Salam Samarjeet Singh vs High Court Of Manipur At Imphal And Anr on 7 October, 2016

Equivalent citations: AIRONLINE 2016 SC 602

Author: Shiva Kirti Singh

Bench: R. Banumathi, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION(C)No.294 of 2015

Salam Samarjeet Singh ….Petitioner

Versus

High Court of Manipur at Imphal & Anr. …..Respondents

J U D G M E N T

Shiva Kirti Singh, J.

I have perused the judgment written by Banumathi, J. Since I am unable to agree with the same, I hereby record my views on the main issues involved in the case.

As most of the relevant facts including the submissions of the rival parties as well as relevant provisions of rules have already been extracted, I will borrow and refer from such facts and statutory provisions where ever necessary. Only to recapitulate the seminal facts, it is noted that the relevant advertisement for filling up a single vacancy in the post of District Judge (Entry Level) by way of direct recruitment through examination of 2013 was published on 15.5.2013. The advertisement disclosed that the recruitment shall be governed by the Manipur Judicial Service (Recruitment and Conditions of Service) Rules, 2005 (for brevity, 'the Rules'). The duly filled applications were to be sent to Registrar, High Court of Manipur at Imphal. Inter alia, it was also indicated, as is the position in the Rules, that for being called for viva voce test a candidate must secure in the written examination 60% marks if he is from unreserved category and 50% if he is of reserved category. The viva voce was to carry 50 marks. The examination was held in July 2013. As per initial notification dated 17.10.2013, the Joint Registrar notified that none of the candidates was successful in their written examination. The mark sheet was published on 29.01.2014 in which petitioner being a scheduled caste category candidate had secured more than the minimum qualifying marks of 50%. In fact he had secured 52.8% marks. Hence petitioner filed a representation on 04.02.2014 for reconsideration of his result. On 07.02.2014 the High Court issued a corrigendum and declared the petitioner as successful in the written examination. Be it noted that the petitioner was the only successful candidate for the unreserved single post under contest. For almost a year the recruitment process remained at a standstill. Through a letter dated 29.01.2015 the petitioner was informed that viva voce will be held on 12.02.2015. The petitioner undertook the said test. On 19.02.2015 the

petitioner learnt from a notice dated 16.02.2015 issued by the Joint Registrar of the High Court and placed on the Notice Board of the High Court that the petitioner had failed to qualify in the interview.

The petitioner made a request for certain informations under the RTI Act from the concerned officer of High Court of Manipur on 21.02.2015. The informations sought for included queries as to whether there was any pass mark/cut-off mark out of the total 50 marks for the interview and also details of the particular rule under which he had failed in the interview. The information was supplied on 19.03.2015 disclosing that he had obtained 18.8% marks in the viva voce test and the cut-off mark/pass mark is 40% out of total 50 marks for the interview. The High Court did not provide reference to any particular rule under which petitioner had been found not qualified in the interview.

It is not in dispute and it was subsequently discovered that the Full Court of the Manipur High Court had resolved on 12.01.2015, only a few days before interviewing the lone candidate- the petitioner, to fix 40% as the pass mark for viva-voce. Since the petitioner was interviewed by all the three Judges of the High Court in the viva voce and was declared to have failed on account of pass marks prescribed for viva voce examination by the Full Court on 12.01.2015, he did not have much option but to prefer the present writ petition in this Court mainly to seek the relief for quashing of his viva voce result dated 16.02.2015 and for declaration of his result for appointment to MJS Grade I with retrospective effect from a reasonable date and/or to grant any just and equitable relief in the facts and circumstances of the case.

A perusal of relevant informations given to the candidates in the advertisement, particularly the general instructions contained in Appendix 'A' of the Scheme of Examination clearly discloses that scheduled caste candidates shall be eligible for the viva voce examination on obtaining 50% or more marks in the written examination. It is also clearly spelt out that selection of candidates shall be made on the basis of cumulative grade value obtained in the written and viva voce examination. In my considered view the statutory mandate for selection on the basis of cumulative grade required the authorities to add the marks of both the examinations, prepare the merit list as per total marks for the cumulative grade and make the selection from such merit list.

This mandate was violated for a reason that does not muster scrutiny. Although the object of viva voce examination has been given in some detail but that is only for the guidance of members of the Board conducting the viva voce test. The mode of evaluating the performance of grading in the written and viva voce examination has been indicated in the general instructions and the same has already been noted in the judgment of Banumathi, J. The grade 'F' which provides for percentage of marks below 40% corresponds to numerical grade '0' but beyond that there is nothing to support the submission on behalf of the High Court that 'F' is indicator of failure in the written examination or in the viva voce. The cut-off mark for the written examination is separately provided under the Rules, to the effect that written examination will carry 200 marks and the cut-off marks should be 60% or corresponding grade for general candidates and 50% or corresponding grade for SC/ST candidates. So 40% to 49% denoted by 'C' also stand for fail marks for the written examination and therefore there is no basis to infer that 'F' standing for below 40% is a symbol of fail marks. Further

when the Rules explicitly specify the pass marks for the written examination and conspicuously make no such provision in respect of viva voce examination, rather provide to the contrary that the final selection list will be by combining the cumulative grade value obtained in the written and the viva voce examination, nothing can be gainsaid on the basis of evaluating procedure alone. For the purpose of deciphering cut-off marks or pass marks for the viva voce examination there ought to be a similar specific provision in the Rules. But it was not there at the relevant time. It has been introduced much later in 2016.

