[2024] 8 S.C.R. 885 : 2024 INSC 647

Salam Samarjeet Singh
v.
The High Court of Manipur at Imphal & Anr

(Writ Petition (Civil) No.294/2015)

22 August 2024

[Hrishikesh Roy, Sudhanshu Dhulia and S.V.N. Bhatti, JJ.]

Issue for Consideration

Can the executive instructions in form of a resolution of the Full Court (High Court) by prescribing minimum marks for interview, override statutory rules made under Article 234/309; whether the High Court's decision frustrates the legitimate expectation of the petitioner.

Headnotes†

Judicial Service – Manipur Judicial Service Rules, 2005 – Just before the interview test, the Full Court of the High Court on 12.01.2015 decided to fix 40% as the cut-off for the viva-voce examination and the petitioner's case is that this decision was never intimated to him – The petitioner who had secured 18.8 marks out of the total 50 marks in the interview segment, was held to be unsuccessful for not having the secured minimum prescribed benchmark of 40% – Correctness:

Held: The unamended Schedule 'B' of MJS Rules 2005 prescribes the mode of evaluating and grading the performance in the written and viva-voce examination – Those who secured below 40% are classified in the 'F' category with zero grade value – However, Sub clause (iv) clearly indicates that the final selection list will be readied by combining the cumulative grade value obtained in the written examination and viva-voce examination – The MJS Rules 2005 came to be amended on 09.03.2016, after conclusion of the present recruitment process whereby, 40% minimum qualifying marks in the viva-voce segment were prescribed – This would also indicate that the Rules as unamended, did not have the requirement of minimum 40% in the viva-voce segment and such qualifying marks came to be incorporated only vide Resolution adopted by the Full Court on 12.01.2015 – If the evaluation and selection of the petitioner would have been carried out on the basis of the unamended Rules, the petitioner having cumulatively secured 50.65% by combining both the written and the interview segment – The petitioner cannot be

placed in the category of failed candidates – In application of the MJS Rules 2005, it is quite certain that there was no cut-off marks or pass marks prescribed for the viva-voce examination in the present process when the recruitment advertisement was published – The subsequent amendment to the Rules with effect from 09.03.2016, cannot be applied to the present recruitment process where the petitioner participated – Moreover, the unamended Rules explicitly provided that the cut-off in the written test for SC/ST Candidates would be 50% – Even though prescribing minimum marks for interview may not be manifestly arbitrary, the present case is on the failure to make the selection, in accordance with the unamended MJS Rules, based on aggregate marks secured by the petitioner in the written examination and the viva-voce test – It is essential to note that while the intention for introducing a minimum cut-off through the High Court Resolution may be bona fide, in the present case, it is not grounded in legality as it cannot override the statutory rules – The minimum marks for interview was prescribed through a High Court Resolution without amending the rules – Therefore, the executive instructions cannot override statutory Rules where the method of final selection by combining the cumulative grade value obtained in the written and the viva voce examinations is specified categorically – In the present case, no notice was given to the petitioner regarding the imposition of minimum 40% marks for interview – Prescribing minimum marks for viva voce segment may be justified for the holistic assessment of a candidate, but in the present case such a requirement was introduced only after commencement of the recruitment process and in violation of the statutory rules – The decision of the Full Court to depart from the expected exercise of preparing the merit list as per the unamended Rules is clearly violative of the substantive legitimate expectation of the petitioners – It also fails the tests of fairness, consistency, and predictability and hence is violative of Article 14 of the Constitution of India. [Paras 14, 15, 16, 18, 25, 26, 31]

Case Law Cited

Sivanandan C.T. & Ors v. High Court of Kerala & Ors [2017] 13 SCR 226 – **followed.**

Dr.(Major) Meeta Sahai v. Union of India [2019] 15 SCR 273 – **relied on.**

Kavita Kamboj v. High Court of P&H [2024] 2 SCR 1136 – **distinguished.**

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Abhimeet Sinha v. High Court of Patna [2024] 6 SCR 530**;** *All India Judges Assn. v Union of India* [2002] 2 SCR 712 **– referred to.**

List of Acts

Manipur Judicial Service Rules, 2005; Constitution of India.

