

[2019] 15 S.C.R. 43

PRANAV VERMA & OTHERS

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v.

THE REGISTRAR GENERAL OF THE HIGH COURT OF
PUNJAB AND HARYANA AT CHANDIGARH & ANR.

(Writ Petition (Civil) No. 565 of 2019)

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DECEMBER 13, 2019

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Service Law: Selection – Interference with selection process – Main (Written) Examination of Civil Judge wherein total 1195 candidates appeared and only 9 cleared the exam – Unsuccessful candidates challenging the entire selection process and evaluation method adopted therein and sought quashing of the result and re-evaluation by independent expert Committee – Held: No discriminatory or malafide practice was undertaken while conducting the exam or its following processes – Officials of the High Court ensured adequate security measures – Procedure of evaluation was ‘uniform’ – Every candidate’s answers were marked on same parameters by the same examiner – There was no examiner variability but marking and evaluation method was strict but it was so for everyone, thus, the option of moderation is applied – Alternative II of the Report by Justice Sikri is adopted, awarding 20 marks in Civil Law I and 10 marks in Civil law II – Prayer for re-evaluation by an Independent Expert Committee cannot be accepted – Also petitioners’ plea that marks of the Main Exam should be disclosed before conducting viva-voce, cannot be accepted since that would invite bias or favouritism affecting the impartial evaluation of a candidate in viva-voce – Thus, respondents directed to award 20 grace marks in Civil Law-I paper and 10 grace marks in Civil Law-II paper to all the candidates – Issuance of direction to prepare fresh results of the Main (Written) Examination of Civil Judge and complete the selection process within the stipulated period – Constitution of India – Art. 32 - Judicial service.

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Partly allowing the Writ Petitions, the Court

HELD: 1.1 In the instant case, Justice Sikri critically examined the selection process as well as the evaluation method

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- A and it is explicit from his report that the procedure of evaluation was ‘uniform’. Evaluation done by multiple evaluators i.e. one Evaluator examining and marking one question in all the mark-sheets, ensures uniformity and prevents chance grading. Every candidate’s answers are marked on same parameters by the same examiner. There can possibly be no other better method to ensure uniformity in evaluation. The petitioners have stated that as per the information received via RTI no model ‘answer key’ was present. It gives more credence to the afore-stated method of evaluation as no model ‘answer key’ ought to be devised for the Main Exam, the purpose whereof is not to just assess the knowledge of candidates but also to evaluate their analytical ability. In the instant case, there was no Examiner Variability, therefore, Justice Sikri very aptly remarked that, “*this was well intended move to attain uniformity in evaluation*”. This method ensures equal level play field for all candidates. The only setback was lack of holistic view and lack of realistic expectations in the examiner’s mind, for which there are adequate remedies. [Para 14][60-G-H; 61-A-C]

- E 1.2 The marking criteria and evaluation method was strict but it was so for everyone. This was may be for the reason that one Evaluator checked one answer in each script and in this manner the entire lot of scripts were marked. The Evaluators failed to keep a pragmatic view that source of recruitment was likely to be the same in a fresh attempt also and that candidates had only 8.5 minutes to answer each question and time constraint did not allow them to give their best of performance. Even those candidates who covered all aspects briefly were not awarded proper marks. It was not a case where some candidates were subjected to strict marking and others had an advantage of lenient marking, so as to draw an inference that the evaluation method was discriminatory or arbitrary. [Para 15][61-D-E]

- G 1.3 It has been found as a matter of fact that the officials of the High Court ensured adequate security measures such as keeping the answer scripts in iron boxes under round-the-clock security and CCTV cameras. Hence, it is just and fair to hold that no discriminatory or malafide practice was undertaken while

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conducting the exam or its following processes. [Para 16][61-F A G]

2.1 Considering that the marking was strict but not discriminatory, the remedy of moderation of marks, in order to remove the variation caused by multiple examiners and dearth of time, is the only effective, equitable and efficacious solution. The petitioners have stated and rightly so that as per the RTI, there are no rules governing grace marks. They have suggested that any appropriate scientific technique like scaling, or moderation can be adopted in this case, as is done by Union Public Service Commission (UPSC) for administrative appointments and UP Public Service Commission (UPPSC) for judicial recruitments. [Para 17][61-H; 62-A-B]

2.2 This Court in *Sanjay Singh's case* considered the suitability of scaling method in depth but declined to approve the same for Judicial Examinations. It considered the viability of scaling and moderation for Judicial Services Examinations and held that use of Scaling is appropriate only when there is differentiation amongst subjects opted by candidates. This does not apply in the cases where subjects are uniform. Further, moderation is a more viable technique so as to exclude the effect of examiner variability. In the instant case, there was no examiner variability but marking was strict, thus, the option of moderation deserves to be considered and applied. [Para 18, 19][62-B; 63-D, F]

Sanjay Singh & Anr vs U.P. Public Service Commission
(2007) 3 SCC 720 : [2007] 1 SCR 235 – referred to. F

2.3 Moderation can be by the addition of marks (in case of strict marking) and/or deduction of marks (in case of lenient marking). In the instant case that the strict marking has caused severe prejudice to the candidates and only 0.702% of them could qualify as against 107 vacancies. The candidates have been suffering for last five years. It is, therefore, inevitable to do complete justice and invoke the powers under Article 142 of the Constitution and consequently award grace marks to the candidates so that more candidates, who are otherwise no less

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- A meritorious, get an opportunity to appear for the viva–voce. The question is how many grace marks should be awarded and what should be the criteria followed. [Para 20, 21][63-G; 64-D-E]

Taniya Malik vs. The Registrar General of Delhi High Court (2018) 14 SCC 129 : [2018] 10 SCR 348 –

- B distinguished.

