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K.H. SIRAJ

v.

HIGH COURT OF KERALA AND ANR.

MAY 23, 2006

B [DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

Service Law:

Kerala Public Service Act, 1968—Section 2—Kerala State subordinate
C *Service Rules, 1958 : Rules 14, 15 & 17/Kerala Judicial Service Rules, 1991; Rule 7/Notification dated 26.3.2001; Cl.10: State Judicial Service Examination—Appointment of Munsif Magistrate—Fixation of minimum cut-off marks—Necessity of—Rules of reservation—Violation of—Single Judge of the High Court declaring selection of certain candidates illegal—*
D *Reversed by the High Court—On appeal, Held: Rule 7 confers powers on the High Court to select suitable persons to serve as judicial officer—Power so conferred enables the High Court to select best available talent for manning judiciary—Condition for obtaining minimum cut-off marks in written/oral Examination not irrelevant—High Court could evolve its own procedure to select suitable candidates—Thus, power conferred under the*
E *Rules justified the prescribed minimum eligibility condition—Since the procedure so evolved is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its power—Such power is vested on the High Court constitutionally for the purpose of administration of the subordinate judiciary—Constitution of India, 1950—Articles 233, 234 &*
F *235—Kerala High Court Rules—Rule 148.*

Testing of suitability of a candidate—Oral test/Interview—Necessity of—Held: Intellactual and personal qualities of a candidate could appropriately be assessed by conducting oral test.

G *Bench marks/cut-off marks—Fixation of—Held: In order to select the best amongst the available candidates, fixation of Benchmarks is necessary.*

Rule of reservation—Applicability of—Held: In terms of rule 15, slots had mandatorily to be filled up by open merit candidates if no suitable
H *candidate from reserved categories available—Hence, filling up of such*

vacancies from candidates other than reserved categories permissible under the Rules. A

Validity of select list—Challenged by unsuccessful/ineligible candidates—Held: Ineligible candidates could not challenge the validity of the select list.

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Selection and appointment—Challenge to—Estoppel—Applicability of—Held: Principle of estoppel applicable since appellants participated in the examination with knowledge of rules and procedural requirements.

Civil Procedure Code, 1908:

C

Writ Petition—Absence of necessary parties in the array of parties—Effect of—Held: The petition falls on this ground.

Disposal of appeals on the same issue by the High Court—Not filing of appeal against—Effect of—Held: the order of the High Court became final and opeartes as **res-judicata** *to the appeals in question—Principle of* **Res-judicata**. D

The High Court of Kerala invited applications for the appointment for the post of Munsif-Magistrate in the Kerala Judicial Services. The appellants/petitioners appeared in the Written test. They were called for an interview before the Board. The select list was issued by the High Court. The appellants challenged the select list alleging that the selection was done in violation of the principles and Rules relating to reservations. They also moved an application for staying the training and appointment of candidates from the select list till the disposal of the writ petition. However, the High Court commenced the training of the last 20 candidates from the select list. The single Judge of the High Court disposed of the original petition declaring the appointment of certain candidates as illegal and consequently restrained respondent Nos. 1 & 2 (the High Court and the State of Kerala) from filling up the said posts from the select list. The Respondents preferred an appeal. The Division Bench of the High Court by its interim order stayed the order of the single Judge. Against the order of the Division Bench, the appellant preferred Special Leave Petition before this Court. This Court disposed of the petition after recording the statement of the respondents that in the event of writ appeal being allowed, the appointments so made would

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A be quashed and appointed candidates would not claim equity on the ground that they have joined the service earlier. Later, the Division Bench of the High Court disposed of the petition holding that the selections and appointments so made were regular in all respects. Hence the present appeals and SLPs.

B One of the appellants contended that in terms of Rule 7 of the Rules, the suitability of a candidate for appointment has to be considered by the aggregate marks of written examination and oral examination; that List has to be prepared after following such a procedure as the High Court deems fit; that fixing a separate minimum cut off marks C is not procedural requirement but it is an additional eligibility for the post, which is contrary to rule 7; that rule 7 is silent as to the fixation of cut off marks which is for relaxation from time to time for the purpose of reservation; that the wording 'procedure deems fit' does not confer any power on the selection Authority so as to take away a right D provided elsewhere as reported in *Raja Ram Mahadev Parjapee's* case, [1962] Supp 1 SCR 739 followed in *Babau Nagar & Ors.* v. *Sree Synthetic,* reported in [1984] Supp SCC 128; and that the selection authority cannot follow any procedure in violation of the Rule of reservation.

