
(2014) 03 MAN CK 0004
In the Manipur High Court
Case No : Writ Petition (C) No. 31 of 2013

Shri Hanjabam Bobby Sharma	Vs	APPELLANT
Manipur Public Service Commission and Others		RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 03 MAN CK 0004

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : N. Ibotombi, Mr. A. Rommel in W.P.C No. 31 of 2013 and Mr. M. Devananda in W.P.C No. 150 of 2013, for the Appellant; L. Shyamkishore, Mr. Y. Paikhomba, Advocate and Ms. Ch. Sundari, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—Heard Mr. N. Ibotombi, learned senior counsel for the petitioner in W.P. (C) No. 31 of 2013 and Mr. M. Devananda, learned counsel for the petitioner in W.P. (C) No. 150 of 2013. Also heard Mr. L. Shyamkishore, learned senior counsel for the respondents and Ms. Ch. Sundari Devi, learned Government Advocate for State respondents. As the issues involved in both the petitions are similar, these are heard together and disposed of by this common judgment and order.

W.P. (C) No. 13 of 2013

The present petition has been filed by an unsuccessful candidate belonging to OBC (Meitei) category in the Manipur Civil Services Combined Competitive Examination, 2010 who had been disqualified on being not able to obtain 50% qualifying marks in General English paper in the Main Examination having obtained only 45% though he had scored 67.15 % in the remaining subjects. The grievance of the petitioner is that the cut-off marks of 50% fixed by the Manipur Public Service Commission (MPSC) as the qualifying marks in General English

paper is unreasonably high and is arbitrary.

2. The Manipur Public Service Commission (MPSC) issued an advertisement dated 25.11.2010 for recruitment to 138 posts which included 19 posts of Manipur Civil Services Grade-II (MCS), 25 posts of Manipur Police Services Grade-II (MPS), 23 posts of Manipur Finance Services Grade-III (MFS), 43 posts of Sub-Deputy Collectors (SDCs), 25 posts of Manipur Secretariat Service, Category-V (SOs) and 3 posts of Election Officers (EOs). Out of the said 138 posts, the posts reserved for the OBC (Meitei/Meetei) category were as follows:-

3. The petitioner applied for the said advertised posts. The aforesaid competitive examination was governed by "Manipur Civil Services Combined Competitive Examination Rules, 2010" which were notified on 15.11.2010 by the Government of Manipur (hereinafter referred to as the "Rules").

As per the scheme of the examination, only candidates who were successful in the preliminary examination, were to appear in the written test of the Main examination, which consists of General English paper which was of a qualifying nature consisting of 300 marks and 7(seven) other papers. The preliminary examination as per the Rules was held on 11.9.2011 and the result was declared on 24.9.2011. 725 candidates, out of 8479 candidates who appeared, were declared successful including the present petitioner. As per the Rules, the papers of Essay, General Studies and optional subjects of only such candidates will be evaluated who attained the minimum standard marks as may be fixed by the Commission in their discretion for the qualifying paper i.e. General English. In other words, unless one obtains the qualifying mark in the General English paper, the remaining papers are not to be evaluated as provided under "Note" u/s II of the Chapter II of the aforesaid Rules.

4. According to the petitioner, he had done exceedingly well not only in General English paper but also in the remaining papers. The main written examination/test was held from 6.02.2012 to 22.02.2012 and after that, viva-voce was held from 21.8.2012 to 18.9.2012. The petitioner contended that even though he had performed very well in the main written examination, his name was not included in the list of 281 successful candidates of the main written examination which was declared on 31.12.2012 and who were called for interview.

5. Being aggrieved by non-selection for interview, the petitioner applied for information from the Manipur Public Service Commission under the Right to Information Act relating to the marks scored by the petitioner in General English paper and other subjects and also about the qualifying marks for General English paper as well as in respect of other papers of those unreserved category/OBC/SC/ST who were called for interview and Xerox copies of the answer scripts of the petitioner in the main examination. According to the petitioner, after much delay on the part of the Manipur Public Service Commission, the aforesaid information was made available to the petitioner, according to which, the qualifying mark for General English paper was 50% i.e. one had to score 150 marks out of 300

marks. As regards the cut-off marks of the successful candidates who were called for interview, the same had been furnished as follows:-

6. The petitioner had obtained 135 marks out of 300 marks (i.e., 45%) in General English paper though he obtained 1343 marks out of total 2000 marks in other remaining subjects, thus scoring only 8 marks less than the topper in the main (written) examination, who had scored 1351 marks out of 2000 marks. The marks obtained by the petitioner in other papers were as follows:-

7. The petitioner contended that even though the petitioner had done exceedingly well in the remaining papers, because of the unreasonably high cut-off mark in the General English paper, he had been disqualified thus was depriving of being called for in the interview and selected in the said examination.

According to the petitioner, if he had qualified in General English, even if he obtains 132 out of 300 marks in the interview, he would have secured first position in the Competitive Examination and would have been recommended for the Manipur Civil Service (MCS) cadre. Similarly, if he obtains 93 marks, 65 marks, 14 marks, 12 marks or even 10 marks, he would still be among the topmost position holders in the Manipur Civil Service and Manipur Police Service (MPS) respectively. Even if he scores nil (0) in the interview for which 300 marks had been allotted, he would still be qualified and could be appointed to any of the posts in the Manipur Finance Services reserved for OBC category, as mentioned below:-

8. According to the petitioner, the Rules, as quoted above, clearly provide that the paper on General English will be of Matriculation or equivalent standard and will be of qualifying nature and marks obtained in the paper will not be counted for ranking. Even though the MPSC had the discretion to fix the minimum standard qualifying marks for General English paper, it cannot be fixed so unreasonably high to the extent of 50% since it is merely of a qualifying nature.

It has been contended, relying on the Kothari Committee Report which had recommended that papers of General English and Indian languages should of matriculation and equivalent standard and of qualifying nature and marks obtained in this paper will not be counted for ranking, that the Union Public Service Commission had been normally fixing the minimum qualifying marks in the General English paper between 20% to 40% for various competitive examinations conducted by it. Other State Public Service Commissions had been also fixing the qualifying marks in the said range for the same reason.