In my considered view the Rules and the instructions clearly demonstrate that there was no cut-off mark or pass mark for the viva voce examination in the past and therefore the High Court on 12.01.2015 made a specific Resolution that no one shall be declared passed and selected for appointment unless he secures minimum 40% in the interview (viva voce). This power to add to the Rules is claimed from the provisions of sub-rule (3) of Rule 1 of Schedule 'B' of the Rules empowering the recruitment authority to take "all necessary steps not provided for in these Rules for recruitment under these Rules……". In my view the Resolution of the High Court on 12.01.2015 ran counter to express provision in the Rules as to how the final merit list was to be prepared by combining the marks of both the examinations. Not providing any pass mark for the viva voce while so providing for the written examination clearly indicates that the Rules deliberately chose not to prescribe any cut-off for the viva voce. The explanation for the same lies in the recommendations made in this regard by the Shetty Commission. The Rules are almost verbatim copy of most of the recommendations in respect of such examination for recruitment. Clearly, they also followed the recommendation of the Shetty Commission that there should not be any cut off or fail marks for the viva voce examination. Such omission was thus clearly deliberate to facilitate the intended result. There was no gap or vacuum here and therefore Clause 1(3) of the Rules is not attracted. Hence, the Rules could not have been altered by a Resolution taken by the Full Court. We have been informed that ultimately the Rules have been formally amended vide notification dated 09.03.2016 issued in exercise of powers under Article 309 read with Article 234 of the Constitution of India whereby, inter alia, it has been included in the general instructions under Schedule 'B' that candidates securing minimum 40% marks in the interview shall only be eligible to be included in the select list. Apparently this amended rule is to come into force only in future from a date to be specified. But in any case it has not been made retrospective and rightly so because such Rules governing selection procedure for recruitment cannot be amended to affect the results after the game has been played.

In the aforesaid facts and circumstances, the contention advanced on behalf of the petitioner that the impugned act of bringing about change in the selection procedure by providing minimum marks for interview or viva voce test in midst of the selection process which has already been initiated amounts to changing the rules of the game and hence impermissible, is well supported by judgment in the case of K. Manjusree v. State of Andhra Pradesh & Anr.[1] as well as in the case of Hemani Malhotra Etc. v. High Court of Delhi[2]. In my view once petitioner was declared as the lone candidate having passed in the written examination, it matters little whether minimum marks for interview were introduced before or after calling him for interview. The petitioner or any other person in his place, knowing fully well that there was no separate cut-off or pass mark for the viva voce, would not feel any pressure to be extra ready for the interview. In order to ensure fairness, after the Full Court decision on 12.01.2015 to fix 40% as pass marks for viva voce, the petitioner

ought to have been informed of this development, at least when intimation of date of interview was communicated to him through letter dated 29.01.2015. Since the viva voce was held on 12.02.2015, he would have got some time to improve his preparations to meet the 40% cut-off newly introduced. That was not done. In such circumstances, I do not find any material, reason or circumstance to distinguish the case of K. Manjusree as well as of Hemani Malhotra. In my considered view the High Court did not have the power to change the scheme of the rules which prescribed pass marks only for the written examination, deliberately omitted the same for viva voce examination and warranted final results after adding both the marks. If for the sake of arguments, such power is conceded even then the power could not have been exercised to change the rules of the game when petitioner alone was left in the arena and could not have been disqualified except by changing the rules midway. Para 15 in the case of Hemani Malhotra extracted earlier in the preceding judgment applies on all force like the judgment in the case of K. Manjusree. Learned counsel for the petitioner has rightly placed reliance on those judgments. The judgment in the case of Ramesh Kumar v. High Court of Delhi & Anr.[3] draws some inspiration from the recommendations of Justice Shetty Commission's Report in para 16 but the general law already settled and stated in para 15 also clearly helps the case of the petitioner. In my view the statutory rules did prescribe a particular mode of selection which did not require any pass mark for the viva voce examination and it had to be given strict adherence accordingly, at least till the ongoing recruitment process got concluded. Since the procedure was already prescribed by the Rules, in the present case there was clear impediment in law in the way of the High Court in proceeding to lay down minimum pass mark for the viva voce test which was meant only for the petitioner as he was the lone candidate successful in the written examination. In my view the petitioner was clearly prejudiced and although no case of bias has been pleaded, the impugned action would validly attract the criticism of malice in law.

For the aforesaid reasons alone, in my view, there is no need in the present case to go into recommendations of the Shetty Commission, even if it be conceded for the sake of arguments that State Government may decide not to fill up posts if it has reasons to believe that appointing the selected candidate would adversely affect the required standards of competence. That stage was never arrived at in this case. Hence reference to an issue of aforesaid nature to a larger Bench by the order in the case of Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.[4] rendered by a Bench of three Judges will not have any effect on the outcome of this case. The law laid down in the case of State of Haryana v. Subash Chander Marwaha & Ors.[5] is applicable only at the stage when the selection process is complete and then if appointment is refused to a selected candidate for good reasons, the candidate may not have an indefeasible right to claim a right of appointment. This course of action would be valid, subject to satisfactory answer by the authority to any charge of arbitrariness. But as noted earlier that stage has not been reached in the case of the petitioner. He has been disqualified by the High Court on the basis of its Full Bench Resolution taken in the course of the selection procedure. That process in my view must be continued and completed fairly, disregarding the subsequent changes brought about by the High Court or subsequent amendment of the Rules.

