

(2019) 02 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No. 5983, 2642, 2644 Of 2016 (S-Res)

Dhanesh Mugali, B.Com., LLb,

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:

Citation : (2019) 02 KAR CK 0013

Hon'ble Judges : R. Devdas, J

Bench : Single Bench

Advocate : B.V. Acharya, Vijetha R Naik, Sridhar N Hegde, Udaya Holla, Vivek Holla

Final Decision : Dismissed

Judgement

1. These writ petitions relate to direct recruitment to the cadre of District Judges in the subordinate judicial services in the State.
2. The High Court of Karnataka notified 50 vacancies to be filled up in the recruitment Notification dated 30.06.2015. About 2,348 candidates appeared for the written examination, while only 16 candidates emerged successful in the written examination which consisted of two papers in Civil and Criminal law. The minimum marks prescribed for SC/ST candidates for being considered for interview/viva-voce is 45%, while candidates of general merit had to secure minimum of 50%, in the written examination. The petitioners secured more than the minimum prescribed marks as stipulated and were called for interview. When the final select list was announced on 07.12.2015, only eight candidates found their names in the final select list, while the names of the petitioners did not find a place in the final select list. Being aggrieved, the petitioners are before this Court.
3. Learned Senior Counsel Shri B. V. Acharya, appearing for the petitioners submits that the respondents have not informed the petitioners, the reason for their non-inclusion in the final select list. Informally, the petitioners were later

given to understand that the petitioners were not selected because they have not obtained the minimum marks prescribed in the interview/viva-voce. The learned Senior Counsel points out to sub-clause (d) of Clause (1) of the recruitment Notification which prescribes minimum of 40% to SC/ST candidates and a minimum of 45% to General Merit candidates in interview for being eligible to be considered for selection to the post. The main ground of attack is the prescription of minimum marks in the provision, clause (1) (d) of the recruitment Notification.

4. The learned Senior Counsel places reliance on a judgment of the Apex Court in the case of Ramesh Kumar Vs. High Court of Delhi and Another reported in (2010) 3 SCC 104. It was pointed out that in the said decision, the earlier case in Durgacharan Misra Vs. State of Orissa reported in (1987) 4 SCC 646 was also considered. In Durgacharan's case (supra), the Apex Court considered the Orissa Judicial Service Rules which did not provide for prescribing minimum cut-off marks in interview for the purpose of selection. The Apex Court held that in absence of the enabling provision for fixation of minimum marks in interview if minimum marks are prescribed, it would amount to amending the Rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in (1980 Supp. SCC 524), P.K.Ramachandra Iyer Vs. Union of India (1984) 2 SCC 141 and Umesh Chandra Shukla Vs. Union of India, (1985) 3 SCC 721, wherein it had been held that there was no 'inherent jurisdiction' of the selection committee/ authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e., 'inherent jurisdiction' is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the Rules is likely to cause irreparable and irreversible harm.

5. It was further observed that in the case of All India Judges' Association (3) Vs. Union of India reported in (2002) 4 SCC 247, the Apex Court accepted Justice Shetty Commission's report which had prescribed for not having minimum marks for interview. The Apex 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. It was further observed that similar view was reiterated in the case of Syed T.A Naqshbandi Vs. State of J & K, (2003) 9 SCC 592 and Malik Mazhar Sultan (3) Vs. U. P. Public Service Commission, (2008) 17 SCC 703. It was further observed that the settled legal position was accepted in Rakhi Ray Vs. High Court of Delhi reported in (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 the Apex Court would have binding effect.

6. It was also pointed out that in All India Judges' Association (3) case (supra), the Apex Court had accepted Justice Shetty Commission's Report in this respect i.e., that there should be no requirement of securing the minimum marks in

interview, thus, this ought to have been given effect to. The Apex Court had issued directions to offer appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in the interview, ignoring the requirement of securing minimum marks in interview. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates.

7. The learned Senior Counsel submits that the Karnataka Judicial Service (Recruitment) Rules, 2004 and Amended Rules, 2011, do not prescribe minimum marks to be obtained by a candidate in interview/viva-voce. In that view of the matter, it is submitted that the respondents could not have prescribed the minimum marks in interview/viva-voce for being considered for selection to the post. In view of the directions issued in Ramesh Kumar's case (*supra*), it is further submitted that the High Court should be directed to offer the appointment to the petitioners who have secured the requisite marks in aggregate in the written examination, ignoring the requirement of securing minimum marks in the interview.

8. Per contra, the learned Advocate General appearing for the respondents submits that the petitions have to be rejected on the ground of acquiescence. It is submitted that the petitioners were aware of the condition stipulated in the recruitment Notification and having accepted the stipulation of having to secure minimum marks in the interview/viva-voce, the petitioners cannot contend that the stipulation should be ignored.

9. On factual aspects, this Court wanted to ascertain the marks obtained by the petitioners in the interview/viva-voce. During the course of the proceedings, the learned Advocate General furnished the records and the marks obtained by the candidates in the interview/viva-voce. It is seen from the marks sheet that the average marks obtained by the petitioners in the interview is less than the marks prescribed under clause (1) (d) of the recruitment Notification.

10. On the question of acquiescence, the learned Advocate General placed reliance on the following judgments:

- i) *Dhananjay Malik and others Vs. State of Uttaranchal and others* (2008) 4 SCC 171;
- ii) *Manish Kumar Shahi Vs. State of Bihar and Others* (2010) 12 SCC 576; and
- iii) *Madan Lal and others Vs. State of J & K and Others* (1995) 3 SCC 486.

