

(2023) 06 GAU CK 0066

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3105 Of 2016

Hage Lampu

APPELLANT

Vs

Gauhati High Court

RESPONDENT

Date of Decision : 21-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 233, 234, 235
Arunachal Pradesh Judicial Service Rules, 2006 — Rule 12(1), 12(1)(i)
Kerala Judicial Service Rules, 1991 — Rule 7, 14, 15, 16, 17

Citation : (2023) 06 GAU CK 0066

Hon'ble Judges : Sandeep Mehta, CJ;Mitali Thakuria, J

Bench : Division Bench

Advocate : K.N. Choudhury, R.R. Kakati, H.K. Das, B.D. Goswami, A. Chandran, P.K. Tiwari

Final Decision : Dismissed

Judgement

1. The instant writ petition under Article 226 of the Constitution of India has been instituted by the petitioner herein for assailing the select list dated 06.05.2016 issued by the Registrar, Recruitment Cell, Gauhati High Court pursuant to the selection process held vide advertisement No.HC.XXXVII-29/2015/815/R.Cell dated 17.07.2015, issued by the Gauhati High Court for direct recruitment against 2(two) posts of Grade I officers in the Arunachal Pradesh Judicial Service and seeking issuance of a writ in the nature of certiorari and/or mandamus to quash/modify the select list and direct the respondents to select and appoint the petitioner against one of these posts.

2. The petitioner is aggrieved of the minimum marks criterion introduced in the viva-voce conducted during the selection process.

The petitioner has questioned the competence of the High Court in introducing the said criterion on the ground that the applicable Rules, i.e. the Arunachal Pradesh Judicial Service Rules, 2006 do not contemplate fixing of minimum marks in viva-voce and thus, as per the petitioner, introduction of such condition

in the advertisement is unreasonably arbitrary and ultra-vires the provisions of the Constitution of India.

3. Notices of the writ petition were issued to the respondents. Affidavits-in-opposition have been filed on behalf of the respondent Nos.1, 2, 3 and 4.

4. In the affidavit-in-opposition filed by the respondent Nos.1, 2 and 3, i.e., the Gauhati High Court, it is asserted that the advertisement specifically provided that the candidates who secured 60% or more marks or corresponding grade in the Mains written examination would be eligible to appear in the viva-voce exam with the proviso that APST (Scheduled Tribe) candidates with 50% or more marks in the Mains written examination would be entitled to appear in the viva-voce examination.

5. The advertisement also clearly provided that in the viva-voce of 50 marks, the candidates would have to secure 60% marks. 47 (forty seven) candidates appeared in the Preliminary examination. 20 (twenty) candidates in the ratio of 1:10 were found eligible for appearing in the Mains examination including the petitioner, respondent No.5 and respondent No.6. Thereafter, the Mains written examination was conducted and the result of the same was issued vide notification dated 22.04.2016 declaring 5 (five) candidates including the petitioner and the respondent Nos.5 and 6 and the respondent No.7 (whose name was struck off from the array of the parties), eligible for appearing in the viva-voce examination which was conducted on 27.04.2016 and the rank-wise tabulation was prepared. The average marks of interview scored by the petitioner were only 21.33 (42.66%), whereas the respondent Nos.5, 6 and 7 scored 38.67, 35.00 and 32.33 marks, respectively in the interview. Accordingly, the respondent Nos.5 and 6 having secured more than the prescribed minimum of 60% marks in the viva-voce, were declared selected on the basis of their merit positions, whereas the petitioner herein who could not score the minimum of 60% marks prescribed for the viva-voce/ interview as per the advertisement, was denied selection.

6. It is further submitted that as the petitioner participated in the written examination without challenging the condition of the advertisement dated 17.07.2015 categorically providing that a minimum of 60% marks would have to be scored in the viva-voce examination, he is estopped from questioning the said condition after being declared unsuccessful.

7. On these grounds, the respondent Nos.1, 2 and 3 have defended the impugned action.

8. The petitioner filed an affidavit-in-reply for countering the averments made in the affidavit-in-opposition filed by these respondents.