Hence while not delving into effect of judgment in the case of All India Judges' Association v. Union of India & Ors.[6] and leaving the issue open for decision in an appropriate case as to what is the effect of aforesaid judgment sub silentio accepting the recommendations of Shetty Commission's

Report that there shall be no cut-off marks in viva voce test. The Judicial Service Rules of various High Courts in my view cannot affect the rights of the petitioner which have to be governed by the Rules on which I have already expressed my view that it deliberately did not provide any cut- off marks for the viva voce test and instead provide for preparation of final result by adding the marks of written examination and viva voce test.

The law laid down in the case of Madan Lal & Ors. v. State of J & K & Ors.[7] in my considered view does not stand in the way of the petitioner. The High Court Resolution was not communicated to the petitioner. It was neither a part of the Rules nor of the advertisement and hence the theory that if a candidate takes a calculated chance and faces the selection procedure then on the result being unfavourable, he cannot be permitted to turn around and challenge the process of selection is not at all attracted. The theory rests on the hypothesis that the impugned procedure or rule is already in public domain and the candidate must, therefore, be aware of it when he participates. So far as the judgment in the case of Kulwinder Pal Singh & Anr. v. State of Punjab & Ors.[8] is concerned, I am in respectful agreement with the same and with the view expressed by Banumathi, J. that only being in the selected panel does not give the petitioner or anybody else an indefeasible right to get an appointment. But the vacancies, as highlighted in paragraph 11, have to be filled up as per statutory rules and in conformity with the constitutional mandate. I do not see anything in that judgment against the consideration of petitioner's case in accordance with law after declaring his results by ignoring the pass mark criteria for the viva voce examination introduced by the High Court and then proceed as per Rules by adding the marks of written examination with that of viva voce test. All actions of authorities must meet the test of reasonableness and in case petitioner is not offered appointment though being the only successful candidate, then the respondents may have to justify their action, if challenged, on the basis of case of Kulwinder Pal Singh and similar other judgments. As already indicated earlier, that stage is yet to arrive.

In the result, in my view the petitioner is entitled to the relief sought for in the writ petition which is allowed in the light of discussions made above. The viva voce result of the petitioner dated 16.02.2015 showing him as 'unsuccessful' shall stand quashed. The respondents shall declare the result of the petitioner for appointment to MJS Grade I as per discussion made in this judgment forthwith and in any case within four weeks. In the peculiar facts of the case, in my view, a decision for appointment of petitioner to MJS Grade I with retrospective effect after a reasonable period from date of the viva voce result which was 16.02.2015 or say w.e.f. 01.04.2015 should be communicated to the petitioner within the aforesaid period of four weeks. In case petitioner is offered the appointment and joins the service, he would get wages by way of salary etc. only from the date he starts working on the post. For the past period he would be entitled only for notional benefits of increment and length of service for pensionary benefits, as and when occasion arises in future. The writ petition of the petitioner succeeds accordingly. The petitioner is held entitled to a cost of Rs.50,000/-.

.....J. [SHIVA KIRTI SINGH] New Delhi.

October 07, 2016.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 294 OF 2015

SALAM SAMARJEET SINGH PETITIONER

VERSUS

HIGH COURT OF MANIPUR AT IMPHAL & ANR. RESPONDENTS

J U D G M E N T

R. BANUMATHI J.

In this Writ Petition filed under Article 32 of the Constitution of India, the petitioner prays for issuance of a writ of certiorari quashing the Notification dated 16th February, 2015 issued by the High Court of Manipur, whereby the petitioner was declared unsuccessful in viva-voce conducted by the High Court of Manipur for appointment to the post of District Judge (Entry Level) in Manipur Judicial Services Grade-I. Petitioner seeks further direction to declare his appointment to Manipur Judicial Services Grade-I with retrospective effect.

2. An advertisement was issued by the Manipur High Court vide Notification No. HCL/A-1/2013-A&E(J)/288 dated 15th May, 2013, inviting applications for recruitment to one vacant (unreserved) post of District Judge (Entry Level) in Higher Judicial Service through District Judge (Entry Level) Direct Recruitment Examination, 2013. As per the conditions prescribed in the aforesaid advertisement, the petitioner being eligible applied for the said post under the category of 'Scheduled Caste'. Examination was held on 21st, 22nd & 23rd July, 2013 and the petitioner also appeared in the same. The High Court of Manipur issued a Notification dated 17th October, 2013 stating therein that none of the candidates had secured the minimum qualifying marks in the said Examination. The marks obtained by all the candidates who appeared in the said examination were uploaded on the website of the High Court of Manipur on 29th January, 2014. From the result made available on the website of the High Court, the petitioner learnt that he had scored 52.8% and that he was eligible for the interview/viva-voce as per the advertisement dated 15th May, 2013 and Schedule "B" of the Manipur Judicial Service Rules, 2005, (for short 'the MJS Rules') as he belongs to the Scheduled Caste community of the State of Manipur. The petitioner had given a representation on 4th February, 2014 to the High Court for reviewing the Notification dated 17th October, 2013 issued by the High Court of Manipur. In response to petitioner's representation, the High Court issued a corrigendum dated 7th February, 2014, modifying the said Notification by

stating that only one candidate namely Shri Salam Samarjeet Singh (SC), petitioner herein had secured the minimum qualifying marks in the written examination held on 21st, 22nd and 23rd July, 2013 for recruitment to MJS Grade-I, under direct recruitment quota and had been found qualified for appearing in the viva-voce. It was also stated therein that the date and time for interview would be notified in due course. Before conducting the viva-voce, the respondent High Court held a Full Court meeting on 12th January, 2015 wherein one of the agenda was to prescribe "qualifying marks for interview (viva-voce)". After discussion on this agenda, the Full Court took a decision that "no one shall be declared pass and selected for appointment unless he secures minimum 40% from the interview".

