

(2009) 05 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No's. 3118, 4475, 4589, 4652 and 4782 of 2008 and
O.S. Writ Petition No. 2562 of 2008

Dipti Dipak Kolapkar and Others

APPELLANT

Vs

The Maharashtra Public Service Commission and State of
Maharashtra and Others

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Bombay Judicial Services Recruitment Rules, 1956 — Rule 3(1), 4
Draft Maharashtra Judicial Rules, 2007 — Rule 6
Draft Maharashtra Judicial Service Rules, 2006 — Rule 6(2)
Right to Information Act, 2005 — Section 8(3)

Citation : (2009) 4 BomCR 59 : (2009) 111 BOMLR 2131

Hon'ble Judges : Swatanter Kumar, C.J.;S.C. Dharmadhikari, J

Bench : Division Bench

Advocate : V.A. Sugdare, in WP No. 4589 of 2008, Dipti D. Kolapkar, in WP No. 3118 of 2008, Syedullah K. Khan, in WP No. 4475 of 2008, U.P. Warunjikar and Nitesh Bhutekar, in AS WP No. 4652 of 2008 and N.E. Deshmukh, in WP No. 4782 of 2008, for the Appellant; V.S. Masurkar, Government Pleader and A.G. Damle, for Respodent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—Principally a common ground of challenge raised by the Petitioners, in all these Writ Petitions, is whether Maharashtra Public Service Commission (hereinafter referred to as "Commission") could introduce the element of minimum marks to be obtained in the written examination as qualifying marks for being called for vivavoce test subsequent to issuance of advertisement issued by the said Commission for the post of Civil Judge, Junior Division, and Judicial Magistrate, First Class. According to the Petitioners, the Commission adopted a criteria different than the one advertised and the Rules of the examination were changed midway. Thus, they pray for quashing and setting aside the entire selection process of the said examination which was conducted in furtherance to the advertisement dated 4th July, 2007 and also pray for

issuance of other directions. To substantiate their reliefs claimed, the Petitioners also rely upon the principles of reasonable expectancy and promissory estoppel.

2. Reference to the basic facts giving rise to this bunch of Writ Petitions is necessary. While examining the factual matrix, we are not referring to the facts stated in each of the cases. Suffice it to refer to the allegations and the grounds stated in Writ Petition Nos. 3118 of 2008, 4652 of 2008, 4675 of 2008 and 4782 of 2008.

3. The Petitioners are law graduates who completed their LL.B. Examination during the years 2005-2007 and claim to have secured reasonably good marks in their LL.B. Examination. Thereafter, they enrolled themselves as Advocates with the Bar Council of Maharashtra and Goa and are practicing Advocates. On 4th July, 2007, the Deputy Secretary of the Commission issued an advertisement inviting applications for filling up 150 vacancies to the post of Civil Judge, Junior Division and Judicial Magistrate, First Class. The last date for submission of the applications was 3rd August, 2007 and the competitive examination was to be conducted on 6th October, 2007. Corrigendum to the said advertisement dated 4th July, 2007 was issued by the Commission on 25th July, 2007 clarifying the number of posts which was increased by 175. In other words, according to the Petitioners, 325 posts were available for recruitment for which the examination was to be conducted. However, the date of the competitive examination was preponed from 6th October, 2007 to 22nd September, 2007. According to the Petitioners, they fulfilled all the qualifications prescribed for the said test in terms of Bombay Judicial Service Recruitment Rules, 1956, (hereinafter referred to as the "Rules"). The Petitioners allege that result of the competitive examination was unduly delayed and the same was declared on 13th March, 2008. In the said result, it was declared that only 163 candidates had qualified for oral examination. The roll numbers of the Petitioners did not appear in the list of qualified candidates and the Petitioners could not ascertain whether or not they had obtained cutoff marks as fixed by the Commission. It is further case of the Petitioners that Clause 2.6.3.1 of the prospectus published by the Commission provided for the examination to be held in two stages, 200 marks for written examination and 60 marks for vivavoce test. Clause 2.6.6.1 provides that minimum cutoff line fixed would be such that the candidates available for vivavoce test would be two to three times of the total number of posts (vacancies) and the candidates who qualified as per the cutoff line alone would be called for interview. There being 325 posts available, the number of persons who would have to be qualified for interview thus would have been 650 to 975. The Commission's action in calling only 163 applicants on the basis of a cutoff line or qualifying marks is unjust and that the applicants who had secured minimum 50% marks in the written examination had been called for interview.

4. On this premise, according to the Petitioners, fixation of condition of obtaining 50% marks in the written examination is violative of Article 14 of the Constitution of India. The Petitioners came to know from the result sheets that

they were required to obtain 50% marks in each subject. This condition was introduced at a subsequent stage which is impermissible. In any case, without prejudice to the above, the condition of 50% marks in each paper was not prescribed by any Competent Authority at any point of time and as such the same could not have been in force against the applicants who have taken the 2007 examination.

5. In Writ Petition Nos. 4782 of 2008, it is averred that the Petitioners obtained 122, 104 and 110 marks, respectively, out of 200 marks but they were shown as not qualified. The result of such change after holding of the written examination is that the petitioners have been denied consideration for appointment to the said posts. The cutoff marks were required to be such that they would provide at least three times of the number of candidates of the existing vacancies, to be filled up, the fixation of cutoff line in individual papers is contrary to the prescription stated in the prospectus. This action of the Respondents is entirely arbitrary. In Writ Petition No. 4782 of 2008 and 4475 of 2008, the Petitioners claim that though they had obtained 50% marks in written examination, they were not called for interview on the ground that 50% marks have to be obtained in each paper and not in aggregate.

6. Separate reply affidavits have been filed on behalf of Respondent Nos. 1 and 2, respectively. According to the Commission, 150 posts of Civil Judge, Junior Division and Judicial Magistrate, First Class were advertised on 4th July 2007 and thereafter a Corrigendum for additional 175 posts was also issued on 25th July 2007. In order to effectuate the directions issued by the Apex Court in the case of All India Judges Association and Others Vs. Union of India (UOI) and Others, in respect of Shetty Commission and in the case of Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others, , the Government of Maharashtra vide its letter dated 14th August 2007 requested the Commission to follow the procedure for the selection in question. The following extract of the said letter has been referred to in the reply :"

The report of the Shetty Commission has been approved by the Apex Court in All India Judges Case. In the draft recruitment rules prepared by the Shetty Commission there exist recruitment of candidate securing not less than 60% marks before he qualifies for viva voce examination. This is to ensure merit based selection. In the proposed draft rules received from the High Court and in turn which were sent to you, there exist similar provision of holding a written examination and further provision to the effect that to qualify for viva voce examination, one has to secure not less than 50% marks. It is, therefore, expected that the provision, of candidate securing not less than 50% marks for being qualified for viva voce examination, will have to be enforced despite the fact that rules containing such provision are yet to be notified."

7. Vide letter No. CJM2005/ 1794(282)/III dated 16th November 2007 the State also clarified that securing 50% marks was essential to be qualified for viva voce. Though, according to the Commission no specific Rules had been framed, the

recommendations of the Shetty Commission are being followed in letter and spirit. The revised Draft Recruitment Rules for these posts were submitted to the Commission for its opinion by the Government. These Rules were approved by the Full House of the High Court and the Commission furnished its opinion vide its letter dated 29th November 2007. However, the Draft Rules were not finalized till declaration of the result. The 1956 Rules do not specifically provide for conducting of a written examination and in fact the Rules are entirely silent as regards written examination. The rules only refer to an interview and this procedure was being followed till 1984 when screening test was introduced keeping in view the large number of applications and difficulties faced in preparing the merit list. In the year 2003, the Commission started two tier competitive examination for the Civil Judges, Civil Judge, Junior Division and Judicial Magistrate, First Class, a written test followed by interview. The Commission also followed the procedure of evaluation, moderation and cross moderation which had been established by it vide order dated 13th February 2004 which was in relation to valuation of answer sheets. Nearly 7298 candidates appeared for the written examination of 2007 and out of them only 163 candidates could get minimum 50% marks so only 163 candidates qualified for the interview which was conducted by the Committee consisting of one Hon'ble High Court Judge and one Member of the Commission. The cut off line of 50% marks in the written examination was introduced as per acceptance and directions issued by the Supreme Court on the basis of the recommendations of the Shetty Commission Report and in fact it was 10% lower than the cut off recommended by the Shetty Commission report and it was so kept also on the basis of Government letter dated 14th August 2007, 8th November 2007 and 16th November 2007 in which the High Court had also been consulted. The information which the Petitioners had asked for vide their letter dated 13th February 2008 under the Right to Information Act was partly replied to vide letter dated 9th May 2008. In the affidavit filed on behalf of Respondent Nos. 2 and 3, in addition to the above it has been averred that the Draft Maharashtra Judicial Rules, 2007 were drafted and accepted by the High Court which thereby had fixed the criteria of securing 50% marks in written examination for being qualified for viva voce test. As meritorious candidates are to be appointed to the post of Judicial Officers, the Supreme Court on the recommendations of Shetty Commission had directed that those candidates should be interviewed who had got 60% or more marks. Rule 6 of the Draft Rules have been referred to, which reads as under:

Rule 6 Competitive Examination -

(2)(a) The competitive examination for recruitment of Civil Judges shall consists of

(i) a written examination of xxxxxx (details to be specified)

(ii) Viva voce examination with less than 1/3 of the marks for the written examination.