9. The petitioner had gathered some information regarding cut-off marks in the qualifying subject of English and other subjects which had not been disputed by the MPSC. In respect of Jammu & Kashmir Public Service Commission, the qualifying marks fixed for General English paper of main examination in the years 2009, 2010 and 2011 were as follows:-

In respect of Andhra Pradesh Public Service Commission, for the competitive

examination held in 2012, the minimum qualifying marks for General English paper in the main examination which was of Senior School Certificate standard were fixed at 40% for O.Cs, 35% for B.Cs, 30% for SC/ST/PH.

In respect of Karnataka Public Service Commission, it has been provided in the Rules that minimum of 30% for each of the papers including English and 35% in aggregate should be obtained by the candidates.

As regards other State Public Service Commissions including Haryana, Odisha, Punjab, Himachal Pradesh, Arunachal Pradesh and Maharashtra, the Commissions have fixed the marks of the qualifying papers as follows:-

(i) Haryana-33% in qualifying papers i.e. Hindi and General English and 45% in aggregate of all papers.

(ii) Odisha-35% for UR and SEBC and 30% for SC and ST in Oriya language and English.

(iii) Punjab-33% in Gurumukhi paper and 45% in aggregate including General English.

(iv) H.P.-40% in General English and Hindi and 45% in aggregate of all papers.

(v) Arunachal Pradesh-33% in each subjects including General English.

(vi) Maharashtra-40% for reserved category.

10. The petitioner also has contended that as per the Council of Higher Secondary Education, Manipur, the pass mark/qualifying mark of English paper in the Higher Secondary Examination conducted by it has been fixed at 33%. Similarly, the Board of Secondary Education, Manipur also has fixed 33% as the pass mark for the General English in the HSLC examination conducted by it. Thus, it has been submitted by the learned counsel for the petitioner that since General English is of matriculation or equivalent standard and of qualifying nature and since the Board of Secondary School, Manipur and Council of Higher Secondary School, Manipur have fixed 33% as the qualifying mark for General English and other States Public Service Commissions also have fixed the qualifying mark ranging from 30% to 40% as mentioned above, fixing of 50% by the Manipur Public Service Commission as the qualifying mark in General English is unreasonably high and as such arbitrary and hence, is liable to be set aside. Learned counsel for the petitioner also has submitted that for the competitive examination being conducted by the Manipur Public Service Commission for the year 2013, the Commission had reduced the qualifying mark in respect of General English paper as 40% for the General Category, 38% for the OBCs, 35% for SC/STs, 30% for person with physical disability as per the decision taken by the Manipur Public Service Commission on 09.12.2013. This, itself indicates that the Manipur Public Service Commission acknowledged that fixation of 50% as the qualifying mark in English in the previous Examinations was unreasonably high. Otherwise, there was no reason for the MPSC to reduce the qualifying mark on

its own.

11. The petitioner has submitted that the qualifying mark for General English was fixed at 50% by the Manipur Public Service Commission after knowing the results of all the candidates and it had been fixed to disqualify the petitioner in order to accommodate some other favoured candidates of the officials of the Manipur Public Service Commission. It has been contended that even though the Rules provide that the papers of Essay, General Studies and optional subjects of the candidates will be evaluated in respect of such candidate who had qualified in General English, all the papers of the petitioner had been evaluated. This would clearly indicate that the petitioner had qualified in the General English otherwise there was no necessity to evaluate the papers of Essay, General Studies and optional subjects as provided under the "NOTE" to the Rules as quoted above.

12. The Manipur Public Service Commission filed their affidavit-in-opposition denying the averments and allegations of the petitioner. In their affidavit-in-opposition, it has been stated that the provisions under the Rules for evaluation of the papers of Essay, General Studies and optional subjects of only such candidates who had qualified in the General English is merely directory in nature and not mandatory and as such if all the papers are evaluated irrespective of whether one qualifies in General English or not, the same cannot be held to be illegal. According to the MPSC, however, there were compelling circumstances to examine all the papers along with the qualified General English to save time and shorten the process in the interest of general public and also of all the candidates. The Manipur Public Service Commission admitted that all the answer sheets/papers including General English paper of all the candidates were examined at the same time by sending all these papers to the concerned examiners to save time, energy, etc. It was also stated that 109 candidates including the petitioner could not get 50% marks in the General qualifying English paper and as such, it was not done selectively to disqualify the petitioner. The Manipur Public Service Commission also stated that the Full Commission had taken a decision on 16th July, 2012 fixing the minimum qualifying marks in General English as 50% i.e. 150 marks out of 300 marks to be scored by all the candidates and it was so fixed as had been done in the last Examination in 2006. Accordingly, it was submitted that the petitioner had no enforceable right seeking for any direction to reduce the qualifying marks from 50% to 33% as desired by the petitioner.

13. The petitioner by filing an additional affidavit had contested the claim of the Manipur Public Service Commission contending that it cannot be stated that evaluation of all papers of all candidates would lead to saving of time, energy, etc. and in the public interest in as much as such exercise would involve evaluation of as many as about 5000 answer sheets. It was alleged that the MPSC fixed the qualifying marks in General English at 50% merely to favour some candidates after knowing the marks scored by the petitioner and some other candidates. According to the petitioner, the procedure adopted by the

MPSC is not only in violation of the Rules but clearly malafide.

14. On hearing the learned counsel for the parties and on perusal of the pleadings on record, the following undisputed facts emerge which may be noted as below:-

(i) The petitioner is an OBC candidate who had applied for Manipur Civil Services Combined Competitive Examination, 2010.

(ii) Out of the total 14,118 applicants, 725 candidates qualified for Main Examination having passed the Preliminary Examination. Out the said 725 candidates, 109 including the petitioner did not score 50% mark in General English and 281 candidates in the Main Examination were found qualified for appearing in the Personality test having scored or more than 50% in General English.

(iii) The Manipur Public Service Commission fixed 50% of the marks allotted to General English paper as the qualifying mark.