3. The petitioner appeared before the Interview Committee comprising of the Chief Justice and two other Judges of the High Court of Manipur on 12th February, 2015. In the interview, the petitioner obtained 18.8 marks out of 50 marks i.e. 37.6%. Since the petitioner failed to secure the minimum marks of 40% vide Notification dated 16th February, 2015 issued by the High Court, the petitioner was declared "not selected". Aggrieved by the aforesaid Notification, the petitioner has filed this Writ Petition, seeking a writ of certiorari to quash the Notification and another of mandamus directing the High Court to declare him appointed to MJS Grade-I with retrospective effect.

4. In the Writ Petition, petitioner has stated that the marks obtained in the viva-voce should be merely added to the marks obtained in the written examination to finalize the merit list and it was not permissible to have fixed a minimum bench mark for the viva-voce. According to the petitioner, his non-qualification in the interview and the impugned Notification dated 16th February, 2015 pursuant thereto are in violation of the law laid down by this Court in P.K. Ramachandra Iyer & Ors. v. Union of India & Ors. (1984) 2 SCC 141and Umesh Chandra Shukla v. Union of India & Ors. (1985) 3 SCC 721. It is further averred that before the commencement of selection process, the Selection Committee prescribed minimum marks only for written examination and that during the course of the selection process, it cannot change the criteria by adding an additional eligibility condition/requirement that the candidates shall secure minimum marks in the interview.

5. On notice, the respondents entered appearance and filed their counter affidavit.

6. Case of the respondent-High Court is that the entire selection process of the 2013 Examination has been conducted in a just and fair manner following the Rules prescribed under the MJS Rules and the action of the respondents is not violative of Articles 14 and 16 of the Constitution of India. Schedule 'B' of the MJS Rules prescribes the minimum qualifying marks for viva-voce as 40%. It is the case of the respondent-High Court that the minimum qualifying marks prescribed have been further clarified in its Full Court Resolution dated 12th January, 2015 before the viva-voce was conducted by the Interview Committee, so as to avoid any discrepancies.

7. In its counter affidavit, the respondent-High Court has further stated that the Recruitment Committee during the course of the interview of the petitioner, which lasted for half an hour, did individual assessment of the candidate in nine disciplines (each discipline carrying 5.55 marks). The total marks obtained by the petitioner from each member were 19.5, 19.0 and 18.0 totalling to 37.6%. The petitioner failed to secure the minimum qualifying marks of 40% in viva-voce as

prescribed under the MJS Rules and hence he failed to qualify in the interview and is not entitled to the relief sought for in the Writ Petition.

8. We have heard learned counsel for the parties at length.

9. Learned Senior Counsel for the writ petitioner, Mr. Sanjay R. Hegde submitted that the Full Court Resolution dated 12th January, 2015 fixing cut-off marks – minimum 40% in the interview is an erroneous interpretation of Evaluation of Performance given in Schedule B of the 2005 Rules. It was further submitted that the action of the respondents to apply the criteria of minimum qualifying marks in the interview would amount to change in the criteria for selection after the selection process started. It was further submitted that the petitioner was never informed about the Resolution dated 12th January, 2015 prescribing minimum marks to be secured in the interview, and the same amounts to violation of principles of natural justice. In support of the contention that changing the 'rules of the game' during the course of selection process would vitiate the entire selection, reliance was placed upon Hemani Malhotra v. High Court of Delhi (2008) 7 SCC 11 and K. Manjusree v. State of Andhra Pradesh & Anr. (2008) 3 SCC 512.

10. Per contra, learned counsel for the respondent has submitted that Schedule B of the MJS Rules stipulates minimum qualifying marks cumulatively for both written examination and viva-voce; and the said minimum qualifying marks so prescribed by the Rules were further clarified in the Full Court meeting dated 12th January, 2015 so as to avoid any discrepancies during the viva-voce conducted by the Interview Committee. It was submitted that the MJS Rules clearly stipulate "that all necessary steps not provided for in the Rules for recruitment shall be decided by the Recruiting Authority" and while so, the Full Court Resolution dated 12th January, 2015, fixing minimum cut-off marks as 40% cannot amount to change in the rules of the game. It was contended that the respondent has not deviated from the Rules nor has it adopted any different criteria for the aforesaid selection process.

