HIGH COURT OF MADHYA PRADESH : JABALPUR

WRIT PETITION No.88/2015

Bharat Bhushan
vs.
High Court of Madhya Pradesh & another

WRIT PETITION No.1372/2015

Chandra Shekhar Tripathi
vs.
High Court of Madhya Pradesh & others

WRIT PETITION No.1373/2015

Sundeep Gupta
vs.
High Court of Madhya Pradesh & others

WRIT PETITION No.1374/2015

Baldev Singh
vs.
High Court of Madhya Pradesh & others

WRIT PETITION No.1376/2015

Pragati Nayak
vs.
High Court of Madhya Pradesh & others

WRIT PETITION No.1377/2015

Keshav Kaushik
vs.
High Court of Madhya Pradesh & others

WRIT PETITION No.1381/2015

Gopal Krishna Sharma
vs.
High Court of Madhya Pradesh & others

WRIT PETITION No.2531/2015

Labh Singh
vs.
High Court of Madhya Pradesh & another

Coram *:*

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice K.K. Trivedi, J.

Whether approved for reporting ? - Yes/No.

Petitioner in person in W.P. No.88/2015.

Shri Manoj Sharma, Advocate for the petitioners in W.P. No.1373/2015, W.P. No.1376/2015 & W.P. No.1381/2015.

Shri Akshat Agrawal, Advocate for the petitioner in W.P. No.2531/2015.

Shri Uday Raj Mishra, Advocate for the petitioner in W.P. No.1374/2015.

None for the petitioners in W.P. No.1372/2015 & W.P. No.1377/2015.

Shri A.A. Barnad, Government Advocate for the respondent-State.

Shri Ashish Shroti, Advocate for the respondent-High Court.

Reserved On : 25.06.2015
Date of Decision : 11.08.2015

J U D G M E N T
(11/08/2015)

Per : K.K. Trivedi, J.

1. This judgment will govern the disposal of all the writ petitions as common questions are involved in all the aforesaid writ petitions. For the sake of convenience, facts are taken from W.P. No.1373/2015.

2. In brief, the claim made by the petitioners in all the aforesaid writ petitions is for issuance of a writ in appropriate nature for setting aside the final results of the

Madhya Pradesh Higher Judicial Service Examinations, held in the year 2007, 2008 and 2010. A further direction is claimed against respondent No.1 for preparation of the fresh merit list by aggregating the marks of written examination and interview. A writ is further claimed for quashing the condition of securing minimum 20 marks out of 50 marks in interview for being qualified, to be included in the select list, as enumerated in the scheme of selection by the respondent No.1, with a further direction to include the names of the petitioners in the final select list for appointment on the post in Madhya Pradesh Higher Judicial Service with all the consequential benefits.

3. To appreciate the claim made in the aforesaid writ petitions, it would be proper to describe certain facts. By making the Madhya Pradesh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 1994 (herein after referred to as 'Rules of 1994), a scheme of recruitment on the post of District & Sessions Judge in the State of Madhya Pradesh was made. The method of appointment was prescribed under Rule 5 of the Rules of 1994,which prescribes that 50% posts were to be filled in by promotion of the Civil Judges (Senior Division) on the basis of merit-cum-seniority and passing of suitability test. 25% posts were to be filled in by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than 5 years qualifying service and remaining 25% posts to be filled in by direct recruitment from amongst the eligible advocates on the basis of written test and *viva voce* conducted by the High Court.

4. The qualification for direct recruitment is prescribed under Rule 7 of the Rules of 1994, which contemplates the

upper age limit, experience in the field and further specifically prescribes that the procedure of selection for direct recruitment and promotion shall be such **as may be specified by the High Court from time to time**.