List of Keywords

Judicial Service; Minimum marks for interview; Executive instruction in form of Full Court Resolution; Overriding statutory rules; Legitimate expectation; Viva voce examination.

Case Arising From

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 294 of 2015

(Under Article 32 of The Constitution of India)

Appearances for Parties

Rana Mukherjee, Ahanthem Romen Singh, Ms. Oindriala Sen, Mohan Singh, Aniket Rajput, Ms. Khoisnam Nirmala Devi, Rajiv Mehta, Advs. for the Petitioner.

Vijay Hansaria, Sr. Adv., Maibam Nabaghanashyam Singh, Ms. Kavya Jhawar, Ms. Nandini Rai, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

1. Heard Mr. Rana Mukherjee, learned Senior Counsel appearing for the petitioner. The respondents – High Court of Manipur and the Registrar General are represented by Mr. Vijay Hansaria, learned Senior Counsel.

2. While deciding this writ petition filed under Article 32 of the Constitution of India, there was a difference of opinion and having regard to the conflicting judgments rendered by the two learned Judges on 7.10.2016, the matter was directed to be placed before a three-judge Bench. Thereafter, when a similar question of law was found pending before the Constitution Bench i.e., in *Tej Prakash Pathak and Others vs. Rajasthan High Court and Others*[1] (for short "Tej Prakash

1 Tej Prakash Pathak And Ors. v. Rajasthan High Court And Ors. C.A. No. 2634/2013 & batch

Pathak"*),* this case was tagged with the said case. On 12.07.2023, however submission was made before the Constitution Bench by the learned counsel for the parties that reference to the Constitution Bench along the lines in *Tej Prakash Pathak (supra)* is unnecessary and therefore the difference of opinion between the two Judges in the present case should be resolved by a three-Judge Bench.

3. According to the learned Senior Counsel for the parties, this case can be segregated and the Court should, inter alia, consider the following aspects :-

> "I. Can executive instructions in the form of a resolution of the Full Court override statutory rules made under Article 234/309?
>
> II. Can the criteria of cut-off marks be introduced by a Full-Court Resolution without amending the rules after the written test is over without informing the candidate?
>
> III. Whether such a course of action amounts to procedural fairness/unfairness?"

4. Thereafter, an order was passed by the Constitution Bench on 12.07.2023 to place the present matter for hearing before a three-Judge Bench and that is how we are posted with this case.

RELEVANT FACTS

5. The petitioner, who was an aspirant for the post of District Judge (Entry Level) in the Manipur Judicial Service Grade-I, responded to the advertisement dated 15.05.2013. The petitioner belonged to the Scheduled Caste category and he appeared in the written examination conducted in July 2013 for all the applicants. The High Court of Manipur then issued a Notification on 17.10.2013 declaring that none of the candidates had secured the minimum qualifying marks in the written examination. A grievance was then raised by the petitioner and eventually a corrigendum came to be issued on 07.02.2014 declaring the petitioner to have been successful in the written examination having scored 52.8% marks which satisfied the required benchmark of 50% for the Scheduled Caste category.

6. Just before the interview test, the Full Court of the Manipur High Court on 12.01.2015 decided to fix 40% as the cut-off for the viva-

voce examination and the petitioner's case is that this decision was never intimated to him. The Full Court Resolution reflected that the 40% minimum qualifying marks for passing the interview was fixed by resorting to sub-Rule (3) of Schedule 'B' of the *Manipur Judicial Service Rules, 2005* (for short "MJS Rules,2005"), which reads as under:-

> *"All necessary steps not provided for in these rules for recruitment under these rules shall be decided by the recruiting authority."*