(iv) The qualifying mark in General English has been reduced to 40% for the General category, 38% for the OBC, 35% for the SC/STs, 30% for Persons with physical disability for the subsequent examination held.

(v) The petitioner scored 135 marks out of 300 marks, scoring 45% in General English and was disqualified but he scored 1343 out of 2000 marks in the remaining 7(seven) papers, 8 marks less than the topper of the examination who scored 1351.

(vi) The qualifying mark of the Preliminary Examination is not disclosed since it was not an issue. But the qualifying mark in other papers/subjects for the Main Examination for summoning the candidates for interview have been disclosed as follows:

15. In the light of the aforesaid undisputed facts, the following issues have emerged for consideration and decision by this Court.

i) Whether fixing of 50% as qualifying mark in General English is unreasonably high and arbitrary?

ii) Whether such fixation was mala fide?

iii) Whether such high fixation of qualifying mark will be amenable to judicial review of this Court in exercise of jurisdiction under Article 226 of the Constitution of India?

iv) If, held to be unreasonably high or arbitrary, what relief can be granted to the petitioner?

16. As we proceed to discuss these issues, we will examine at what stages of the competitive examination, marks which are of qualifying nature are applied to determine the fate of the candidates under the Manipur Civil Services Combined

Competitive Examination Rules, 2010.

We observe that there are three stages where three kinds of qualifying marks for different purposes are invoked by the MPSC in course of the examination process.

For this, we may refer to the relevant provisions of the Rules which deal with qualifying marks.

In Chapter-I of SCHEDULE-II of the Rules, which deals with "Procedures for Holding Combined Competitive Examination Under the Manipur Civil Services Combined Competitive Examination Rules, 2010" it has been provided under Paragraph no. 13 as follows:

13. Candidates who obtain such minimum qualifying marks in the Preliminary Examination as may be fixed by the Commission at their discretion shall be admitted to the Main Examination and candidates who obtain such minimum qualifying marks in the Main (Written) examination as may be fixed by the Commission at their discretion shall be summoned by them for an interview for personality test:

Provided that candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and the Physically Disabled categories may be summoned for interview/personality test as stated above by the Commission applying relaxed standards in the Preliminary as well as in the Main Examination (Written) if it is found by the Commission that sufficient number of candidates from these communities are not likely to be summoned for interview on the basis of general standard to fill up the vacancies reserved for them:

Provided further that the candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and the Physically Disabled categories who appeared in the examination by resorting to any relaxation/concessions in the eligibility or selection criteria, at any stage of the examination, shall be adjusted against the vacancies reserved for Scheduled Castes, Scheduled Tribes, Other Backward Classes and the Physically Disabled categories even if Such candidates are in the merit list.

Further under Paragraph no. 4 of Section-I of Chapter II dealing with "Examination Plan, Scheme, and Subjects for Preliminary and Main Examination Under Manipur Civil Services Combined Competitive Examination Rules, 2010" it has been provided as follows:

2. The Manipur Civil Services Combined Competitive Preliminary Examination will consist of 1 (one) paper of objective type (multiple choice questions) and carry a maximum of 300 marks in General Studies only, for which the syllabus is mentioned in sub-section (A) of Section-II. This Examination is meant to serve as a screening test only; the marks obtained in the Preliminary Examination by the candidates who are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination will be 5 times the total

approximate number of vacancies to be filled in the year in the various services and posts. Only those candidates who are declared by the Commission to have qualified in the Preliminary Examination in a year will be eligible for admission to the Main Examination of that particular year, provided they are otherwise, eligible for admission to the Main Examination.

3. The Combined Competitive Main Examination will consist of Written Examination and Interview/Personality Test. The Written Examination will consist of 8 (eight) compulsory papers of conventional essay type in the subjects set out in sub-section (b) of Section-II. Also note (ii) under para-I of sub-section (B) of Section-II may be seen.

4. Candidates who obtain such minimum qualifying marks in the written part of the Main Examination as may be fixed by the Commission at their discretion, shall be summoned by them for an interview for a personality test under sub-section (C) of Section-II. However, the paper on General English will be of qualifying nature. Also see note (ii) under Para-I of sub-Section (B) of Section-II. The marks obtained in General English will not be counted for ranking. The number of candidates to be summoned for interview will be about twice the number of vacancies to be filled up. The interview will carry 300 marks (with no minimum qualifying marks).

Marks thus obtained by candidates in the Main Examination (Written part as well as interview) would determine their final ranking. Candidates will be allotted to the various services/posts keeping in view their marks in the Examination and the preferences expressed by them for the various services/posts.

It may be also noted that in the "Note" appended to Paragraph B relating to Combined Competitive Main Examination (Written and Interview) dealing with the "Scheme and Subjects for the Preliminary and Main Examinations", it has been provided as follows:

"Note:

(i) The paper on General English will be of Matriculation or equivalent standard and will be of qualifying nature. The marks obtained in the paper will not be counted for ranking.

(ii) The paper on Essay, General Studies and optional Subjects of only such candidates will be evaluated as attained such minimum standard as may be fixed by the Commission in their discretion for the qualifying paper, i.e., General English.

17. From the scheme of the competitive examination as provided under the Rules quoted above, it is evident that the Rules provide for screening at three stages of the examination by way of fixing qualifying marks, firstly, at the stage of Preliminary Examination, secondly, to screen out those who do not qualify for General English in the Main Examination and thirdly, at the Main Examination in respect of the papers for the purpose of calling for interview.