5. Certain amendments were made in the year 2005 in the aforesaid Rules, on account of accepting Justice Shetty Commission Report by the Apex Court and making it a law. However, the mode of selection, the procedure to be prescribed for the said selection, prescription of marks etc. for such selection were not changed. It is the case of the petitioners that since Justice Shetty Commission has recommended that cutoff marks in the *viva voce* or interview is impermissible and the same is accepted by the Supreme Court, it was not open to prescribe that condition thereafter. It is asserted by the petitioners that each of them qualified the written examination and were called for interview but since they could not secure the minimum marks fixed for *viva voce* or interview, though they have secured more marks in the written test than some of the selected candidates, yet they were not selected. That action of the respondent High Court is untenable. The emphasis is on the prescription of cut off marks for the *viva voce* or interview and as such it is claimed that the result of selection declared by the High Court, runs contrary to the law laid-down by the Apex Court and is, thus, liable to be struck down.

6. The respondents have filed their return and the High Court while relying on the provisions of the Rules of 1994, has contended that the cutoff marks for *viva voce* or interview were rightly prescribed. It is the submission of the respondents that the suitability of any candidate has to be tested by conducting *viva voce* and for that purpose, cutoff

marks can be assigned. It is the further submission of the respondents that the decision by the Apex Court in the case of ***All India Judges' Association and others vs. Union of India and others[1],*** nowhere restricts the prescription of cutoff marks for *viva voce*, if minimum marks for the interview are prescribed in the scheme of selection made by the High Court and is in public domain before the selection process is commenced, it cannot be said to be contrary to the law laid-down by the Apex Court. On the other hand, the Apex Court in the case of All India Judges' Association (supra), in paragraph 27 has observed that there has to be certain minimum standards, objectively adjudged, for officers who are to enter Higher Judicial Service as District Judges. It is further observed by the Apex Court that the High Courts of respective States should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their efficiency with adequate knowledge of case-law for being appointed directly as District Judges. It is the stand of the respondents that the Apex Court has not accepted Justice Shetty Commission recommendations in toto. The non-fixation of minimum marks for interview, as suggested by Justice Shetty Commission recommendations, were not accepted by the Apex Court as is evinced from the subsequent law laid-down by the Apex Court in the case of ***K. Manjusree vs. State of Andhra Pradesh and another[2],*** *and* ***K.H. Siraj vs. High Court of Kerala and others[3],*** the selections made by the High Courts in such cases were not held as bad in law on that count.

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1 ***(2002) 4 SCC 247***

2 ***(2008) 3 SCC 512***

3***(2006) 6 SCC 395***

7. It is the further contended by the respondents that petitioners have come belatedly before the Court. The selection of the year 2007 was never called in question within time. Same was the situation for the selection of the year 2008. When the selection was again held in the year 2010, writ petitions were directly filed before the Apex Court under Article 32 of the Constitution of India. Since the Supreme Court has relegated the parties to the High Court, these writ petitions have been filed before this Court. However, after such a long lapse, the selection, as was done in the year 2007, 2008 and 2010, cannot be reopened. Moreover, the petitioners having participated in the selection process with full knowledge of the impugned provision, cannot be allowed to complain after the said process is concluded. Further, the selected candidates and all others, who had taken part in the selection process and qualified written test and were interviewed, have not been impleaded as parties in the present proceedings. Therefore, no effective relief can be granted to the petitioners. If it is held that there cannot be any minimum benchmark for *viva voce* or interview, the selections already made on the basis of such provision will become topsy-turvy and those, who are selected and appointed or those who were candidates in such selection, must be heard before passing any order in such proceedings. They are necessary parties in the context of the wider relief claimed in these petitions. It is the further submission of the respondent High Court that the posts and the remaining vacancies have subsumed in the next selection process - as unfilled vacancies of 2007 were merged in the vacancies of 2008 and likewise unfilled vacancies were again merged in the selections held in the year 2010 and 2011. Since the notification of the vacancies has also been issued in the year 2014 and selection process is going on, the petitioners who are not the candidates in

the present selection process, cannot be granted any relief. The Apex Court has granted limited interim relief to the extent that any appointment made would be subject to the final outcome of the writ petitions. Since the appointments already made have not been called in question, the petitioners are not entitled for any relief against such appointment and the writ petitions are liable to be dismissed.