7. The petitioner who had secured 18.8 marks out of the total 50 marks in the interview segment, was held to be unsuccessful for not having the secured minimum prescribed benchmark of 40%. At this stage, it may be noted that the total marks allocated for the written examination for the three papers were 300 and for the interview segment, a total of 50 marks were prescribed. In his written examination, the petitioner had secured 158.50 marks and 18.8 marks in the interview, his total aggregate score in the written examination plus viva-voce was 177.3 marks, out of the total possible 350 marks. Thus, the percentage of marks scored by the petitioner cumulatively stands at 50.6 percent. It is also pertinent to note that the Manipur High Court subsequently on 9.3.2016 amended Schedule-B, Sub-rule(3) to prescribe 40% minimum cut-off for the viva voce.

8. In the split judgment, Justice Banumathi upheld the rejection of the petitioner for failing to secure minimum 40% in the viva voce. It was observed that the fixation of 40% minimum cut off for viva voce is in consonance with the *MJS Rules, 2005* as per Clause 1(3) of the General Instructions provided in Schedule-B. Under the Mode of Evaluation table, securing less than 40% marks has been graded as 'F', which carries a grade value of '0'. In Justice Banumathi's opinion, it was therefore implicit that for a 'pass' in exam, a minimum of 40% marks must be obtained. It was also noted that after participating in the viva voce, the petitioner cannot turn around and challenge the selection process.

9. On the other hand, Justice Shiva Kirti Singh, held that the rejection in viva voce test is wrongful as it violated the statutory mandate which provided for selection based on the cumulative grade value obtained in the written exam and viva voce. It was noted that Grade 'F' for marks below 40% as provided in the evaluation table, corresponds

to securing '0' marks and nothing beyond that. Grade 'F' is not an indicator of failure in the examination.

ARGUMENTS

10. Before this Court, Mr. Rana Mukherjee, learned Senior Counsel for the writ petitioner would argue that when no minimum marks were prescribed in the viva-voce segment at the time when the recruitment commenced through the advertisement dated 15.05.2013, the Full Court could not have fixed minimum qualifying marks in the viva-voce since the unamended *MJS Rules, 2005* never envisaged minimum marks in the viva-voce segment. According to the counsel, this is a case of midway change of rules of the game and therefore it is argued that the opinion expressed by Justice Shiva Kirti Singh should be accepted by this larger Bench. It was contended that the present case is covered by the decision of the five-judge Constitution Bench of this Court in *Sivanandan C.T. & Ors vs High Court of Kerala & Ors*[2] *(*for short "Sivanandan CT"*).*

11.1 On the other hand, Mr. Vijay Hansaria, learned Senior Counsel would refer to the General Instructions contained in Schedule 'B' to the *MJS Rules, 2005* to say that the petitioner was required to obtain 50% marks in the written examination to be eligible for the viva-voce segment which he did. The counsel however contends that those scoring below 40% in the interview, as per the mode of evaluation, should be considered in the 'Fail' category and here since the petitioner had secured less than 40% in the viva-voce segment, he was rightly held to be unsuccessful.

11.2 According to the counsel, the decision in *Sivanandan C.T.(supra),* can have no application in the present facts as in that case, the Rules were amended after the interview was over but in the present case, the requirement of minimum 40% in the interview segment was decided before the interview commenced.

11.3 Mr. Hansaria also drew our attention to the subsequent decisions of this Court in *Kavita Kamboj v. High Court of P&H*[3] (for short "Kavita Khamboj") and *Abhimeet Sinha v High Court of Patna*[4] *(*for short

2 [2017] 13 SCR 226 : (2023) SCC OnLine SC 994

3 [2024] 2 SCR 1136 : (2024) 7 SCC 103

4 [2024] 6 SCR 530 : (2024) 7 SCC 262

"Abhimeet Sinha") to buttress his submission that the minimum marks for interview can be prescribed by the High Court and is not violative of the recommendations of the Shetty Commission and the decision of this Court in *All India Judges Assn. v Union of India*[5] (for short "All India Judges(2002))".