At the initial stage of the Preliminary Examination, the MPSC would fix the minimum qualifying mark to be obtained by the candidates in the Preliminary Examination so as to be qualified for appearing in the Main Examination. Only those candidates who score the qualifying mark in the Preliminary Examination would be eligible for admission to the Main Examination. This qualifying mark would be mainly for the purpose of determining the number of candidates who will be admitted to Main Examination. Paragraph no. 2 of Section I of Chapter II as quoted above provides that the number of candidates to be admitted to the Main Examination will be 5 times the total approximate number of vacancies to be filled in the year in the various services and posts. Thus, fixation of the qualifying mark in the Preliminary Examination is directly related to the number of candidates which are proposed to be admitted to the Main Examination. It is not so much concerned with the relative merit of the candidates as with the compulsion of reducing the number of candidates to 5 times the vacancies advertised. In other words, the fixation of the qualifying mark at this first stage is more to do with procedural requirement rather than inter se merit of the candidates. Therefore, by the very nature of its use, the qualifying mark in the Preliminary Examination would vary from examination to examination as it would dictated more by the number of vacancies, rather than the required or desired merit of the candidates. Thus, if there be a large number of candidates applying compared to a very small number of vacancies advertised, the qualifying mark would be in the higher side to bring the down the number of candidates to 5 times the vacancies as contemplated under the Rules. As the qualifying mark would be correlated to the number of vacancies, it would inevitably differ from examination to examination, corresponding to the number of posts advertised. As a result, it may not be possible to set any standard for determining as to what would be the ideal qualifying mark to be set in the Preliminary Examination which may be regularly and consistently applied in the examinations conducted by the MPSC.

18. Coming to the next stage where the MPSC fixes "qualifying marks" is in the Main Examination. There are two kinds of qualifying marks involved in the Main Examination. One is related to the General English whose mark is not to be counted for determining the ranking. It is only in respect of those candidates who qualify in General English that the other subjects in the Main Examination would be evaluated and not otherwise. Application of the other qualifying mark is related to the remaining papers which will be invoked for the purpose of calling for the interview of those candidates who qualify in General English. In other words, only those candidates who obtain the qualifying mark in the remaining subjects (after screening out those who do not qualify in the General English) would be called for interview.

As clearly mentioned in the "Note", the mark obtained in the General English Paper is of qualifying nature and will not be counted in the ranking and the remaining papers of only such candidates who obtain the qualifying mark in English will be evaluated.

The other qualifying mark will be determined by the MPSC on the basis of marks obtained in the subjects (other than General English) for the purpose of summoning for interview. Though this qualifying mark at the final stage to screen out the candidates may be also related to the number of vacancies to be filled up as indicated in the Rules, it has to be mainly related to the merit, for the principal purpose of competitive examination is to get the best and the most meritorious candidates for appointment to the public services in the State. This last qualifying mark set for the other subjects of the Main Examination has to have relation to the qualitative merit of the candidates. Therefore, the qualifying mark as contemplated at this last stage will be of a higher standard and cannot be fixed beforehand. Can it be said so in respect of the qualifying mark for General English whose mark is not be counted for the purpose of final ranking? As per the scheme of the examination, though the paper in General English is compulsory for all the candidates who are qualified for the Main Examination, mark obtained in it will not be counted for determining the ranking of the candidates. The reasons have been given in Paragraph no. 4 of Section I and "Note" to Section II of Chapter II as mentioned above. The nature of the said qualifying mark is indicated in the "Note" itself. It has been clarified that the paper on General English will be of matriculation or equivalent standard and will be of qualifying nature. This is in clear contradistinction to the other qualifying mark at the final stage set for other subjects in the Main Examination which are of Honour's degree standard as mentioned in Paragraph (B) of Section-II as well as in Section III-Part B of Chapter II. The fact that General English will be of matriculation standard and of qualifying nature and its mark is not to be counted, would clearly indicate that what is required of the candidates of their knowledge of General English is of basic nature whose aim is to test the candidates' ability to read and understand serious discursive prose, and to express his ideas clearly and correctly in English as mentioned in Section III-Part B of Chapter II. If the requirement of General English is merely of matriculation standard and qualifying nature, whose mark is not to be counted for determining inter-se merit of the candidates, the qualifying mark so determined must be in the context of the said requirement. This "qualifying nature" of the mark in English is not so much correlated to qualitative merit of the candidates, as its mark is not to be counted for the ranking, nor related to the number of vacancies as in the case of qualifying mark set for the Preliminary Examination or for calling for interview but to examine the basic knowledge of English subject. Therefore, if it is merely of "qualifying nature" to test the basic knowledge of the candidates in English, we must understand it only as the normal passing mark, i.e., the bare minimum mark one must score in order to say that he had obtained the basic and required knowledge in the General English as stipulated in Section III-Part B of Chapter II of the Rules.

19 To recapitulate and at the risk of being repetitive, it may be stated that this Court has found that there are three stages where "qualifying marks" are applied under the Rules.

Firstly, it is invoked at the Preliminary Examination stage to screen out candidates with the main purpose of bringing down the number of prospective candidates to five times the number of vacancies. As discussed above, by the very nature of this requirement, the "qualifying mark" has little to do with the merit of the candidates rather than to meet the procedural requirement of bringing down the number of candidature and hence, the fixation of "qualifying mark" at this Preliminary Examination stage cannot be determined beforehand and also cannot be uniform and would vary from examination to examination. If there are a large number of candidates compared to the number of posts advertised, the qualifying mark will necessarily be on higher side. Because of this, the question, whether a particular cut off mark or qualifying mark in the Preliminary Examination stage is unreasonably high does not arise, as it must co relate to the requirement of bringing down the number of candidates to five times the number of vacancies. Therefore, an apparently high qualifying mark may still be reasonable if it is required to be adopted to bring down the number of candidates to five times the number of vacancies.

The second time the "qualifying mark" is applied is to adjudge the candidates who are allowed to appear in the Main examination of their basic and required knowledge in the English subject. This paper on General English is of Matriculate or equivalent standard and only of qualifying nature which will not be counted towards the determination of the final ranking.

The third stage where the "qualifying mark" is invoked is when the Commission determines it for the purpose of adjudging the eligibility of candidates to be called for interview as part of the Main Examination. It is to be noted that this qualifying mark is to be applied to those candidates who had qualified in General English in the Main Examination. Those who do not qualify in General English, as in the case of the petitioner, the application of this "qualifying mark" in other papers do not arise. The marks obtained in these subjects along with the marks obtained in the interview will determine the respective merit position of the candidates. Therefore, determination of this "qualifying mark" at this third stage obviously has to have reference to the relative merit of the candidates. For this reason, the "qualifying marks" would also differ from examination to examination. If there are many meritorious candidates in any particular examination, the standard of this third qualifying mark will obviously be on a higher side as after all, the selection of the candidates has to be based purely on merit, subject to reservations. Therefore, it would not be possible to make any guess or presume as to what would be the appropriate "qualifying mark" at this third stage and it would be at the wisdom of the Commission to determine as to what would be the ideal "qualifying mark" at this third stage on the basis of the performance so as to choose the best candidates.