2.4 Justice Sikri in his concise but scholarly authored report has suggested three alternatives for awarding of grace marks; First Alternative is awarding 20 marks in Civil Law–I; Second Alternative is awarding 20 marks in Civil Law–I and 10 marks in

- C Civil Law–II; and Third Alternative is awarding 35 marks in aggregate. After going through the report of Justice Sikri, in this regards, it is deemed appropriate to adopt Alternative II of the Report, since the marking in Civil Law–I and Civil Law–II both was strict. Marking of Civil Law–II was only marginally strict.

- D Equity can thus be well balanced by awarding 10 marks to every candidate in Civil Law–II paper and 20 marks in Civil Law–I. The prayer of the petitioners for addition of 50 grace marks is not found feasible, for the moderation should also look reasonable. The petitioners have failed to assign any well founded reason for seeking moderation of 50 grace marks, only on the apprehension

- E that even the candidates who secured good marks in written examinations were given very low marks in viva–voce and the Committee has been awarding a meagre 8 to 18 marks, and hence they too will not be able to meet the eligibility criteria of minimum 50% marks. It is not compulsory for the High Court to fill all vacant posts, even if suitable candidates are not available. [Para 22][64-F-H; 65-A]

2.5 The need of viva–voce is an integral part of selection process for certain posts. The viva–voce and Written Examination (Main Exam), thus, both have their own importance in a selection process and it is for the interviewing panel to decide how many

- G marks be awarded to a candidate keeping in view his/her performance in interview. Secondly, the composition of Selection Committee is the sole prerogative of Chief Justice of the High Court and this Court need not venture into the issue which pertains to exercise of administrative power(s) of the Chief Justice. [Para 23][65-C, E-F]

3. The alternative prayer of the petitioners for re-evaluation by an Independent Expert Committee is not worth acceptance. Firstly, for the reason that these 107 posts are already lying vacant for a considerable long period and the re-evaluation would further delay it. Secondly, Justice Sikri has thoroughly examined the fact situation before recommending the award of grace marks. Thirdly, there is no provision for re-evaluation in the Recruitment Rules and any such direction would run counter to the mandate of this Court in *H.P. Public Service v. Mukesh Thakur* laying down that in the absence of any provision under the statute or statutory rules/regulations, the Courts should not generally direct re-evaluation. [Para 24][65-G-H; 66-A]

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H.P. Public Service Commission v. Mukesh Thakur
(2010) 6 SCC 759 : [2010] 7 SCR 189 – relied on.

4. As regards the petitioners' plea that marks of the Main Exam should be disclosed before conducting viva-voce, such a practice may not insulate the desired transparency, rather will invite criticism of likelihood of bias or favouritism. The broad principles to be laid down in this regard must be viewed keeping in view the selections for various categories of posts by different Selecting Authorities, for such a self-evolved criteria cannot be restricted to Judicial Services only. If the Members of the Interviewing Boards are already aware of the marks of a candidate secured in the Written Examination, they can individually or jointly tilt the final result in favour or against such candidate. The suggested recourse, thus, is likely to form bias affecting the impartial evaluation of a candidate in viva-voce. As the written examination assesses knowledge and intellectual abilities of a candidate, the interview is aimed at assessing their overall intellectual and personal qualities which are imperative to hold a judicial post. Any measure which fosters bias in the minds of the interviewers, therefore, must be done away with. [Para 27][66-G; 67-A-C]

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Ashok Kumar Yadav and Others v. State of Haryana
(1985) 4 SCC 417 : [1985] 1 Suppl. SCR 657 – relied on.