12. Going by the above submissions, the following issues arise for our consideration:

A. Can the executive instructions in form of a resolution of the Full Court by prescribing minimum marks for interview, override statutory rules made under Article 234/309?

B. Whether the High Court's decision frustrates the legitimate expectation of the petitioner?

Issue A

13. To answer the issue, a reference to the unamended Schedule 'B' of *MJS Rules 2005* is necessary:

"Schedule B to the MJS Rules of 2005

Clause 1:

Competitive Examination/Limited Departmental Examination

(i) Written examination of 3 papers for 100 marks each

(ii) Interview : Viva-voce of 50 marks

Clause 3:

General Instructions:

(i) All candidates who obtained 60% or more marks or corresponding grade in the written examination shall be eligible for viva-voce examination, provided that SC/ST candidates who obtained 50% or more marks or corresponding grade in the written examination shall be eligible for viva-voce examination.

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

5 [2002] 2 SCR 712 : (2002) 4 SCC 247

(iii) All necessary steps not provided for in these rules for recruitment under these rules shall be decided by the recruiting authority.

(iv) Mode of evaluating the performance of Grading in the written and viva-voce examination shall as below:

Percentage of marks	Grade	Grade Value
70% & above	O	7
65% to 69%	A+	6
60% to 64%	A	5
55% to 59%	B+	4
50% to 54%	B	3
45% to 49%	C+	2
40% to 44%	C	1
Below 40%	F	0

Numerical marks obtained for each question in written examination are to be graded as per the above chart and thereafter all the grade values are to be added up and divided by total number of questions, thereby arriving at a Cumulative Grade value Average (CGVA), which inturn is to be again graded as per the above chart.

(v) The same vigorous and objective grade value exercise is also recommended for the viva-voce examination as well.

(vi) Final selection list will be readied by combining the cumulative grade value obtained in the written examination and viva-voce examination."

14. The unamended Schedule 'B' of *MJS Rules 2005* prescribes the mode of evaluating and grading the performance in the written and viva-voce examination. Those who secured below 40% are classified in the 'F' category with zero grade value. However, Sub clause (iv) clearly indicates that the *"final selection list will be readied by combining the cumulative grade value obtained in the written examination and viva-voce examination."*

15. Interestingly, the *MJS Rules 2005* came to be amended on 09.03.2016, after conclusion of the present recruitment process whereby, 40% minimum qualifying marks in the viva-voce segment were prescribed. This would also indicate that the Rules as unamended, did not have the requirement of minimum 40% in the viva-voce segment and such qualifying marks came to be incorporated only vide Resolution adopted by the Full Court on 12.01.2015.

16. If the evaluation and selection of the petitioner would have been carried out on the basis of the unamended Rules, the petitioner having cumulatively secured 50.65% by combining both the written and the interview segment and would have been awarded 'B' Grade as per the mode of evaluation prescribed under sub-Clause (iv) of Clause 3 under Schedule 'B' of the *MJS Rules 2005.* With 'B' Grade, the petitioner cannot logically be placed in the category of failed candidates.

17. As was noticed earlier, the relevant advertisement for filling up the vacancy in the entry-level post of District Judge was initiated through the advertisement published on 15.05.2013 which reflected that the recruitment shall be governed by the *MJS Rules 2005*. The duly filled application was presented by the petitioner and he secured the minimum benchmark of 50% marks as a Scheduled Caste category candidate, in the written examination. If the unamended Rules were to be made the basis for evaluation of the performance, the petitioner with his 18.8 marks in the interview out of the maximum permissible 50 marks would have qualified, as his cumulative score (written 158.50 and viva 18.8) would have been 177.3 out of total 350 marks. His percentage in aggregate will then be 50.6% and this would have ensured his success as per the unamended MJS Rules.

