. 10 & 13 were eligible for competing for the said posts of Munsiffs. 21.It is difficult to appreciate how only because respondent no. 13 was the daughter of the Chairman and daughter-in-law of another Member of the Commission, both of whom disassociated themselves from the selection process as she was competing, can be said to be disqualified from being considered for selection only on the ground of her relationship with the concerned Members of the Commission. The learned senior counsel for the petitioners fairly submitted that relatives of Members simpliciter are not disqualified but his contention was that other Members of the Commission are also bureaucrats and would be having liking and soft comer for each other. They may therefore try to push up the relative- of the Chairman by inflating her marks at the oral test. Such a contention, to say the least, is totally outside the scope of the present proceedings. As we have noted earlier, it is not alleged by the petitioners that the Members of the Interview Committee were biased either against the petitioners or in favour of any given candidate. In the absence of such pleading of bias and mala fides such a hypothetical contention, only based on the result of the oral interview cannot be sustained. It is also to be kept in view that there is one salient feature of the case which contra- indicates this contention. As noted earlier there were 11 vacancies of Munsiffs for which the selection process was started by the Commission as recommended by the State of Jammu and Kashmir. So far as respondent No. 13 is concerned her rank on merits of open category candidates is at sl. no. 14, in the light of the marks obtained by her. There are 13 candidates above her who have got more marks. Therefore, if 11 vacancies were to be filled in, respondent no.13 would be left out. If what the petitioners contended was true and if the Members of the Commission were interested in seeing that anyhow she walks in an for that purpose they were to inflate her marks, they would have resorted to inflating her marks to such an extent that she would clearly walk in the list of first 11 selected candidates. Consequently there is no substance in this contention of learned counsel for the petitioners. In this connection, we may also profitably recapitulate what is stated in para 2 of the affidavit in reply of Dr. Girija Dhar. She has clearly stated that as a matter of fact the particulars furnished by the candidates in their applications in pursuance of the advertisement only had been placed before the Members of the Interview Board. The results of the candidates at the written examination were not placed before the Members of the Interview Board. These averments could not be successfully challenged by the learned counsel for the petitioners.

Consequently, it must be held that the Members of the Interview Committee were not knowing as to what marks were obtained by the candidates at the written test. Therefore, there would be no occasion for them to manipulate the marks of any candidate at the oral interview so as to bring them in the light of the marks obtained by him in the written test to a total which would make him eligible to be included in the select list of first II candidates as there were only 11 clear vacancies. Consequently, there is no substance even in this grievance of the petitioners. Contention No.8 22.This takes us to the last contention. The learned counsel for the petitioners submitted that as per the requisition forward by the State of Jammu and Kashmir through the Secretary to the Law Department, the second respondent was required to hold the selection process for recruiting candidates from open market for filling up 11 vacancies. The said letter of the Secretary to the Government, Law Department is at annexure-A to the petition. It reads as under: - GOVERNMENT OF JAMMU AND KASHMIR CIVIL SECTT :LAW DEPARTMENT TO The Secretary, J & K State Public Service Commission, Srinagar No. LD(A)92/78 Dated: 22.7.1992 Subject: Selection of Candidates for ap- pointment as Munsiffs in the Judicial Department. Sir,. I am directed to say that the Public Service Commission may kindly start a process in accordance with the Jammu and Kashmir Civil Service (Judicial) Re- cruitment Rules, 1967 for selection of can- didates for appointment as Munsiffs in the K.C.S. (Judicial) Service. However, considering the fact that only 11 vacancies are presently available, only a select list of twenty candidates inclusive of Scheduled Castes/Scheduled Tribes candidates as per their reservation quota may kindly be prepared and furnished to the Government. No waiting list of candidates is 'required. Yours faithfully, Sd/- G.A Lone, Secretary to Government Laws Department" A mere look at the letter shows that the Government requested the Commission to hold selection for filling up II clear vacancies only. The letter nowhere showed that more vacancies were likely to arise in future and selection may be held also for such anticipated vacancies. It is true that the letter mentioned that a select list of 20 candidates may be prepared and furnished to the Government but these 9 additional candidates would serve as waiting list candidates from which eligible candidates can be drawn in order or merits if any of the first 11 candidates selected did not join or for any reason could not join. 'Mat is the precise reason why no separate list of waiting list candidates was directed to be prepared. Learned senior counsel for the petitioners was right when he submitted that the recruitment process in the present case was only for filling up II existing clear vacancies of Munsiffs. It is not possible to agree with the respondents that this req- uisition also took note of anticipated vacancies during the course of one year and therefore it can be said to be a requisition for recruiting 20 candidates on clear and anticipated vacancies. If that was so, the contents of the letter would have been different. We agree with the learned counsel for the respondents that while sending the requisition for recruitment to posts the Government can keep in view not only actual vacancies then existing but also an- ticipated vacancies during one more year or for a given period of time and in that case the requisition would cover actual vacancies and anticipated ones. But one the clear wordings of the

