
(1986) 04 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 57 of 1986

Arunkumar Ganeshrao Mukhedkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 25-04-1986

Acts Referred:

Bombay Judicial Services Recruitment Rules, 1956 — Rule 4
Constitution of India, 1950 — Article 234

Citation : (1986) 3 BomCR 378

Hon'ble Judges : V.P. Salve, J; R.R. Jahagirdar, J

Bench : Division Bench

Advocate : B.N. Deshmukh and G.N. Patel, for the Appellant; A.V. Savant, A.G. and S.S. Choudhary, Govt. Pled. for Respondent Nos. 1, 2 and 3, for the Respondent

Judgement

R.R. Jahagirdar, J.—The petitioner before us is a resident of Aurangabad. The first respondent is the State of Maharashtra Public Service Commission. The third respondent is the Registrar High Court of Judicature at Bombay.

2. The petitioner has passed the L.L.B, (New) Course Examination in the year 1978 from Marathwada University. He has enrolled himself as an Advocate with the Bar Council of Maharashtra on 17th February, 1979. Initially, he was practising in the District Court at Nanded and from 27th August, 1981 on the establishment of the Aurangabad Bench of the Bombay High Court. The petitioner is practising as an Advocate since 1979 till today.

3. On 22nd January, 1986 the 2nd respondent viz. the Maharashtra Public Service Commission, who here after will be referred to as the commission" , inserted an advertisement in the Daily Marathwada newspaper inviting applications for filling up 150 posts of the Civil Judges (J.D.) and Judicial Magistrate (First Class). The Petitioner is one of the application for the said posts. Some of the posts were reserved for Scheduled Caste and Scheduled Tribes. As per the advertisement, the qualification for post of the Civil Judge (J.D.) and

Judicial Magistrate (F.C.) are that the candidate must be an Advocate, Attorney or Pleader, having a practice of three years as on 7th March, 1986 in the High Court of Bombay or in other courts subordinate to the High Court. So also the candidate should have sufficient knowledge of Marathi. The advertisement has laid down an age limit between 21 to 35 years and for backward class candidates the age limit is upto 40 years as on 1st May, 1985. The said advertisement also provides that the candidate will have to appear for written examination in two papers. The first paper consisting of 100 marks will include the following 4 subjects :

1. Civil Procedure Code,
2. Transfer of Property Act,
3. Specific Relief Act, and
4. Law of Contracts, state of Goods Act and Partnership Act,

The second paper also consists of 100 marks and would include :

1. Indian Penal Code.
2. Evidence Act.
3. Code of Criminal Procedure and
4. an essay on the subject connected with law.

4. The petitioner before us has raised a serious objection to the compulsory written tests required to be under gone by every application for the said judicial posts. According to the petitioner, neither the State of Maharashtra nor the Commission has any authority to compel the applicant to appear for written examination. The candidates who have not only obtained the LLB. Degree but also have been practising as Advocates in the High Court as well as in the subordinate Court. The petitioner before us, on the grounds elaborately stated in the petition, has prayed for a that the advertisement dated 22nd January, 1980 issued by the Commission is illegal and to hold that the respondents have no authority to hold the written examination as prescribed by the advertisement dated 22nd January, 1986. The petitioner has also prayed for an injunction restraining the Commission and its Officers from holding the written examination as per the said advertisement and also from holding the interviews and from filling up the said judicial posts as per the advertisement dated 22nd January, 1986.

5. Shri V.R. Gaonkar Deputy Secretary of the Commission, in his affidavit-in-reply has justified the decision of the Commission in holding the written examination. According to the Commission, such a written examination will enable the Commission to attract and pick up better talents for the judicial posts. The Deputy Secretary to the Commission says that the Commission has already secured the approval of the High Court as well as the Government for holding the

screening tests. It is, therefore, the submission of the Commission that this Court should not interfere with the decision already taken by the Commission to hold the written tests and should dismiss the petition.

6. Shri. R.G. Sindhakar, Register of the High Court, Appellate Side, Bombay, in his affidavit has stated that the Honourable the Chief Justice and the Honourable Administrative Judges at their meeting on 16th August, 1984 have already sanctioned the holding of the written examination for short-listing of candidates for appointment as Civil Judges. It is the say of the Register that since the Honourable the Chief Justice and the Honourable Administrative Judge of the High Court have already sanctioned the written examination, it is no longer open to the petitioner to challenge the same and this Court will not be justified in interfering with the said decision.