(b) 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 percent or more marks or corresponding grade in the written examination shall be eligible for the viva voce examination;

(c) Selection of candidates shall be made on the basis of cumulative grade value obtained in the written and viva voce examination.

The Draft Rules of 2007 which are on the lines of Shetty Commission recommendations as accepted by the Supreme Court and which were ultimately adopted and confirmed as Maharashtra Judicial Service Rules, 2008, notified on 25th August 2008, make such a prescriptions which not only provide this criteria but even states the requirement of scoring/securing 50% or more marks in each subject in the written examination to qualify for viva voce. It is stated that thus 163 candidates were the ones who had secured 50% or more marks in each subject and were treated as eligible for viva voce.

8. A preliminary objection has also been taken by the Respondents as to the maintainability of the Writ Petitions on the ground that the successful candidates have not been joined as parties though the Writ Petition has been filed only after the declaration of the result. Furthermore, the Petitioners are not entitled to any relief on merits as merit is the sole criteria for selection to these posts which is in conformity with the Rules.

9. According to the Petitioners, the Draft Rules and for that matter any subsequent criteria adopted to the advertisement, and in any case after holding of the examination, different than the one stated earlier cannot be applied and particularly to the disadvantage of the Petitioners and as such the entire selection is liable to be quashed and they are entitled to pray for issuance of a fresh merit list. However, in Writ Petition No. 4652 of 2008 the Petitioner has not made such a prayer and has confined his relief to the extent that the Respondent particularly the Commission should be directed to call the Petitioner for interview without applying the eligibility criteria for viva voce being 50% marks in each of the subjects. They also contend that there was no occasion for applying the Shetty Commission recommendations to the present selection. The Respondents, on the other hand, contend that the selection has been conducted strictly in accordance with law in force and the Petitioners even having participated in the entire selection process now cannot turn back to challenge the process of selection. The condition of 50% has been enforced and applied equally to all and no prejudice has been caused to any candidate keeping in view that merit is the criteria for appointment to such posts.

10. From the above narrated facts, it is clear that only Rules that were notified in force with regard to appointment to the posts of Civil Judge, Junior Division and Judicial Magistrate, First Class were the Bombay Judicial Services Recruitment Rules, 1956 as modified upto 25th July 2003. Under these Rules, "service"

means the Judicial Service of the State of Maharashtra which included both the levels of services, high judicial services as well as Civil Judges, Senior and Junior Divisions. Constitution of Service has been provided under Rule 3(1) as Junior Branch and Senior Branch. The Junior Branch was to consist of Judges of the Small Causes Courts at Bombay and at places other than Bombay, Civil Judges (Senior Division), Chief Judicial Magistrate and Additional Chief Judicial Magistrate. Rule 4 of these Rules deals with appointment to the post of Civil Judges, Junior Division and Judicial Magistrate, First Class and it provides as follows :

4. METHOD OF RECRUITMENT TO THE JUNIOR BRANCH:3(

A) Metropolitan Magistrates, Juvenile Court, Bombay:(

a) Appointment to these posts shall be made by nomination from amongst the candidates who

(i) are ordinarily not more than forty years of age;

(ii) have been practicing as Pleader, Attorneys or Advocates in the High Court of Bombay or Courts Subordinates thereto, for the period not less than five years;

Provided that, preference may be given to the candidates possessing

(i) training and experience in social service, Child Welfare and Psychology or experience of work in Children Home or similar institution, or both;

(ii) diploma in Social Science, Child Delinquency or Child Psychology;

(iii) Practical experience as probation Officer or Inspector of Certified Schools;

Provided further than, the age limit may be relaxed in favour of candidates having exceptions qualifications;

(b) a person appointed to the post shall be on probation for a period of one year;

(c) a person appointed to the post shall be required to pass language examination according to the rules prescribed in that behalf.

(d) Appointment by nomination shall be made by the Governor in consultation with the Commission.

Provided that, the Commission shall invite a representative of the High Court to be present at the interview held by the Commission for this purpose and the representative so present may take part in the deliberation of the Commission but shall not be entitled to vote.

(4) (i) Appointment to the posts of Civil Judges (Junior Division) and Judicial Magistrate of the First Class shall be made by nomination from

(a) members of the Bar, or

(b) in special circumstances by reemployment of retired Civil Judges (Junior

Division) or

(c) members of the ministerial staff of the High Court or any Court subordinates to it, or

(d) members of the staff working as Legal Assistant in the Legal Section of the Law and Judiciary Department of Mantralaya, or

(e) member of the ministerial staff of office of the Government Pleaders in the High Court, City Civil Court and District Courts.

(ii) The appointment shall be made by the Governor in consultation with the Commission except that it shall not be necessary to consult the Commission in reemploying retired Civil Judges (Junior Division):

Provided that the Commission shall invite a representative of the High Court to be present at the interview held by the Commission for this purpose and the representative so present may take part in the deliberations of the Commission but shall not be entitled to vote.

(iii) Appointments from amongst Members of the Bar shall be made from the candidates who:

(a) are ordinarily not less than twentyone and not more than thirtyfive years (forty years in the case of candidates belonging to communities recognized as Backward by Government for the purposes of recruitment);

(b) who have practiced as advocates, attorneys or pleaders in the High Court or Courts subordinates thereto for not less than three years on the last date prescribed for the submission of the applications.

(c) are certified in Brihan Mumbai by the Principal Judge of the City Civil Court on 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 viceversa.

(Note : In the case of Public Prosecutor, serving under the Government who apply for the posts their service in that capacity shall be taken as practice at the Bar.)

(iiiA) appointments from amongst members of the ministerial staff, shall be made from candidates who -

(a) are ordinarily no more than fortyfive (fifty years in case of candidates belonging to communities recognized as Backward by Government for purposes of recruitment);

(b) who have obtained the L.L. B. degree or qualified for enrollment as Advocate and served as such members for period of not less than five years, including not less than three years after obtaining such degree or qualifying for such

enrollment; and

(c) are certified in the case of the members of the ministerial staff of the High Court, by the Registrar of the High Court and in the case of the members of the ministerial staff of the subordinate Courts, by the Presiding Officer of the said Court, to have sufficient knowledge of Marathi to enable them to speak, read, write and translate with facility into English and viceversa;

(d) are certified in the case of member of the staff working as Legal Assistant in the Legal section of the Law and Judiciary Department of Mantralaya, by the Principal Secretary, Law and Judiciary Department, Government of Maharashtra that they have sufficient knowledge of Marathi so as to enable them to speak in the said language, to write and read the said language and to translate with facility into English and viceversa.

(e) are certified in the case of any member of the ministerial staff of the office of the Government Pleader, High Court of Judicature at Bombay City Civil Court and District Courts by High Court Government Pleader, City Civil Court, Government Pleader and District Government Pleader, respectively, they have sufficient knowledge of Marathi so as to enable them to speak in the said language; to write and read the said language; to write and read the said language and to translate with facility into English and viceversa.

(f) Notwithstanding anything contained in preceding provisions, for appointment to the posts of Civil Judge (Junior Division) and Judicial Magistrate of the First Class to be made by nomination, the fresh Law graduates shall also be eligible;

Provided that he shall be certified by the Principal of the College or the equivalent authority from where the candidates studied Law that he has sufficient knowledge of Marathi to speak, read, write and translate with facility into English and viceversa;

Provided further that the candidate is not less than twenty on years and not more than thirty five years (forty years in the case of candidates belonging to communities recognized as Backward by the Government for the purposes of recruitment).

Explanation : The expression fresh Law graduate means a candidate who has secured fifty five per cent marks at final year LL.B. Examination in the first attempt within three years of the last date prescribed for submission of application and who is eligible to be enrolled as an Advocate whether enrolled as such or not;

(iv) (a) The person appointed by nomination shall be on probation for a period of two years which may be extended by the High Court from time to time, as it may deem fit.

(b) During the period of probation and until expressly confirmed by a written order the services of an appointee shall be terminable by one month's notice on

either side, without any reason being assigned therefore or by payment of salary for the period of notice of the unexpired portion thereof.

(c) He/she shall be required to pass the language examination according to the rules prescribed in that behalf unless he/she has already passed or has been exempted from passing those examinations.

