

A JHARKHAND PUBLIC SERVICE COMMISSION

v.

MANOJ KUMAR GUPTA AND ANR.

(Civil Appeal No. 9441 of 2019)

B

DECEMBER 18, 2019

[L. NAGESWARA RAO AND DEEPAK GUPTA, JJ.]

Service Law – Jharkhand Eligibility Test – Eligibility of the candidates for appointment as lecturers – Jharkhand Public Service Commission (JPSC) issued advertisement on 19.07.2006 inviting applications for Jharkhand Eligibility Test – The test consisted of three papers; the first two papers were multiple choice questions and third paper was a descriptive type question paper – Candidates obtaining 50% marks in Paper I and II were eligible to take test in paper III – The writ petitioner obtained 50% marks in papers I and II – Thereafter, writ petitioner appeared in paper III – The JPSC fixed a cut off percentage of 60 for paper III which the writ petitioner did not attain and he was declared unsuccessful – Writ petition – High Court held that JPSC could not fix the minimum marks for paper III – On appeal, held: There were no minimum marks provided for paper III in the advertisement – It was for the moderation committee to decide what should be the cut-off marks – This could be done by the moderation committee even at a later stage – This was not a change brought about but an additional aspect brought in while determining the merit of the candidates who were found fit to be eligible for consideration for appointment of lecturers – High Court erred in holding that the JPSC could not fix the minimum marks for paper III – Therefore, judgment of the High Court set aside.

Disposing of the appeals, the Court

G HELD : 1. A perusal of Clause 4.1 of the scheme clearly indicates that the moderation committee has been constituted only for the purpose of deciding the cut-off marks in each subject for declaring the result. The advertisement clearly indicates that only those candidates who obtained 50% marks in Paper I and II

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would be eligible to take the test in Paper III. The minimum qualifying marks in case of General/OBC candidates was 50%. At this stage, there was no need to fix the qualifying marks for Paper III. That need will arise only when the moderation committee meets and decides what should be the level of competence expected from the people who are to be considered for appointment as Lecturers. It is for the moderation committee to decide what should be the cut-off marks. There could be the subject where all the people who qualified Paper I and II get very low marks in Paper III and the moderation committee may be justified in lowering the standards and prescribing lower qualifying standards. On the other hand, there may be a subject where there are many candidates who do extremely well in Paper III and the moderation committee may decide to fix a higher minimum standard. The constitution of a moderation committee is normally done only to do this sort of moderation. [Para 6] [988-C-F]

2. As far as the finding of the High Court that the rules of the game were changed after the selection process had started, this Court is of the considered view that this is not the case as far as the present case is concerned. There were no minimum marks provided for Paper III in the advertisement. This could be done by the moderation committee even at a later stage. This is not a change brought about but an additional aspect brought in while determining the merit of the candidates who are found fit to be eligible for consideration for appointment of Lecturers. [Para 7][988-F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9441 of 2019.

From the Judgment and Order dated 09.11.2016 of the High Court of Jharkhand at Ranchi in W.P. (C) No. 3705 of 2015.

With

Civil Appeal No. 9442 of 2019.

Sunil Kumar, Sr. Adv., Abhishek Vikas, Jamnesh Kumar, Parth

- A Shekhar, Himanshu Shekhar, Anil K. Jha, Chandra Anand Jha, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

- B 1. The Jharkhand Public Service Commission (JPSC) issued an advertisement on 19.07.2006 inviting applications from candidates desirous of competing in the Jharkhand Eligibility Test (JET). This test is not meant for selection to any post but is conducted to determine the eligibility of the candidates for appointment as lecturers in universities and colleges of the State of Jharkhand. This test called the State Level Eligibility Test (SLET) is conducted as per the guidelines laid down by
- C the University Grants Commission (UGC).