7. Mr. B.N. Deshmukh, the learned Counsel for the petitioner has, at the commencement of his arguments, invited our attention to Article 234 of the Constitution of India which states as follows :

"Appointments of persons other than district Judges of the judicial service of a State shall be made by the Governor of the State in accordance with rules made by the him in that behalf after consultation with the State Public Service Commission and with the High Court exercising Jurisdiction in relation to such State."

What is emphasised by Shri Deshmukh, the learned Counsel for the petitioner, is that both the State Public Service Commission and the Honourable High Court have merely a right to be consulted before the rules are finalised and approved by the Governor of the State. The final authority of approving the draft rules with or without modification is exclusively with the Governor. It is further submitted by Mr. Deshmukh for the petitioner that the Commission had no power or authority to compel the Advocates application to appear for the written examination, since the rules approved by the State Governor, do not contain any provision for holding a written test. In support of this contention that the rules do not provide for written test, he has invited our attention to Rule 4 of the Bombay Judicial Service Recruitment Rules, 1956. Which hereafter will be referred to as "the Judicial Rules" for the sake of brevity. Rule 4(i), inter alia, provides:

"Appointments to the post of Civil Judges (Junior Division) and Judicial Magistrate of the First Class shall be made by nomination from members of the Bar....."

Rule 4(ii) provides :

"the appointment shall be made by the Governor in consultation with the Commission..."

Our attention has been invited by Mr. Deshmukh for the petitioner to Rule 4(iii) of the Judicial Rules, which inter alia, provides :

"appointment other than appointments of retired Civil Judge (Junior Division) shall be made from among candidates who ---

(a) are ordinarily not less than twenty-one and not more than thirty-five years...

(b) unless otherwise expressly directed ordinarily have practised as Advocates, attorneys or pleaders in the High Courts subordinate thereto for not less than three years on the last date prescribed for the submission of the application:

(c) are certified in Greater Bombay by the Principal Judge of the City Civil Court or the Chief Judge of the Small Causes Court or the Chief Metropolitan Magistrate and elsewhere by a District Judge, to have sufficient knowledge of Marathi, to enable them to speak, read, write and translate with facility into English and vice versa."

8. Mr. Deshmukh, the learned Counsel for the petitioner, has urged before us that in order to qualify oneself for the post of the Civil Judge (Junior Division) and Judicial Magistrate (First Class), the candidate is required to fulfil the 3 conditions set out in Rule 4(iii) of the Judicial Rules which have been already referred to. The petitioner, therefore, having fulfilled all the 3 conditions could reasonably expect to be invited for interview for the said judicial post. It is the grievance of Mr. Deshmukh that the Commission besides the 3 conditions already mentioned above has also added one more condition which is of a compulsory nature viz. that each applicant must appear for the written tests in order to qualify himself or herself for an interview for the judicial post. This condition of the compulsory appearance for the written examination is violative of Rule 4(III) of the Judicial Rules inasmuch as the said Rules do not provide for holding of such written tests in order to qualify a candidate for the interview. It is also the submission of Mr. Deshmukh that the direction of the Commission for the compulsory written test in the form of a rule has not been admittedly approved by the Governor as is contemplated under Article 234 of the Constitution of India. This being the position, the direction of the Commission to the candidates requiring them to appear for the written tests compulsorily is also violative of Article 234 of the Constitution of India.

9. Mr. A.V. Savant, the learned Advocate General appearing for all the 3 respondents, including the Maharashtra Public Service Commission, has submitted before us that the decision to hold written tests has been taken by the Commission after due deliberations and considerable thought. It is not a decision taken in a hurry. Initially, the Law and Judiciary Department of the Government of Maharashtra, was requested to convey its views regarding the proposal to hold the written tests as a prelude to the interviews for the judicial posts. Similarly, the Honourable High Court was also requested to convey its views on the proposed written test. The Registrar of the High Court by his letter dated 17th August, 1984 informed the Secretary to the Government of Maharashtra, Law & Judiciary Department, that the High Court has approved the proposal for holding the written examination for short listing of the candidates. The said letter of the

Registrar of the High Court dated 17th August, 1984 was placed before the Government for its consideration and the Government accorded its approval on 5th September, 1984 for holding the written tests. The Government of Maharashtra by its letters dated 12th September, 1984 conveyed to the Maharashtra Public Service Commission the decision of the Government as also of the High Court according sanction for holding the written examination. It was submitted by the learned Advocate, General before us that since the two important limbs of the Government viz. the law & Judiciary Department as also the High Court has accorded its sanction for holding the written tests, it is no longer open to the petitioner to make a grievance about it in this writ petition. According to the learned Advocate General, the contention raised by the petition in this petition is frivolous and should not find favour with us.