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- A 5. The respondents are directed to award 20 grace marks in Civil Law—I paper and 10 grace marks in Civil Law—II paper to all the candidates of 2019 Examination and prepare fresh results of the Main (Written) Examination of Civil Judge (Junior Division) within two weeks and complete the selection process within four weeks thereafter. The entire selection process shall be completed in all respects before 15th February, 2020. The left out vacant posts along with vacancies which have occurred meanwhile and those anticipated within next six months, be advertised as early as possible and be filled in accordance with the timeline prescribed by this Court in *Malik Mazhar Sultan* case. [Para 28][67-D-F]
- C *Malik Mazhar Sultan vs. U.P. Public Service Commission (2008)* 17 SCC 703 – relied on.
C PIL v. Registrar General of High Court of Delhi (2017) 11 SCC 456; *Prashant Ramesh Chakravar v. UPSC & Ors (2013)* 12 SCC 489; *Sujasha Mukherji v. High Court of Calcutta (2015)* 11 SCC 395 : [2015] 2 SCR 480; *Lila Dhar v. State of Rajasthan (1981)* 4 SCC 159 : [1982] 1 SCR 320; *Pramod Kumar Srivastava v. Bihar Public Service Commission (2004)* 6 SCC 714 : [2004] 3 Suppl. SCR 372; *Centre for Public Interest Litigation vs Registrar-General High Court of Delhi (2017)* 11 SCC 456 – referred to.
- D *C PIL v. Registrar General of High Court of Delhi (2017)* 11 SCC 456; *Prashant Ramesh Chakravar v. UPSC & Ors (2013)* 12 SCC 489; *Sujasha Mukherji v. High Court of Calcutta (2015)* 11 SCC 395 : [2015] 2 SCR 480; *Lila Dhar v. State of Rajasthan (1981)* 4 SCC 159 : [1982] 1 SCR 320; *Pramod Kumar Srivastava v. Bihar Public Service Commission (2004)* 6 SCC 714 : [2004] 3 Suppl. SCR 372; *Centre for Public Interest Litigation vs Registrar-General High Court of Delhi (2017)* 11 SCC 456 – referred to.
- E *C PIL v. Registrar General of High Court of Delhi (2017)* 11 SCC 456 – referred to.

Case Law Reference

	(2017) 11 SCC 456	referred to	Para 10.1
F	[2007] 1 SCR 235	referred to	Para 13
	(2013) 12 SCC 489	referred to	Para 13
	[2015] 2 SCR 480	referred to	Para 13
	[2018] 10 SCR 348	distinguished	Para 21
G	[1982] 1 SCR 320	referred to	Para 23
	[2010] 7 SCR 189	relied on	Para 24
	[2004] 3 Suppl. SCR 372	referred to	Para 25
	(2017) 11 SCC 456	referred to	Para 26
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[1985] 1 Suppl. SCR 657 relied on Para 27 A
(2008) 17 SCC 703 relied on Para 28

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 565 of 2019.

[Under Article 32 of The Constitution of India] B

With

W.P. (C) No. 617/2019 and 651/2019

Nidesh Gupta, Gurminder Singh, Sr. Advs., Prashant Bhushan, Hemanth Pothula, Miss Tulika Prakash, Ravi Panwar, Ashok Mathur, Ms. Neidhi Gupta, D. S. Chauhan, Ms. Ruchi Singh, Prashant Kumar, Surender Kumar Gupta and Ms. Priya Mishra, Advs. for the appearing parties. C

The following Judgment of the Court was delivered :

JUDGMENT D

1. These Writ Petitions under Article 32 of the Constitution have been filed at the instance of more than 90 candidates challenging the entire selection process and evaluation method adopted in the Main (Written) Examination of Civil Judge (Junior Division) [herein referred to as “Main Exam”] in the Haryana Civil Service (Judicial Branch) Examination – 2017 and seeking to quash the result declared on 11.4.2019 along with the directions to get all the papers of the Main Exam of the petitioners to be re-evaluated by an Independent Expert Committee, besides the constitution of an Independent Judicial Service Commission for conducting examinations for selection of Lower Judicial Officers. E F

Factual Background

2. Pursuant to the Notification-cum-Advertisement No. 6 of 2016 published on 20.03.2017 [herein after referred to as the “Original Notification”] for recruitment to 109 posts of Civil Judge (Junior Division) in Haryana Civil Service (Judicial Branch) – 2017, Preliminary Examination was conducted on 16.07.2017. However, on account of question paper-leak, the High Court of Punjab & Haryana scrapped the said examination on 13.09.2017. Thereafter, 107 posts were re-notified on 27.08.2018, out of which 75 were meant for General Category and the remaining 32 were earmarked for Scheduled Castes, Backward G H

- A Classes (a), Backward Classes (b), Economically Backward Persons in General Category, Ex-Service Men and Physically Handicapped Persons of Haryana State.
 - 3. The examination was conducted in accordance with provisions of Punjab Civil Services (Judicial Branch) Rules, 1951 as applicable to
- B the State of Haryana and as amended from time to time including vide notification no. GSR1/Const./Art.234 & 309/2017 dated 09.01.2017. This examination comprised of three stages –
 - (I) Preliminary Examination
 - (II) Main Examination
 - C (III) Viva Voce
- 4. Marks obtained in the Preliminary Examination were not to be counted towards final results. The purpose was solely to shortlist the candidates for the Main Exam. Candidates equal to 10 times the number of vacancies advertised, were shortlisted in order of their merit in the respective categories to enable them to sit in the Main Exam. If two or more candidates at the last number got equal marks, then all of them were considered eligible to sit for the Main Exam, warranting the corresponding increase in the stipulated ratio.
- E 5. The Main Exam consisted of five papers – Civil Law – I, Civil Law – II, Criminal Law, English and Hindi. The first four papers were for 200 marks and Hindi was for 100 marks. In order to qualify for viva-voce examination, a candidate is required to secure a minimum of 33% marks in each of the written exam and an aggregate of minimum 50% marks in all five papers [45% for reserved category]. It is pertinent to
- F note that viva-voce is also a part of the Main Exam and treated as the sixth paper of 200 marks. No minimum marks are prescribed for viva-voce as per the Rules. The candidates equivalent to three times of the advertised posts, who qualify in the written Exam are called strictly in order of merit to appear for the viva-voce. Marks obtained in the five papers are consolidated with the marks obtained in Viva Voce and
- G accordingly a final merit list is prepared.
- H 6. Preliminary Examination pursuant to the re-notified vacancies was held on 22.12.2018 and its result was declared on 21.01.2019. Main Exam was held from 15.03.2019 to 17.03.2019. Results of the Main Exam were declared on 11.04.2019 wherein only 9 candidates (6 of General Category and 3 of Reserved Categories) were declared qualified

and found fit for the Viva Voce. Complete details of the number of candidates who appeared/qualified in each stage of the selection process are as follows:- A