9. The petition was admitted for hearing vide order dated 22.11.2019. Final arguments were heard on 09.05.2023.

10. Mr. K.N. Choudhury, learned Senior counsel representing the petitioner,

vehemently and fervently contended that the condition introduced in the advertisement whereby the recruiting authority, i.e., the Gauhati High Court, has mandated that the candidates appearing in the selection process would be required to secure a minimum of 60% marks in the interview, is highly arbitrary and contrary to the Arunachal Pradesh Judicial Service Rules, 2006 and hence, the petitioner is entitled to challenge the same even after having participated in the selection process.

11. Mr. Choudhury further urged that the process of fixing minimum marks in viva-voce test for selection to the Judicial Services has been declared to be arbitrary and unconstitutional by Hon'ble the Supreme Court in various judgments and thus, merely because the petitioner participated in the selection process without challenging this condition as introduced in the recruitment notification, he cannot be estopped from laying challenge to the grossly illegal and arbitrary condition. In this regard, his contention was that the Shetty Commission's recommendations not to fix minimum marks in viva-voce/ interview has been approved by the Hon'ble Supreme Court and hence, the condition introduced in the advertisement requiring the candidates to score a minimum of 60% marks in the interview is ultra vires the constitutional scheme, arbitrary and de hors the law.

12. Mr. Choudhury further submitted that if the grand total marks of Mains written examination and viva-voce, as per the result-sheet dated 06.05.2016 are taken into account, the petitioner secured 191.83 marks which is much higher than the two selected candidates. Thus, despite the fact that the petitioner stood first in the overall merit, he has been denied selection owing to the sheerly arbitrary and illegal condition imposed by the recruiting authority fixing minimum marks in the viva-voce.

13. Mr. Choudhury placed reliance on the following Supreme Court judgments in support of his arguments:

- i. Rakhi Ray & Ors. Vs. High Court of Delhi, reported in (2010) 2 SCC 637.
- ii. All India Judges' Association & Ors. Vs. Union of India & Ors., reported in (2002) 4 SCC 247.
- iii. Hemani Malhotra Vs. High Court of Delhi, reported in (2008) 7 SCC 11.
- iv. K. Manjusree Vs. State of Andhra Pradesh & Ors., reported in (2008) 3 SCC 512.
- v. Ramesh Kumar Vs. High Court of Delhi & Anr., reported in (2010) 3 SCC 104.
- vi. The State of U.P. Vs. Ram Chandra Trivedi, reported in (1976) 4 SCC 52.
- vii. Raj Kumar & Ors. Vs. Shakti Raj & Ors., reported in (1997) 9 SCC 527.
- viii. Raminder Singh Vs. The State of Punjab & Anr., reported in (2016) 16 SCC 95.

ix. K.H. Siraj Vs. High Court of Kerala & Ors., reported in (2006) 6 SCC 395.

x. Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors., reported in (2013) 4 SCC 540.

and reiterated the argument that merely because the petitioner participated in the selection process, he cannot be estopped from challenging the condition of selection notification fixing minimum marks for interview because such condition is grossly illegal, arbitrary and contrary to the settled law as laid down by Hon'ble the Supreme Court.

14. Mr. Choudhury submitted that Justice Shetty Commission's Report on selection to Judicial Services clearly prescribed that there shall be no minimum marks in viva-voce/interview. This condition was accepted and approved by Hon'ble the Supreme Court in the case of All India Judges' Assn. (3) (supra). The same view was affirmed in the cases of Hemani Malhotra (supra), Ramesh Kumar (supra) and Rakhi Ray (supra).

He thus urged that the condition imposed by the recruiting authority, i.e., the Gauhati High Court in the advertisement dated 17.07.2015 fixing minimum of 60% marks in viva-voce as mandatory requirement to qualify the selection process is liable to be struck down and since the petitioner stood first in the overall merit, he deserves to be selected and appointed to the post of Grade I officer in the Arunachal Pradesh Judicial Service from the date the two successful candidates joined the post. He urged that as a consequence, the candidate who stood second in merit, i.e. respondent No.6, would have to make way for the petitioner

15. Per contra, Mr. H.K. Das, learned Standing Counsel, Gauhati High Court representing the respondent Nos.1, 2 and 3 vehemently and fervently opposed the submissions advanced by Mr. Choudhury, learned senior counsel for the petitioner.