8. On the aforesaid grounds, we have heard learned Counsel for the parties at length and perused the record. To appreciate the controversy involved in the present writ petitions, we are required to test the rules governing the services as also the law laid-down by the Apex Court in that behalf.

9. The Rules governing the recruitment in the Higher Judicial Service were initially made by the State Government as Madhya Pradesh Uchchtar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994. These Rules prescribe constitution of service in four categories, namely :

(a)(i) District Judge in Senior Time Scale;

(ii) District Judge in Junior Administrative Grade non-functional;

(b) District Judges in Selection Grade;

(c) District Judges in Super Time Scale; and

(d) District Judges in Above Super Time Scale.

The method of recruitment on the said post was by direct recruitment from Bar and by promotion by selection on the basis of merit-cum-seniority from amongst the officers belonging to Madhya Pradesh Lower Judicial Service. The quota for direct recruitment was not specifically prescribed but it was provided that the posts to be filled in by direct recruitment shall be determined by the High Court from time to time but shall not exceed 10% of the total strength.

The direct recruitment was to be made as far as possible annually. A specific restriction was put that the posts for direct recruitment where suitable persons are not available for appointment, **shall not be carried forward**. This prescription specifically made in the Rules provided that there was no rule to carry forward the unfilled posts, in a given selection process, meaning thereby that the direct recruitment posts were to be earmarked selection on year to year basis.

10. Indeed, recommendations of Justice Shetty Commission were accepted by the Apex Court and the State Governments were called upon to amend the rules relating to the recruitment in the Higher Judicial Service to bring it in conformity with the recommendations. For that purpose, amendment was carried out in the Rules of 1994; making prescription for District Judges in Rule 3 of Rules of 1994, namely; (a) District Judges (Entry level); (b) District Judges (Selection Grade); and (c) District Judges (Super time scale). While making change in the method of appointment in Rule 5 of the Rules of 1994, the earlier rule was completely substituted by the new rule in the following manner :

> "**5. Method of Appointment.**- (1) Appointment to the posts in category (a) of sub-rule (1) of rule 3 shall be made as follows :-
>
> (a) 50 percent by promotion from amongst the Civil Judges (Senior Division) on the basis of merit-cum-seniority and passing suitability test;
>
> (b) 25 percent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than 5 years qualifying service :
>
> Provided that notwithstanding that a person has passed such competitive examination, his suitability for promotion shall be considered by

> the High Court of the basis of his part performance and reputation:
>
> Provided further that recruitment to the posts shall be made on the basis of the vacancies available till the attainment of the required percentage;
>
> (c) 25 percent of the posts shall be filled by the direct recruitment from amongst the eligible advocates on the basis of the written test and viva voice conducted by the High Court.
>
> (2) Appointment to the categories (b) and (c) of sub-rule (1) of rule 3 shall be made by the High Court by selection of members of the service from categories (a) and (b) respectively on merit-cum-seniority basis:
>
> Provided that no member of the service shall be appointed in the category (b) and (c) of sub-rule (1) of rule 3 unless he has completed five years and three years continuous Service in the category (a) and (b) respectively."

The bar for keeping the posts earmarked as was earlier prescribed in the Rules, has been done away in the amended provisions. Meaning thereby, if the vacancies advertised in a particular year remained unfilled, the same can be carried forward to the next year of recruitment. In view of the aforesaid change in the Rules, now we are required to test the provisions of law, which have been pressed by the petitioners and the respondents.