2. The test consists of three papers – the first two papers are multiple choice questions to be answered on an Optical Mark Reader (OMR). One test is of a general subject and one test is of the subject for
- D which the candidate applies. The third paper is a descriptive type question paper dealing only with the subject selected by the candidate. Relevant portion of the advertisement reads as follows:

- “A candidate who does not appear in Paper-I will not be permitted to appear in Paper-II and Paper-III. Paper-III will be evaluated only for those candidates who are able to secure the minimum qualifying marks in Paper-I and Paper-II as per the table given in the following:-
- E

F	CATEGORY	MINIMUM QUALIFYING MARKS		
		PAPER-I	PAPER-II	PAPER-I + PAPER-II
G	GENERAL/OBC	40	40	100 (50%)
	PH/VH	35	35	90 (45%)
H	SC/ST	35	35	80 (40%)

3. The writ petitioner obtained 50% marks in Papers I and II but he did not do as well in Paper III. The JPSC fixed a cut off percentage of 60 for Paper III which the writ petitioner did not attain and as such he was declared not successful and, therefore, ineligible to be considered for appointment as lecturer. A

4. Aggrieved by the said action, the writ petitioner filed a writ petition before the High Court which allowed the same. The appeal filed by the JPSC before the writ court was also allowed mainly on the ground that the Public Service Commission could not have fixed qualifying marks of 60% and this amounted to changing the rules of the game after the advertisement had been issued and process of selection had started. It held that once the candidate had obtained 50% marks, the candidate could not be disqualified and the JPSC was not bound by the instructions of the UGC in this regard. The High Court also directed that the case of the writ petitioner would be considered on the basis of performance. The High Court held that no cut off marks had been provided for Paper III. B
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5. We have heard Shri Sunil Kumar, learned senior counsel appearing for the JPSE who drew our attention to the scheme framed by the UGC for the SLET. The scheme has a provision for constitution of a moderation committee which will help in deciding the cut off marks in each subject for declaring the result. The relevant portion of the scheme reads as follows: E

“Moderation Committee: The committee will help in deciding the cut-off marks in each subject for declaring the result. The Committee will consist of the following:

1. Chairman of Steering/Advisory Committee. F
2. State Government Representatives.
3. Two Professors of the different State Universities in rotation.
4. One Professor from outside the State.
5. Member Secretary (State agency) G
6. One nominee of the U-CAT out of two nominated by UGC.
7. Member Secretary, (UGC Official) U-CAT, UGC.”

Mr. Sunil Kumar contends that the moderation committee, keeping in view the various factors, decides what should be the cut off marks in H

- A each subject and this does not have to be decided at the stage of issuance of advertisement. On the other hand, Shri Abhishek Vikas, learned counsel appearing for the original writ petitioner, submits that the advertisement does not envisage any minimum cut-off marks for Paper III. He further submits that this is only an eligibility test and the field of choice becomes larger if more people are held eligible. Both sides have
- B challenged the judgment of the High Court and we are deciding both the appeals by this common judgment.

6. A perusal of Clause 4.1 of the scheme clearly indicates that the moderation committee has been constituted only for the purpose of deciding the cut-off marks in each subject for declaring the result. The
- C advertisement clearly indicates that only those candidates who obtained 50% marks in Paper I and II would be eligible to take the test in Paper III. The minimum qualifying marks in case of General/OBC candidates was 50%. At this stage, there was no need to fix the qualifying marks for Paper III. That need will arise only when the moderation committee
- D meets and decides what should be the level of competence expected from the people who are to be considered for appointment as Lecturers. It is for the moderation committee to decide what should be the cut-off marks. There could be the subject where all the people who qualified Paper I and II get very low marks in Paper III and the moderation committee may be justified in lowering the standards and prescribing
- E lower qualifying standards. On the other hand, there may be a subject where there are many candidates who do extremely well in Paper III and the moderation committee may decide to fix a higher minimum standard. The constitution of a moderation committee is normally done only to do this sort of moderation.

- F 7. As far as the finding of the High Court that the rules of the game were changed after the selection process had started, we are of the considered view that this is not the case as far as the present case is concerned. There were no minimum marks provided for Paper III in the advertisement. This could be done by the moderation committee even at
- G a later stage. This is not a change brought about but an additional aspect brought in while determining the merit of the candidates who are found fit to be eligible for consideration for appointment of Lecturers.

8. In view of the above, we are of the considered opinion that the High Court erred in holding that the JPSC could not fix the minimum
- H marks for Paper III. Hence, we set aside the judgment of the High

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MANOJ KUMAR GUPTA AND ANR. [DEEPAK GUPTA, J.]

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Court dated 09.11.2016. The Civil Appeal No. 9441 of 2019 @ Special A
Leave Petition (Civil) No.14926 of 2017 filed by the Jharkhand Public
Service Commission is allowed and C.A. No. 9442 of 2019 @ Special
Leave Petition (Civil) No.31106 of 2017 filed by the other side (writ
petitioner) is dismissed.

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Ankit Gyan

Appeals disposed of.