16. Mr. Das, during the course of his arguments, drew the Court's attention to the minutes of the Full Court meeting of the Gauhati High Court dated 08.06.2012, wherein it was resolved that Selection Committee may adopt the criteria of 60% minimum marks for the interview and 35% minimum marks for the official language for the Assam Judicial Service. He submitted that the evaluating performance criterion in the Arunachal Pradesh Judicial Service Rules, 2006 (Rules of 2006, in short) itself gives the power to the recruiting authority to fix the minimum marks in the viva-voce.

17. In this regard, he drew the Court's attention to the General Instructions for Competitive Examination provided in Schedule B of the Rules of 2006 wherein, it is prescribed that the object of viva-voce examination is to assess the suitability of candidates for the cadre by judging the mental alertness, knowledge of law, clear and logical exposition, balance of judgment skills, intellectual depth and other attributes of the candidate. He submitted that in Schedule B Clause C(iv)6

of the evaluating criterion, it is clearly recommended that there shall be a similar vigorous and objective grade value exercise for the viva-voce examination as well. He urged that the prescription of minimum marks in the interview was incorporated by the recruiting authority in the advertisement by taking recourse to the Full Court decision, Rule 12(1)(i) of the Rules of 2006 and the General Instructions for Competitive Examination and thus, the conscious decision so taken cannot be put to challenge, more so when the petitioner having participated in the selection process failed to qualify and hence he cannot now retrace his steps and challenge the condition of the advertisement.

18. He further submitted that the Supreme Court judgment in the case of Ramesh Kumar (supra) relied upon by the petitioner's counsel rather supports the case of the respondents because in the said judgment it is clearly provided that the selection criteria has to be adopted and declared at the time of commencement of recruitment process. The rules of game cannot be changed after the game is over. He urged that in para 15 of the said judgment it is clearly laid down that in case no procedure is prescribed by the rules and there is no other impediment in law, the competent authority, while laying down the norms for selection may prescribe for the test and further specify minimum benchmarks for written test as well as for viva-voce.

19. Mr. Das pointed that the appointing authority i.e., the Full Court of Gauhati High Court has taken a considered decision in the meeting held on 08.06.2012 that minimum marks can be fixed for the viva-voce and thus, introduction of this condition in the recruitment advertisement cannot be termed to be illegal or arbitrary by any stretch of imagination. He submitted that the judgment in the case of Hemani Malhotra (supra) relied upon by the petitioner's counsel is distinguishable on facts because in the said case the criteria of selection was changed in the midst of the selection process.

He further submitted that the contention made on behalf of the petitioner that recommendation made in Justice Shetty Commission's Report were approved in totality by Hon'ble the Supreme Court in the case of All India Judges Association (supra), is not correct. In this regard, Mr. Das submitted that in the case of All India Judges' Association (supra), the Hon'ble Supreme Court neither examined nor approved recommendation made in Justice Shetty Commission's Report on the issue of fixing minimum marks in interview/viva-voce in the selection process for judicial services. He urged that this very aspect was elaborated by the Hon'ble Supreme Court in the case of Salam Samarjeet Singh Vs. High Court of Manipur at Imphal & Anr., reported in (2016) 10 SCC 484.

In this regard, he referred to the observations made in para No.28 of Salam Samarjeet Singh judgment, which read thus:-

"28. Admittedly, the Shetty Commission has recommended that the viva-voce test shall carry fifty marks and there shall be no cut-off marks in the viva-voce test. In All India Judges' Assn. (3) case, (2002) 4 SCC 247, para 37, this Court

subject to various modifications in the judgment, accepted all other recommendations of the Shetty Commission. While there was a detailed discussion on the perks, mode of recruitment to the Higher Judicial Service and the proportionate percentage for promotion as District Judges for judicial officers, limited competitive examination for Civil Judges (Junior Division) and percentage of direct recruitment, there was no detailed discussion regarding the other recommendations of Shetty Commission. As rightly contended by the learned Senior Counsel for the respondent, All India Judges' Assn.(3) case is sub silentio on the recommendation of Shetty Commission as to "no cut-off marks for the viva-voce". The contention of the petitioner that fixing cut- off marks for the viva-voce is in violation of the decision of this Court is not tenable."