Thus, the nature of the "qualifying mark" as contemplated under the second stage is qualitatively different from the first and third stage. The qualifying mark in the intermediate second stage with which we are primarily concerned with,

need not vary from examination to examination and will be of a determinate nature as its purpose is only to test the basic knowledge in English as discussed above.

This Court, in the context of the Rules as discussed above would therefore, hold that the qualifying mark in General English has to be understood and mean as pass mark. This analysis and conclusion is in conformity with the scheme of the examination as discussed above.

As this Court holds, keeping into consideration the scheme of the examination, that "qualifying mark" of General English would mean "passing mark", it cannot be of a varying nature and must be of a reasonable standard as the subject of General English has been prescribed by the Rules as of matriculation standard. In that context, fixation of 50% as the "qualifying mark" in English is certainly on an unreasonably higher side.

20. We may examine this issue from another perspective. It is to be noted that the purpose of determining the qualifying mark in General English is not to select the best candidates for the purpose of appointment to the public service. It has the limited purpose of determining the minimum standard required of a candidate to be able to discharge the public functions and duties efficiently as required of a public servant. It is to test the candidate's ability to read and understand serious discursive prose, and to express ideas clearly and correctly in English. That's the reason the marks obtained in English has not been counted towards ranking.

The use of English language in the competitive examination especially for the purpose of appointment to civil services under the State as well as the Union had been the subject matter of consideration of the expert bodies in the past. The Kothari Committee which submitted its report in 1976, while making recommendations regarding the pattern of competitive examination, had discussed about the relevancy of English paper. Considering the importance of English in the life of our country which acts as an important link language for the purpose of administration and also to keep in touch with the new developments and because of the world wide use of the language, the Kothari Committee recommended that there should be a compulsory paper in English to test the adequacy of knowledge and proficiency in the use of English. Accordingly, the Kothari Committee made the necessary recommendation to that effect. In this regard, it may be apposite to refer to certain relevant portions of the Kothari Committee's Report as below:-

"12. As regards the Indian Language and English paper, the relevant paragraphs of the Committee are as follows:-

3.22. We are convinced that every candidate desiring to join the All India and Central Service should have sound Knowledge of at least one of the Indian languages included in the Eighth Schedules to the Constitution. A young person who lacks proficiency even in one of our languages suffers from a major lacuna

and is ill fitted for public service. Indeed the development of a well-rounded personality, it is necessary that our young people should have some interest in the languages and the related literatures of our country. We strongly recommend that there should be a compulsory paper for an Indian language, (to be selected by the candidates out of the language listed in the Eighth Schedule) for both Preliminary Examination and the Main Examination.

3.23. We have been given careful thought to the role of English in our scheme of examinations. English has an important place in the life of our country. It is an important link language for purposes of administration, especially at the All India level. In many of our universities English continues to be medium of education, particularly at higher postgraduate level. Knowledge of English is essential for keeping in touch with new developments, particularly in science and technology. English is perhaps, the most used medium for international communication, we recommend that there should be a compulsory paper to test the adequacy of knowledge and proficiency in the use of English.

13. In Appendix IX, the Committee recommended the syllabi of English and Indian languages. The relevant portion is as follows:-

(The syllabus of Eighth Schedule languages and English would be common.)

The aim of the paper is to test the candidate's ability to read and understand serious discursive prose, and to express ideas clearly and correctly, in English/ Indian language concerned.

The paper would be in three parts to test:-

- (i) Comprehension of given passages,
- (ii) Usage and vocabulary and
- (iii) Ability to critically discuss given statements.

14. The Central Government examined the recommendations of the Committee along with the recommendations of the U.P.S.C. on these recommendations and decided that the paper in English and the paper in the Indian language should be of qualifying nature in the Civil Service (Main) Examination only and the marks obtained in these papers should not be included in the competitive ranking of the candidates but it would be necessary for the candidates to get qualifying marks in these subjects. It was also decided that unnecessary high standard should not be set in these papers as this might pose a handicap for candidates from the rural communities and weaker sections of the Society.

15. The papers on the Indian language and English will be of matriculation and equivalent standard and will be of qualifying nature. The marks obtained in these papers will not be counted for ranking.

[The aforesaid paragraphs have been extracted from the decision of the Central Administrative Tribunal, Principal Bench, New Delhi rendered on 22.8.1988 in

"Shri Brij Kishore Dubey & Ors. Vs. Union of India & Anr." (OA NO. 816/97 & Connected cases)]

21. The Manipur Public Service Commission has, more or less, adopted the examination pattern as followed by the Union Public Service Commission and made English a compulsory subject only for a limited purpose as provided under the Rules. It may be also mentioned that under the Manipur Rules as mentioned in Section III-Part B of Chapter II, it has been clarified that the aim is to test the candidate's ability to read and understand serious discursive prose and to express his ideas clearly and correctly in English.

22. The contents of the Compulsory English paper as provided under the Manipur Rules in Section III-Part B, Chapter II are similar to that of UPSC as given below:

Compulsory Subjects for Main Examination English-Compulsory (Main Examination)

The aim of the paper is to test the candidates' ability to read and understand serious discursive prose, and to express his ideas clearly and correctly in English/ Indian language concerned.

The pattern of questions would be broadly as follows:

- (i) Comprehension of given passages.
- (ii) Precise Writing
- (iii) Usage and Vocabulary
- (iv) Short Essay.