11. A decision, after Justice Shetty Commission recommendations have been adopted, in the case of All India Judges' Association (supra), was rendered by the Apex Court in the year 2010 in the case of ***Ramesh Kumar vs. High Court of Delhi and another***[4]***,*** which is strongly relied by the petitioners. According to the petitioners, the Apex Court has categorically held that there cannot be

4 ***(2010) 3 SCC 104***

prescription of cut off marks for viva voce, and moreso where it is not so provided in the Rules. Learned Counsel for the petitioners has heavily placed reliance in particular on paragraphs 18 and 19 of the report, which read thus :

> *"18. These cases are squarely covered by the judgment of this Court in Hemani Malhotra v. High Court of Delhi, wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in All India Judges' Assn. (3) case had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact situation, the question of acquiescence would not arise.*
>
> *19. In view of the above, as it remains admitted position that petitioner Ramesh Kumar had secured 46.25% marks in aggregate and as he was required only to have 45% marks for appointment, Writ Petition (C) No.57 of 2008 stands allowed. The connected writ petition filed by Desh Raj Chalia as he failed to secure the required marks in aggregate, stands dismissed. The respondents are requested to offer appointment to petitioner Ramesh Kumar, at the earliest, preferably within a period of two months from the date of submitting the certified copy of this order before the Delhi High Court. It is, however, clarified that he shall not be entitled to get any seniority or any other perquisite on the basis of his notional entitlement. Service*

> *benefits shall be given to him from the date of his appointment. No costs."*
>
> *(emphasis supplied)*

We are conscious that once the law is laid-down in that respect, the same has to be adhered to.

12. As against the aforesaid, learned Counsel for the respondent High Court has relied on paragraph 15 of the decision rendered in the case of ***Ramesh Kumar*** (supra) and has contended that it is also held by the Apex Court that if no procedure is prescribed by the Rules and there is no other impediment in law, the competent authority while laying down the norms for selection, may prescribe for the test and further specify the minimum benchmarks for written test as well as for viva voce. It is the contention of learned Counsel for the respondents in the case of ***Mahinder Kumar and others vs. High Court of Madhya Pradesh, through Registrar General & others***[5]***,*** *and in the case of K. Manjusree* and *K.H. Siraj* (supra), since the selection made by the High Courts was not found fault with by the Apex Court, the decision rendered by the Apex Court would mean that for viva voce minimum benchmark can be prescribed.

13. While amending the Rules of 1994, proviso in Rule 7, where qualification for direct recruitment was prescribed, was added by amendment made on 08.06.2005. For the purposes of appreciation, Rule 7 of Rules of 1994 is quoted herein below :

> *"**7. Qualification for direct recruitment.-** No person shall be eligible for appointment by direct recruitment unless :-*
>
> *(a) he is a citizen of India;*

5***(2013) 11 SCC 87***

> *(b) he has attained the age of 35 years and has not attained the age of 48 years on the first of January of the year in which applications for appointments are invited;*
>
> *(c) he has been for not less than seven years an Advocate or a Pleader;*
>
> *(d) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment.*
>
> *The procedure of selection for direct recruitment and promotion shall be such, as may be specified by the High Court from time to time."*

This particular aspect was considered by the Apex Court in the Case of ***Ramesh Kumar*** (supra). In paragraph 15 of the decision, the Apex Court has categorically held that Justice Shetty Commission's recommendations suggest prescription of marks for selection of candidates. However, recommendations, as have been pointed out herein above, were not accepted in toto. It was left open to the selecting authority to prescribe its own procedure, if the same was permissible under the relevant rules.

14. Having referred to the rival pleas, we must now see - what was the claim made by the petitioner - before the Apex Court in the case of ***Mahinder Kumar and others*** (supra) and what was the issue for consideration before the Apex Court. Undoubtedly, though eligibility conditions for selection were already prescribed in the Rules after the amendment but the procedure was not prescribed and in the light of the proviso added to the amended Rule 7 of the Rules, procedure for selection for direct recruitment was prescribed by the High Court. Since the evaluation of the answer-sheets was in fact part of the procedure to be prescribed, such a prescription of evaluation of answer-sheets was made the subject matter before the Apex Court in the case of ***Mahinder Kumar and others*** (supra). The

Court was not required to consider the “eligibility conditions” nor the same have been considered in the said case. There is marked distinction between the “eligibility conditions” and “procedure for selection”. The eligibility conditions are essentially to be provided in the rules itself and non-fulfillment of those eligibility conditions become a disqualification to take part in the selection by any candidate. This aspect cannot be left open to the authorities to be prescribed on every occasion whenever the selection is to be done. Therefore, the law laid-down by the Apex Court in the case of ***Mahinder Kumar and others*** (supra), as has been relied by the learned Counsel for the respondents would be of no avail in the present case.