11. For filling up one "unreserved" post of District Judge (Entry Level) Grade-I in Manipur Judicial Service, by direct recruitment from the Bar, admittedly, recruitment process was set in motion by advertisement dated 15th May, 2013. General Instructions with respect to the scheme of recruitment were appended to the said advertisement. The said instructions in the advertisement were incorporated from Schedule 'B' ? Competitive Examination of Manipur Judicial Services Rules, 2005. As per MJS Rules, the competitive examination comprises of two parts viz., —(i) written examination comprising of three papers each carrying 100 marks total 300 marks; (ii) interview (viva voce) carrying 50 marks. General Instructions in Schedule 'B' Clause 1(3) read as under:-

> 3. GENERAL INSTRUCTIONS:-
>
> All candidates who obtain sixty percent or more marks or corresponding grade in the written examination shall be eligible for viva-voce examination.
>
> Provided that Scheduled Caste/Scheduled Tribe candidates who obtain fifty per cent or more marks or corresponding grade in the written examination shall be eligible for

the viva-voce examination. Selection of candidates shall be made on the basis of cumulative grade value obtained in the written and viva-voce examination. The object of the viva-voce examination under sub-rule (1) and (2) is to assess the suitability of the candidate for the cadre by judging the mental alertness, knowledge of law, clear and logical exposition, balance of judgment, skills, attitude, ethics, power of assimilation, power of communication, character and intellectual depth and the like of the candidate.

All necessary steps not provided for in these rules for recruitment under these Rules shall be decided by the recruiting authority. The mode of evaluating the performance of Grading in the written and viva- voce examination shall be as specified below:

EVALUATING PERFORMANCE IN COMPETITIVE EXAMINATION FOR JUDICIAL SELECTION The system Operates as follows:-

The questions in the question paper may carry numerical marks for each question.

The examiner may assign numerical marks for each sub-question which may be totaled up and shown against each full question in numbers. The tabulator will then convert the numerical marks into grades in a seven point scale with corresponding grade values as follows:

Percentage of marks Grade value	Grade	Grade Value
70% and above	O	7
65& to 69%	A+	6
60% to 64%	A	5
55% to 59%	B+	4
50% to 54%	B	3
45% to 49%	C+	2
40% to 44%	C	1
Below 40%	F	0

4. After converting the numerical marks of each question into the appropriate grade according to the formula given in first column above the tabulator will re-convert to Grades obtained for each question to the Grade value according to the value given in the third column above. .....

6. What happens if there are several successful candidates obtaining the same grade and the available positions are fewer in number? How do you rank them to determine who is to be given the job? Of course, this situation can develop with numerical marking also where persons with one mark of half a mark difference are given advantage. This is unfair given the fact that in actual practice this may happen because of the play of subjective elements on the part of the individual examiners. What is therefore recommended is a similar vigorous and objective grade value

exercise for the viva-voce examination as well.

7. At the end of each day's interview the tabulator will convert the numerical marks assigned to each category into grade and then to grade values. This will then be totalled up and the cumulative grade value average of each candidate interviewed will be obtained. .....

9. The final selection list will be readied by combining the cumulative grade value obtained in the written examination and the viva-voce examination. [Emphasis added]

12. The above instructions for Competitive Examination For Direct Recruitment of Grade–I Judicial Officer were inter alia incorporated in the 2013 advertisement. On a reading of Clause 1(3) – General Instructions in Schedule 'B', it is clear that the first respondent has reserved a residuary right in its favour to take necessary steps which are not expressly included in the Rules. Before conducting the interview/viva-voce of the petitioner, the High Court held a Full Court Meeting on 12th January, 2015 wherein Agenda No.2 – "qualifying marks for interview (viva- voce)" was taken up for discussion. After referring to the Rules–"Evaluating Performance in Competitive Examination for Judicial Selection" and also the table for converting numerical marks into grades, the Full Court resolved that 40% marks would be the minimum qualifying marks for the interview/viva-voce. The resolution of the Full Court reads as under:-

MINUTES OF THE FULL COURT HELD ON 12.01.2015 IN THE CHAMBER OF HON'BLE THE CHIEF JUSTICE Agenda No.2: Qualifying mark for interview (viva-voce) Resolution: A question as to what percentage would be the minimum qualifying marks for passing interview (viva-voce) is discussed. The following provisions of sub-rule (3) of Schedule-B of Manipur Judicial Service (MJS) Rules were taken into consideration:

"All necessary steps not provided for in these Rules for recruitment under these Rules shall be decided by the recruitment authority. The mode of evaluating the performance of Grading in the written and viva-voce examination shall be as specified below:

.....

The Full Court after considering the power conferred on the Recruitment Authority in the above states Rules and percentage of marks with Grade Value given above resolved that no one shall be declared passed and selected for appointment unless he secures minimum 40% from the interview (viva-voce).

13. Having regard to the submissions of the petitioner and the respondent, the question falling for consideration is whether prescribing 40% marks as the minimum qualifying marks for the interview after holding the written examination and before conducting the viva-voce was within the power of

the respondents; or whether it amounts to change in the criteria of selection in the midst of the selection process.

14. As seen from the MJS Rules - under the head - "EVALUATING PERFORMANCE IN COMPETITIVE EXAMINATION FOR JUDICIAL SELECTION", a scheme of converting the numerical marks of each question into an appropriate grade, according to the formula given in the table and re-converting into grades, is stipulated. In the table, the percentage of marks and Grade prescribe that marks below 40% is Grade 'F' which means 'Fail' and its Grade Value is '0'. The High Court has maintained that the Full Court decision prescribing minimum 40% marks in the interview/viva-voce was taken in order to introduce consistency in the criteria of evaluating performance of candidates in written examination and interview/viva-voce. Since the MJS Rules already stipulate that less than 40% marks is Grade 'F' with Grade Value '0', it is implicit in the Rules that for a 'pass' in the examination, 40% minimum marks need to be obtained, though of course as per MJS Rules, this is for the cumulative Grade Value obtained in the written examination and the interview/viva-voce examination. Keeping in view the MJS Rules, in particular, the table converting numerical marks into Grades and the final Select List that is prepared by adding cumulative grade value obtained in the written examination and the interview/viva-voce, it is my considered view that fixing 40% for interview/viva-voce out of total marks of 50 is in consonance with MJS Rules and it will not amount to change in the criteria of selection in the midst of selection process.