aforesaid letter, it is not possible to agree with this submission. It must be held that the requisition in the present case by the Government was for holding selection tests by the Commission for fillings up 11 clear vacancies and nothing more. No anticipated vacancies were contemplated to be filled in. The process of recruitment was got initiated by the State through the Commission, for only eleven clear vacancies. 23. It is no doubt true that even if requisition is made by the Government for II Dosts the public Service Commission may 'send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up, because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. It easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given can- didate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated he may like to compete. Conse- quently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the eleven vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once 11 Vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose. 24.It is now time to refer to rule 41 as pointed out by the learned counsel for the petitioners. The said rule reads as under:- "Security of the list. The list and the waiting list of the selected candidates shall remain in operation for a period of one year from the date of its publication in the Government Gazette or till it is exhausted by appointment of the candidates whichever is earlier, provided that nothing in this rule shall apply to the list and the waiting list prepared as a result of the examination held in 1981 which will remain in operation till the list or the waiting fist is exhausted. A mere look at the rule shows that Pursuant to the requisition to be forwarded by Government to the Commission for initiating the recruitment process, if the Commission has prepared merit list and waiting list of selected candidates such list will have a life of one year from the date of publication in Government Gazette or till it is exhausted by the appointment of candidates, whichever is earlier. This means that if requisition is for filling up of II vacancies and it does not include any anticipated vacancies, the recruitment to be initiated by the Commission could be for selecting 11 suitable candidates. 'The Com- mission may by abundant caution prepare a merit list of 20 or even 30 candidates as per their inter se ranking on merits. But such a merit list will have a maximum life of one year from the date of publication or till all the required appointments are made whichever even happened earlier. It means that if requisition for recruitment is

for 11 vacancies and the merit list prepared is for 20 candidates, the moment 11 vacancies are filled in from the merit list the gets exhausted, or if during the span of one year from the date of obligation of such list all the 11 vacancies are not filled in, the moment the year is over the list gets exhausted. In either event, thereafter, if further vacancies are to be filled in or remaining vacancies are to be filled in, after one year, a fresh opportunity to all the open market candidates to compete. This is the thrust of rule 41. It is in consonance with the settled legal position as we will presently see. We cannot agree with the learned counsel for respondents that during the period of one year even if all the 11 vacancies are filled in for which requisition is initiated by the State in the present case and if some more vacancies arise during the one year, the present list can still be operated upon because the Commission has sent the list of 20 selected candidates. As discussed above, the candidates standing at serial nos. 12 to 20 in the list can be considered only in case within one year of its publication, all the 11 vacancies do not get filled up for any reason. In such a case only this additional list of selected candidates would serve as a reservoir from which meritorious suitable candidates can be drawn in order of merit to fill up the remaining requisitioned and advertised vacancies, out of the total 11 vacancies. If that cannot be done for any reason within one year of the publication of the list, even this reservoir will dry up and the entire list will get exhausted. We asked learned counsel for respondents State to point out whether after the letter at page 87, there was any further communication by the State to the Commission to initiate process for recruitment to additional anticipated vacancies. He -fairly stated that no further request was sent. That letter at page 87 is the only material for this purpose since that is the basis for the recruitment made by the Commission in the present case. In this connection, we may usefully refer to a decision of this Court in the Case of State of Bihar v. Madan Mohan Singh & Ors. (AIR 1994 SC 765). In that case appointments to the posts of Additional District and Sessions Judges were being questioned. The question was whether appointments could be made to more than 32 posts when the selection process was initiated for filling up 32 vacancies and whether the merit list of larger number of candidates would remain in Operation after 32 vacancies were filled in. Negativing the contention the such merit list for larger number of candidates could remain in operation after 32 advertised va- cancies were filled in, K. Jayachandra Reddy, J. made the following pertinent observations:-"Where the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list of 129 candidates prepared in the ratio of 1:4 on the basis of the written test as well as viva voce will hold good only 'for the purpose of filling up those 32 vacancies and no further because said process of selection for those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process. Reliance placed by the learned counsel for respondents in the case of Asha Kaul (Mrs) and Anr. Vs. State of Jammu and Kashmir and Ors. (1993 (2) SCC 573), is of no avail. In