(Emphasis supplied)

20. Mr. Das also relied on the Supreme Court judgment in the case of Taniya Malik Vs. Registrar General of High Court of Delhi, reported in (2018) 14 SCC 129 and urged that the controversy regarding permissibility of prescribing minimum marks in the interviews for selection to posts in Higher Judicial services has been laid to rest in the said judgment, wherein it has been emphasized that it is absolutely necessary not only to have interview but also to prescribe minimum marks for the same when the appointment in the higher judiciary, such as the post of District Judge, is involved. He referred to the following observations made by Hon'ble the Supreme Court in the case of Taniya Malik (supra) and urged that the controversy involved in this writ petition is squarely covered by the ratio of the above judgment and hence, the petitioner has no valid grounds so as to question the impugned condition in the advertisement dated 17.07.2015 and the selection of the respondent Nos.5 and 6.

"19. In our considered opinion, it is desirable to have the interview and it is necessary to prescribe minimum passing marks for the same when the appointment in the higher judiciary to the post of District Judge is involved. The interview is the best method of judging the performance, overall personality and the actual working knowledge and capacity to perform otherwise the standard of judiciary is likely to be compromised. A written examination only tests academic knowledge, which is sometimes, gained without possessing overall qualities, practical experience of practice and law. In written exam, even the person with no calibre who takes decision by cramming may obtain better marks. When the Judges of the High Court too are appointed by adjudging the performance and intellect, an interview would be indispensable for judicial post. As ultimately, they also come to adorn the chair of a Judge and Judges of subordinate and higher judiciary to deliver justice to masses, the criteria of experience of practice for direct recruitment of 7 years whether actually gained can be adjudged only by interview, communicating skills and by elucidation of certain aspects which would not be possible by written exam alone. In Siraj [K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395 : 2006 SCC (L&S) 1345], it was emphasised that interview is the main fulcrum for judging the suitability of the candidate for

appointment as District Judge in the higher judiciary. In our opinion that is absolutely necessary. When we consider past practice earlier when the written examination was not prescribed, the High Court used to select the candidates for higher judiciary only by the method of interview. Now additional safeguards of written examination have been added.

The importance of interview for the post of the higher judiciary has increased than ever before, it is absolutely necessary to weed out unworthy elements/crammers and in our considered opinion it is not only appropriate but also absolutely necessary to prescribe the minimum pass marks so as to weed out unworthy element so as to segregate grain from the chaff. There is a vast difference between having the experience that is required for a Judge that cannot solely be adjudged on the basis of written performance, and for which overall personality, intelligence test is absolutely necessary. Without that it would not be appropriate to make appointments in judiciary. Thus in our opinion the prescription of minimum 45% marks for reserved category candidates could not be said to be uncalled for. Merely by the fact that some more posts were advertised and they are lying vacant, it could not have been a ground to relax the minimum marks for interview after the interview has already been held. It would not have been appropriate to do so and the High Court has objected to relaxation of minimum passing marks in viva voce examination in its reply and as the power to relax is to be exercised by the High Court and since it has opposed such a prayer on reasonable ground and the institutional objective behind such prescription, we are not inclined to direct the High Court to relax the minimum marks.

20.

21. Even otherwise the petitioners have undertaken the exam with the stipulation of minimum cut-off marks in written and oral examination and then having failed, they cannot turn round and are estopped to contend to the contrary. This Court in K.H. Siraj [K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395 : 2006 SCC (L&S) 1345] has observed that when the candidates participated in the interview with the knowledge that for selection they have to clear the prescribed minimum pass marks, on being unsuccessful in interview, could not turn around and challenge that the prescription of minimum marks was improper. They are estopped to contend it as observed in K.H. Siraj [K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395 : 2006 SCC (L&S) 1345] thus: (SCC pp. 426-27, paras 72-74)

[Emphasis supplied]

On these submissions, Mr. Das implored the Court to dismiss the writ petition.

21. We have given our thoughtful consideration to the submissions advanced at Bar and the material available on record.

22. The following three principal grounds of challenge laid by the petitioner can

be formulated for adjudication in this writ petition.

(1) The Arunachal Pradesh Judicial Service Rules, 2006 do not empower the recruiting authority to prescribe minimum marks in the interview.

(2) The petitioner, despite participating in the selection is entitled to challenge the condition of recruitment advertisement whereby minimum 60% marks were fixed in the interview because this is purely a legal challenge based on the ground of arbitrariness and hence, the plea of estoppel cannot foreclose the right of the petitioner to question the validity of the unreasonable and arbitrary condition.

