

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 21st OF JULY, 2022

WRIT PETITION No. 16180 of 2022

Between:-

**ANAND KUMAR LOWANSHI S/O SHRI
NARMADA PRASAD LOWANSHI, AGED
ABOUT 32 YEARS, OCCUPATION: LAW
ASPIRANT, R/O NEAR SHANKAR MANDIR,
SHAHID PATEL COLONY, 3RD LINE,
OPPOSITE YADAV TENT HOUSE, SEONI
MALWA-461223 (M.P.)**

.....PETITIONER

**(BY SHRI MANOJ SHARMA - SENIOR ADVOCATE
ASSISTED BY SHRI QUAZI FAKHRUDDIN - ADVOCATE)**

AND

- 1. HON'BLE HIGH COURT OF MADHYA
PRADESH THROUGH THE REGISTRAR
GENERAL, SOUTH CIVIL LINE, JABALPUR-
482001 (M.P.)**
- 2. STATE OF MADHYA PRADESH, THROUGH
PRINCIPAL SECRETARY, DEPARTMENT
OF LAW AND LEGISLATIVE AFFAIR,
GOVERNMENT OF M.P., VINDHYACHAL
BHAWAN, BHOPAL-462003 (M.P.)**

.....RESPONDENTS

**(SHRI ANKIT AGARWAL - GOVERNMENT ADVOCATE FOR
RESPONDENT NO.2, ON ADVANCE COPY)**

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This petition coming on for admission this day, Hon'ble Shri Justice Ravi Malimath, Chief Justice passed the following:

ORDER

The case of the petitioner is that he was enrolled as an Advocate with the Madhya Pradesh State Bar Council in the year 2017. The respondent No.1 called for applications for recruitment to the posts of Civil Judge Junior Division (Entry Level) under the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994. The petitioner applied for the same. He passed the preliminary exam as well as the final exam. He was called for the interview. He was not selected. He was expected to score a minimum of 20 out of 50 allotted marks for the interview. Since he had not scored the minimum of marks in the interview, he was not eligible to be selected. Questioning the same, the instant petition is filed seeking to set aside the impugned interview/selection procedure, which mandates 20 marks to be obtained out of the maximum of 50 marks; to set aside Clause 6 of the main examination form wherein information about relatives in the judiciary is called for and other consequential reliefs.

2. Shri Manoj Sharma, learned senior counsel appearing for the petitioner's counsel submits that the mandate to procure a minimum of 20 out of 50 marks is erroneous. That once the candidate has cleared the preliminary and the final examination and a merit list has been prepared, the selection ought to be made on the basis of that select list. That the procurement of the minimum marks is wholly uncalled for. He relies on the judgment of the Hon'ble Supreme Court in the case of *Hemani Malhotra vs. High Court of Delhi* reported in (2008) 7 SCC 11, with

reference to paras 17 and 18. It is his further contention that Clause 6 of the application form for the main exam calls for particulars with regard to family members, who are in the profession. That the same would affect the candidate at the time of interview. Furthermore, whether the relative of the candidate is practising or is a Judge or otherwise, is of no concern so far as judging his merit is concerned.

3. Heard learned senior counsel.

4. The minimum marks to be obtained for the interview is governed by the advertisement published on 21.12.2021 vide Annexure P-1, wherein for the clause of interview it is narrated that the maximum marks to be obtained is 50 marks, out of which the candidate should obtain a minimum of 40% of the same, namely, 20 marks out of 50 marks for the interview. The same reads as follows:-

“3- 1 k{kkRdkj

,d- 1 k{kkRdkj & मुख्य परीक्षा में सफल आवेदकों को अनुक्रमांक के क्रम से साक्षात्कार हेतु बुलाया जायेगा। साक्षात्कार के लिए 50 अंक निर्धारित हैं। आवेदकों को अंतिम रूप से चयनित होने के लिए साक्षात्कार में न्यूनतम 40 प्रतिशत अंक अर्थात् 20 अंक प्राप्त करना अनिवार्य है।”

Therefore, the candidates were aware of the existence of such a clause.