that case the very same Jammu and Kashmir Government had sent a requisition to the Public Service Commission to select 20 candidates for the posts of Munsiffs in accordance with the High Court requirement. Therefore, the Commission advertised for recruitment to the said posts and held written test and oral interview. The Commission having selected 20 candidates in the order of merits and also having prepared a waiting list of candidates, the State of Jammu and Kashmir did not appoint even selected 20 candidates on these advertised posts. The High Court rejected the writ petition praying for a suitable writ of mandamus to the State to fill up the remaining vacancies out of 20 for which recruitment was made. The petitioners approached this court in appeal by way of special leave. This court speaking through Jeevan Reddy, J took the view that though inclusion in the select list does not confer any indefeasible right to appointment, there was an obligation for the Government to fill up all the posts for which requisition and advertisement were given. However on the peculiar facts of the case, the court did not think it fit to interfere. This court in para 10 of the report clearly observed that by merely approving the list of 20 there was no obligation on the Government to appoint them forthwith. The appointment depends upon the availability of the vacancies. The list remains valid for one year from the date of its approval and date of publication and if within such one year any of the candidates therein is not appointed, the list lapses and a fresh list has to be prepared. Though a number of complaints had been received by the Government about the selection process, if the Government wanted to disapprove or reject the list, it ought to have done so within a reasonable time of the receipt of the select list and for reasons to be recorded. Not having done that and having approved the list partly (13 out of 20 names), they cannot put forward any ground for not approving the remaining list. It is difficult to appreciate how this judgment can be of any avail to the respondents. In the case aforesaid before this court there was a clear requisition and recruitment for 20 posts. The State had however chosen to appoint only 13 out of 20. The list had a life of one year till all the 20 posts were fill up. This was in consonance with rule 41. In the present case the facts are different. The requisition is not for 20 vacancies as in Asha Kaul's case but for 11 posts. There is no requisition to fill up any anticipated more vacancies. Once the list is approved eventhough it may contain names of 20 candidates, the list in the present case will get exhausted once 11 vacancies for which advertisement had been issued and recruitment is made are filled up. 25.At this stage we may profitably refer to one more decision of this court in Hoshiar Singh Vs. State of Haryana and Ors. (1993 supp (4) SCC 377). In that case of requisition for recruitment as sent by the Director General of Police to the Haryana Subordinate Services Selection Board was for appointment of 8 posts of Inspector of Police. The Board however sent the list of 19 selected candidates, out of them 18 persons were given appointments. The appointments on posts beyond the 8 posts for which requisition was made by the Director General of Police were brought in challenge before the High Court. The High Court accepted the challenge and held that appointments beyond 8 posts were illegal. This Court while upholding the decision of High Court speaking through Agrawal, J. observed in para 10 of the report as under:- "The

learned counsel for these appellants have not been able to show that after the revised requisition dated January 24, 1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. Since the requisition was for eight posts of Inspector of Police, the 'Board was required to sent its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertise and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable." In the present case as the requisition is for 11 posts and even though the Commission might have sent list of 20 selected candidates, appointments to be effected out of the said list would be on 11 posts and not beyond 11 posts, as discussed by us earlier. This contention will stand accepted to the extent indicated hereinabove. 26. As per annexure-C so far as open category candidates are concerned, they are shown in the order of merits upto sl. no. 16. There arc also 2 Scheduled Castes and 2 Scheduled Tribes candidates in all making 20. The extend of selected Scheduled Caste and Scheduled Tribe candidates on reservation quota works out to be 1/5 of the total 20 selected candidates. If this list has to operate, as we have held, only till vacancies are filled up, then on the ratio of 115 of the total vacancies to be filled up, the posts to be reserved for Scheduled Castes and Scheduled Tribes out of total 1 1 posts could be one each for Scheduled Caste and Scheduled Tribe candidates, as 1/5 of 11 would be 2.5 which would yield either 2 reserved candidates or maximum 3 candidates but as maximum 3 candidates may tilt the inter se balance between the Scheduled Castes and Scheduled Tribes, if either of these two categories is given 2 posts out of 3, interest of justice would be served if we direct the respondents to reserve 2 posts in all out of II for being filled up by 1 Scheduled Caste and Scheduled Tribe candidate each, in the order of inter se merits of Scheduled Caste and Scheduled Tribe selected candidates as mentioned in the list at annexure-C. The remaining 9 posts will be available to general category candidates as listed in order of merits in the list at annexure-C. The moment these 11 posts are filled up within 1 year of the publication of list at annexureC this list will get exhausted or if for any reason these II vacancies could not be filled up by the time one year from the date of publication of the list is over, even then the list would get exhausted and fresh recruitment will have to be made in the light of fresh requisition from the State. For computing one year's currency of impugned select list as per rule 41, the period during which appointments were stayed during pendency of these proceed- ings would

naturally got excluded. The contention no.8 therefore will stand accepted to the aforesaid extent. In the result this writ petition fails subject only to the directions issued by us to the State Government while accepting contention no. 8 aforesaid. In the facts and circumstances of the case, there will be no order as to costs.