15. In view of the aforesaid, we have no doubt in our mind that since the scheme of selection, as made in the rules nowhere contemplates prescription of the minimum cutoff marks for viva voce/interview, in the light of the law laid-down by the Apex Court in **Ramesh Kumar** (supra), such a prescription in the advertisement was not permissible.

16. Reverting to the decision of the Supreme Court in **Ramesh Kumar** (supra), which, in our opinion, is directly on the point. The High Court of Delhi in the advertisement issued for the selection process, as in the present case, had prescribed minimum of 50% marks for General category and 45% marks for Reserved category in the *viva voce* test. That prescription has been found to be norms for selection and not a procedural matter. On that finding, the Supreme court opined that the selection process must be carried forward on the basis of the norms for selection prescribed in the statutory rules in force. In absence of statutory rule on that subject/issue, the appointment process must be in conformity with the decisions of the Supreme Court

(including in **All India Judges' Association (3) Vs. Union of India**). In para 18, the Court concluded that in absence of any statutory requirement of securing minimum marks in interview, the Delhi High Court ought to have followed the same principles as envisaged in **All India Judges' Association (3)** case and the argument of acquiescence can be of no avail. Notably, in that case the Court granted relief to the writ petitioners before it because, the selection to the post involved had not been completed in any subsequent years to the selection process under challenge. This is amply clear from the dictum in paragraph 18 of the said decision which is extracted in its entirety in paragraph 11 above.

17. Accordingly, even if the present set of writ petitioners before this Court would succeed on the argument that minimum cut off marks for *viva voce*/interview cannot be prescribed by way of advertisement inviting applications, the question is whether any relief can be granted to the petitioners. As has been pointed out earlier, the Rules before amendment expressly provided that unfilled vacancies during the concerned selection process shall not be carried forward. Indeed, after the amendment, unfilled vacancies in the given selection process can be carried forward. However, as per the Rules, those vacancies get subsumed in the following selection process. In other words, the unfilled vacancies of the selection process of the year 2007 got merged and subsumed in the vacancies notified in the year 2008. As a result, 20 vacancies were notified in the year 2008. In the selection process for the year 2008 only 9 candidates were selected and the unfilled vacancies were merged and subsumed in the vacancies notified in the year 2010. As a result, in 2010, 20 vacancies were advertised as against which only 3 candidates were selected. Indeed, the

writ petitioners participated in the said selection process but the unfilled vacancies as per the Rules got subsumed in the vacancies notified for selection process of the subsequent year(s). The High Court has already notified all the vacancies in the advertisement issued in 2014. Considering the fact that the advertisement issued on 28.11.2014 for examination of Entry Level 2015, 83 vacancies/posts have been notified which include the unfilled vacancies in the examination conducted in 2010, no relief can be granted to these writ petitioners unlike in the case of **Ramesh Kumar** (supra), wherein the selection process to the post against which relief was claimed by the writ petitioner had not been completed in any subsequent year to the selection process under challenge. Notably, there is no challenge to the rule providing for merging or subsuming of vacant posts in relation to examination conducted in 2010 in the subsequent advertisement(s) issued for that purpose, for which reason also the petitioners cannot succeed in getting any relief.