(3) That the petitioner having secured the highest grand total marks in the written examination and the interview taken together is entitled to be selected on the post advertised as being a more meritorious candidate.

23. First, we will take up the challenge given to jurisdiction of the recruiting authority i.e. the Gauhati High Court in prescribing the condition of minimum marks in the recruitment notification.

Rule 12(1)(i) of the Rules of 2006 prescribes that no person selected for appointment by direct recruitment shall be appointed unless the appointing authority is satisfied that he possesses a good moral character and "is in all respect suitable for appointment to the service" (Emphasis supplied).

Clause A of Schedule B indicates the break-up of marks for the written examinations which would constitute of 3(three) papers, each carrying 100 marks and viva-voce which would be of 50 marks.

General Instructions C(i) prescribes that all candidates who obtain 60% or more marks or corresponding grade in the written examination shall be eligible for viva-voce examination. Relaxation of 10% is provided to the Arunachal Pradesh (Scheduled Tribe) candidates in the marks required for clearing the written examination. Clause C(ii) prescribes that selection of candidates shall be made on the basis of cumulative grade obtained in the written and viva-voce examination. Clause C(iii) lays down that the object of viva-voce examination is to assess the suitability of the candidates for the cadre by judging the mental alertness, knowledge of law, clear and logical exposition, balance of judgment, skills, attitude, ethics, power of assimilation, power of communication, character and intellectual depth and the like of the candidate. The mode of evaluating the performance of grade in the written and the viva-voce examination has been further explained in Clause C(iv).

Clause C(iv)(6) recommends a similar vigorous and objective grade value exercise for the viva-voce examination as well. (Emphasis supplied)

Thus, we are of the view that Rule 12(1)(i), General Instructions C(iii) and C(iv)(6) read in conjunction give a clear indication that viva-voce examination would be the ultimate test of assessing the suitability of the candidate. Clause C(iv)(6)

gives a strong indication that the grade value exercise for the viva-voce examination should be at par with the written examination.

Rule 12(1)(i) of the Rules of 2006 enjoins upon the appointing authority a duty to test the suitability of the candidate for appointment to service. The various parameters to be applied for assessing the suitability are highlighted in C(iii) of General Instructions and these parameters are to be kept in mind during the viva-voce examination.

24. Hon'ble the Supreme Court has laid down in a catena of judgments, some of which have been referred (*supra*), that for direct recruitment to the District Judge cadre, interview/viva-voce is the best method of assessing the suitability of a candidate. Since testing the suitability of the candidates on the touchstone of the various attributes indicated by Hon'ble Supreme Court and also indicated in Clause C(iii) of the guidelines is strongly emphasized a fortiori before recommending a candidate for appointment to District Judiciary, the recruiting authority would be required to conduct a very robust and comprehensive exercise in the viva-voce so as to maintain fairness and transparency in the selection process and to ensure that only the deserving and suitable candidates are selected to a highly sensitive post of Grade-I Judicial Officer. Viva-voce is the only stage where the candidates come face to face with the interview board which comprises of Judges of High Court. Thus, the interview is the only proper stage where the suitability of the candidate can be objectively and comprehensively tested on the yardsticks indicated in Clause C(iii) of General Instructions. At the cost of repetition, it may be mentioned that Clause C(iv)(6) of the Schedule B gives a clear direction to the recruiting authority to undertake a vigorous and objective grade value exercise for the viva-voce examination at par with the written examination so as to eliminate the possibility of unfairness creeping in the process on account of subjective elements on the part of the individual examiners for the written test.

25. If the criterion of minimum marks in viva-voce examination is not fixed, possibility cannot be ruled out that a candidate, who secures high marks in the written examination could be selected even if he does not secure a single mark in the interview. A situation may even arise that a candidate may keep silent and refuse to answer to every single question posed by the Interview Board, and yet, he could stake a claim for selection merely on the basis of the marks scored in the written examination. In such a situation, the mandate of Rule 12(1) that the appointing authority must be satisfied that the candidate is in all respect suitable for appointment to the service, would be totally compromised and the sanctity of entire viva voce examination may become an exercise in futility. In drawing this conclusion, we are benefited by the observations made by the Hon'ble Supreme Court at paragraph No.19 in the case of Taniya Malik quoted (*supra*).