15. Clause 1(3), General Instructions of the MJS Rules reserves a right in favour of the High Court which enables the High Court to resort to the procedures, in addition to, what has been specifically laid down in the Rules. It provides that "all necessary steps not provided for in these Rules for recruitment under these Rules shall be decided by the Recruiting Authority". Having regard to the aforesaid provision, the High Court cannot be faulted with, in prescribing cut-off marks for the interview/viva-voce. The object of conducting interview/viva-voce examination has been rightly stated in the Rules to assess suitability of the candidate by judging the mental alertness, knowledge of law, clear and original exposition, intellectual depth and the like. The Rules further stipulate a vigorous and objective grade value exercise for the interview/viva-voce examination as well. Keeping in view the Rules and having regard to the seniority of the post which is District Judge (Entry Level), the High Court cannot be faulted with for exercising its residuary right reserved in its favour by prescribing cut-off marks for the interview.

16. Contending that change in the norms for selection by introducing the minimum marks for interview during the selection process would amount to change in the rules of the game, reliance was placed upon K. Manjusree v. State of A.P. (2008) 3 SCC 512 wherein this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the commencement of the game. It was held that the competent authority, if not restrained by the statutory rules, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

17. Counsel for the Petitioner has also relied on Hemani Malhotra v. High Court of Delhi (2008) 7 SCC 11. In Hemani Malhotra's case, the result of the written examination of the Delhi Higher Judicial Service was not announced by the High Court of Delhi, and individual communication was sent to the petitioners therein, informing them of their selection for the interview. Five candidates were called for interview on various occasions and were informed of its postponement, i.e. the interview first scheduled for 20.09.2006 was later deferred to 29.11.2006, 07.12.2006, 23.01.2007, 05.02.2007 and was finally conducted on 27.02.2007. Meanwhile on 13.12.2006, by a Full Court Resolution, minimum qualifying marks for the viva-voce was prescribed (55% for General Candidates and 50% for SC and ST candidates). In such facts and circumstances, prescribing minimum marks for the interview was struck down along the same lines as in the case of Manjushree.

18. Observing that prescribing minimum marks for the interview was not permissible after the written test was conducted, in Hemani Malhotra v. High Court of Delhi (2008) 7 SCC 11, it was held as under:

> "15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva-voce, but if minimum marks are not prescribed for viva- voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva-voce test was illegal."

19. In Hemani Malhotra, candidates were called for interview on various dates but no interview was held and it was deferred. In the meanwhile minimum qualifying marks were prescribed for interview. This is not the case before us. In this case, prior to the interview which was conducted on 12th February, 2015, a Full Court meeting was held on 12th January, 2015 and a decision was taken prescribing minimum qualifying marks for the viva- voce. Thus, it would be incorrect to contend that prejudice was caused to the petitioner, especially when no bias is alleged.

20. After referring to the cases of Manjusree and Hemani Malhotra, in Ramesh Kumar v. High Court of Delhi & Anr. (2010) 3 SCC 104, it was also held as under:-

> 15. Thus, the law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva- voce.
>
> 16. In the instant case, the Rules do not provide for any particular procedure/criteria for holding the tests rather it enables the High Court to prescribe the criteria. This

Court in All India Judges' Assn. (3) v.

Union of India (2002) 4 SCC 247 accepted Justice Shetty Commission's Report in this regard which had prescribed for not having minimum marks for interview. The Court further explained that to give effect to the said judgment, the existing statutory rules may be amended. However, till the amendment is carried out, the vacancies shall be filled as per the existing statutory rules. A similar view has been reiterated by this Court while dealing with the appointment of Judicial Officers in Syed T.A. Naqshbandi v. State of J&K (2003) 9 SCC 592 and Malik Mazhar Sultan (3) v. U.P. Public Service Commission (2008) 17 SCC 703. We have also accepted the said settled legal proposition while deciding the connected cases i.e. Rakhi Ray v. High Court of Delhi (2010) 2 SCC 637 vide judgment and order of this date. It has been clarified in Rakhi Ray v. High Court of Delhi (2010) 2 SCC 637 that where statutory rules do not deal with a particular subject/issue, so far as the appointment of the Judicial Officers is concerned, directions issued by this Court would have binding effect.