Candidates appeared in Preliminary Examination	14301	A
Candidates qualified for Main Exam	1282	
Candidates appeared in Main Exam	1195	B
Candidates found fit for Viva Voce	9(6+3)	

7. Aggrieved by their exclusion from amongst the candidates qualified for viva voce and contending that the entire selection process is unjust, unfair, arbitrary and violative of Article 14 of the Constitution, the Petitioners have approached this Court and sought indulgence in light of the followings: C

- a. As per the result declared, only 0.702% candidates managed to pass the Main Exam and the rest 99.298% failed. The explanation given for this was that no other candidate could secure a minimum of 33% in each subject and an aggregate of 50% in all five (45% for reserved category). D
- b. Information obtained through RTI discloses that there was no marking criteria or model answer key for evaluation of answer scripts of the Main Exam. Performance of the candidates solely depended on the discretion of the examiner(s). Further, no principles governing grace marks were available. E
- c. The High Court has provided an ineffective and infructuous remedy of paid re-checking without the disclosure of marks of candidates who had not qualified. F

8. This Court on 29.04.2019 directed the Registrar General of the High Court to be present in person along with answer scripts of all the candidates who appeared in the Main Exam. On 03.05.2019, having considered the grievances of the Petitioners, Hon'ble Mr. A.K. Sikri, J., a former Supreme Court Judge was requested to look into some of the answer scripts of the Main Exam to make an assessment whether the evaluation undertaken should be accepted by the Court. On 31.07.2019, Justice Sikri, after a deep insight and thorough evaluation of the answer scripts gave his report along with valuable suggestions of paramount importance. G

**Report by Hon'ble Justice (Retd.) A. K. Sikri dated
31.07.2019**

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- A 9. **Justice Sikri** has evaluated the selection process as well as the evaluation method used in the Main Exam and opined under different heads as follows:
- B 9.1 **Selection Process** – It is observed that the selection process is *prima facie* faultless. The Co-ordinators of the exam were highly qualified persons i.e. Vice Chancellors of National Law Schools or very senior professors, who provided the question bank to the Recruitment Committee. On this basis, the Recruitment Committee formulated the question paper(s) for the Main Exam. Examination Centre-in-charge handed over answer scripts of 1195 candidates in sealed iron boxes to the Registrar-Recruitment. These iron boxes were kept under strict surveillance round the clock. Also, roll numbers were concealed on the answer sheets before evaluation. Many other adequate security measures were also ensured.
- C 9.2 **Evaluation Method** – To make an assessment on the evaluation method adopted in the Main Exam, Justice Sikri randomly selected scripts of 5 candidates who had qualified the exam and of 5 petitioners. These answer scripts had been provided to him in Delhi under strict security. Further, to ensure transparency, he checked answer sheets of some other candidates who had not qualified the Main Exam (other than petitioners) for which he visited the High Court of Punjab & Haryana on two occasions- 24.05.2019 and 11.06.2019.
- D 9.3 The purpose to evaluate all the scripts was to compare the marks given to the qualified candidates with those who did not qualify by going through the quality of their answers. He also had a look at the list of marks obtained by all the candidates.
- E 9.4 **Observations :**
- F Justice Sikri in his report has observed that the evaluation done for Criminal Law, English and Hindi papers was appropriate. He identified the main problem in Civil Law-I paper and found that there were 18 questions in total in this paper and all of them were compulsory. Total time for finishing the paper was 3 hours i.e. 180 minutes. He made an assessment that if 27 minutes are taken out for reading and
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understanding the questions (1.5 minute per question), then the candidate was left with 8.5 minutes to answer each question. The questions were descriptive in nature. It is pertinent to note that the three law papers were evaluated by fifteen Evaluators by allotting one question to one Evaluator. Thus, one question was evaluated by one Evaluator only in all answer scripts and in this manner each answer script was examined by many Evaluators. He, thus, came to the following conclusions:

- Marking of Civil Law- I was strict. Evaluators seemed to expect long answers for each question covering all aspects in detail, without recognizing that candidates barely had any time. Even the candidates who covered all aspects in brief were not awarded good marks.
- Highest marks in Civil Law- I were 95 out of 200 i.e. 47.5%. Even, this candidate deserved more marks.
- The method of getting answer scripts evaluated by many Evaluators was intended to attain uniformity. However, a major repercussion was that this left the Evaluators with no opportunity to see overall performance of the candidates and take a holistic view. Evaluators would have had a realistic expectation in mind if they checked the complete answer scripts as opposed to checking only one answer.
- Paper was not difficult but too lengthy. Most of the questions were descriptive, some replica of bare provisions. Examiner expected long answers, but the questions were too many and the marking was extremely strict.
- For Civil Law –II, – attributes pointed in Civil Law – I were not present. Though, it was noted that suitable marks were not awarded even when answers were perfect. There was marginally strict marking.