10. This submission of the learned Advocate General does not appeal to us has to be rejected for the following reasons :

11. It is pertinent to note that the Judicial Rules are not framed either by the Honourable High Court or by the Maharashtra Public Service Commission. Article 234 of the Constitution of India makes it abundantly clear that the final authority to accord his approval to the draft rules suggested either by the State Public Service Commission or by the Honourable High Court rests exclusively with the Governor. Therefore, so long as the holding of the written examination does not find its approval from the Governor and does not find its place in the Judicial rules, the decision of the Maharashtra Public Service Commission to hold written examination without obtaining the approval of the Governor would in our opinion, be violative of both the Judicial Rules as well be Article 234 of the Constitution of India. In this connection, the wording of Article 234 of the Constitution of India requires careful consideration. On a careful reading of Article 234 it would be abundantly clear that both the High Court as well as the Maharashtra Public Service Commission have merely to play an advisory role in connection with any proposed rules. As already stated, the rules placed for the consideration of the Governor either by the High Court or by the Commission may or may nor find favour with the Governor, who may either accept the proposal in toto or in some cases accept them with modifications. This being the position the submission of the learned Advocate General fails to convince us and has, therefore, to be rejected.

12. It was then contended by the learned Advocate General that in case where posts are limited and the number of applicants is disproportionately large, in such an eventuality it is open to the Maharashtra Public Service Commission to evolve some criteria or method by which the list of the candidates who can qualify themselves for an interview can be short-listed. According to the learned Advocate General, the criteria evolved by the Maharashtra Public Service Commission of holding the written examination is not without any purpose. The criteria of holding the written tests has a nexus with the object to be achieved and the object to be achieved is that by screening the candidates, the

Commission would be in a position to find out better talents for the Judiciary. The learned Advocate General also wants us to take this fact into account that the Commission has asked each candidate to appear for the written examination and no discrimination has been committed by the commission regarding the written tests which is uniform. It was, therefore, contended before us that the ultimate object of holding the written test viz. to secure better talents for the judicial posts, be borne in mind by us while considering the submission made by the learned Advocate for the petitioner that the decision to hold written examination should be struck down as unconstitutional and violative of the Judicial Rule.

13. This submission also fails to convince us. Simply because each candidate has been asked to appear for the written examination cannot be the test to find out as to whether the ultimate object of getting better talents for judiciary will be achieved or not. This submission of the learned Advocate General cannot be accepted by us because the petitioner is challenging the very authority and the power of the Commission to hold the written examination and competing each candidate to appear for the same. The criteria of holding the examination having a nexus written ultimate object of attracting better talents for the Judicial Service, as adopted by the Commission, we find, is not uniform. Mr. Deshmukh, the learned Counsel for the petitioner has invited our attention to the Notification dated 26th February, 1986 issued by Shri V.R. Gaonkar, Deputy Secretary, Maharashtra Public Service Commission, from the Advocates for the posts of Metropolitan magistrates. Bombay and also for the posts of Judges in the Court of small causes, Bombay. The Notification contains the usual condition regarding the age as well as practice at the Bar, but what has been emphasised by Mr. Deshmukh, and in our opinion rightly so, is that this Notification for the posts of Metropolitan Magistrates as well as the posts of the Judge of the Court of Small Causes does not contain a provision for written examination at all. If the criteria adopted by the Maharashtra Public Service Commission of holding the written examination is true viz. to get better talents for the Judicial Service, in which event one would reasonably expect that there would be a similar provision of compulsory written examination in the Notification inviting application for the posts of the Metropolitan Magistrates and the Judge of the Court of small Causes, Bombay. In view of this position which emerges that for posts of Civil Judge, compulsory written test has been prescribed and for the posts of Small Causes Courts Judges and for the posts of Metropolitan Magistrates, no written tests are prescribed, the learned Advocate General has not been able to convince us as to how this compulsory written examination will enable the Commission to achieve its ultimate object of tracing the better talents for the Judiciary.