21. Both Hemani Malhotra and Ramesh Kumar relied upon Manjusree to hold that prescription of minimum marks in the interview was not permissible after the written test was conducted. After referring to State of Haryana v. Subash Chander Marwaha and Ors. (1974) 3 SCC 220 and observing that the principles laid down in Manjusree without any further scrutiny would not be in the larger public interest or the goal of establishing an efficient administrative machinery, in Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.(2013) 4 SCC 540 (three Judges), this Court observed that the matter deserves consideration by a larger Bench. In paras (12) to (15), it was held as under:-

> 12. If the principle of Manjusree case (2008) 3 SCC 512 is applied strictly to the present case, the respondent High Court is bound to recruit 13 of the "best" candidates out of the 21 who applied irrespective of their performance in the examination held. In such cases, theoretically it is possible that candidates securing very low marks but higher than some other competing candidates may have to be appointed. In our opinion, application of the principle as laid down in Manjusree case (2008) 3 SCC 512 without any further scrutiny would not be in the larger public interest or the goal of establishing an efficient administrative machinery.
>
> 13. This Court in State of Haryana v. Subash Chander Marwaha (1974) 3 SCC 220 while dealing with the recruitment of Subordinate Judges of the Punjab Civil Services (Judicial Branch) had to deal with the situation where the relevant rule prescribed minimum qualifying marks. The recruitment was for filling up of 15 vacancies. 40 candidates secured the minimum qualifying marks (45%). Only 7 candidates who secured 55% and above marks were appointed and the remaining vacancies were kept unfilled. The decision of the State Government not to fill up the remaining vacancies in spite of the availability of candidates who secured the minimum qualifying marks was challenged. The State Government defended its decision not to fill up posts on the ground that the decision was taken to maintain the high standards of competence in judicial service. The High Court upheld the challenge and issued a mandamus. In appeal, this Court reversed and opined that the candidates securing minimum

> qualifying marks at an examination held for the purpose of recruitment into the service of the State have no legal right to be appointed. In the context, it was held: (Subash Chander Marwaha case, (1974) 3 SCC 220 p. 227, para 12) "12. ... In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for more (sic mere) eligibility."
>
> 14. Unfortunately, the decision in Subash Chander Marwaha (1974) 3 SCC 220 does not appear to have been brought to the notice of Their Lordships in Manjusree (2008) 3 SCC 512. This Court in Manjusree (2008) 3 SCC 512 relied upon P.K. Ramachandra Iyer v. Union of India (1984) 2 SCC 141, Umesh Chandra Shukla v. Union of India (1985) 3 SCC 721 and Durgacharan Misra v.

State of Orissa(1987) 4 SCC 646. In none of the cases, was the decision in Subash Chander Marwaha (1974) 3 SCC 220 considered.

15. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the "rules of the game" insofar as the prescription of eligibility criteria is concerned as was done in C. Channabasavaih v. State of Mysore, AIR 1965 SC 1293 in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the "rules of the game" stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.

Since the decision laid down in the Manjusree's case is doubted and the matter is pending for consideration by a larger Bench, and in the facts and circumstances of this case, it is my view that the ratio laid down in Manjusree and Hemani Malhotra is not applicable to the present case.

22. This Court has laid much emphasis on interview/viva-voce in a catena of decisions. In the recruitment for judicial services, the importance of interview/viva-voce cannot be underestimated. Viva-voce is the best mode of assessing the suitability of a candidate as it brings out the overall intellectual qualities of the candidates. In Ramesh Kumar v. High Court of Delhi & Anr. (2010) 3 SCC 104, this Court held as under:-

> "11. In State of U.P. v. Rafiquddin (1987) Supp SCC 401; Krushna Chandra Sahu (Dr.) v. State of Orissa (1995) 6 SCC 1; Manjeet Singh v. ESI Corpn. (1990) 2 SCC 367 and K.H. Siraj v. High Court of Kerala (2006) 6 SCC 395 this Court held that the Commission/Board has to satisfy itself that a candidate had obtained such aggregate marks in the written test as to qualify for interview and obtained "sufficient marks in viva-voce" which would show his suitability for service. Such a course is permissible for adjudging the qualities/capacities of the candidates. It may be necessary in view of the fact that it is imperative that only persons with a prescribed minimum of said qualities/capacities should be selected as otherwise the standard of judiciary would

> get diluted and substandard stuff may get selected. Interview may also be the best mode of assessing the suitability of a candidate for a particular position as it brings out the overall intellectual qualities of the candidates. While the written test will testify the candidate's academic knowledge, the oral test can bring out or disclose overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership, etc. which are also essential for a Judicial Officer.

12. Reiterating similar views, this Court has given much emphasis on interview in Lila Dhar v. State of Rajasthan (1981) 4 SCC 159 and Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417 stating that interview "can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity with some degree of error."

23. Full Court decision dated 12th January, 2015 prescribing minimum qualifying marks for viva-voce is a decision taken towards ensuring the fair and meritorious appointment on the post advertised and no mala fide can be attributed to the respondents for such a decision. Had the High Court convened the Full Court Meeting after conducting the viva-voce and had then prescribed the minimum qualifying marks, the contention of the petitioner would have been justified. When the decision of the Full Court was to ensure selection of meritorious candidate, it cannot be said that the decision of the High Court amounted to change in the criteria of selection after the selection process has started.

24. Petitioner contends that the decision of the High Court to prescribe minimum qualification marks is against the recommendations of the Shetty Commission and is violative of the judgment of this Court in All India Judges' Association and Ors. v. Union of India and Ors. (2002) 4 SCC 247. It is further argued that in the said case, the Court accepted Shetty Commission's Report which has recommended not having cut-off marks in interview for the recruitment of the judicial officers.

25. No doubt, Shetty Commission has recommended in its Report that there should be no cut-off marks in the viva-voce test. Relevant recommendation of Shetty Commission reads as under:-

> "The viva-voce test should be in a thorough and scientific manner and it should take anything between 25 to 30 minutes for each candidate. What is recommended by the Commission is that the via voce test shall carry 50 marks and there shall be no cut-off marks in viva-voce test."