23. It is in this context that the qualifying mark in General English under the Manipur Rules has to be considered and understood. The purpose of including English as a qualifying subject has been elaborately discussed above. The aim of the paper is to test the candidate's ability to read and understand serious discursive prose, and to express ideas clearly and correctly in English language. The fact that it has been described as of qualifying nature and of matriculation standard and mark obtained in it is not counted towards determining rank itself indicates the parameters within which we have to examine and understand the meaning and nature of "qualifying nature". Though the MPSC is to determine the qualifying mark, it has to be done in the context of the requirements and parameters of the Rules and also in a manner which is not arbitrary as our jurisprudential scheme abhors arbitrariness. As to how to measure arbitrariness in an administrative action, more particularly when it pertains to the academic matters, there is no fixed principle to determine. It must depend on the facts of each case. Fixing of qualifying mark means requirement to score the minimum mark by a candidate in order to qualify the examination. Fixing 50% of the total marks in General English, as has been done in the present case, in itself, and per se, may or may not be considered arbitrary as it would depend on various factors including what the authority would consider to be the minimum standard

required to be possessed to ensure sufficient knowledge and expertise in English language. Unless there is a reference point, it may not be possible to hold that any particular mark is unreasonably high or arbitrary. Therefore, we may examine if there is any reference point or indicators under the Rules which can guide us to examine if such fixation of 50% as qualifying mark or pass mark is arbitrary or not. We have to remember that reasonability of the action is issue would have some correlation to the purpose of such action is contemplated under the Rules. Consequently, we have to examine the purpose for which General English has been incorporated in the competitive examination.

24. As stated above, it is observed that different State public service commissions which are following similar pattern of examination by making English language a compulsory paper but only as a qualifying subject without counting the mark obtained therein for determination of inter se merit or ranking, have fixed the qualifying mark in English subject ranging from 33% to 45%. Even the UPSC had fixed it in the range of 33% to 45%. Therefore, if the UPSC and the various State Public Service Commissions had fixed the qualifying mark in English between 20%-40% for the same purpose, what would be the rationale behind the MPSC to fix the qualifying mark at 50%. The only answer of the MPSC as mentioned in the affidavit in opposition is that it was fixed as had been done in earlier examinations by the MPSC. Apart from precedence, no other reason has been projected by the MPSC. This therefore, leads to the next stage of consideration, as to whether, such a discretion exercised by the MPSC had been guided by relevant factors and considerations? If not, can such a decision be sustained?

25. Though the MPSC had stated that the Commission after a thorough discussion had decided to fix the qualifying mark in General English at 50% as in the previous examination held in 2006, nothing has been brought on record the factors which led them to take the decision other than that of precedence. There is nothing on record either in the affidavit in opposition filed by the MPSC or by way of producing the relevant records to show that the MPSC had given due consideration to various factors including the practice or norm prevailing in other States or even in UPSC. This is in contrast to the subsequent affidavit filed by the MPSC on 20.1.2014 in which it was stated that the MPSC consulted the UPSC and taken into consideration the practice followed in other State Public Service Commissions. It was stated that the MPSC after consideration of all the relevant factors and present situation in its subsequent meeting held on 9.12.2013 decided to modify its earlier decision taken on 20.11.2013 to change the qualifying mark of General English to 40% for General, 38% for OBCs, 35% for SC/ST and 30 % for persons with Physical Disabilities candidates for the subsequent competitive examination. What it shows is that the MPSC subsequently did consult UPSC and considered what has been the practice in other State Public Service Commissions clearly indicating that there was proper application of mind by the MPSC, which was totally absent when the earlier decision was taken to fix the qualifying mark in General English at 50%. There is

also nothing to indicate that when the MPSC fixed 50% as the qualifying mark, it had considered the pattern of the Board of Secondary Education, Manipur which had fixed 33% as the pass mark in English as well as the Council of Higher Education, Manipur which also had fixed 33% as the pass mark in English. Nothing has been brought on record that in any Board Examination and in fact in any other competitive examination in any part of the country, the qualifying mark for English has been kept at or near 50%. As per the records available, it is only the MPSC in the entire country which has fixed 50% as the qualifying mark in English.

It is to be noted that in the context of the examination scheme which we have discussed elaborately above, the "qualifying mark" as mentioned under the Rules has to be read as "passing mark".

In view of the above, this Court would not hesitate to hold that the qualifying mark of 50% set by the MPSC is unreasonably high so as to render it arbitrary, more so in absence of any rational basis. The MPSC has failed to satisfactorily explain as to how they have fixed such a high mark of 50% as the qualifying mark in General English except for stating that it was so fixed in the previous examination in 2006.

26. In this regard, it may be apposite to recall the observation of the Hon'ble Supreme Court made in *Arunachal Pradesh Public Service Commission and Another Vs. Tage Habung and Others*, as follows:

26. With due respect, in our opinion the ratio decided by this Court in *Calton* case AIR 1983 SC 1143 and reiterated in *Sushil Kumar Ghosh* case 1993(1) GLR 315 will not apply in the facts and circumstances of the present case. At the very outset, we agree with the view taken in the instant case that the decision taken by the Commission vide Notification dated 13-6-2007 fixing the cut-off marks as 40% in English as qualifying marks was unreasonable and unjustified. However, the decision dated 13-6-2007 was not given effect because of the subsequent O.M. issued by the State Government dated 7-1-2008 and adopted by the Commission vide Notification dated 16-4-2008. The only question, therefore, that falls for consideration is as to whether the appellants were justified in fixing the minimum 33% qualifying marks in all the subjects in order to appear in the viva voce test. Indisputably, no separate qualifying marks were prescribed for qualifying in the viva voce test.

(emphasis added)

Though, the issues as confronting before us was not the issue before the Hon'ble Supreme Court in the said case, the aforesaid observation that fixing the cut-off marks as 40% in English as qualifying marks was unreasonable and unjustified certainly supports the view taken by this Court that fixing of 50% as qualifying mark is unreasonable.

27. Normally, the Courts adopt a "hands off" approach while dealing with

academic matters that too involving expert bodies like the public service commissions. In educational policy matters the Courts are loath to interfere. However, if the action is found to have violated the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary, the Court can step in. This Court, for the reasons discussed above has held that fixation of 50% as qualifying mark in English is manifestly arbitrary and warrants interference. For taking this view, this Court places reliance on the decision of the Supreme Court rendered in *Sanchit Bansal and Another Vs. The Joint Admission Board (JAB) and Others*, .