(v) appointment by reemployment of retired Civil Judges (Junior Division) shall be made, by the Governor after consultation with the High Court. Appointment by nomination from among officers of other services shall be made by the Governor after consultation with the High Court and the Commission.

11. We have already noticed that the above rules in relation to appointment to the post of Civil Judge, Junior Division and Judicial Magistrate First Class were in force. However, keeping in view the various recommendations made in the Shetty Commission Report, Rules were duly approved and affirmed and made as law of the land by the judgment of the Supreme Court in the case of All India Judges Association (*supra*). It may also be useful to notice at this stage that the Government in consultation with the High Court and the Commission had prepared draft rules titled as 'Draft Maharashtra Judicial Service Rules, 2006'. The said rules provided and dealt with the eligibility criteria and method of selection to the post of Judicial Magistrate First Class/Civil Judge Junior Division. Rule 6(2) provides that there shall be a written examination and viva voce examination. The candidates who secured not less than 50% of marks at such written examination shall be called for viva voce examination provided that Scheduled Castes, Scheduled Tribes candidates who obtained even 45% of marks or more were to be considered as eligible for viva voce test. This rule was subsequently amended and in the sentence "candidate who secures not less than fifty (50) percent of marks at such written examination, shall be eligible for the viva voce examination", the words "each paper" were inserted. These rules were finalized and notified as Maharashtra Judicial Services Rules, 2008 and were duly gazetted by the State Government after due consultation with the High Court and the Maharashtra Public Service Commission (hereinafter referred to as the 'Commission') vide notification dated 25th August, 2008. In other words, only the draft rules were of relevancy as on the date of the advertisement and holding of the examination they were in force particularly keeping in view the fact that no specific criteria or methodology has been provided under Rule 4 of the Bombay Judicial Services rules, 1956.

12. The Commission had issued a brochure relating to the appointment to these posts as "Maharashtra Public Service Commission Competitive Examination Application and Guide". This was published in the year 2006. This brochure was a general brochure issued for providing guidelines for filling and submission of the application form, conducting of examination and interview by the Commission for various posts under the State Government. Clause 2.6 dealt with the appointment to the post of Civil Judge, Junior Division and Judicial Magistrate, First Class competitive examination. Clause 2.6.1.2 requires the Commission to

state the position of vacancies and while issuing the advertisement to clearly state the number of vacancies which is not to be altered subsequent thereto. Clause 2.6.2.1 provides for qualification and eligibility criteria for taking up the examination for Advocate, Attorney and Pleader. Clause 2.6.2.2 provide that the applicants should be fresh law graduates and the age limit of 21 years minimum and 35 years maximum is provided. It requires that the candidate should have passed the LL.B. examination within last three years from the last date of submission of application of examination on securing minimum of 55% of marks in first attempt and has been enrolled as an advocate. The candidate should be able to speak, read and write fluent Marathi language. Clause 2.6.3 relates to the examination scheme and provides that there shall be two papers of 200 marks and oral exam of 60 marks. It also provides the syllabus and the method in which the examination was to be conducted. The result of the written exam was to be declared before the viva voce and the candidates who satisfy the conditions stated in these instructions were to be called for viva voce. The petitioners had placed heavy reliance upon Clause 2.6.6.1, translation of which reads as under:

2.6.6.1 A cut off line of marks (minimum marks) shall be drawn in such a way that double to triple number of candidates than vacancies to be filled up shall be available for vivavoce/ oral exam.

13. Instruction Clause 2.6.6.2 requires the result of the viva voce to be published in the newspaper and every candidate who qualifies the viva voce was also to be notified independently. Clause 2.6.7 contemplate the cut off marks and ultimately declaration of the final result. Clauses 2.6.7, 2.6.7.2 and 2.6.8 are the other clauses which would have bearing on the matters in issue before us. They can usefully be reproduced as under:

2.6.7 Vivavoce/ Oral exam:

The only candidates who fulfill the eligibility, qualification and other terms prescribed and who secure marks above cut off line, shall be called for vivavoce. The said vivavoce shall be of 60 marks and its purpose would be such as is mentioned in Para No. 7.8 of the prospectus.

2.6.7.2 The vivavoce / oral exams of the candidates who are qualified therefore ,shall be conducted at place and time prescribed by the Commission.

2.6.8 FINAL RESULT:

The marks obtained in written exam and viva voce shall be counted and then merit list shall be prepared. The candidates securing equal marks in the said merit list shall be preferred or ranked in accordance with the norms set by Commission in para 7.10 of the prospectus.

14. The Petitioners have placed emphasis upon the judgments of the Supreme Court to buttress their plea that any fixation of criteria or minimum mark subsequent to the advertisement would vitiate the selection process and exclusion of their candidature from viva voce thus would be arbitrary and liable

to be interfered by the Court. It will be appropriate to discuss at this stage itself the main judgments of the Supreme Court that have been relied upon by the Petitioners.

15. In the case of K. Manjusree Vs. State of A.P. and Another, , the Supreme Court was concerned with selection and appointment to the post of District and Sessions Judges (Grade II) which was notified by Andhra Pradesh State Higher Judicial Service\\Rules, 1958. The advertisement issued in furtherance to the Rules had stated that an interview would be held for selection to the post. The Full Court of Andhra Pradesh High Court had apprised the Chief Justice, who in turn constituted the Committee for furtherance of administrative to lay down the guidelines and procedure for selection. The draft procedure was prepared and placed before the Full Court and the Administrative Committee vide its Resolution dated 30th November 2004 had decided the methodology of selection and had resolved to conduct the written examination for the candidates for 75 marks and oral examination for 25 marks. The selection process was completed in accordance therewith and merit list was prepared of the total marks of 125. The Interview Committee finalized the list of the candidates to be recommended for appointment as per merit and reservation and submitted to the Administrative Committee the report dated 3rd April 2006. After completion of this process, the Full Court had approved the Resolution dated 30th November 2004 but did not agree with the selection list prepared by the Interview Committee. It then authorized the Chief Justice to constitute another Committee for preparing a fresh list of candidates to be recommended. It recommended scaling down of marks obtained by the candidates and recalculation. The SubCommittee recommended varying prescribed ratio between written examination marks and interview marks from 3:1 to 4:1 with minimum marks and the candidates who failed to secure such minimum marks should be considered as having failed. Then subsequently on the revised criteria, fresh mark list was prepared and only 31 candidates were found to have qualified both in written test and interview and revised merit list was prepared after which 9 candidates were recommended for appointment.

16. The contention raised before the Court was that minimum marks having not been prescribed under the Rules or by the Resolution dated 30th November 2004 by the Administrative Committee, the Full Court could not have altered the select list by introducing minimum marks for interview after completion of the selection process.

17. On the above facts, the Supreme Court while rejecting the contention that as far as change in regard to scaling down was concerned, it was unexceptional as it is in consonance with the criteria decided by the Administrative Committee on 30th November 2004 before commencing the selection process but accepted the other contention. In paragraph 24 of the judgment, the Supreme Court held as under:

24. But what could not have been done was the second change, by introduction

of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District and Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the above interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , Umesh Chandra Shukla Vs. Union of India (UOI) and Others, , and Durgacharan Misra Vs. State of Orissa and Others, .

18. While making the above conclusion, the Supreme Court in paragraph 29 of the judgment also stated that the authority making Rules, regulating the selection, can prescribe by Rules minimum marks both for written and interviews or prescribe minimum marks for written examination but not for interview or may not prescribe any minimum marks but if the Selection Committee wants to prescribe minimum marks for interview, it should do so before commencement of the selection process otherwise such prescription would be improper.

19. In the case of Hemani Malhotra Vs. High Court of Delhi, , the Supreme court was concerned again with the selection to the post in the higher judicial services. As per the Rules, an advertisement had been issued stating that there shall be written examination of one paper only of 250 marks with two parts and there will be interview/viva voce. It was clearly stated that minimum qualifying marks in the written examination shall be 55% for general candidates and 50% for Scheduled Caste/Scheduled Tribe candidates. Five candidates had cleared the written examination and on 7th December 2006 they had come to appear for viva voce before the Committee. However, at that point of time, the Committee met and resolved that it was desirable to provide minimum marks even in the viva voce. Resultantly, the Full Court on 13th December 2006 passed a Resolution stating that minimum qualifying marks in viva voce will be 55% for general candidates and 50% for Scheduled Caste/Scheduled Tribe candidates. On these facts, the Supreme Court held that prescription of cut off marks at vivavoce test was not in accordance with the decision of the Supreme Court and while relying upon the judgment of the Supreme Court in K. Manjusree (supra), it directed the Respondents to add the marks obtained by the Petitioner in written examination and viva voce and then to prepare a common merit list.