26. Admittedly, the Shetty Commission has recommended that the viva-voce test shall carry fifty marks and there shall be no cut-off marks in the viva-voce test. In All India Judges' Association case para (37), this Court subject to various modifications in the judgment, accepted all other recommendations of the Shetty Commission. While there was a detailed discussion on the perks, mode of recruitment to the Higher Judicial Service and the proportionate percentage for promotion as District Judges for judicial officers, limited competitive examination for Civil Judges (Junior

Division) and percentage of direct recruitment, there was no detailed discussion regarding the other recommendations of Shetty Commission. As rightly contended by the learned Senior Counsel for the respondent, All India Judges' Association case is sub silentio on the recommendation of Shetty Commission as to "no cut-off marks for the viva-voce". Contention of the petitioner that fixing cut-off marks for the viva-voce is in violation of the decision of this Court is not tenable.

27. Learned senior counsel for the respondents has also drawn attention to the Judicial Service Rules of various High Courts namely, Delhi, Maharashtra, Odisha, West Bengal and Himachal Pradesh which have prescribed minimum cut-off marks for the interview. Insofar as MJS Rules are concerned, such fixing of cut-off marks in the interview/viva-voce cannot be said to be arbitrary or in violation of the decision of this Court.

28. Yet another aspect of the matter is that the petitioner participated in the selection process and only because in the final result the petitioner being unsuccessful, he cannot turn around and contend that the criteria for selection was changed. It is fairly well-settled that the candidate having participated in the selection process without any protest cannot be allowed to turn around and question the very process having failed to qualify. In Madan Lal & Ors. v. State of J&K & Ors. (1995) 3 SCC 486, this Court observed:-

> "9. ... 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....
>
> 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."

29. In the written examination, the petitioner has secured 158.50 out of 300; in the interview/viva-voce 18.80 out of 50 totalling 177.30 out of 350 i.e. 50.65%. Learned senior counsel for the petitioner submitted that as per the existing Rules, the final selection is to be made by adding the cumulative grade value obtained in the written examination and interview/viva-voce examination. The petitioner having obtained cumulative percentage of 50.65 which is equivalent to Grade 'B'; it is contended that, had the High Court followed the Rules, the petitioner must have been declared to have been selected and the High Court has deliberately denied the appointment to the petitioner.

30. For the sake of argument, even assuming that the petitioner was successful in the selection, in my view, it would not give the petitioner an indefeasible right to get an appointment as well. Referring to various judgments, in Kulwinder Pal Singh and Another v. State of Punjab and Others (2016) 6 SCC 532, this Court held as under:

> 10. It is fairly well settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well.

The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India v. Bhanu Lodh (2005) 3 SCC 618, All India SC & ST Employees' Assn. v. A. Arthur Jeen (2001) 6 SCC 380 and UPSC v. Gaurav Dwivedi (1999) 5 SCC 180.

11. This Court again in State of Orissa v. Rajkishore Nanda (2010) 6 SCC 777 held as under: (SCC p. 783, paras 14 & 16) "14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate."

31. No mandamus can be issued in favour of the petitioner as no prejudice was caused to him. I say so because the 2013 advertisement was issued only for one 'unreserved' post. Had somebody else been appointed, the grievance of the petitioner might have had substance. Admittedly, nobody was appointed for the said post and the post remains vacant. Subsequent developments are also relevant and noteworthy. For filling up of three 'unreserved' posts of MJS Grade-I, fresh advertisement was issued on 12th August, 2015 by the High Court. The petitioner also applied for the said post. Because of litigation and certain directions thereon, selection process pursuant to the said advertisement was cancelled. In supersession of the said earlier advertisement, a fresh advertisement was issued by the High Court on 4th August, 2016 seeking applications for three 'unreserved' and one 'reserved' post of MJS Grade-I. The last date for the receipt of applications was 26th August, 2016 and the petitioner also applied for the said post. The learned senior counsel appearing for the High Court submitted that the examinations are likely to be conducted in October, 2016. When the said post of 2013 examination has now been clubbed with other vacant posts and advertised seeking applications from the eligible candidates, the petitioner cannot seek mandamus seeking for appointment for the said post with retrospective effect. The petitioner has no indefeasible right to seek appointment as District Judge (Entry Level) in the Manipur Judicial Services Grade-I. In the facts and circumstances of the case, the petitioner is not entitled to the relief sought for.

32. For the foregoing discussions, the petitioner is not entitled to the relief sought for. In the result, the Writ Petition is dismissed.

.....J. [R. BANUMATHI] New Delhi;

October 07, 2016

IN THE SPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION(C)No.294 of 2015

Salam Samarjeet Singh ….Petitioner

Versus

High Court of Manipur at Imphal & Anr. ….Respondents

O R D E R

Since there is a difference of opinion between us in view of the dissenting judgments pronounced by us, the matter may be placed before appropriate Bench for final adjudication after obtaining permission of Hon'ble the Chief Justice of India.

.....J. [SHIVA KIRTI SINGH] .....J. [R. BANUMATHI] New Delhi.

October 07, 2016.

---

[2] (2008) 3 SCC 512 [4] (2008) 7 SCC 11 [6] (2010) 3 SCC 104 [8] (2013) 4 SCC 540 [10] (1974) 3 SCC 220 [12] (2002) 4 SCC 247 [14] (1995) 3 SCC 486 [16] (2016) 6 SCC 532