5. So far as the judgment of the Hon'ble Supreme Court in the case of *Hemani Malhotra* (supra) relied upon by the learned senior counsel is concerned, with reference to paras 17 and 18, it is narrated therein, while relying on the report of Hon'ble Justice Shetty Commission with regard to fixing of cut-off marks for the purposes of the viva voce test. On

considering the same, in para-18, it was held that the marks obtained by the petitioner in the viva voce test had to be added on to the marks obtained in the written test and then the merit list has to be prepared.

6. Having considered the said judgment, we are of the view that the same would not apply to the facts of this case. The facts involved therein were to the extent that after the written exam was conducted for recruitment to the Delhi Higher Judicial Service, the marks obtained in the written test were not disclosed. At that stage, the selection committee met and resolved that it was desirable to prescribe minimum marks for viva voce. Therefore, the matter was placed before the Full Court. The Full Court resolved that the minimum qualifying marks in viva voce will be 55% for General candidates and 50% for Scheduled Castes and Scheduled Tribes. Thereafter, the candidates were called for an interview even though such an interview was not postulated in the advertisement. The Hon'ble Supreme Court in the case of *Hemani Malhotra* (supra), in para-14, held as follows:-

"14. It is an admitted position that at the beginning of the selection process, no minimum cut-off marks for viva voce were prescribed for Delhi Higher Judicial Service Examination, 2006. The question, therefore, which arises for consideration of the Court is whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed would amount to changing the rules of the game after the game was played....."

Therefore, what the Hon'ble Supreme Court was considering was as to whether the introduction of a requirement for obtaining minimum marks for interview after the selection process was completed would

amount to changing the rules of the game after the game was played. The same is not the position herein. There is no change of the rules of the game at a subsequent date. The requirement was published even in the advertisement calling for the posts. Therefore, all were aware of the same. Hence, the question of changing the rules of the game is not a point involved in this case.

7. The Hon'ble Supreme Court in *Hemani Malhotra's* case (supra) further held in para-15 as follows:-

"15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal."

Therefore, in the facts of the aforesaid case, the prescription of having the minimum marks for the viva voce was introduced after the selection process had commenced. However, the facts in the instant case are that the marks for the viva voce were already prescribed at the stage of calling for the advertisement. The advertisement clearly indicated that 50 marks would be allotted for the interview, out of which the candidate has to procure a minimum of 40%, namely, 20 marks out of 50 marks. Thus, in the instant case, much before the commencement, namely, even at the stage of advertisement, the fixing of the minimum marks for viva

voce was already prescribed. Hence, we are of the view that based on the facts and circumstances involved, the said judgment would not be applicable to the case on hand.

8. In the judgment of the Hon'ble Supreme Court in the case of *K. Manjusree vs. State of Andhra Pradesh and Another* reported in (2008) 3 SCC 512 it was held that the prescription of minimum marks for an interview is not illegal. It was held in para-33 as follows:-

"33. The Resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is

changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

9. In the case of *Ramesh Kumar vs. High Court of Delhi and Another* reported in (2010) 3 SCC 104, the Hon'ble Supreme Court held that the authority may prescribe a minimum benchmark not only for the written test but also for the viva voce. It was held in para-15 as follows:-

"15. Thus, the law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva voce."

Therefore, the position in law is quite clear that minimum marks for the interview can be prescribed by the authority provided the same is made known much before the start of the selection process and not during the selection process.

10. So far as the contention on Clause 6 of the application form is concerned, we do not find that the same would affect the legal right of the petitioner. What is sought for therein are the particulars of any individual who is in the profession and if so, their relationship with the candidate. We are of the considered view that probably the said clause has been added only to know the background of the candidate as to whether any of his relatives or otherwise are practising or in the judiciary. While selecting a person for a judicial service it is not only essential but it is the

duty of the authority to know every single particular of the candidate as possible. That an appointment cannot be made in darkness without knowing the background of the candidate. Full and complete disclosure is warranted. Therefore, it is only just and necessary that in the process of obtaining information about the candidate this is also an additional information. Therefore, we do not find that the furnishing of any of these particulars would affect any of the legal rights of the petitioner.

11. Hence, we find no good ground to interfere. The writ petition is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

s/