20. Lastly, reliance was also placed upon the case of Durgacharan Misra Vs. State of Orissa and Others, , where the Supreme Court took the view that prescribing

of minimum qualifying marks for viva voce test by the Public Service Commission and excluding candidates for not securing that prescribed mark would be illegal if the Rules did not so provide.

21. In the case of Banking Service Recruitment Board, Madras Vs. V. Ramalingam and Others, , the Supreme Court held as under:"

5. ...The cutoff marks fixed will depend upon the examining body's view of the importance of the subject for the post in question. It may well fix higher cutoff marks for subjects which may have greater relevance than other subjects which may have relevance but not to the same extent. Basically it is for the examining body to fix cutoff marks....

22. From the facts of each of the above referred cases, it is clear that the principle stated by the Supreme Court is on the premise that there was no specific stipulation prescribed under the Rules, the selection process had been completed and even merit list had been prepared, where after a criteria had been changed or altered to the prejudice of the applicants who were successful candidates and in those circumstances the Supreme Court had granted relief to the Petitioners as aforenoticed.

23. Now, let us examine the applicability of the above legal principles in light of the facts of the present case particularly in light of the views which are applicable to the case in hand. As far as Bombay Judicial Services Rules are concerned, they hardly provide for any specific methodology and criteria for appointment to the post of Civil Judge, Junior Division/Judicial Magistrate First Class. Rule 4(4)(i) specifies the qualifications that the applicant must possess. Subclause (ii) of Subrule (4) of Rule 4 states that the appointments shall be made by the Governor in consultation with the Commission except in the case of reemployed retired Civil Judges (Junior Division) and the Commission is to invite a representative of the High Court to be present at the interview which may be held by the Commission for this purpose. The appointments are to be made by nomination. Subclause (iii) of Subrule (4) of Rule 4 then deals with the appointments from amongst the member of the Bar and the requisite qualifications which should be possessed by the fresh Law Graduates as well as the persons to be appointed from amongst the members of ministerial staff. In relation to fresh Law Graduates in terms of Rule 4(iii)(f), the explanation provides that expression "fresh Law Graduates" means a candidate who has secured 55% marks at final year LL.B. Examination in the first attempt within three years of the last date prescribed for submission of the application and who is eligible to be enrolled as an Advocate whether enrolled as such or not. Thus, it is clear that the Rule is completely silent as to what will be the methodology adopted by the Commission for appointment to the post in question. It does not state that there would even be a written examination and what would be the pass percentage of such written examination. Proviso to subclause (ii) of Subrule (4) of Rule 4 indicates that the Commission shall invite a representative of the High Court to be present at the interview held by the Commission who will have

no right to vote but who may take part in the deliberations of the Commission in the interview conducted by the Commission. With reference to these Rules, the Commission and for that matter the High Court had not framed any statutory Rules which had been duly notified by the State Government.

24. Article 234 of the Constitution requires that the appointment of persons other than District Judges to the judicial service of a State could be made by the Governor of the State in accordance with Rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. In terms of Article 235 of the Constitution of India, the control of District Court and Courts subordinate thereto including postings and promotions, etc is vested in the High Court. Thus, all the Rules, Regulations and instructions framed by any competent authority have to be in conformity with this Constitutional mandate. The brochure published by the Commission is a general brochure published for the purposes of administrative convenience and guidance by the Commission and is not statutory "Rules" framed by the State under Article 234 of the Constitution of India. In fact, the brochure does not even indicate that the Regulations or Instructions indicated in the brochure are in furtherance to any statutory Rules and does not indicate even the source of the power under which they have been framed. Furthermore, only Clauses 2.6.1 to 2.6.9 deal with the matters relating to appointment to the judicial services while the other Clauses relate to appointment to various services of the State, like, Forest Service, Assistant Motor Vehicle Inspector, PSI and other Services, etc. Again, Clause 2.6.3.4 indicate the subjects in relation to which the two papers will relate and that the written examination is to be of 200 marks while Clause 2.6.7.1 indicate that viva voce test is to be of 60 marks.

25. The eligibility criteria is specified in Clause 2.6.2.1. Clause 2.6.2.1 relates to eligibility of Advocate, Attorney and Pleader for the appointment, besides that the age of candidate should not be less than 21 years and more than 35 years. Subclause (2) of Clause 2.6.2.1 indicates that the candidate should have three years experience of practicing as Advocate as on the last date of submission of the application form. Clause 2.6.3.1 deals with marks for the written examination and interview to be held. Clause 2.6.6.1 contemplates that there has to be cut off line of marks which shall be drawn in such a way that double or treble number of candidates then vacancies will be filled up, shall be available for viva voce oral examination when results of the candidates of having qualified of viva voce is to be published but in terms of clauses 2.6.7, the candidates who fulfill the eligibility qualification and other terms prescribed and who secure marks above cut off line, shall be called for viva voce. (Emphasis supplied). Clause 2.6.7.1 further states that the viva voce shall be of 60 marks. The object of the interview in terms of Clause 7.8.1 is to judge the suitability of the candidate and his mental ability for the particular post. The Interview Committee can ask all questions including questions relating to general knowledge, suitability and the responsibility and duties of the post for which the appointments are to be made. In the final result, the marks obtained in the written examination and the viva

voce shall be counted to prepare the merit list. Final list of recommended candidates was to be prepared in terms of Clause 7.10.

26. The concept of cut off marks as required under Clauses 2.6.1 and 2.6.7 are to be dealt with and understood in terms of Clause 7.10 of the brochure relating to general conditions. This clause requires that the cut off marks shall be published on the website of the Commission after the written examination held for the concerned service and the Commission would not consider any objection in relation to such cut off marks as may be specified. The translation of Clause 7.6 of the brochure reads as under:

7.6 Cut off Line

7.6.1 As per policy of the Commission the cut off line of marks obtained in the examination shall be published on the website of the Commission after examination.

7.6.2 Generally no representation regarding cut off marks shall be considered.

27. The State Government in consultation with the High Court and the Commission as required under Article 234 of the Constitution of India had prepared Draft Rules which were titled as Draft Maharashtra Judicial Service Rules, 2006 which were to be notified but remained pending finalization on one count or the other for some time and finally were notified with some amendments vide Notification dated 25th August 2008. It is obvious that the finally published Rules dated 25th August 2008 could hardly be made applicable to the examination and interview in question. Chapter III of the Draft Rules deals with appointments and recruitment to different posts. Under Rule 5(3), appointments are to be made to the cadre of Civil Judges, Junior Division by nomination on the basis of the aggregate marks obtained in competitive examination conducted by the Commission in terms of the examination scheme as may be framed by the High Court. This examination is to include both written and viva voce marks, but in terms of Rule 6 (2)(a) a candidate who secures not less than 50% of marks in the written examination shall be eligible for viva voce examination for appointment to the post of Civil Judge, Junior Division. Thus, in the Draft Rules, specific Rule has been framed which provide for qualifying marks/cut off marks which a candidate is expected to secure before he becomes eligible for being called for viva voce test. The only difference between Draft Rules 2006 and the Notified Rules of 2008 is in Clause 6(2)(a) is that 50% marks in the written examination is the requirement in the prior while under the later it is in each paper in the written examination that 50% marks are to be obtained. Second proviso to Rule 6.(2)(a) of the Draft Rules provide that the candidate who obtained 40% marks in the viva voce examination shall be eligible for selection. This was so incorporated even in the final Rules notified by the Notification of 25th August 2008. Thus, under the Draft Rules, a candidate has to secure 50% marks in the written examination to be eligible for viva voce and 40% marks in the viva voce to be eligible for selection to the post of Civil Judge,

Junior Division. This appears to be the position under the Draft Rules though under the Rules duly notified vide Notification dated 25th August 2008, the condition of 50% marks in each paper of written examination is also introduced and would be obviously mandatory. It may also be noticed here that Shetty Commission had made relevant recommendations for appointment to the post of Civil Judge, Junior Division relating to competitive examination for recruitment to Civil Judge. As per the recommendation, it is to consist of written examination and viva voce. The candidates are to obtain 60% or more marks in the written examination to be eligible for viva voce examination. The final selection is to be made on the basis of cumulative, grade value obtained in the written and viva voce examination. It is pleaded by the Respondents that the Draft Rules of 2006 are on the lines of the Shetty Commission, though with a little relaxed condition in the sense that instead of 60% marks in the written examination, it is 50% marks which have been made compulsory to make a candidate eligible for viva voce. The Shetty Commission recommendations were accepted by the Supreme Court in the case of All India Judges' Association (supra). We may also notice here that the matter in relation to appointment to higher judicial services in the State of Maharashtra was subject matter of a Writ Petition being Writ Petition (C) No. 109 of 2005 (Maharashtra State Judges Association v Hon'ble Bombay High Court through Registrar) which came up for hearing before the Supreme Court and that Rule 5 of Chapter III, the Judicial Services Rules 2006 then were approved and framed by the Bombay High Court, providing method of recruitment to District Judges was found to be not in consonance with paragraph 28 of the judgment of the Supreme Court. The learned Counsel had sought time to seek instructions whereafter a Committee of three Judges of the High Court was constituted which in turn suggested amendments and changes in the Rules to bring in tone with paragraphs 27 and 28 of the judgment of the Supreme Court in the case of All India Judges' Association (supra). In other words, it is the requirement of the law that the recruitment rules framed by the State have to be in accordance with the Constitutional mandate of Article 234 and have to be in line with the judgment of the Supreme Court accepting the recommendations of the Shetty Commission.