9.5 Suggestions

Justice Sikri has unambiguously opined that the situation can be remedied by moderating marks so that more students can qualify the Main Exam for appearing in Viva Voce. A total of 311 candidates secured more than 33% marks in Civil Law-I

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- A Paper but they could not secure aggregate 50% marks which impacted their final result. Accordingly, he has after due deliberations suggested the following three alternatives: –
- **Alternative I** – 20 Grace Marks i.e. 10% be given in **Civil Law –I**. Using this, 28 more candidates (15 General + 13 Reserved) will qualify for Viva Voce making the total number of qualified candidates to 37.
 - **Alternative II** – 20 Grace Marks i.e. 10% be given to all candidates in **Civil Law-I** paper **and** 10 Grace Marks i.e. 5% be added in marks secured by all candidates in **Civil Law-II** paper. Cumulatively, 30 marks in total will increase. Using this, 60 (33 General + 27 Reserved) candidates will get through to Viva Voce taking the tally of qualified candidates to 69.
 - **Alternative III** – Moderation be done by giving 35 marks to all candidates. This will add 42 General Category candidates and 23 Reserved Category candidates to the existing number of 9, thereby making a total of 74.
- In the concluding remarks, Justice Sikri has recommended use of Alternative I. But keeping in mind availability of large scale vacancies, he has also suggested other two alternatives by virtue of which more candidates can qualify for viva-voce.

Contentions of Petitioners:

- F 10. Learned Counsel for the Petitioners, Mr. Prashant Bhushan at the outset has pointed out an inadvertent clerical error in the report of Sikri, J. regarding the number of vacancies allocated for general and reserved categories, as per the re-notified advertisement. On merits, his submissions may be summarized as follows:-
- G 10.1 *First Alternative* sought by the petitioners is re-evaluation of both the Civil Law-I and Civil Law-II papers by an Independent Authority as there was strict marking in these papers. For this, the petitioners lay emphasis on the standards laid down in *CPIL vs Registrar General of High Court of Delhi*¹.
- G 10.2 The *Second Alternative* submission is that 50 grace marks may be awarded to all the candidates, so the number of candidates

H ¹(2017) 11 SCC 456

qualified for Viva Voce would increase to 150-160 (nearly 1.5 times the number of vacancies available). It is highlighted that no appointment had been made in Haryana Judicial Service since 2014.

10.3 Shortlisting of sufficient candidates for appearing in viva-voce is desperately needed so that no seat is left vacant keeping in mind that many of the candidates have already been selected for various other State Judicial Services. 31 petitioners have already been appointed in different Judicial Services and many more would have been appointed from the 1195 candidates who appeared in the Main Exam. It can be safely inferred that some of the candidates are likely to drop out of Haryana Judicial Service Interview process or appointment.

10.4 The petitioners oppose the idea of conducting a fresh examination because it will only add to the hardships of the candidates, more so when they have already appeared twice in the said process.

10.5 The petitioners have highlighted the criteria of obtaining in aggregate a minimum of 50% marks in six papers (including five papers of Main Exam and sixth- viva-voce) and expressed their apprehension of scoring low marks in viva-voce due to which they would not be able to secure the minimum aggregate of 50% marks to meet the eligibility criteria. The reason of apprehension is that the same Recruitment Committee constituted by the Punjab and Haryana High Court has awarded only 8 to 18 marks to a large number of candidates even though they have secured goods marks in the written examinations. This Court, therefore, should employ a moderation technique by which candidates who deserve the seat can get it.

10.6 Seventy-four candidates who will become successful to appear for Viva Voce as per Alternative III suggested by Sikri, J. would only touch the bare minimum marks i.e. 450 marks out of 900 and if they fail to secure 50% marks in Viva Voce then the entire exercise would become futile.

10.7 The petitioners, thus, suggest moderation and scaling scientific techniques to remove variation caused by factors like multiple examiners, multiple optional subjects with varying difficulty levels

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- A or different difficulty levels of the mandatory subjects for all candidates. These methods, according to them, are used by the UPSC for administrative appointments and UPPSC for judicial recruitments.
- B 10.8 Petitioners and other candidates have immensely suffered in the last 5 years in anticipation of the exam dates and fair selection and appointments. They could not engage themselves in any other career options due to the constant uncertainty.
- C 10.9 The names and subject marks obtained by each candidate should be disclosed in a consolidated list after the Main Exam and before the Viva Voce. Similar procedure is followed in Delhi, Rajasthan etc. to ensure transparency.
- D 10.10 The timelines given in *Malik Mazhar Sultan vs. U.P. Public Service Commission*² should be strictly adhered to. Respondents should conduct the next examination cycle in a time bound manner.
- E 11. S/Shri Nidesh Gupta and Gurminder Singh, Senior Advocates representing the Punjab and Haryana High Court, on the other hand, strenuously opposed the petitioners' claim and urged that since Justice Sikri has not found any fault or illegality in the selection process which has been conducted in most fair and impartial manner under strict administrative vigil, there is no necessity for this Court to interfere with the selection process while exercising the power of judicial review. They urged that the standards of the examination be not diluted by accepting the suggestions given by Justice Sikri in his report and the appropriate recourse would be to re-advertise the vacant posts and make selection afresh.