26. The power of High Court to prescribe minimum marks for the oral examination was examined in extenso by Hon'ble the Supreme Court in the case of K.H. Siraj Vs. High Court of Kerala & Ors., reported in (2006) 6 SCC 395 and

the prescription so made in the recruitment notification in spite of non-availability of specific power in the Rules was approved/affirmed.

The relevant paragraphs of the judgment in K.H. Siraj (*supra*) wherein, this aspect was considered, are reproduced hereinbelow for the sake of ready reference.

"48. In this background, two questions raised by Mr. L.N. Rao have to be considered:

1. The prescription of minimum mark for the oral examination as a condition of eligibility for selection as Munsif Magistrate is not authorised by Rule 7 of the Kerala Judicial Service Rules, 1991;

2. The select list has not been prepared in accordance with Rules 14 to 17 of KSSR 1958.

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 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 well accepted norm to adjudge the merit and suitability of any candidate for any service, whether it be the Public Service Commission (I.A.S., I.A.F. 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 bench mark 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 high-powered body like 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 high-powered 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 Vs. Kali Das Batish*, 2006 (1) SCC 779 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.

51. The very scheme and amplitude of Rule 7 under which the selection is made is sufficient answer to the contention of the appellants. Under the scheme of the Indian Constitution, the High Court is vested with the entire administration of the subordinate judiciary under Articles 233, 234 and 235 of the Constitution of India. The High Court is vested with the power to see that the high traditions and standards of the judiciary are maintained by the selection of proper persons to man the subordinate judiciary.

52. The place of the High Court in the matter of administration of justice was very elaborately and poignantly delineated by S.B. Majumdar, J., who speaking for the Constitution Bench in *State of Bihar Vs. Bal Mukund Sah*, (2000) 4 SCC 640, said that the very responsible and onerous duty is cast on the High Court under the constitutional scheme and it has been given a prime and paramount position in this matter, with the necessity of choosing the best available talent for manning the subordinate judiciary. The repercussions of wrongful choice is also pointed out in the said judgment.

53. It is significant to note that the appellants-petitioners themselves have not challenged the prescription of minimum cut-off marks for the written examination though if their contention is to be accepted, the prescription of such minimum cut-off will also be equally invalid. Their contention, in our view, is without any substance and merit.

54. In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidates' academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a judicial officer.

55. We may usefully refer to a decision of this Court in *Lila Dhar Vs. State of Rajasthan*, (1981) 4 SCC 159 in which this Court observed as under:

"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the

essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.

'The ideal in recruitment is to do away with unfairness.' (SCC pp.162-63, para 4)

* * *

'A system of recruitment almost totally dependent on assessment of a person's academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrowWe venture to suggest that our recruitment procedures should be such that we can select candidates who cannot only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems.'

It is now well recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantage over the interview-test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. (SCC p. 163, para 5)

* * *

"While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention that it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power." (SCC p.166, para 9)."

56. In Mohan Kumar Singhania & Ors. Vs. Union of India & Ors., (1992) suppl. 1 SCC 594, S. Ratnavel Pandian, J. speaking for the Bench, observed as under: (SCC p.608, paras 18-21)

"18. Hermer Finer in his textbook under the caption The Theory and Practice of Modern Government states:

"The problem of selection for character is still the pons asinorum of recruitment to the public services everywhere. The British Civil Service experiments with the interview.

19. The purpose of viva voce test for the ICS Examination in 1935 could be best understood from the following extract of the Civil Service Commission's pamphlet:

'Viva Voce- the examination will be in matters of general interest; it is intended

to test the candidate's alertness, intelligence and intellectual outlook. The candidate will be accorded an opportunity of furnishing the record of his life and education.'

20. It is apposite, in this connection, to have reference to an excerpt from the United Nations Handbook on Civil Service Laws and Practice, which reads thus:

'..... the written papers permit an assessment of culture and intellectual competence. This interview permits an assessment of qualities of character which written papers ignore; it attempts to assess the man himself and not his intellectual abilities.'