28. The advertisement for the examination in question was issued on 4th July 2007 for inviting application for filling up of 150 vacancies to the post of Civil Judge, Junior Division and Judicial Magistrate First Class. A Corrigendum thereto was issued on 25th July 2007 adding another 175 posts, thus making total vacancies available as 325 posts. The examination was conducted, as already noticed, on 22nd September 2007. The advertisement dated 4th July 2007, besides specifying the eligibility criteria, qualifications and other necessary requirements in relation to submission of certificates, etc., required the candidates to take a brochure in light blue colour relating to the application form which is a brochure for competitive examination. The candidates were required to peruse the brochure in regard to information of examination scheme, syllabus, general process of selection, etc. It may be noticed that advertisement did not in

any way specify as to how the selection process including conduct of written examination and/or viva voce would be held, what would be the marks. In other words, for all this purpose, the candidates were expected to rely upon the brochure. We have already noticed that the brochure postulated the cut off marks to be provided at viva voce level where 2 to 3 times of the vacancies the candidates could be called for interview. Clause 2.6 cannot be and must not be read in isolation. It is essentially to be construed for achieving the object of holding of such competitive examination especially when the appointments are to be made for the cadre of Civil Judge, Junior Division for administration of justice in the State. Clause 2.6.6 and 7.6 to 7.11 have to be read in conjunction with each other and must be interpreted in light of the Draft Rules and/or the recommendations made by the Shetty Commission and as declared to be a judicial dictum by the Supreme Court in the case of All India Judges' Association (supra).

29. The present cases are one where the concept of cut off marks was not alien to the process of selection. On the contrary, it had specifically been spelt out in Clause 2.6.1, 2.5.7 and 7.6 of the Brochure relatable to number of vacancies and rendering a candidate eligible for viva voce. The expression "other terms prescribed" in Clause 2.5.7.2 obviously means prescribed by the competent authority. The brochure itself did not provide in detail everything and kept it open for the competent authority to provide the cut off marks at a subsequent stage. Clause 7.6.1 made a specific stipulation that the cut off marks would be provided at a stage subsequent to the holding of the examination. Once there was specific stipulation empowering the authority to prescribe the cut off marks, the manner in which cut off marks were provided and the fact that cut off marks were provided at a subsequent stage can hardly be questioned by the Petitioners, especially when the entire selection process has been concluded and even appointments thereof have been made.

30. We have already noticed that the Bombay Judicial Services Rules are silent on the methodology and criteria to be adopted for making appointments to the post of Civil Judge, Junior Division and Judicial Magistrate First Class. The brochure only provided the guidelines which were not the statutory Rules framed by the competent authority i.e. The Governor under Article 234 of the Constitution of India. The Draft Rules, therefore, cannot be said to be of no consequences particularly when they were in conformity with the Rules/recommendations of the Shetty Commission as approved by the Supreme Court in the case of All India Judges Association (supra). So far as there is no conflict between the statutory Rules and the Draft Rules, recommendation of the Shetty Commission and even the guidelines issued by the Commission, they could be read harmoniously and given effective meaning and interpretation for achieving the object of fair method of selection to the post of Civil Judge, Junior Division/Judicial Magistrate, First Class in the State of Maharashtra. There is no conflict between any of the Rules, Guidelines and statutory provisions. In fact, all future appointments are to be dealt with in accordance with the provisions contained in

the Rules of 2008. Prescribing of cut off date for subsequent stage is not only contemplated but in fact is specifically provided for in the brochure and the Draft Rules which specifically name such provision clearly stating the cut off marks or the minimum marks which a candidate should obtain in order to render him eligible to viva voce examination and then for final selection.

31. In light of this position and after considering all Guidelines and the statutory Rules, in our humble view, the Petitioners can hardly drive any advantage from the judgments of the Supreme Court in the cases of K. Manjusree, Hemani Malhotra and Shri Durgacharan Misra (supra) on facts as the Rules and Guidelines contained in the brochure are entirely different and distinct.

32. In the case of Mehmood Alam Tariq and Others Vs. State of Rajasthan and Others, , the Supreme Court was concerned with the recruitment by the Public Service Commission for appointment to Civil Services under the State where prescription of 33% of marks for viva voce examination was challenged and while setting aside the judgment of the High Court of Rajasthan, the Supreme Court held as under.

8. On a careful consideration of the matter, we are persuaded to the view that the prescription of minimum qualifying marks of 60 (33%) out of the maximum marks of 180 set apart for the vivavoce examination does not, by itself, incur any constitutional infirmity. The principles laid down in the cases of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , Lila Dhar Vs. State of Rajasthan and Others, , Ashok Kumar Yadav and Others Vs. State of Haryana and Others, , do not militate against or render impermissible such a prescription. There is nothing unreasonable or arbitrary in the stipulation that officers to be selected for higher services and who are, with the passage of time, expected to man increasingly responsible positions in the core services such as the Administrative Services and the Police Services should be men endowed with personality traits conducive to the levels of performance expected in such services. There are features that, distinguish, for instance, Accounts Service from the Poice Service - a distinction that drawn upon and is accentuated by the personal qualities of the officer. Academic excellence is one thing. Ability to deal with the public with tact and imagination is another. Both are necessary for an officer. The dose that is demanded may vary according to the nature of the service. Administrative and Police Services constitute the cutting edge of the administrative machinery and the requirement of higher traits of personality is not an unreasonable expectation.

Indeed in Lila Dhar Vs. State of Rajasthan and Others, , this Court observed:

Thus, the written examination assessee the man's intellect and the interview test the man himself and 'the twain shall meet' for a proper selection. If both written examination and interview tests are to be essential feature of proper selection the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personally is yet to develop and it is too early to identify the personal qualities

for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this Court in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, , *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and other cases. On the other hand, in the case of service to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied....

There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview test catch a glimpse of the future personality in the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great weight, to the interview test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirement of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission.

This Court indicated that in matters such as these, which reflect matters of policy, judicial wisdom is judicial restraint. Generally matters of policy have little adjudicative disposition.

9. Indeed, the point raised in the appeals admits of the answer found in the pronouncement of this Court in *State of U.P. Vs. Rafiquddin and Others*, where this Court considered the permissibility of the prescription of minimum qualifying or cutoff marks in viva voce examination, while dealing with Clause (ii) of the proviso to Rule 19 (as it stood prior to the 1972 amendment) of the U.P. Civil Service (Judicial Branch) Rules 1951. The provision required the selection committee, inter alia, to ensure that persons who did not secure sufficiently high marks in the interview were not recommended for the posts. Pursuant to the power thus reserved to it, the selection committee, prescribed certain minimum cutoff marks for the interview. This Court upholding the validity of the prescription observed at pages 264 and 265 (of JT): (at pages 171172 and 173 of AIR):

...Aggregate marks obtained by a candidate determined his position in the list, but the proviso of the rule required the Commission to satisfy itself that the candidate had obtained such aggregate marks in the written test as to qualify

him for appointment to service and further he had obtained such sufficiently high marks in viva voce which would show his suitability for the service. The scheme underlying R.19 and the proviso made it apparent that obtaining of the minimum aggregate marks in the written test and also the minimum in the viva voce was the sine qua non before the Commission could proceed to make its recommendation in favour of a candidate for appointment to the service. The Commission in view of Cl.(ii) of the proviso had power to fix the minimum marks for viva voce for judging the suitability of a candidate for service. Thus a candidate who had merely secured the minimum of the aggregate marks or above was not entitled to be included in the list of successful candidates unless he had also secured the minimum marks which had been prescribed for the viva voce test....

..The Commission had, therefore, power to fix the norm and in the instant case it had fixed 35 per cent minimum marks for viva voce test. The viva voce test is a wellrecognized method of judging the suitability of a candidate for appointment to public services and this method had almost universally been followed in making selection for appointment to public services. Where selection is made on the basis of written as well as viva voce test, the final result is determined on the basis of the aggregate marks. If any minimum marks either in the written test or in viva voce test are fixed to determine the suitability of a candidate the same has to be respected. Cl.(ii) of the proviso to R.19 clearly confers power on the Commission to fix minimum marks for viva voce test for judging the suitability of a candidate for the service. We do not find any constitutional legal infirmity in the provision.