The Supreme Court after referring to an array of previous judgments while observing the limits of interference by the Court in academic matters and policy matters held at para 27 in *Sanchit Bansal* (supra) that where the procedure adopted is arbitrary, this Court could interfere:

27. Thus, the process of evaluation, the process of ranking and selection of candidates for admission with reference to their performance, the process of achieving the objective of selecting candidates who will be better equipped to suit the specialised courses, are all technical matters in academic field and the courts will not interfere in such processes. The courts will interfere only if they find all or any of the following: (i) violation of any enactment, statutory rules and regulations; (ii) mala fides or ulterior motives to assist or enable private gain to someone or cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious.

(Emphasis added)

28. Ld. Counsel for the Respondents no. 1 and 2 had contended that the petitioner has no vested right, in absence of which he is not entitled to any direction or writ of mandamus from this Court. However, as the recruitment process had been vitiated by arbitrariness, as discussed above, the petitioner would be entitled to appropriate relief. It has been also contended that the present petition is hit by estoppel as an unsuccessful candidate cannot challenge the recruitment process after participating in the same. This contention is also not tenable in as much, the petitioner was not aware in advance that the qualifying mark in General English would be 50%. In fact the petitioner had contended that since the standard of General English would be of matriculate standard and the examination in the subject was to test the basic knowledge in it as provided under the Rules and mark obtained in it was not would not be counted towards the final merit, and assuming that he had to obtain the pass mark only, he had put in the bare minimum effort only in the subject for passing in it and concentrated more on the other subjects. Therefore, setting as 50% as the qualifying mark has come as shock to him and as such was entitled to challenge it. The fact remains that this qualifying mark was not made known to the candidates beforehand and as such it cannot be said that the petitioner fully knowing of the said qualifying mark had taken part in the competition. This court would, therefore, hold that the present petition is maintainable and he was

entitled to question the validity of the fixation of the qualifying mark.

It has been also submitted by the Respondents by relying on the decision of the Hon"ble Supreme Court rendered in Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, that the competent authority has the power to fix the cut off marks and it has also the power not to lower them in the interest of general merit, even if some of the vacancies remain unfilled and such a decision cannot be termed as arbitrary and a candidate has no vested right to claim appointment to a post. True, normally a candidate has no vested right to seek appointment. But if other candidates have been already appointment, a candidate would have the right to seek appointment if he has been unfairly denied. It is equally true that a candidate cannot question the recruitment process unless it is found to be arbitrary. As discussed above, as this Court has found the fixation of the qualifying mark in General English to be arbitrary. Accordingly, in view of the decision of the Supreme Court rendered in Sanchit Bansal (supra), the recruitment process can be interfered with.

29. Having held that setting 50% as qualifying mark in General English is unreasonable and arbitrary and hence illegal, what would be its effect on the Manipur Civil Services Combined Competitive Examination, 2010 which has been already concluded and appointments been made on the basis of it? Since, otherwise meritorious candidates like the present petitioner had been disqualified by the said unreasonable, arbitrary and illegal act of the MPSC, the legal effect would be that the result of the said Examination would be vitiated. In other words, the results of the Manipur Civil Services Combined Competitive Examination, 2010 will be rendered illegal. Consequently, the appointments made on the basis of the result of the said Examination will be also cannot be held to be valid. However, in spite of this Court taking the view that the Manipur Civil Services Combined Competitive Examination, 2010 had been vitiated and liable to be declared invalid, this Court refrains from making such a declaration, as such a declaration would render all the appointments made on the basis of the Examination invalid and consequently result in administrative disruption and chaos. Moreover, another competitive examination namely, Manipur Civil Services Combined Competitive Examination, 2013 has already commenced. Thus, disturbing the concluded selection process and appointments already made at this stage will not only create administrative chaos but also uncertainly, which is not in the interest of the society at large, which ought to be avoided, if possible. That apart, it is to be noted that the arbitrariness and resultant illegality in the selection process is not due to any mala fide act on the part of the authorities as alleged by the petitioner, nor for any fault of the candidates who were recommended by the Commission. Thus, the candidates so recommended and appointed could not be made to suffer for an illegal act of the MPSC more so when it is not a mala fide act, and not of their doing. Therefore, this Court would refrain from declaring the said selection process and resultant appointments as illegal. Accordingly, this Court holds that the appointment of the private respondents and others need not be disturbed.

30. If this Court has declined to disturb the selection process and the subsequent appointments so made, including those of the private respondents, will the petitioner be disentitled to any relief? Can the petitioner be denied any relief, even if he has been successful in demonstrating that the MPSC had acted unreasonably and arbitrarily depriving him of the fruits of his hard labour and his claim based on merit? This Court thinks not. As the maxim goes, where there is a wrong, there is a remedy. Once a litigant is successful in establishing his case, he must be given the relief claimed unless it is impossible to do so. This Court is of the view that relief can still be given to the petitioner and the petitioner can still be considered for appointment against a supernumerary post, if he is found to be successful in the Main Examination on redetermination of the "qualifying mark" in General English. This Court can not ignore the innate merit of a candidate which cannot be sacrificed at the altar of a procedure or decision which is found to be unreasonable.

In the result, all the issues framed by this Court are decided in favour of the petitioner by holding that the fixation of the qualifying mark though unreasonable and hence, arbitrary, was not, however, mala fide.

WRIT PETITION (C) NO. 150 OF 2013

31. In this writ petition, the petitioner who belongs to the Other Backward Class (OBC) and visually impaired category has also challenged the fixation of 50% as the qualifying mark in General English as arbitrary because of which the petitioner was also disqualified. The further claim of the petitioner is that as a candidate belonging to the reserved category of OBC, the petitioner is entitled to be considered to a relaxed qualification qua the general unreserved category.

As regards, the fixation of 50% as the qualifying mark in General English, this Court has already held in W.P. (C) No. 31 of 2013 that it is arbitrary. Accordingly, this issue is also decided in favour of the petitioner. However, as regards the further claim of the petitioner that the petitioner as a candidate under reserved category is entitled to relaxation in the qualifying mark and cut off marks in other subjects, it needs to be clarified that this being a policy matter and unless found to be arbitrary, no such direction can be given by this Court. However, it has been noted as revealed by the records, that though in General English, the MPSC had set a uniform qualifying mark as discussed above, it did set different cut off marks in other subjects for various categories who were called for interview as follows.