21. This Court in *Lila Dhar vs. State of Rajasthan*, (1981) 2 SCC 159 while expressing the view about the importance and significance of the two tests, namely, the written and interview has observed thus: (SCC p. 164, para 6)

"..... the written examination assess the man's intellect and the interview test the man himself and the "the twain shall meet" for a proper selection."

57. The qualities which a Judicial Officer would possess are delineated by this Court in *Delhi Bar Assn. Vs. Union of India & Ors.*, (2002) 10 SCC 159. A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy irrelevant arguments and the like. Existence of such capacities can be brought out only in an oral interview. It is imperative that only persons with a minimum of such capacities should be selected for the judiciary as otherwise the standards would get diluted and substandard stuff may be getting into the judiciary. Acceptance of the contention of the appellants-petitioners can even lead to a postulate that a candidate who scores high in the written examination but is totally inadequate for the job as evident from the oral interview and gets zero marks may still find it a place in the judiciary. It will spell disaster to the standards to be maintained by the subordinate judiciary. It is, therefore, the High Court has set a benchmark for the oral interview, a benchmark which is actually low as it requires 30% for a pass. The total marks for the interview are only 50 out of a total of 450. The prescription is, therefore, kept to the bare minimum and if a candidate fails to secure even this bare minimum, it cannot be postulated that he is suitable for the job of Munsif Magistrate, as assessed by five experienced Judges of the High Court.

58. In this connection, reference may be made to the decision in *Manjeet Singh Vs. ESI Corpn.*, (1990) 2 SCC 367 at p. 371 wherein the Rules did not prescribe any minimum marks for the interview. The advertisement for the job set a minimum of 40% to the written test and without a minimum for the interview. However, candidates with less than 40% at the interview were not selected. The selection was upheld by this Court relying on a judgment of Punchhi, J in *Rajesh Sood Vs. Director-General, ESI Corpn*, 1985 (2) SLR 699. In *Union of India Vs. Amrik Singh*, (1994) 1 SCC 269, though there was no specification in the

statutory rules regarding the minimum length of service for promotion, such prescription was laid by administrative instructions. In para 7, this Court said that the instructions so issued were not inconsistent with the Rules. Reference may also be made to a decision of this Court in *Jasbir Rani Vs. State of Punjab*, (2002) 1 SCC 124, in which the relevant rules did not specify as to the relevant date for considering the age qualification. The advertisement, however, fixed a cut-off date, which was contended to be illegal. This Court held that the said prescription was for the purpose of implementation of the rules regarding age.

59. We may now refer to few decisions cited by Mr. T.L.V. Iyer, learned senior counsel appearing for the respondents, in support of his contentions.

60. In *State of Haryana vs. Subash Chander Marwaha*, 1974 (3) SCC 220, the Rules specified that a candidate obtaining 45% marks was eligible for appointment. However, the Government restricted the appointments to candidates getting over 55%. Candidates who had obtained less than 55% but over 45% challenged the non-appointment despite existence of vacancies, on the ground that all those got over 45% should have been appointed. This was not accepted by this Court.

61. It has been held by this Court in *M.P. Public Service Commission Vs. Navnit Kumar Potdar*, 1994 (6) SCC 293 that in an interview- based selection, it was open to the Selecting Board to insist on a higher qualification than that prescribed by the Rules. In that case, five years' experience was the prescribed qualification. But this Court held that there was nothing wrong in confining the selection to candidates with experience of 7½ years.

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 Vs. Akhilesh C. Bhargav*, (1987) 4 SCC 482.

[Emphasis supplied]

This very principle was emphasized and reiterated in the case of *Taniya Malik* (supra).

27. It may be mentioned here that the 3(three) senior most Judges of the High Court comprise the Interview Board which tests the suitability of the candidates in the viva-voce examination. Hence, the very composition of the Board gives rise to a strong presumption that the exercise so undertaken by the Board would

be objective, fair and without any bias or prejudice.