This should, in our opinion, conclude the present controversy in favour of the appellants.

33. We are unable to accept the contention raised on behalf of the Petitioners that Clause 2.6.6.1 is to be given a strict construction and the Commission is to call all the candidates for interview who fall within two to three times number of vacancies. In other words, if there are 100 vacancies, 200 to 300 candidates should be called for interview irrespective of their performance in the written examination. That does not appear to be intent of the guidelines published in the brochure. It will lead to absurd result if this interpretation is accepted. Even the candidates who might have failed in the written examination would be entitled to be called for interview, if they fall within the number of 200300. This guideline has to be read with reference to the other guidelines i.e. 2.6.7.1, 7.6.1 and 7.10.

34. This is one aspect of the matter. Let us examine the other aspect as well. The other aspect would be whether the Competent Authority can in law provide for cut off marks or marks even higher than the one which have been spelt out in the advertisement for shortlisting and ensuring selection of best candidates for appointment to the judicial services. In the case of K.H. Siraj Vs. High Court of Kerala and Others, , the Supreme Court, while dealing with the contention that

the High Court had erred in fixing the cutoff marks where the rules did not prescribe any particular minimum marks, took the view that the High Court could make such prescription as there was nothing in the rules barring such procedure to be adopted and particularly when the rule itself empowered the High Court to evolve the procedure as it deems fit for selection. The Supreme Court held as under:

49. So far as the first submission is concerned, we have already extracted Rule 7 in paragraph supra. Rule 7 has to be read in this background and the High Court's power conferred under Rule 7 has to be adjudged on this basis. The said Rule requires the High Court firstly to hold examinations written and oral. Secondly, the mandate is to prepare a select list of candidates suitable for appointment as Munsif Magistrates. The very use of the word "suitable" gives the nature and extent of the power conferred upon the High Court and the duty that it has to perform in the matter of selection of candidates. The High Court alone knows what are the requirements of the subordinate judiciary, what qualities the judicial officer should possess both on the judicial side and on the administrative side since the performance of duties as a Munsif or in the higher categories of Subordinate Judge, Chief Judicial Magistrate or District Judge to which the candidates may get promoted require administrative abilities as well. Since the High Court is the best judge of what should be the proper mode of selection, Rule 7 has left it to the High Court to follow such procedure as it deems fit. The High Court has to exercise its powers in the light of the constitutional scheme so that the best available talent, suitable for manning the judiciary may get selected.

50. What the High Court has done by the notification dated 26.3.2001 is to evolve a procedure to choose the best available talent. It cannot for a moment be stated that prescription of minimum pass marks for the written examination or for the oral examination is in any manner irrelevant or not having any nexus to the object sought to be achieved. The merit of a candidate and his suitability are always assessed with reference to his performance at the examination and it is a wellaccepted norm to adjudge the merit and suitability of any candidate for any service, whether it be the Public Service Commission (IAS, IFS, etc.) or any other. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition in Rule 10 of the notification dated 26.3.2001. The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as benchmark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a highpowered body like the High Court to evolve its own procedure as it is the best judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a highpowered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in Union of India (UOI)

and Others Vs. Kali Dass Batish and Another, , wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper.

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62. Thus it is seen that apart from the amplitude of the power under Rule 7 it is clearly open for the High Court to prescribe benchmarks for the written test and oral test in order to achieve the purpose of getting the best available talent. There is nothing in the Rules barring such a procedure from being adopted. It may also be mentioned that executive instructions can always supplement the Rules which may not deal with every aspect of a matter. Even assuming that Rule 7 did not prescribe any particular minimum, it was open to the High Court to supplement the rule with a view to implement them by prescribing relevant standards in the advertisement for selection. Reference may be made to the decision of this Court in State of Gujarat v. Akhilesh C. Bhargav.

35. A Division Bench of this Court in the case of Smt. Mukulika S. Jawalkar and Others Vs. The State of Maharashtra and The High Court of Judicature at Bombay, was dealing with the case of appointment to the higher judiciary of the State. In that case also, a shortlisting criteria had been adopted by the Selection Authority, though it was not stated in the advertisement. The Court, while rejecting the contention that providing of such criteria per se is violative of Articles 14 and 16 of the Constitution of India, held as under:

11. ...The procedure of shortlisting is not unknown to a process of selection. In various selections and in various forms, the procedure of shortlisting is adopted to make the process of selection more meritoriented and administratively convenient. To say that, providing of such criteria per se is violative of Articles 14 and 16 of the Constitution of India would, in fact, tantamount to construing the basic principle of service jurisprudence to the very concept of selection on merit.

12. The Supreme Court in the case of The State of Haryana Vs. Subash Chander Marwaha and Others, examined the scope of prescription of higher criteria than the one specified under statutory Rules (Rule 8 of the Punjab Civil Service (Judicial Branch) Service Rules, 1951, held as under:

"It was, however, contended by Dr. Singhvi on behalf of the respondents that since Rule 8 of Part C makes candidates who obtained 45% or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55% as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is

equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10 (ii), part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there 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 competent to fix a score which is much higher than the one required for more eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. That the Punjab Government later on fixed a lower score is no reason for the Haryana Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who got less than 55% have no right to claim that the selection be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened Rule 8 of Part C.

13 The Supreme Court in the case of Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, was concerned with direct recruitment to the post of Deputy Executive Engineer. The Rule prescribed was Bachelor Degree in Engineering as the minimum qualification. The authorities having taken a decision to prefer Post Graduates in Engineering out of the ones who qualified than the Bachelor Degree Holders, while rejecting the challenge on the ground of Articles 14 and 16 of the Constitution of India, the Court held as under:

The matter may be looked at from another viewpoint. The word "preference" as understood in ordinary parlance means preferring or choosing as more desirable, favouring or conferring a prior right. What then is the purpose and object sought to be achieved by the insertion of the preference clause in the rule? There is no doubt that preference was sought to be granted under Note 1 to postgraduates in the larger interest of the administration. How would the interest of the administration be served by granting preference to postgraduates? It is obvious that it was thought that on account of their higher mental equipment the quality of performance that the State will receive from highly qualified engineers would be better and of a high order. In other words, the State considered it necessary to strengthen the engineering service by recruiting postgraduates to the extent available so that the State may benefit from their higher educational qualifications and better performance. If this was the objective surely it would

not be realised unless postgraduates are treated as a class and given preference en bloc over the graduates. Since sufficient number of postgraduates may not be available from the feeder channels and even if available cannot be promoted out of turn without causing heart burns, it was sought desirable to resort to such large scale recruitment directly from the open market. The underlying idea of the memo dated October 13, 1978 was the same but certain difficulties were felt in resorting to enforcement of the preference clause at the promotion stage and that is why the second part came to be inserted in Note 1 but no such difficulty would be experienced in strengthening the cadre through direct recruitment. But then it was said what was the need for the PSC to hold the written test by inviting applications from graduates and subjecting them to test? That was the reason that there was no guarantee that sufficient number of post graduates would qualify for selection and appointment. But if the preference rule were to be implemented as held by the Tribunal it would apply only where the postgraduate and graduate candidates have secured the same number of marks. If the rule so implemented is carried to its logical end it would ultimately resolve a tie only at the last rung of the ladder because ties at higher levels would be resolved by a post graduate being followed by a graduate in the select list. The question of elimination would really arise at the last placement in the list and hence the real purpose of the preference rule would not be served. That is why this Court in *Md. Usman Case* approved of this method of recruitment as most reasonable. There is nothing arbitrary or unreasonable in the employer preferring a candidate with higher qualification for service. It is well settled by a catena of decisions that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme. See *Roshan Lal Tandon Vs. Union of India (UOI)*, ; *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, ; *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, ; *Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others*, , *V. Markendeya and Others Vs. State of Andhra Pradesh and Others*, and *Sanatan Gauda Vs. Berhampur University and others*, .

15. The second decision to which our attention was invited is a judgment of a learned single Judge of the Gujarat High Court in *Gujarat State Sales Tax NonGazetted Employees" Association v. State of Gujarat 1988 (1) SLR 452*. In that case 120 posts of Sales Tax Tax Inspectors were required to be filled in by direct selection. An advertisement was issued in the newspapers and as many as 15,000 candidates applied in response thereto. This necessitated screening of the candidates at the threshold. It was found that more than 1000 applicants were holding first class degrees in different faculties of recognised Universities; 580 of them were first class Commerce graduates, 101 first class Arts graduates and about 500 first class Science graduates. Having regard to the number of vacancies the field of choice was restricted to first class graduates only and it was decided not to call for interview a second class or third class graduate including graduates having Commerce degree with Accountancy as a subject. It

was this decision which was put in issue before the learned single Judge by candidates who were eliminated at the threshold from consideration. The relevant rule provided that the appointment to the post of Sales Tax Inspectors shall be made (a) by direct selection or (b) by promotion. In so far as direct selection was concerned, the educational qualification required was stated to be a degree of a recognised University. The proviso laid down as under:

Provided that preference shall be given to a candidate who possesses the degree of B.Com with Accountancy or Chartered Accountants, or possesses a qualification recognised to be equivalent to such examination by the Government of Gujarat.