11. Moreover, it was pointed out by the learned Advocate General that in the case of *Salam Samarjeet Singh Vs. High Court of Manipur at Imphal* and another reported in (2016) 10 SCC 484, the Bench was split on the question as to whether the prescription of minimum marks for interview could be stipulated. It was also pointed out that Ramesh Kumar was considered in the latest judgment.

12. Heard learned Senior Counsel Sri. B.V. Acharya for petitioners and Sri. Udaya

Holla, learned Advocate General for the respondents.

13. No doubt, in Ramesh Kumar's case, the Apex Court had held that in All India Judges' Association (3) case, the Apex Court had accepted Justice Shetty Commission's report that there should not be a stipulation on minimum marks to be obtained in interview and as a consequence, the directions ought to have been given effect to. But the fact remains that many of the High Courts including the High Court of Karnataka continued to maintain the requirement of minimum marks to be obtained in interview. It is interesting to note that one of the judges of the Apex Court, in the case of Salam Samarjeet Singh (supra) has held that All India Judges' Association (3) case is sub silentio on the recommendation of Shetty Commission as to "no cut-off marks for viva-voce". It was also opined that the contentions of the petitioners that fixing cut-off marks for the viva-voce is in violation of the decision of the Apex Court is not tenable. What is even more noteworthy is that a co-ordinate Bench of three Judges of the Apex Court, in the case of Tej Prakash Pathak and others Vs. Rajasthan High Court and Others reported in (2013) 4 SCC 540, considered the judgment in Ramesh Kumar and opined that application of the principle as laid down in K. Manjusree vs. State of A.P., (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.

14. Their Lordships have further held that the decision in Ramesh Kumar was unfortunately taken without considering the decision in The State of Haryana Vs. Subash Chander Marwaha and Others reported in (1974) 3 SCC 220. In fact, it was observed that the decision in Manjusree's case was also without reference to Subash Chander Marwaha. However, since the question was whether the State or its instrumentalities could be permitted to tinker with the 'rules of the game' insofar as the prescription of eligibility criteria is concerned, altering the selection criteria in middle of the selection process, their Lordships felt it required authoritative pronouncement of a larger bench. Therefore, the matter was placed before the Hon'ble Chief Justice of India for appropriate orders.

15. In the case on hand, the 'rules of the game' were not altered during the selection process. The prescription of minimum marks in the interview was stipulated in the recruitment Notification. Therefore, the petitioners are in no way prejudiced. To that extent, this Court is of the opinion that the observations in Tej Prakash Pathak, which is a subsequent judgment, would be sufficient to decide this case.

16. In Tej Prakash Pathak their Lordships have observed that if the principle of Manjusree's case is applied strictly, the 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. It was therefore opined that application of the principle as laid down in Manjusree without any further scrutiny would not be in the larger public interest or the goal of establishing efficient administrative machinery.

17. Their Lordships have further observed that in Subash Chander Marwaha while dealing with the recruitment of subordinate Judges, the Apex Court 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 were appointed and the remaining vacancies were kept unfilled. The decision of the State Government not to fill up the remaining vacancies inspite 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 high standards of competence in judicial service. The High Court upheld the challenge and issued a mandamus. In appeal, the Apex Court reversed and opined that the candidates securing minimum qualifying marks at an examination held for the purpose of recruitment into judicial service of the State have no legal right to be appointed. In that context, it was held that 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.

18. In the light of the above, it is clear that even if minimum marks are not prescribed for interview, the selection committee is entitled to form an opinion about the suitability or unsuitability of a candidate to be appointed as a Judge. Moreover, as observed by Their Lordships in the cases of Subash Chander Marwaha and Tej Prakash Pathak, minimum marks prescribe an average standard and a candidate becomes eligible for consideration on having crossed the minimum level. Mere crossing of the minimum standard does not vest a right in the candidates to claim or seek a writ of mandamus to appoint him or her to the post of a Judge.

19. In the case on hand, the prescription of minimum marks in the interview was stipulated in the recruitment Notification. No prejudice is caused to the petitioners. Having regard to the minimum marks prescribed, the selection Committee has assessed the candidates and awarded lesser than the minimum marks prescribed, in respect of the petitioners. There is a definite meaning behind the marks awarded to the petitioners. We cannot disregard the combined and considered opinion of the members of the selection committee, who are none other than the Hon'ble Judges of this Court. If the Committee is of the opinion that a candidate is unsuitable to be appointed as a Judge, the decision of the Committee requires to be respected.

20. This Court deems it fit to volunteer a suggestion as regards the contentious issue of fixation of minimum marks in the interview. There is no harm in doing away with the minimum marks in interview, provided, a clause could be stipulated that if the selection Committee is of the opinion that a candidate is not suitable for appointment, the Committee could mark the candidate as 'failed' or 'try again', where the candidate is found too young. Marks could be awarded in

the interview only for 'suitable' candidates for further consideration, in terms of the other provisions.

21. In the light of the discussions above, this Court is of the opinion that the decision of the selection committee in awarding lesser than the minimum marks prescribed in the interview would only mean that in the assessment of the Committee, the candidature of the petitioners for appointment as Judges, cannot be considered. As stated earlier, the assessment and considered opinion of the selection Committee requires to be respected and upheld. It is only the members of the selection Committee who had the benefit of personally interviewing the candidates and assessing the performance and personality of the candidates. This Court cannot substitute its view to that of the selection Committee, lest it would belittle the duly considered opinion of the selection Committee.

The writ petitions are accordingly dismissed. No order as to costs.