28. As pointed out by Mr. Das, the Full Court of the Gauhati High Court has taken a considered decision vide minutes dated 08.06.2012 that minimum marks can be prescribed for the viva-voce examination to be conducted for recruitment to a Grade-I post. At paragraph 62 of the judgment in the case of K.H. Siraj (supra), Hon'ble the Supreme Court clearly laid down that there is nothing in the Rules barring such a procedure from being adopted and furthermore, the executive instructions can always supplement the Rules which may not be clear on every aspect of a matter. Thus, the competence of the High Court in prescribing minimum marks for the viva-voce examination cannot be questioned. In addition thereto, Clause (C)(iv)(6) of the General Instructions in the Rules of 2006 clearly prescribes that the rigor of testing a candidate in viva-voce shall be at par with the standard to be adopted in the written examination. Hence, it is clear that the prescription of the Rules also requires that minimum marks @ 60% in the viva-voce akin to the minimum marks in written examination are required to be fixed so as to ensure that truly deserving candidates fully suitable for the posts are selected as Grade-I Judicial Officers.

29. Hence, the contention of Mr. K.N. Choudhury, Senior Advocate representing the petitioner that the Rules do not empower the recruiting authority, i.e. Gauhati High Court to fix the criterion of minimum marks for interview, has no merit whatsoever and deserves rejection.

30. In the case of K. Manjusree (supra) on which reliance was heavily placed by Mr. Choudhury, on the issue of estoppels, in the initial scheme of recruitment process, the pre-determined criterion provided for 75 marks for written examination and 25 for interview, thus, prescribing a ratio of 3:1. However, the written examination was actually held for 100 marks as against the 25 interview marks which changed the ratio to 4:1. The marks for written examination were thereafter proportionally scaled down to maintain the 3:1 ratio. The said action was upheld by Hon'ble the Supreme Court. However, the procedure, whereby minimum qualifying marks for interview were prescribed after the interviews were over, was disapproved and struck down. While doing so, Hon'ble the Supreme Court held that minimum marks could be prescribed both for written examination and interview but such prescription have to be done in advance. Thus, this judgment is also of no avail to the petitioner and rather, adds succor the decision of the recruiting authority i.e. the respondent Gauhati High Court in fixing the minimum marks for the viva-voce in the advertisement itself.

31. The argument of Mr. Choudhury that the petitioner, despite having participated in the selection process cannot be estopped from challenging the condition of minimum marks in interview was based on Hon'ble the Supreme Court's judgment in the case of K. Manjusree (supra). Suffice it to say that in a later judgment i.e. Salam Samarjeet Singh (supra) a doubt has been cast on the correctness of the view taken in K. Manjusree (supra).

32. The judgment in the case of Tej Prakash Pathak (supra) on which Mr. Choudhury relied upon dealt with the situation, wherein the selection criterion was changed in the midst or after the commencement of the selection process. Hon'ble the Supreme Court had referred the said issue to a Larger Bench. Thus, the said judgment is also of no aid whatsoever to the petitioner because in the case at hand the prescription of minimum marks in the interview was made in the recruitment notification itself. The petitioner participated in the process and having failed to get selected, he challenged the said condition subsequently. Thus, the said judgment is of no assistance whatsoever to the petitioner.

33. We are of the view that petitioner though being cognizant of the conditions incorporated in the advertisement dated 17.07.2015 fixing minimum marks for viva-voce, participated therein and failed. Thus, keeping in view the ratio of the Hon'ble Supreme Court judgment in the case of Taniya Malik (paragraph No.21 highlighted above), there is no doubt in the mind of the Court that the petitioner is stopped from challenging the condition of minimum marks in the interview.

Thus, the issue Nos.1 and 2 decided against the petitioner.

34. In the wake of discussion made above and considering the ratio of Hon'ble the Supreme Court judgments in the cases of Taniya Malik (supra), Salam Samarjeet Singh (supra), Ramesh Kumar (supra) and K.H. Siraj (supra) and the provisions contained in the Rules of 2006, we are of the firm view that the questioned condition in the recruitment advertisement, whereby prescription of 60% minimum marks was made for the viva-voce test, does not suffer from any illegality, arbitrariness nor the same can be said to be de hors the Rules of 2006 or the Constitutional mandate.

As issue Nos.(1) and (2) have been decided against the petitioner, the challenge at issue (3) has to fail as a natural consequence thereof.

35. Resultantly, the petitioner who could not secure the minimum 60% marks in the interview, was rightly denied selection in the questioned direct recruitment of Grade I in the Arunachal Pradesh Judicial Service undertaken vide notification dated 17.07.2015.

36. The writ petition lacks merit and is dismissed as such.

No order as to costs.