In the context of this preference rule it was observed in para 7 of the judgment as under:

To hold that the rule of preference enacted to give to Commerce Graduates with Accountancy or to candidates having other prescribed qualifications an absolute preference over the graduates of other faculties would be to denude the substantive provision of much of its force and effect and to cover the rule of preference into a rule of reservation thereby obliterating altogether the right of other candidates possessing degree of recognised Universities in various other faculties to be considered for the post.

It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone of consideration. It was, therefore, held that screening a candidate out of consideration at the threshold of the process of selection is neither illegal nor unconstitutional if a legitimate field demarcating the choice by reference to some rationale formula is carved out. Thus the challenge based on Articles 14/16 of the Constitution was repelled. We are in agreement with the ratio of this decision and that is enough to negative the claim of candidates who had preferred O.A. Nos. 1736 to 1739 of 1990 and who were not called for interview on their failing to secure the minimum qualifying marks in the written test.

16. In the present case also the zone of consideration was narrowed by eliminating candidates who did not succeed in the qualifying test and out of those who succeeded in the qualifying test and secured the minimum marks after interview were considered and thereafter in the process of selection the preference rule was applied by first choosing the post graduates and thereafter the graduates. We have already pointed out above that classification on the basis of higher educational qualification with a view to achieving improvement in administrative performance is not abhorrent to Articles 14/16 of the Constitution. We are, therefore, of the opinion that the view taken by the learned single Judge of the High Court on a true interpretation of the relevant rule in the context of the historical background was a plausible view and should commend acceptance

as it would advance the cause of efficiency in a highly technical service. We, therefore, think that even if two views were possible, the Tribunal ought not to have unsettled the legal position settled earlier by the High Court with which even this Court refused to interfere in SLP. For the foregoing reasons, we do not approve of the view subsequently taken by the Tribunal.

14. The Supreme Court in the case of Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, , while examining the matter in relation to prescription of shortlisting criteria where the minimum eligibility criteria is fixed by the statute, expressed the view that the Selection Board could still fix a higher criteria for calling candidates for viva voce test. While holding that such shortlisting would be part of the selection process without altering the minimum qualifications, the Court in relation to appointment of Presiding Officers of Labour Court held as under:

6. The question which is to be answered is as to whether in the process of shortlisting, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the Courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

9. In Kothari Committee's Report on the "Recruitment Policy and Selection Methods for the Civil Services Examination" it has also been pointed out in respect of interview where a written test is also held as follows.

The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled....

In this background, it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are

called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding shortlisting the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of shortlisting shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of shortlisting is part of the process of selection. Once the applicants are received and the selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short listed, the process of selection commences. If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3) (c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) places a bar that no person having less than five years of practice as an advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act.

15. The Supreme Court in yet another case titled Union of India and another Vs. T. Sundararaman and others, held that where the number of applications received in response to an advertisement is large and it will not be convenient or possible for the Commission to interview all the candidates, the Commission may restrict the number of candidates to a reasonable limit on the basis of qualifications and experience higher than the minimum prescribed in the advertisement or by holding a screening test....

36. Thus, in the alternative, even this could be stated that if the rules so permit and it is otherwise expedient, there could be higher criteria for shortlisting that may be introduced by the Authorities at a subsequent stage.

37. From the records of the case, it appears that total number of 7298 candidates had appeared in the written examination and out of them, only 163 candidates could get 50% marks and they were treated as qualified for viva voce test. If 900 candidates were to be called for interview that necessarily would mean that the candidates who have not even secured 30% to 35% marks or even who have obtained 10 to 20 marks out of 100 in the written examination were entitled to be called for interview. This approach would not only be unfair but undesirable for appointment to the cadre of judicial services. The Competent Authority i.e. The State Government in consultation with the High Court and the Commission was expected to take a decision which it took by providing the minimum cut off marks in accordance with the guidelines contained in the

brochure as well as the Draft Rules. The Draft Rules could be a guiding factor insofar as they were applied fairly and equally to all concerned. The entire challenge to the providing of minimum marks/cut off marks is founded on misconception of law with a particular reference to the facts and regulations governing the case in hand. Essentially, opinion of the Court should normally tilt in favour of an approach adopted by the Authorities insofar as it is in conformity with law and intends to achieve laudable object of ensuring selection of best candidates for the posts responsible for administration of justice in the State of Maharashtra.

38. In the case of Smt. Mukulika S. Jawalkar (supra), the Court placed emphasis on importance of trial judges in the hierarchy of the Administration of Justice and held as under: `

Judge" is a generic term. The other terms like umpire, arbiter and arbitrator are only species of judge. A judge determines all matters of disputes and pronounces what is law, now as well as what will be law for the future, and acts under the appointment of the Government. Pollock C.B. Ex parte Davis (1857) 5 W.R.523 said that "judges are philologists of the highest orders". They are not mere administrative officers of the Government but represent the State to administer justice. His functions are to judge a cause and conduct trial according to the legal form and norms and give relief to the party. He does nothing for his own judgment or from a dictate of private will but he will pronounce according to the law and justice. *Judex debet judicare secundum allegata et probata*, is a maxim which controls the functioning of a judge. The framers of the Constitution of India, to achieve the goal, stated in the preamble of the Constitution of India in regard to justice and equality incorporated in, amongst others, Articles 233 and 235 and vested control in the High Courts over the subordinate courts. The Supreme Court clearly stated that judges, at whatever level they may be, represent the State and its subordinates unlike bureaucrats or members in other services. Judges were said to be discharging sovereign functions in exercise of their judicial power and power in contra distinction to the public service. In a largest democracy of the world, governed by rule of law under the written constitution, judiciary is the sentinel on the qui vive to protect the fundamental rights and protect the people from any violation of law and grant them justice. The concept of judicial independence, being a wider concept, indicates independent functioning of every judge, free of fear, interference and breaches. Judiciary, was said to be composed of individual persons to work primarily on their own, free of restrictions, but in consonance with law. The Supreme Court in High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, held as under:

The Constitution of India has delineated distribution of sovereign power between the Legislature, the Executive and the Judiciary. The judicial services is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise sovereign judicial power of the State. They are

holders of public offices in the same way as the members of the Council of Ministers and the members of the Legislature. It is an office of public trust and in Indian democracy, the Executive, the Legislature and the Judiciary constitute the three pillars of the State. Three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service.

2. Emphasising importance and responsibility of the trial judge, the court described that the trial judge is the kingpin in the hierarchical system of administration of justice, he directly comes in contact with the litigants during the day to day proceedings and dispensation of justice. Faith in judiciary are the facets of the judicial administration to which they contributed substantially. It is essential to maintain faith of common masses in the judiciary, failing which it would lose its respect and esteem. Law is meant to meet the ends of justice. The Supreme Court said that the conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough and courteous, patient, punctual, just, impartial, sans political or partisan influences; he should administer justice according to law and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interference with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. If he tips the scales of justice, its ripping effect would be disastrous and deleterious.

3. If that be the ethos of the post of District Judge, correspondingly should be the higher parameters for selection to that post. Parameters and criteria should be stringent for selection to that post. Of course, these parameters must be in conformity to the basic rule of law. Greater is the obligation upon the selection authorities to calibrate or drive a balance between the dignity of the post and the standards for selection. Merit and merit alone can be directional in proper selection and would be the hallmark to a just and fair process of selection. Within the scope of Rules and Regulations governing the subject, the selection process needs to be free from any misdemeanour.

39. The final result was declared on 13th March, 2008 while all the present Writ Petitions have been filed subsequent thereto. The proposal in regard to providing of 50% qualifying marks in the written examination for viva voce was finalised on 16th November, 2007 by the Commission and the Commission accepted and implemented the same on 29th November, 2007 and even the Draft of Judicial Service Rules of 2006 with its amendment were cleared by the High Court on 29th November, 2007 itself. This clearly shows that the criteria of cut off marks/ minimum marks is contemplated in the guidelines and Draft Rules and is in conformity with the judgment of the Supreme Court in the case of All India Judges' Association (supra). It was prescribed even prior to declaration of the

results of the written examination. This, of course, was in addition to the statutory mandate contained in the Daft Rules and the judgment of the Supreme Court in the case of All India Judges' Association (supra).

40. In the light of this, the decision of the appropriate Government to provide cut off marks does not suffer from an element of illegality and/or unfairness much less arbitrariness. The majority of the Petitioners are the applicants who have failed to secure 50% marks in the written examination and have not been called for viva voce test. They participated in the entire process and being unsuccessful as per notified criteria have approached this Court after declaration of the merit list. The Applicants hardly have any indefeasible right to question the correctness or fairness or legality of the selection process in the present matter.