It is very clear from the above that the MPSC had set a relaxed standard for the reserved category for the purpose of calling for interview.

It may be also noted that the MPSC had also set different cut off marks/qualifying marks for different categories at the stage of Preliminary Examination as follows:

Therefore, when the MPSC had set different and relaxed cut off marks/qualifying

marks for the reserved categories in both the Preliminary Examination and in the Main Examination (who were called for interview), there is no reason why the qualifying mark in General English also should not be relaxed in respect of the reserved candidates including for those candidates belonging to persons with disability.

It had been contended on behalf of the MPSC that this Court cannot direct for relaxation of the cut off marks in view of the decision of the Hon''ble Supreme Court in SLP (C) No. 28043 of 2013 & 28042 of 2013 (Prof. A. Marx Vs. Government of Tamil Nadu & Anr.) decided on 13.12.2013 wherein the Supreme Court had held that the question as to whether the cut off marks stipulated for the reserved category candidate have to be reduced or not is entirely a matter for the State government to decide and the Court exercising writ jurisdiction cannot grant such relaxation/concessional marks as the same is the decision to be taken by the State Government. Though there cannot be any difference of opinion with the view expressed by the Hon''ble Supreme Court, in the present case what we have found is that the MPSC had relaxed the cut off marks/qualifying marks for the reserved categories in the two phases of the examination. Therefore, when the MPSC had taken the conscious decision to grant relaxation at the Preliminary Examination as well as in the Main Examination at the stage of interview, there is no reason why the MPSC cannot do the same while fixing the qualifying mark for the General English. It would have been otherwise and the ratio of the case in Prof. A. Marx (supra) would have been squarely applicable in the present case, had the MPSC had not relaxed the standard for the reserved categories in the Preliminary Examination as well in the Main Examination for the purpose of calling for interview. Therefore, this Court would not hesitate to hold that the petitioner belonging to the reserved category of physically disabled persons is entitled to a relaxed standard also in the qualifying marks set for General English.

In the result, the writ petition is allowed. Though this Court has refrained from disturbing the recommendation of the MPSC and appointments made so far on the basis of the Manipur Civil Services Combined Competitive Examination 2010 for the same reasons as elaborated in W.P. (C) No. 31 of 2013, the present writ petitioner would be also entitled to relief as provided hereunder.

In the result, the writ petitions, W.P. (C) No. 31 of 2013 and W.P. (C) No. 150 of 2013 are allowed with the following findings and directions.

i) Fixation of 50% as "qualifying mark" in General English by the Manipur Public Service Commission in the Manipur Civil Services Combined Competitive Examination, 2010 is found to be unreasonably high and manifestly arbitrary and hence illegal. However, in spite of such a finding, the recommendation and selection made by the MPSC by acting upon the said "qualifying mark" need not be disturbed in the public interest.

ii) The Manipur Public Service Commission is directed to re-fix the "qualifying

mark" in General English for the Manipur Civil Services Combined Competitive Examination, 2010 by treating it to be the pass mark keeping into consideration the intent and purpose of the Rules and the norms followed all over the country for such civil service competitive examinations including the Union Public Service Commission, as discussed above.

Further, the Manipur Public Service Commission is directed to re-fix the "qualifying mark" in General English for the Manipur Civil Services Combined Competitive Examination, 2010 in respect of the candidates belonging to Physically Disabled persons.

iii) If upon such re-fixation, the petitioner in W.P. (C) No. 31 of 2013 is found to be qualified, the Manipur Public Service Commission would conduct an interview of the petitioner and make necessary recommendation to the State Government and if the petitioner is found to have scored marks higher than any of the private respondents under the OBC category or any of the successful candidates under General/Unreserved category, the petitioner would be afforded appointment to a suitable post reserved for the OBC candidate or against any of the unreserved post, for it is settled that even a reserved candidate can be appointed against unreserved post if he is meritorious enough. For this purpose, the State Government is directed to create a supernumerary post by making necessary adjustment against any vacancy which has subsequently arisen after the initiation of the recruitment process of the Manipur Civil Services Combined Competitive Examination, 2010. In such an event, though, the appointment of the petitioner will be from retrospective effect from the date the private respondents were given appointment, he will not be entitled to any arrears of pay and allowances but be given notional benefits only.

Similarly, if the petitioner in W.P. (C) No. 150 of 2013 is also found to be qualified upon such re-fixation of the relaxed qualifying mark in General English, the Manipur Public Service Commission would conduct an interview of the petitioner and make necessary recommendation to the State Government and if the petitioner is found to have scored marks higher than any of the private respondents under the Physically Disabled candidates (Visually Impaired), the petitioner would be afforded appointment to a suitable post reserved for the Physically Disabled candidates (Visually Impaired) category. For this purpose, the State Government is directed to create a supernumerary post by making necessary adjustment against any vacancy which has subsequently arisen after the initiation of the recruitment process of the Manipur Civil Services Combined Competitive Examination, 2010. In such an event, though, the appointment of the petitioner will be from retrospective effect from the date the private respondents were given appointment, he will not be entitled to any arrears of pay and allowances but be given notional benefits only.

iii) This exercise of re-fixation of the qualifying mark in General English as directed above shall be undertaken by the Manipur Public Service Commission within two weeks from today and if the petitioners are found qualified, the

interview of the petitioners in both the writ petitions would be conducted and necessary recommendation to the State Government be made within three weeks thereafter. The State government on the basis of such recommendation shall appoint the petitioners to suitable posts as directed above.

iv) It is clarified that this entire exercise will be confined to the petitioners only in as much as only the petitioners have pursued their claim diligently promptly and in right earnest and those who have not approached this Court and are mere fence sitters cannot be allowed to take advantage of this order.

No order as to costs. The records/answer scripts requisitioned by this Court be returned to the Manipur Public Service Commission.