14. The learned Advocate General in support of his submission that in the event of the Commission receiving application disproportionate to the posts which are to be filled. In, the Commission is entitled to evolve a procedure by which the candidates can be short-listed. Mr. Savant, the learned Advocate General, has placed strong reliance on an unreported judgement of the Nagpur Bench of the Bombay High Court in Writ Petitions Nos. 2147 of 1983, 2107 of 1983 and 2103

of 1983 consisting of Pendse and Paunikar, JJ., it is pertinent to note that Mr. Deshmukh for the petitioner also relies on some passages from the same judgment. Mr. Savant has invited our attention to page 9. Paragraph 4, of the said judgement which inter alia contains the following observation:

"It is undoubtedly true that the Public Service Commission can prescribe some method or criteria to scrutinise application in case they are large in number and disproportionate to the number of posts available. It was not very seriously disputed on behalf of the petitioners that the Commission, while scrutinising the application may adopt a criteria to ascertain whether some of the eligible candidates should be dropped out. But it was contended that whatever may be the criteria adopted by the Commission, it must have nexus to the object to be achieved. The object to be achieved is obvious being selection of the best available material."

Relying strongly on this judgement, the learned Advocate General has contended before us that in consonance with these observations in the judgment of Pendse and Paunikar, JJ., it was decided by the Commission to hold the written tests and since the object to be achieved is the selection of the best candidates, the petitioner cannot make any grievance out of this.

15. We do not think that the decision of Pendse and Paunikar, JJ, in the three writ petitions can be of any assistance to the learned Advocate General. The facts in the three writ petitions before the Nagpur Bench of the Bombay High Court were as follows:

Several Advocates had applied for the posts of Civil Judges and Judicial Magistrates in response to the advertisement issued by the Maharashtra Public Service Commission. The Public Service Commission decided to invite only those Advocates. Applicants for Interview who had completed 5 years or more practice at the Bar. This criteria adopted by the Maharashtra Public Service Commission was challenged by the petitioners Advocates in the three writ petitions. Particularly what was challenged was Instruction No. 7, which was attached to application form and which can as follows :

"7. Where the number of applications from candidates who are eligible to be called for interview is disproportionately large in comparison with the number of advertised posts, the Commission, at their discretion may select candidates for interview by applying any criteria which may be decided by them. Candidates not selected for Interview will be informed of their non-selection, but the reasons for non-selection will not be communicated."

Pendse, J. formulated the question in the three petitions before him as follows:

"Whether it is permissible for the Commission to introduce a new criteria for determining whether a candidate who is otherwise eligible in accordance with advertisement should be called for interview."

Pendse, J. while considering this question has observed in paragraph 5 of his

judgement as follow:

".....While in the present case the selection is to be made in accordance with the Bombay Judicial Service Recruitment Rules framed by the Governor in exercise of constitutional powers. It is therefore, not open for the Commission to ignore those rules and adopt criteria of method which is in violation of the rules." (Under lining is ours)

"It is not permissible for the Commission to after the minimum requirement prescribed by the rules for selection to the post by prescribing that only these candidates who had put in practise of five years of more will be called for interview."

While striking down Instruction No. 7 which was challenged by the petitioners Advocates in the three writ petitioners as violative Articles 14 and 16 of the Constitution of India, Pendse, J., has held :

"It is impossible to accede to the submission. It is well settled that administrative Instruction issued by the Commission in setting the criteria cannot modify the statutory rules relating to recruitment and the action of the commission in not inviting each of the petitioner for interview was clearly erroneous." (Underlining is ours)

Therefore, the observation on which reliance was placed by the learned Advocate General have to be read with the question which arose for consideration before pendse, J. and the final decision given by him striking down instruction No. 7 as violative of Articles 14 and 16 of Constitution of India. This being the position we are clearly of the option that the decision cited by the learned Advocate General will not be of any help to him. On the other hand we are of the option that the observation which have been made by the Pendse, J., and the conclusion drawn by him in the three writ petition clearly go to support the contention of the petition before us.