18. To get over this position, two fold argument was canvassed before us, on behalf of the petitioners. Firstly, relying on the decision of the Supreme Court in the case of **Rameshwar and others Vs. Jot Ram**[6], it was argued that the relief claimed by the petitioner must be determined as on the date of institution of proceedings and since they had approached the Apex Court within time, only on the ground of delay or laches or because of subsequent event they cannot be denied the relief. This argument at best, in our opinion, will be available to writ petitioners in Writ Petition Nos.88/2015, 1373/2015, 1376/2015, 1381/2015 and 2531/2015 who had filed writ petition before the Supreme Court challenging the results declared by the High Court in

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relation to selection process held in 2010. They had filed writ petitions immediately thereafter. That contention may also be available to the writ petitioner in Writ Petition No.No.1372/2015 who had immediately filed writ petition before the Supreme Court challenging the selection process of 2008, culminated with the declaration of results. As regards, other writ petitioners having filed writ petition, after the subsequent selection process had commenced cannot get any relief whatsoever. With regard to the writ petitions filed immediately after the culmination of selection process with declaration of results of the concerned year, the interim relief granted by the Court was of limited nature - to the extent of appointments made pursuant to the concerned selection process subject to the final outcome of the writ petitions. Notably, none of the petitioners have challenged the appointments already made pursuant to the said selection process as such. Their claim is that their names should also have found place in the select list, having secured requisite aggregate marks. However, since there is no interim direction to set apart commensurate post(s) of the concerned selection process (examination), their claim cannot be considered against the vacancies notified in the advertisement dated 28.11.2014. None of the petitioners have participated in the said selection process. Indeed, the said advertisement bears a note that the selection of candidates against the 83 posts will be subject to the decision in Writ Petition No.101/2010 and Writ Petition No.236/2011 filed before the Supreme Court by Baldev Singh and Gopal Krishna Sharma. As regards Baldev Singh, he filed writ petition in 2010 questioning the validity of examination results declared in 2008 which as found earlier suffers from delay and laches and more so because the selection process for 2010 had commenced.

19. It is not possible to overlook the vested rights of candidates who have been declared to have been selected and also appointed against the concerned vacancies for the year 2007, 2008 and 2010 respectively. The claim of the writ petitioners could be taken forward if the vacancies of the concerned year in which he (they) had appeared for examination was kept vacant and not notified in the subsequent advertisement for selection of candidates. It is, however, clear from the record that the unfilled vacancies were notified in the subsequent advertisement for selection and the selection process proceeded on that basis. None of the petitioners participated in the subsequent selection process. As the unfilled vacancies got subsumed by operation of law and also because it was notified in the subsequent selection process advertisement, no relief can be granted to these petitioners. For, no relief or challenge in that regard is found in the writ petitions though amended. Therefore, it is not possible to accommodate the writ petitioners by setting aside the selection of candidates who have already been appointed in the vacancies of the concerned year and more so when no relief in that behalf has been claimed by the petitioners. In other words, the unfilled vacancies for the examinations held in 2007, 2008 and 2010 are no more existing, having been notified in the subsequent selection process advertised for that purpose. Similarly, no direction can be issued to unseat the already appointed candidates merely because he (they) may have secured lesser aggregate marks than the aggregate marks of the writ petitioners in the concerned selection process. The candidates appointed against the vacancies of 2007, 2008 and for that matter 2010 have completed substantial service and unseating them would result in causing serious miscarriage of justice to them, as they could have otherwise been appointed against the unfilled vacancies.

20. Yet another reason as to why entire exercise cannot be reopened is that some of the candidates, who have taken part in the impugned selection process and secured better aggregate marks than that of the petitioners, have not chosen to challenge such action nor are before the Court; and in case the entire select list is required to be reviewed and fresh select list is required to be made, those candidates will also have to be offered the post in terms of their placement in the select list. It is not known whether such persons would be eager to join the services or not. In view of this, it would be endless exercise which is not required to be undertaken, in the larger interest of the institution.

21. Having said so, now we have to examine the aspect whether the petitioners have any locus to challenge the entire selection in the garb of challenge to prescription of cutoff marks in interview/viva voce as mentioned in paragraph 8 of the advertisement, after taking part in the selection process unsuccessfully.