F **Issues for consideration**

- G 12. On a consideration of the rival submissions and on appreciation of the report submitted by Justice Sikri, it appears that the following questions arise for our consideration:
- (i) Whether selection process and evaluation method is unjust, arbitrary and in violation of Article 14 of the Constitution?
- (ii) Whether moderation of marks (grace marks) is needed in the facts and circumstances of the present case?

(iii) Whether re-valuation of Civil Law-I and Civil Law-II papers A is required by an Independent Expert Committee?

(iv) Whether the marks obtained in the Main Exam be disclosed before the viva-voce is conducted?

Analysis of the Issues:

Re: Issue 1

13. The Petitioners contended that the evaluation has been done without any marking criteria, it lacks uniformity and is in contravention of the view taken by this Court in the following decisions –

- *Sanjay Singh & Anr vs U.P. Public Service Commission*³ C
- *Prashant Ramesh Chakrawar vs UPSC & Ors*⁴
- *Sujasha Mukherji vs High Court of Calcutta*⁵
- *CPIL vs Registrar General of the High Court of Delhi*⁶

13.1 In *Sanjay Singh* (supra), this Court analytically went into inner depth of the scheme of Examination and laid down guidelines regarding moderation of marks in case of judicial services examination. It was, thus, held:

“23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer-scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer-scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer-scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer-scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiner evaluate the answer-scripts relating to a subject, the subjectivity of the

³ (2007) 3 SCC 720

⁴ (2013) 12 SCC 489

⁵ (2015) 11 SCC 395

⁶ (2017) 11 SCC 456

- A *respective examiner will creep into the marks awarded by him to the answer-scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer-scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is 'Hawk-Dove' effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer-script is given to different examiners, there is all likelihood of different marks being assigned. If a very well written answer-script goes to a strict examiner and a mediocre answer-script goes to a liberal examiner, the mediocre answer-script may be awarded more marks than the excellent answer-script. In other words, there is 'reduced valuation' by a strict examiner and 'enhanced valuation' by a liberal examiner. This is known as 'examiner variability' or 'Hawk-Dove effect'. Therefore, there is a need to evolve a procedure to ensure uniformity inter se the Examiners so that the effect of 'examiner subjectivity' or 'examiner variability' is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:*
- (i) *The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/Judges. Where the case of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer-scripts for valuation.*
- (ii) *To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination.*
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They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer scripts. But this by itself does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or eroticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top-level answer scripts and some answer books selected at random from the batches of answer scripts valued by each examiner. The top-level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks etc. may also be prepared in respect of the valuation of each examiner.)

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggest upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in

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- A *marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.*
- B *(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are revalued either by the Head Examiner or any other Examiner who is found to have followed the agreed norms.*
- C *(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the Examiners. In such a situation, one more level of Examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.*
- D *The above procedure of ‘moderation’ would bring in considerable uniformity and consistency.*
- E *It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.”*
- F *[Emphasis applied]*
- G 13.2 The guidelines laid down in *Sanjay Singh* (supra) have been followed in the other three cases cited on behalf of the petitioners viz. *Prashant Ramesh Chakrawar* (supra), *Sujasha Mukherji* (supra) and *CPIL* (supra).
- H 14. In the instant case, Justice Sikri critically examined the selection process as well as the evaluation method and it is explicit from his report that the procedure of evaluation was ‘uniform’. We are of the view that evaluation done by multiple evaluators i.e. one Evaluator examining and marking one question in all the mark-sheets, ensures uniformity and

prevents chance grading. Every candidate's answers are marked on same parameters by the same examiner. There can possibly be no other better method to ensure uniformity in evaluation. The petitioners have stated that as per the information received via RTI no model 'answer key' was present. It gives more credence to the afore-stated method of evaluation as no model 'answer key' ought to be devised for the Main Exam, the purpose whereof is not to just assess the knowledge of candidates but also to evaluate their analytical ability. In the present case, there was no Examiner Variability, therefore, Justice Sikri has very aptly remarked that, "*this was well intended move to attain uniformity in evaluation*". This method ensures equal level play field for all candidates. The only setback was lack of holistic view and lack of realistic expectations in the examiner's mind, for which there are adequate remedies as discussed in the later part of this order.

15. The marking criteria and evaluation method was strict but it was so for everyone. This was may be for the reason that one Evaluator checked one answer in each script and in this manner the entire lot of scripts were marked. The Evaluators failed to keep a pragmatic view that source of recruitment was likely to be the same in a fresh attempt also and that candidates had only 8.5 minutes to answer each question and time constraint did not allow them to give their best of performance. Even those candidates who covered all aspects briefly were not awarded proper marks. Unlike the hypothetical illustration given in *Sanjay Singh's* case (supra), it was not a case where some candidates were subjected to strict marking and others had an advantage of lenient marking, so as to draw an inference that the evaluation method was discriminatory or arbitrary.