41. In the case of Smt. Mukulika S. Jawalkar (supra), the Court commented upon the rights of such Petitioners.

19. Let us also examine the rights of the petitioners in questioning the validity of the criteria. We have already held that no error in law or on facts of the case can be traced in the decision of the competent authority to introduce shortlisting criteria at the scrutiny stage itself. The contention raised before the Court is that upon submission of the application, a fundamental right of the petitioners is infringed and they are denied equality. It is a settled principle of law that neither the submission of an application nor existence of vacancies gives even a legal right to a candidate to be selected for appointment, much less a fundamental right. In the case of Subash Chander Marwaha (supra), the Supreme Court clearly stated that the mere fact that a candidate's name appears in the select list will not give him a right to ask for mandamus that he be appointed. Even where the candidates are selected, how many appointments are to be made would fall in the domain of the appointing authority. In another case in N. Mohanan v. State of Kerala and Ors. 1997 (2) RSJ 772, where the candidates had even been selected but no list was annexed, the Court held that the candidates do not have any right to claim appointment. In terms of Articles 14 and 16 of the Constitution of India, an applicant has a legitimate right to be considered for the selection but only in accordance with the Rules and prescribed procedures. There is no indefeasible legal, much less a fundamental, right vested in an applicant to claim appointment. By adopting a criteria which was uniformly applied to all applicants, the petitioners were found not eligible and thus not permitted to take the written examination. This the petitioners can hardly question.

42. In the case of University of Cochin, Rep., by its Registrar, University of Cochin Vs. N.S. Kanoonjamma and others, , the Supreme Court also stated the principle that having participated in the selection process, the applicants were estopped from challenging the correctness of the procedure. In the present case, the Applicants also knew about the entire procedure which was adopted by the Commission as the interviews were held and results were declared on 13th March, 2008 and they were not called for interviews on the basis of criteria of minimum marks and as such they had a complete knowledge about the selection

process. The Petitioners having known that the Authorities have applied the criteria of minimum marks for calling the applicants for interview can hardly be permitted to challenge subsequently the eligibility criteria as having been framed wrongly. (Reference : G.N. Nayak Vs. Goa University and Others, .

43. In any case, no indefeasible right has been vested in any applicant to compel the Authorities to call him/her for interview merely because there are 300 vacancies. The State cannot be compelled to fill all the vacancies irrespective of the performance of the Applicants in the written examination. Such contention has been outrightly rejected by the Supreme Court in the case of All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., .

44. We must also notice that the Writ Petitions have been filed after declaration of the result but none of the selected candidates have been impleaded as parties to the present Writ petitions, despite the fact that the entire selection process has been questioned and the correctness and legality of the entire process of selection has been questioned by the Applicants/Petitioners, except in Writ Petition No. 4475 of 2008 where the Petitioner contends that he does not question the appointment of the appointed candidates and would pray for issuance of direction to the Commission that he should also be interviewed. In our opinion, it was obligatory upon the Petitioners to implead all the appointed candidates and this Court cannot pass any order in their absence which is likely to prejudicially affect their existing right. Thus, these Petitions even suffer from defect of nonimpleadment of the necessary and proper party.

45. The Bombay Judicial Services Rules being silent, guidelines issued by the Commission in its brochure having specifically provided for prescription of cut off marks by the Competent Authority at a stage subsequent to a written examination and the existing Draft Maharashtra Judicial Services Rules, 2006 read in conjunction with the acceptance of recommendations of Shetty Commission by the Supreme Court in All India Judges" Association case (supra), there can hardly be any doubt that the Commission was competent to provide for cut off marks at a stage subsequent to the issuance of advertisement. The providing of cut off marks/minimum marks by the Commission can neither be stated to be arbitrary nor violative of Articles 14 and 16 of the Constitution of India. The criteria of minimum marks has been uniformly and fairly applied to all candidates without exception, in appointment to the post of Civil Judge, Junior Division/ Judicial Magistrate, First Class, the posts which are of a great significance and which are at the root level of the judicial system. In order to maintain faith of the public at large and to serve the ends of Administration of Justice better, it is essential that the persons of high merit, caliber and intelligent are appointed to these posts. After reference being made and reliance being placed upon the Draft Rules of 2006, the judgment of the Supreme Court in All India Judges" Association case (supra) and the guidelines contained in the Brochure published by the Commission, it is clear that there is no bar express or implied which debars the Commission from adopting such a procedure. On the

contrary, and as discussed in some elaboration above, there are specific and mandatory provisions requiring the Commission and the Competent Authority to apply criteria of minimum marks to be obtained for being eligible for the viva voce examination. The judgment of the Supreme Court relied upon by the Petitioners on correct application of law of precedent had hardly any application to the present cases. The Commission in adopting the said criteria has not violated any rule or regulations. It has not changed any criteria midway or upon conclusion of process of selection as was in the case of Munjusree as well as Himani Malhotra. In fact, in the case of Himani Malhotra (supra), the rule had specifically provided for 55% as qualifying marks but only in the written examination and the criteria of obtaining 55% marks in the viva voce test was introduced after examination was over, results having been declared and after candidates have come to appear for interview. We have already noticed that in these judgments as well as in the judgment in the case of Manjit Singh (supra), the Supreme Court has unambiguously stated that the Competent Authority has the power to introduce and provide such cut off marks or criteria for shortlisting in accordance with law to ensure fair and meritorious selection to the posts in question.

46. One aspect as argued in Writ Petition No. 4475 of 2008 and Writ Petition No. 4782 of 2008 needs to be separately dealt with. It is the contention of some of the Petitioners in these Petitions and particularly Petitioner Nos. 1, 2 and 3 that even if criteria prescribed in the Brochure and decision of the Commission to call candidates who secure 50% marks in the written examination as being eligible for being called for viva voce test is held to be correct, they were eligible to be called for interview/viva voce test as they had obtained 50% marks. The three Petitioners in Writ Petition No. 4782 of 2008 had obtained 122, 104 and 110 marks, respectively out of 200 marks, whilst the Petitioner in Writ Petition No. 4475 of 2008 had obtained 102 marks out of 200. Admittedly, they have not been called for viva voce test on the ground that they did not obtain 50% marks in the written examination in each of the papers. We may notice that the word "each" has been, for the first time, introduced by the notification of 25th August, 2008 while examination was held in the year 2007. The criteria specified by the Commission in the year 2007 related to obtaining of 50% marks in the written examination. Even the Draft Rules of 2006 had provided for obtaining 50% marks in the written examination. The Rule did not contemplate that a candidate should obtain 50% marks in each paper. To that extent, the case of these Petitioners would be covered by the judgment of the Supreme Court in the case of K. Manjushree (supra) and these Petitioners would be entitled to be called for viva voce test. There is nothing in the statutory Rules of 2008 to give retrospective effect to it as the statutory rules relating to recruitment normally have to be effected prospectively particularly in the cases when the vacancies had fallen and even process of selection had commenced prior to coming into force of the statutory rules. The Draft Rules of 2006 could be taken into consideration insofar as they were not in contradiction to the statutory rules in

force and the judgment of the Supreme Court in All India Judges' Association's case (supra) and to the terms of the Brochure. The Draft rules specifically provided under the Rules 6 (2)(a) "candidate who secures not less than fifty (50) percent of marks at such written examination shall be eligible for viva voce examination" We are unable to read this rule as interpreted by the learned Counsel appearing for the State. The very fact that this Rule 6(2)(a) has been amended in the year 2008 by adding the words "each paper" shows that the earlier rule did not imply the same thing. For this reason alone, we would be inclined to grant some relief to the Petitioners in these two Writ Petitions.

47. For the reasons aforerecorded, all the Writ Petitions are dismissed, insofar as they claim the relief of quashing of process of selection and applying of criteria for obtaining 50% marks in the written examination on any other grounds taken in the Writ Petitions. Writ Petition No. 4475 of 2008 as well as Writ Petition No. 4782 of 2008 are partially allowed, to the extent that the candidates who have obtained 100 marks or more in the written examination be called for viva voce examination, whereafter the Commission shall proceed in accordance with law. We also make it clear that we would extend this relief to all candidates who might not have approached this Court as this would further the cause of justice and avoid institution of more cases on this ground as well. We thus mandate the Commission to call all such candidates for interview who have obtained 100 marks or more in the written examination and after conducting their viva voce test, the Commission shall proceed in accordance with law. However, we clarify that this direction will not affect the selection already made and all Appointees who have assumed charge shall not be disturbed in any manner by our order. Needless, therefore, to further clarify that their selection and appointment so also seniority etc. shall not be affected by our order delivered today. There shall be no order as to costs.