22. For the sake of convenience, entire paragraph 8 of the advertisement placed on record in W.P. No.1377/2015 as Annexure P-2, said to be issued in the year 2007, is reproduced below :

> *"8. (i) For the purpose of shortlisting of candidates a preliminary examination comprising, an objective test shall be conducted and the candidates who qualify in the said preliminary examination at the High Court of Madhya Pradesh, Jabalpur, or at such other places as may be specified by the High Court, will be permitted to appear in the main examination. The questions in the Preliminary Examination will be on Law (same subjects as specified in Para 8(iii)), English and General Knowledge.*

(ii) Candidates, who qualify in the preliminary examination, will be required to appear in main written examination at their own expenses at the High Court of Madhya Pradesh, Jabalpur, or at such other places as may be specified by the High Court.

(iii) The Written Examination shall consist of two papers, each of 3 hours duration arid of maximum 100 marks. The object of the written test is to assess the Knowledge of a candidates in Law and latest pronouncements. 1 st paper shall relate to Constitution of India, Civil Procedure Code, Cr.P.C., I.P.C., Hindu Marriage Act, Hindu Succession Act, Hindu Adoptions and Maintenance Act, Transfer of Property Act, Contract Act, Specific Relief Act, M.P. Accommodation Control Act, Limitation Act, Evidence Act and M.P. Land Revenue Code, N.D.P.S. Act, Schedule Caste Schedule Tribes (Prevention of Atrocities) Act, Prevention of Corruption Act, Negotiable Instrument Act and Electricity Act.*

Second Paper will be in two parts, The First part will contain factual data of a Civil Case and a Criminal Case on the Basis of which the candidate shall prepare judgment in the Civil Case and Criminal Case. The Second Part will contain a passage in Hindi to be translated into English and a passage in English to be translated into Hindi.

(iv) Only such candidates, who secure minimum marks in each of papers in the written examination as, decided by the High Court will be called for interview.

(v) The interview shall carry 50 marks and minimum 20 marks have to be secured by the candidates.

(vi) Candidates shall be selected on the basis of marks obtained by them in each paper of the main written examination and interview separately, subject to obtaining minimum marks as fixed by the High Court in the written examination as well as in the interview.

> *(vii) On completion of the selection process, the result of examination (list of selected candidates) shall be published in M.P. Rajpatra. The result of all the candidates both successful and unsuccessful shall be declared on the website of the M.P. High Court."*

23. Similar was the condition mentioned in paragraph 8 of the advertisement issued in the year 2008, as is clear from the document placed on record of W.P. No.1372/2015 as Annexure P-2. Same was the condition prescribed in the advertisement issued in the year 2010, as is placed on record in W.P. No.88/2015 as Annexure P-4.

24. Learned counsel for the petitioners have heavily placed their reliance on the case of **Rameshwar and others Vs. Jot Ram and others**[7] and would contend that the right to relief claimed by the petitioners is to be determined as on the date of institution of proceedings and since they had approached the Apex Court within time, only on the ground of delay and laches or that subsequent events have taken place, they cannot be denied the relief. For the abovesaid reason we have examined the contentions of the petitioners. To challenge the selection of the year 2007, for the first time the writ petition ws filed in the Supreme Court being W.P.(C) No.416/2010. There is no reference whether petitioners had approached any Court of law before filing of the said writ petition or not. The selection of the year 2008 was sought to be challenged in the year 2009 and 2010 by the petitioners by filing W.P. (C) No.471/2009 and W.P.(C) No.101/2010. The selection of the year 2010 was called in question by filing W.P.No.221/2011, W.P. No.214/2011, W.P.No.225/2011 W.P.(C) No.230/2011, W.P.(C) No.236/2011 and W.P.No.179/2011. The reliefs

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claimed were that prescription of such a condition in the advertisement regarding obtaining minimum marks in the interview be declared illegal. To that extent no interim relief was granted by the Apex Court but only this much was said that the appointment, if any, made would be subject to final outcome of the writ petitions.