16. It has been found as a matter of fact that the officials and officers of the High Court ensured adequate security measures such as keeping the answer scripts in iron boxes under round-the-clock security and CCTV cameras. Hence, it is just and fair to hold that no discriminatory or malafide practice was undertaken while conducting the exam or its following processes.

Re: Issue II

17. Considering that the marking was strict but not discriminatory, the remedy of moderation of marks, in order to remove the variation caused by multiple examiners and dearth of time, is the only effective, equitable and efficacious solution. The petitioners have stated and rightly

- A so that as per the RTI, there are no rules governing grace marks. They have suggested that any appropriate scientific technique like scaling, or moderation can be adopted in this case, as is done by Union Public Service Commission (UPSC) for administrative appointments and UP Public Service Commission (UPPSC) for judicial recruitments.
- B 18. This Court in *Sanjay Singh* (supra) considered the suitability of scaling method in depth but declined to approve the same for Judicial Examinations observing as follows:
- "24. In the Judicial Service Examination, the candidates were required to take the examination in respect of all the five subjects and the candidates did not have any option in regard to the subjects. In such a situation, moderation appears to be an ideal solution.* But there are examinations which have a competitive situation where candidates have the option of selecting one or few among a variety of heterogeneous subjects and the number of students taking different options also vary and it becomes necessary to prepare a common merit list in respect of such candidates. Let us assume that some candidates take Mathematics as an optional subject and some take English as the optional subject. It is well recognised that marks of 70 out of 100 in Mathematics do not mean the same thing as 70 out of 100 in English. In English 70 out of 100 may indicate an outstanding student whereas in Mathematics, 70 out of 100 may merely indicate an average student. Some optional subjects may be very easy, when compared to others, resulting in wide disparity in the marks secured by equally capable students. In such a situation, candidates who have opted for the easier subjects may steal an advantage over those who opted for difficult subjects. There is another possibility. The paper-setters in regard to some optional subjects may set questions which are comparatively easier to answer when compared to some paper-setters in other subjects who set tougher questions which are difficult to answer. This may happen when for example, in Civil Service Examination, where Physics and Chemistry are optional papers, Examiner 'A' sets a paper in Physics appropriate to degree level and Examiner 'B' sets a paper in Chemistry appropriate for matriculate level. In view of these peculiarities, there is a need
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to bring the assessment or valuation to a common scale so that the inter se merit of candidates who have opted for different subjects, can be ascertained. The moderation procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer-scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is creation of scaled score.”

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[Emphasis added]

19. This Court thus considered the viability of scaling and moderation for Judicial Services Examinations and held that use of Scaling is appropriate only when there is differentiation amongst subjects opted by candidates. This does not apply in the cases where subjects are uniform. Further, moderation is a more viable technique so as to exclude the effect of examiner variability. In *Sanjay Singh case* (supra), this Court observed that, “*there is “reduced valuation” by a strict examiner and “enhanced valuation” by a liberal examiner. This is known as “examiner variability” or “hawk-dove effect” ... [P]rocedure of moderation would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.*” (para 23) As already discussed, there was no examiner variability in present case but marking was strict which is why we are of the view that the option of moderation deserves to be considered and applied.

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20. We may also notice that moderation can be by the addition of marks (in case of strict marking) and/or deduction of marks (in case of lenient marking). In *Taniya Malik vs. The Registrar General of Delhi High Court*⁷, 100 posts were advertised and only 64 candidates could qualify the Main Exam for appearing in the Viva Voce. While considering the challenge to examination process, this Court held that moderation cannot be applied for the reason that:

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⁷(2018) 14 SCC 129

- A "This Court in *Sanjay Singh* (supra) has laid down moderation to be appropriate where there are multiple examiners of the same subject. It has also been observed that where a number of candidates are limited and only one examiner will evaluate, it is to be assumed that there will be uniformity in valuation. That is only where several examiners evaluate the same subject. There is difference in average marks and range of marks awarded. There is a 'hawk-dove' effect. Some examiners are liberal and they award more marks; some examiners are strict and they give fewer marks, the same may be moderated. There may be variance in degree of strictness and liberality. It is in order to remove the subjectivity or variability, that the provision of moderation is adopted. It is not the situation in the instant case, hence, the decision in *Sanjay Singh* (supra) rather than buttressing negates the plea of moderation urged on behalf of the Petitioners."

21. *Taniya Malik*'s case (supra) is distinguishable as it has been found as a matter of fact in the instant case that the strict marking has caused severe prejudice to the candidates and only 0.702% of them could qualify as against 107 vacancies. The candidates have been suffering for last five years. It is, therefore, inevitable to do complete justice and invoke the powers under Article 142 of the Constitution and consequently award grace marks to the candidates so that more candidates, who are otherwise no less meritorious, get an opportunity to appear for the viva-voce. The question is how many grace marks should be awarded and what should be the criteria followed.