16. Mr. Savant, the learned Advocate General then urged that his submission that in order to attract better on the Judiciary, it is within the powers of the Commission to impose an additional condition i.e. the written tests, is clearly supported by the decision of The State of Haryana Vs. Subash Chander Marwaha and Others, . In order to appreciate the submission made by Mr. Savant that it is open to the Commission to impose additional conditions in order to select better candidates for the Judicial posts, it would be necessary to refer to vary briefly, the fact of the Supreme Court case. On 3rd February, 1970 an advertisement was published in the Government Gazette for recruitment of 15 judicial posts. The Commission had discarded the claims of respondents Nos. 1 to 3 before the Supreme Court on the ground that they had secured less than 55 percent of marks in the written tests. That decision was challenged by way of writ petition in the High Court of Punjab and Haryana, who allowed the writ petition and issued a writ of mandamus to the State of Haryana to select respondent Nos. 1 to 3 to the Judicial posts. Against the said decision the State of Haryana filled an

appeal to the Supreme Court. On behalf of the State of Haryana it was contended that although under the Rules, the minimum of 45 percent was required to be considered for eligibility of a candidate for selection in the interest of maintaining high standard of judicial competence the State Government was not prevented from fixing the minimum standard of a score of 55 percent marks, particularly when it was approved by the High Court. This contention of the State of Haryana was accepted by the Supreme Court and while allowing the appeal the of the State of Haryana it was held.

"Even as is no constraint on the State Government in respect of the number of appointments to be made there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility."

17. This decision of the Supreme Court relied upon by the learned Advocate General in our opinion, cannot be of any assistance to him for two reasons. In the first place, the rules which came up for consideration before the High Court of Punjab and Haryana as well the Supreme Court were framed by the State Government itself and secondly, Rules itself specifically provided for the written examination laying down the minimum marks viz, 45 per cent before a candidate could qualify himself for an interview. So far as petition before us is concerned. It is common ground that the Judicial Rules have been approved by the Governor of the State of Maharashtra and not by the Government and, secondly, in the Judicial Rules which are before us, admittedly there is no provision for the conducting or holding a written test much less the provisions for the minimum marks required for the purpose of enabling the candidate to appear for an interview. This being the position, for the reasons already stated, the learned Advocate General cannot derive any assistance from the judgment.

18. Mr. Savant, the learned Advocate General then invited our attention to a decision in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, Particular reliance is placed on the following observation to be found in the judgment :

"It cannot be said that the oral interview test is so defective that selecting candidates for admission on the basis of oral interview in addition to written test must be regarded as arbitrary. The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates., but in the absence of any better test for measuring personal, characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse."

What is emphasised by the learned Advocate General relying upon this

judgement of the Supreme Court is that the Supreme Court has approved the written test coupled with the oral test for the purpose of evaluating the capacity and calibre of the candidates. It was urged that the same tests have been introduced by the Maharashtra Public Service Commission viz. the written test which will be followed by the oral test. Since the proposed written test finds favour in this the decision of the Supreme Court, the petitioner before us is not entitled to any relief.

19. Here again we do not think that the submission of Mr. Savant is well founded. The Supreme Court was only concerned with the question of the introduction of the oral as well as written tests for the purpose of selecting the candidates to the College. The question involved in the present petition for our consideration was not before the Supreme Court. The Supreme Court was not concerned with the Judicial Rules, approved by the Governor of Maharashtra. Therefore, simply from these observations we are not prepared to come to the conclusion that in the absence of specific provision in the Judicial Rules, after getting approval of the Governor as contemplated under Article 234 of the Constitution of India, the Maharashtra Public Service Commission can be permitted to conduct the written test which is envisaged by them.

20. The criteria of the written tests having nexus with the object to be achieved viz. the selection of the better talents for the judicial posts cannot be accepted by us for the following reasons:

21. Firstly written test has not been provided in the Judicial Service Rules. Secondly, in paragraph 2 of the affidavit-in-reply filed by Shri V. R. Gaonkar, Deputy Secretary of the Maharashtra Public Service Commission, has stated.

"....then to invite to the final interview those who come up in the screening test result, on the basis of qualifying standards prescribed for general and backward class candidates..." Although in the affidavit-in-reply there is a clear reference to the qualifying standards prescribed for general and backward class candidates, the perusal of the advertisement would show that it merely makes a reference to the candidates being required to appear compulsorily for the written examination. The qualifying standards prescribed for general and backward class candidates, which are required to be achieved, before they can qualify themselves for an interview, have not been stated in the advertisement at all. With the result that the candidates who will be appearing for the completely in the dark. They are not made aware as to what are the qualifying standards which are to be achieved by them, both by general as well as backward class candidates in order to enable them to qualify for an interview. If the authorities have fixed a qualifying standard for general candidates, say at 55 percent and for backward class say at 45 percent in our opinion in fairness to the candidates. It must to made clear to them. Otherwise they will be appearing for the examination without knowing as to how much percentage of marks they are required to secure before they could qualify themselves for the interview. Respondent No. 2 namely the commission will not know, from the answer papers

who are the general and who are the reserved class candidates. Thirdly, in paragraph two of the affidavit-in-reply, the secretary to the Commission has stated: "Generally, candidates about thrice the number of posts available in such category are invited for such interview."