18. In application of the *MJS Rules 2005*, we are quite certain that there was no cut-off marks or pass marks prescribed for the viva-voce examination in the present process when the recruitment advertisement was published. The subsequent amendment to the Rules with effect from 09.03.2016, cannot be applied to the present recruitment process where the petitioner participated. Moreover, the unamended Rules explicitly provided that the cut-off in the written test for SC/ST Candidates would be 50% and the final list would be calculated by combining the cumulative grade value in both written and viva voce.

19. During the course of arguments, Mr. Hansaria, Learned Senior Counsel for the High Court relied on the decisions of this Court in

Kavita Khamboj(supra) and *Abhimeet Sinha(supra)* to emphasize the importance of interview for selection in the higher judiciary. In this regard, we must observe that it is well-settled that prescribing minimum marks for interview is not violative of the Shetty Commission report and the judgment of this Court in *All India Judges(2002) (supra).* This Court in a recent judgment in *Abhimeet Sinha(supra)* examined the following aspects:-

> "34.1. ((i) Whether the prescription of minimum marks for viva voce is in contravention of the law laid down by this Court in All India Judges (2002) [All India Judges Assn. (3) v. Union of India, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] which accepted certain recommendations of the Shetty Commission?
>
> 34.2. (ii) Whether the prescription of minimum marks for viva voce is violative of Articles 14 and 16 of the Constitution of India?"

20. It was opined in the above judgment that the prescription of minimum marks for the viva voce is not violative of Articles 14 and 16 of the Constitution. Discussing the recommendations of Shetty Commission and the precedents of this Court, it was held that *All India Judges (2002)* is sub-silentio on the aspect of minimum marks for interview and cannot be said to have authoritatively pronounced on doing away with minimum marks for interview.

21. However, in our view, even though prescribing minimum marks for interview may not be manifestly arbitrary, the present case is on the failure to make the selection, in accordance with the unamended *MJS Rules,* based on aggregate marks secured by the petitioner in the written examination and the viva-voce test. This aspect was also discussed in *Abhimeet Sinha (supra)*:

> **"68.** The implications of the split judgment in *Salam Samarjeet Singh* v. *High Court of Manipur* [*Salam Samarjeet Singh* v. *High Court of Manipur*, (2016) 10 SCC 484 : (2017) 1 SCC (L&S) 147] will next bear consideration. Banumathi, J. in her judgment noticed that *All India Judges (2002)* [*All India Judges Assn. (3)* v. *Union of India*, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] is *sub silentio* on the aspect of minimum cut-off marks for the viva voce test. In his dissenting judgment, Shiva Kirti Singh, J. had not

expressed any disagreement on the said *sub silentio* observation but left it open for determination in a future case. There again, the dissent of Singh, J. was based on the fact that minimum cut-off was not prescribed in the recruitment rules and were brought in midway through the recruitment process, just prior to the stage of interview, by resolution of the Court. Here however the prescription of minimum cut-off in the recruitment process was notified for information of the candidates well before the commencement of the selection process under the Patna High Court and also under the Gujarat High Court and this distinguishing feature will have to be borne in mind."

22. The judgment in *Abhimeet Sinha (supra)* reiterated the following position in case of inconsistency between the recommendations of Shetty Commission and the rules framed by the High Court as per the proviso to Article 309 of the Constitution of India:

"(i) In case of inconsistency between the recommendations and the Rules, primacy should be given to the existing statutory rules.

(ii) In the absence of existing Rules, the High Court should follow the directions of this Court.

60. For the sake of completeness, we may however clarify that even though the statutory rules can be supplemented to fill in gaps as held in Kavita Kamboj v. High Court of P&H [Kavita Kamboj v. High Court of P&H, (2024) 7 SCC 103] , ***the High Court cannot act contrary to the Rules*** [Sivanandan C.T. v. High Court of Kerala, (2024) 3 SCC 799 : (2024) 1 SCC (L&S) 67]."