22. Justice Sikri in his concise but scholarly authored report has suggested three alternatives for awarding of grace marks; First Alternative is awarding 20 marks in Civil Law-I; Second Alternative is awarding 20 marks in Civil Law-I and 10 marks in Civil Law-II; and Third Alternative is awarding 35 marks in aggregate. The Petitioners, on the other hand, have urged for awarding 50 grace marks keeping in view the fact that more candidates need to qualify for 107 vacancies.
- G After going through the report of Justice Sikri, in this regards, we deem it appropriate to adopt Alternative II of the Report, since the marking in Civil Law-I and Civil Law-II both was strict. Marking of Civil Law-II was only marginally strict. Equity can thus be well balanced by awarding 10 marks to every candidate in Civil Law-II paper and 20 marks in Civil Law-I. The prayer of the petitioners for addition of 50 grace marks is

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not found feasible, for the moderation should also look reasonable. We may hasten to add that it is not compulsory for the High Court to fill all vacant posts, even if suitable candidates are not available.

The petitioners have failed to assign any well founded reason for seeking moderation of 50 grace marks, only on the apprehension that even the candidates who secured good marks in written examinations were given very low marks in viva-voce and the Committee has been awarding a meagre 8 to 18 marks, and hence they too will not be able to meet the eligibility criteria of minimum 50% marks.

23. Firstly, we may very briefly emphasise the need of viva-voce as an integral part of selection process for certain posts. This Court in *Lila Dhar v. State of Rajasthan*⁸, observed that

“6. ... [T]he written examination assesses the *man's* intellect and the interview test the man himself and “the twain shall meet” for a proper selection.... [I]n the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied...”

The viva-voce and Written Examination (Main Exam), thus, both have their own importance in a selection process and it is for the interviewing panel to decide how many marks be awarded to a candidate keeping in view his/her performance in interview. Secondly, the composition of Selection Committee is the sole prerogative of Chief Justice of the High Court and this Court need not venture into the issue which pertains to exercise of administrative power (s) of the Chief Justice.

Re: Issue III

24. The alternative prayer of the petitioners for re-evaluation by an Independent Expert Committee is not worth acceptance. Firstly, for the reason that these 107 posts are already lying vacant for a considerable long period and the re-evaluation would further delay it. Secondly, Justice Sikri has thoroughly examined the fact situation before recommending the award of grace marks. Thirdly, there is no provision for re-evaluation in the Recruitment Rules and any such direction would run counter to

⁸(1981) 4 SCC 159

- A the mandate of this Court in *H.P. Public Service Commission v. Mukesh Thakur*⁹, laying down that in the absence of any provision under the statute or statutory rules/regulations, the Courts should not generally direct re-evaluation.

25. The above-cited view has been reiterated by this Court in *B. Pramod Kumar Srivastava v. Bihar Public Service Commission*¹⁰ observing as under:

- C “7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer book. There is a provision for scrutiny only wherein the answer books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. *In the absence of any provision for revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks.*

- E 26. The Petitioners have relied on the decision in *Centre for Public Interest Litigation vs Registrar-General High Court of Delhi*¹¹ to substantiate their plea for re-evaluation of answer scripts by an Independent Expert Committee. However, in that case too it was held “*if the suitable candidates are not found, the employer is not obliged to fill up the posts.*” The directions for re-evaluation were given only as a special case.

Re: Issue IV

- G 27. As regards the petitioners’ plea that marks of the Main Exam should be disclosed before conducting viva-voce, we are of the considered opinion that such a practice may not insulate the desired transparency, rather will invite criticism of likelihood of bias or favouritism. The broad principles to be laid down in this regard must be viewed keeping in view the selections for various categories of posts by different Selecting

⁹(2010) 6 SCC 759

¹⁰(2004) 6 SCC 714

H ¹¹(2017) 11 SCC 456

Authorities, for such a self-evolved criteria cannot be restricted to Judicial Services only. If the Members of the Interviewing Boards are already aware of the marks of a candidate secured in the Written Examination, they can individually or jointly tilt the final result in favour or against such candidate. The suggested recourse, thus, is likely to form bias affecting the impartial evaluation of a candidate in viva-voce. The acceptance of the plea of the petitioners in this regard will also run contrary to the authoritative pronouncement of this Court in *Ashok Kumar Yadav and Others v. State of Haryana*¹². As the written examination assesses knowledge and intellectual abilities of a candidate, the interview is aimed at assessing their overall intellectual and personal qualities which are imperative to hold a judicial post. Any measure which fosters bias in the minds of the interviewers, therefore, must be done away with.

28. For the reasons stated above, we allow these Writ Petitions in part with the following directions:-

- (i) The Punjab and Haryana High Court through its Registrar General is directed to award 20 grace marks in Civil Law-I paper and 10 grace marks in Civil Law-II paper to all the candidates of 2019 Examination and prepare fresh results of the Main (Written) Examination of Civil Judge (Junior Division) within two weeks and complete the selection process within four weeks thereafter. D E
- (ii) The entire selection process shall be completed in all respects before 15th February, 2020. F
- (iii) The left out vacant posts along with vacancies which have occurred meanwhile and those anticipated within next six months, be advertised as early as possible and be filled in accordance with the timeline prescribed by this Court in *Malik Mazhar Sultan* case (supra).

29. All pending applications, if any, are disposed of in terms of the aforesaid order.

Nidhi Jain

Writ Petitions partly allowed.

¹²(1985) 4 SCC 417