The Judicial posts as per the advertisement are 150. Statement was made at the Bar by the learned Advocate General that the Commission has received as many as 2100 applications for these posts. As per the usual practice followed by the Commission, thrice the number of the vacant posts will be invited for an interview, which would mean that for the 150 posts, about 450 candidates will be invited. Now, if all the 2100 candidates appear for the examination and if, say 50 per cent of them viz. about 1050 in number answer the qualifying tests, in which case it was expected of the Commission to make an unqualified statement in their affidavit-in-reply that all the candidate who will achieve the qualifying standard will be called for the interview. At one place in the same paragraph, the Deputy Secretary says that generally candidates about thrice number of the available posts will be called for interview, at other place he says those who come up screening test will be called for interview. In view of these conflicting and contradictory statements in the affidavit of respondent No. 2 an element of uncertainty is introduced regarding the future of applicants who have been directed to appear for written test. According to us, injustice will be done to those candidates who despite achieving the qualifying standards, may not be invited for interview. This is an unsatisfactory affidavit-in-reply. This would be an anomalous position which might emerge if the written tests, as envisaged by the Commission are permitted to be held. Fourthly, as we have already stated that the candidate who have applied for the posts of the Judge of the Court of Small Causes will not be required to appear for any of the written tests : whereas the candidates who have applied for the posts of Civil Judge (Junior Division) and Judicial Magistrate (First Class) will be compelled to appear for the written examination. Compelling the candidates to appear for the written test, though not provided in Rules and not approved by the Governor of this State, and which is an admitted position, will be violative of Article 234 of the Constitution of India and also of Judicial Rules. Candidates will be compelled to appear for the written tests for the posts of Civil Judge (Junior Division) and Judicial Magistrates (First Class). But the candidates will be exempted from appearing for the written examination for the post of Metropolitan Magistrates as well as Judge, of Court of small Causes, Bombay. This is the anomalous position which will clearly emerge in case the Maharashtra Public Service Commission is permitted to hold the written tests.

22. Fifthly, and lastly it does appear from the affidavit-in-reply of the Deputy Secretary to the Maharashtra Public Service Commission that in case the number of applicants is disproportionately large to the number of applicants is disproportionately large to the number of advertised posts, they will hold the written examination which would by implication mean that, in case the number of applicants is not disproportionately large, they may not hold the written

examination at all. Under this situation, it will be impossible for us to accept the contention of the learned Advocate General for the State Government that the criteria of holding the written examination has a nexus with the object to be achieved viz. to achieve better talents for the judicial posts.

23. In our opinion, in order to prescribe compulsory written test, it will be necessary for respondent No. 2 namely Maharashtra Public Service Commission, to get the existing Judicial Service Rules amended, by providing for compulsory written test and also by providing for qualifying standard for an Interview for general and backward class candidates. For such an amendment, it is also essential to get the approval of the Governor of this State as required by Article 234 of the Constitution of India.

24. For the reasons stated in the preceding paragraph of the judgement, the petitioner succeeds in this petition. These are all the submission which have been made before us by Mr. B.N. Deshmukh, the learned Counsel for the petitioner and the learned Advocate General for the respondent.

25. As urged by Mr. Deshmukh, entire advertisement published by respondent No. 2 namely Maharashtra Public Service Commission cannot be declared as illegal, In as much as except the direction for compulsory written examination, the rest of advertisement is in consonance with the Judicial Service Rules.

26. Before we proceed to pass the final order, we want to make it abundantly clear that although we have decided the proposed written tests to be conducted by the Maharashtra Public Service Commission as illegal and unconstitutional, this decision will not prevent the respondent. No. 2 namely the Maharashtra Public Service Commission if it so desires, to proceed with its other programme of holding the interviews and of filling up the judicial posts as advertised by the Maharashtra Public Service Commission.

27. After, therefore, considering the submissions made before us by Mr. B. N. Deshmukh, the learned Counsel for the petitioner and the learned Advocate General for respondents Nos. 1, 2 and 3, and for the reasons stated in the preceding paragraph, we pass the following order :

28. ORDER

(i) Rule is made absolute in terms of prayer (b) in so far as it relates to holding of written examinations.

(ii) Rule is made absolute in terms of prayer (c-1).

(iii) There will be no order as to costs.