[emphasis supplied]

23. Applying the above legal proposition, it is seen that in this matter, the mode of evaluation was provided for in the Rules. This is not a case where the Rules were silent. Mr. Hansaria, placed considerable reliance on the decision of this Court in *Kavita Khamboj(supra)*, where a three-judge bench of this Court while upholding the prescription of minimum 50% marks in interview for promotion as District Judges, observed that the rules can be supplemented to fill in the gaps. However, it particularly distinguishes the instances

where the Rules specifically provide for the mode of evaluation. In this regard, it is noteworthy that the Supreme Court speaking through DY Chandrachud CJI, itself notes that the matter would have been entirely different if the Rules specifically provided that the final merit list would be on the basis of aggregate marks:

> **"52.** Moreover, the Rules in the present case are entirely silent in regard to the prescription of a minimum eligibility for clearing a competitive test, on the one hand, and the *viva voce*, on the other hand. If the Rules were to specifically provide in a given case that the criterion for eligibility would be on the combined marks of both the written test and the viva voce, the matter would have been entirely different. [*P.K. Ramachandra Iyer* v. *Union of India*, (1984) 2 SCC 141, para 44 : 1984 SCC (L&S) 214] Rule 6(1)(*a*) and Rule 8 being silent as regards the manner in which merit and suitability would be determined, administrative instructions can supplement the Rules in that regard. This is not a case where the Rules have made a specific provision in which event the administrative instructions cannot transgress a rule which is being made in pursuance of the power conferred under Article 309 of the Constitution. For instance, if the Rules were to provide that there would be a minimum eligibility requirement only in the written test, conceivably, it may not be open to prescribe a minimum eligibility requirement in the *viva voce* by an administrative instruction. ***Similarly, if the Rules were to provide that the eligibility cut-off would be taken on the basis of the overall marks which are obtained in both the written test and the viva voce, conceivably, it would not be open to the administrative instructions to modify the terms***."
>
> [emphasis supplied]

24. In the present case, the Resolution (12.1.2015) prescribing qualifying marks for viva voce is not a case of supplementing the rules but appears to us as a case where the Rules pertaining to the final selection of candidates, have been substituted. Therefore, the decision in *Kavita Khamboj(supra)* is clearly distinguishable.

25. On the other hand, the decision in *Sivanandan C.T. (supra),* is squarely applicable to the facts of the present case. In that case, the

Court held that the Kerala High Court erred in fixing the minimum cut-off contrary to *Rule 2(c)(iii*) of *Kerala State Higher Judicial Service Special Rules,1961* which provided that the aggregate of the written test and the viva voce would be taken into consideration for appointment. There also, the Rules were subsequently amended in 2017 to prescribe minimum cut-off of 35% in the viva voce. It is essential to note that while the intention for introducing a minimum cut-off through the High Court Resolution may be bona fide, in the present case, it is not grounded in legality as it cannot override the statutory rules. The minimum marks for interview was prescribed through a High Court Resolution without amending the rules.

26. In view of the above discussion, we hold that the executive instructions cannot override statutory Rules where the method of final selection by combining the cumulative grade value obtained in the written and the viva voce examinations is specified categorically. Issue A is answered accordingly.

Issue B

27. The second issue that falls for our consideration is whether the High Court's decision frustrates the substantive legitimate expectation of the petitioner. In *Sivanandan CT (supra),* a constitution bench of five judges of this Court speaking through Chandrachud DYC J. succinctly explained the principle as under:

> **"40.** The principle of fairness in action requires that public authorities be held accountable for their representations, since the State has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predicable manner and honour the promises made or practices established unless there is a good reason not to do so. In *Nadarajah* [*R. (Nadarajah)* v. *Secy. of State for the Home Deptt.*, 2005 EWCA Civ 1363] , Laws, L.J. held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that State

actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.

"45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14."

28. The Court therein observed that an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish : (*i*) the legitimacy of the expectation; and (*ii*) that the denial of the legitimate expectation led to a violation of Article 14.