25. Now, it has to be examined whether the petitioners can be allowed to challenge such a condition after having taken part in the selection process. The Apex Court in the case of ***Amlan Jyoti Borooah vs. State of Assam and others***[8]***,*** has categorically held that the candidates, if have taken part in the selection without any *demur* have no right to challenge such conditions as they are estopped and precluded from doing so. The relevant part in paragraphs 29 to 32 of the report reads thus :

> *"29. The question which, however, arises for consideration is as to whether despite the same, we, in exercise of our jurisdiction under Article 136 of the Constitution of India, should interfere with the impugned judgment.*
>
> *30. The appellant concededly did not question the appointment of 169 candidates. It is idle to contend that he was not aware thereof. If he was to challenge the validity and/or legality of the entire select list in its entirety, he should have also questioned the recruitment of 169 candidates which took place as far back as on 4-7-2000.*
>
> *31. Appellant was aware of his position in the select list. He was also aware of the change in the procedure adopted by the Selection Committee. He appeared at the interview without any demur whatsoever although was not called to appear for the physical ability test prior thereto. Appellant chose to question the appointment of 77*

8 ***(2009) 3 SCC 227***

> *candidates not only on the premise that the procedure adopted by the Selection Committee was illegal but also on the premise that no new vacancy could have been filled up from the select list.*
>
> *32. The appellant, in our opinion, having accepted the change in the selection procedure sub silentio, by not questioning the appointment of 169 candidates, in our considered opinion, cannot now be permitted to turn round and contend that the procedure adopted was illegal. He is estopped and precluded from doing so."*

26. Keeping in mind the observations in the aforesaid decision and also the observations in paragraph 18 of ***Ramesh Kumar's*** case (supra), we hold that the petitioners cannot be granted any relief in the present writ petitions. They have taken part in the selection as was held in the year 2007, 2008 and 2010 respectively without any demur and even without raising objection in that respect. Only when they failed to get selected on account of not obtaining the minimum marks in the interview, they resorted to writ remedy. On the other hand, when ultimately they failed in the final selection, they straightway rushed to the Supreme Court and filed the petitions only against few persons. If the entire selection process was said to be vitiated because of applying the condition of obtaining minimum marks in the interview, all those who have qualified for interview were required to be added as party to the petitions, as ultimately those candidates will be directly affected.

27. Lastly, as the advertisements were only with respect to the vacancies on the posts as is specifically mentioned in Rule 5 of the Rules of 1994, where it is categorically prescribed that the recruitment to the posts shall be made **on the basis of the vacancies available**. This makes it clear that vacancies are to be carried forward and get

subsumed in the next selection, which is to commence. Therefore, no vacancies of the years 2007, 2008 or 2010, in which years the petitioners were candidates for selection, are presently available. As a result, the claim of the petitioners cannot be considered for grant of appointment against the vacancy with reference to advertisement of 2007, 2008 or 2010, as the case may be. For this reason also, the selection said to be made by the respondents cannot be set aside to accommodate the petitioners nor against the vacancies already subsumed and merged in the subsequent advertisements, in which process, the petitioners have not participated. Since the selection for appointment is to be made from the candidates, who have participated in selection at present, the candidature of petitioners cannot be taken forward. Even otherwise, since the unfilled posts have not been kept vacant for the petitioners as there was no interim order to this effect, the claim of candidates who are presently participating, cannot be jeopardised.

28. While parting, we may reiterate the legal position stated in **Ramesh Kumar** (supra) that in absence of statutory rule permitting cutoff marks for *viva voce*, all appointment processes hereafter must be in conformity with the qualification norm specified in the decisions of the Supreme Court including in ***All India Judges' Association (3)'s*** case (supra).

29. As a result, the writ petitions fail and are hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(**A.M. Khanwilkar**)
Chief Justice

(**K.K. Trivedi**)
Judge

Skc/AM.