29. Let us now apply the above principle to the present case. The unamended *MJS Rules, 2005* generated a legitimate expectation in the candidate that the merit list would be drawn based on the aggregate of the total marks secured both in the written examination and the viva voce examination. Moreover, the petitioner had no notice about the minimum cut-off for the viva-voce segment which was introduced just on the eve of the viva-voce test, well after the conclusion of written examination. If the candidate had been informed in advance, he could have prepared accordingly, ensuring a fair and predictable process.

30. The petitioner in this case, is on a similar footing as the petitioners in *Sivandandan CT (supra)* where it was noted as under:

"13. In the above backdrop, it is evident that when the process of selection commenced, all the candidates were put on a notice of the fact that : (i) the merit list would be drawn up on the basis of the aggregate marks obtained in the written examination and viva voce; (ii) candidates whose marks were at least at the prescribed minimum in the written examination would qualify for the viva voce; and (iii) there was no cut-off applicable in respect of the

> marks to be obtained in the viva voce while drawing up the merit list in the aggregate."

31. In the present case, no notice was given to the petitioner regarding the imposition of minimum 40% marks for interview. Prescribing minimum marks for viva voce segment may be justified for the holistic assessment of a candidate, but in the present case such a requirement was introduced only after commencement of the recruitment process and in violation of the statutory rules. The decision of the Full Court to depart from the expected exercise of preparing the merit list as per the unamended Rules is clearly violative of the substantive legitimate expectation of the petitioners. It also fails the tests of fairness, consistency, and predictability and hence is violative of Article 14 of the Constitution of India.

32. Before we conclude, we may also advert to the contention that after participating in the recruitment process, the unsuccessful candidates cannot turn around and challenge the recruitment process.[6] We are of the view that it is equally well-settled that the principle of estoppel cannot override the law.[7] Such legal principle was reiterated by the Supreme Court in *Dr.(Major) Meeta Sahai Vs. Union of India*[8] where it was observed as under:

> "17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."

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6 Madan Lal v. State of J&K (1995) 3 SCC 486; Dhananjay Malik v. State of Uttaranchal (2008) 4 SCC 171; Ramesh Chandra Shah v. Anil Joshi (2013) 11 SCC 309 ; Anupal Singh v State of Uttar Pradesh (2020) 2 SCC 173

7 Krishna Rai v Banaras Hindu University (2022) 8 SCC 713

8 [2019] 15 SCR 273 : (2019) 20 SCC 17

33. In light of the above discussion, the opinion of Justice Shiva Kirti Singh is upheld. This Court is not in agreement with the opinion rendered by Justice Banumathi.

34. The petitioner, is therefore, entitled to be declared successful in the recruitment test. It is also noteworthy that despite getting more than 50% marks in the written exam, he was only called for the interview round after he filed a Right to Information (RTI) Application to know his marks. A corrigendum was later issued by the High Court in this regard.

35. It would be unjustified to deny the sole SC candidate, who successfully qualified both the written exam and the interview, in accordance with the then existing rules.

36. Following the above conclusion and to avoid disturbing the seniority of those who are already serving in the same cadre vis-à-vis the petitioner who is found entitled to recruitment, the following order is passed:

I. The High Court should declare the petitioner to be successful by virtue of his scoring 50.6% in aggregate marks in the recruitment tests. He be issued appointment order. However, the appointed petitioner will be entitled to seniority only from the date of his appointment. The petitioner shall not be entitled to any actual monetary benefits for any period prior to his appointment.

II. The appointee should be given notional seniority from the year 2015 when the interview was conducted. It is however made clear that this notional seniority is only for the purpose of superannuation benefits.

III. The above directions be implemented within four weeks from today.

37. The matter stands disposed of and answered on the above terms. Parties to bear their own cost.

Result of the case: Matter disposed of.

[†]*Headnotes prepared by:* Ankit Gyan