Other appellants contended that apart from the candidates belonging E to backward classes, SC/ST candidates were also disqualified for selection by fixing 30% minimum cut off marks for the oral examination which is arbitrary because unequals are treated alike; that the selection agency has no inherent power to prescribe selection criteria; that the Legislature did not provide criteria for selection by exclusion of candidates by oral F examination; that the first respondent has no authority to override the legislative intention; that Rule 7 of the Rules did not provide a selection criteria based on the exclusion of candidates on account of not securing a separate minimum cut off marks in the oral examination; and that the system followed by the High Court is in clear violation of the Rules and the principles laid down by this Court in catena of decisions and G also against the norms suggested by *Shetty Commission* with regard to the Judicial Service appointments.

Respondents submitted that the selection in question was done pursuant to the Notification issued by the High Court of Kerala; that H clause 10 of the Notification prescribes a scheme of written and oral

examination to be taken by the candidate; that the oral examination was held for deciding the candidate's general knowledge, grasp of general principles of law, analytical ability an suitability for appointment as Munsif Magistrate; that there was a relaxation of the marks in the written examination in favour of candidates belonging to scheduled castes and Scheduled Tribes; that in terms of the Notification pre-examination training to the Scheduled Castes and Scheduled Tribes candidates was given to equip them for the examination; that on earlier occasions appointments had been made in accordance with the same procedure as laid down in the Notification. The same procedure was followed in the impugned selection also.

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Dismissing the appeals and the SLPs, the Court

HELD : 1.1. Rule 7 of the Kerala Judicial Service Rules requires the High Court to hold examinations written and oral. The mandate is to prepare a select list of candidates suitable for appointment as Munsif Magistrates. The very use of the word 'suitable' gives the nature and extent of the power conferred upon the High Court and the duty that it has to perform in the matter of selection of candidates. The High Court alone knows the requirements of the subordinate judiciary, the qualities the Judicial Officer should possess both on the judicial side and on the administrative side since the performance of duties as a Munsif or as judicial officer require administrative abilities as well. Since the High Court is the best Judge of what should be the proper mode of selection, Rule 7 has left it to the High Court to follow such procedure as it deems fit. The High Court has to exercise its powers in the light of the constitutional scheme so that the best available talent, suitable for manning the judiciary may get selected. [819-A-B-C-D]

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1.2. It cannot be said that prescription of minimum pass marks for the written examination or for the oral examination is in any manner irrelevant or not having any nexus to the object sought to be achieved. The merit of a candidate and his suitability are always assessed with reference to his performance at the examination and it is a well accepted norm to adjudge the merit and suitability of any candidate for any service. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition interms of clause 10 of the Notification. [819-D-E-F]

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A 1.3. It will not be proper to any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high powered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers.
B [819-G-H, 820-A]

Union of India and Ors. v. *Kali Dass Batish & Anr.*, [2006] 1 SCC 779, relied on.

C 1.4. Under the scheme of the Indian Constitution, the High Court is vested with the entire administration of the subordinate judiciary under Arts. 233, 234 and 235 of the Constitution of India. The High Court is vested with the power to see that the high traditions and standards of the judiciary are maintained by the selection of proper persons to man the subordinate judiciary. [820-B-C]

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State of Bihar & Anr. v. *Balmukund Sah & Ors.*, [2000] 4 SCC 640, followed.

2. Interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will
E testify the candidates' academic knowledge, the oral test alone can bring out or disclose his overall intelectual and personal qualities which are also essential for a judicial officer. [820-F-G]

3.1. Executive instructions can always supplement the Rules which may not deal with every aspect of a matter. Even assuming that Rule
F 7 did not prescribe any particular minimum, it was open to the High Court to supplement the Rule with a view to implement them by prescribing relevant standards in the advertisement for selection.
[824-F-G]

Sahkari Ganna Vikas Samiti Ltd. v. *Mahabir Sugar Mills (P) Ltd.*,
G [1981] 4 SCC 149; *Mohan Kumar Singhania & Ors.* v. *Union of India & Ors.*, [1992] Suppl. SCC 594; *Delhi Bar Association* v. *Union of India Ors.*, [2002] 10 SCC 159; *State of Haryana* v. *Subash Chander Marwaha & Ors.*, [1974] 3 SCC 220; *Manjeet Singh, UDC & Ors.* v. *Employees State Insurance Corporation & Anr.*, [1990] 2 SCC 367; *Rajesh Sood* v.
H *Director- General, Employees State Insurance Corporation,* (1985) 2

Service Law 699; *Union of India & Anr.* v. *Amrik Singh & Ors.*, [1994] 1 SCC 269; *Jasbir Singh & Ors.* v. *State of Punjab & Anr.*, [2002] 1 SCC 124; *State of Haryana* v. *Subhash Chander Marwaha & Ors.*, [1974] 3 SCC 220 and *Madhya Pradesh Public Service Commission* v. *Navnit Kumar Potdar & Anr.*, [1994] 6 SCC 293, referred to.

4.1. There were no eligible reserved candidates available for filling up certain slots from all the reserved candidates, 37 of them available among the 88 eligible candidates had already been given place above Slot No. 60 and there was not a single reserved candidate available to fill up slots 60 etc. Therefore, under Rule 15, the slots had mandatorily to be filled up by open merit candidates. It is not possible for the Government to keep those vacancies unfilled particularly, when there was a total of 70 vacancies to be filled up and open merit candidates were also available. Non-filling up of those vacancies by open merit candidates would have resulted in violation of rule 15 of the Rules. [827-G-H, 828-A]

4.2. In fact, the Division Bench of the High Court had gone into this aspect and examined this matter with reference to Rules and found that there was no departure from Rules 14 to 17 in the preparation of the select list. Since the appellants/petitioners are not eligible candidates, they are not entitled to constest the validity of the list on this ground. [828-A-B]

5.1. The appellants/petitioners, in any event, are not entitled to any relief under Art. 226 of the Constitution of India for more reasons than one. They had participated in the written test and in the oral test without raising any objection. They knew well from the High Court's Notification that minimum marks had to be secured both at the written test and in the oral test. [828-G-H]

Remany v. *High Court of Kerala,* (1996) 2 KLT 439, referred to.

5.2. The appellants/petitioners having participated in the interview, it is not open to them to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. Therefore, the writ petition filed by the appellants/petitioners should be dismissed on the ground of estoppel. The decision of the High Court holding to the contrary is per incuriam. [829-D-E, 830-C]

A *Madan Lal & Ors.* v. *State of J & K and Ors.,* [1995] 3 SCC 486, relied on.

6. The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the select list to a limited extent, B acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they C will be affected without being heard. Publication in the newspaper does not cure this defect. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. Hence, the writ petitions D have to fail for non-joinder of necessary parties also. [830-D-E-F]

7. Since the appellant has chosen to file appeals only against the decision in Writ Appeal filed by himself and has not chosen to file any appeal against the decision in the other appeals, the decision therein has become final and, therefore, operates as *res judicata.* [831-B-C]

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8. The appellants/petitioners could not secure even the minimum of 30% marks prescribed by the High Court. The five Judges including the Chief Justice who had interviewed the candidates in an objective way, have found these appellants/petitioners as not suitable for the job and, therefore, not awarded them even the minimum marks required F in the oral test. There is no *mala fide* or bias attributed to the selection committee. [831-D-E]

9. When the Constitutional mandate is that the High Court should perform its duty in having the best available talent chosen for the G subordinate judiciary, it is not possible to dilute the standards by any process. It is only this mandate of the Constitution, that the select committee in this case has performed and found the appellants/ petitioners unsuitable. [831-F-G]

CIVIL APPELLATE JURISDICTION . Civil Appeal Nos. 2539-2540 H of 2005.

From the Judgment and Order dated 1.3.2005 of the High Court of Kerala at Ernakulam in W.A. No. 1496/2004 and 1584/2004.

L. Nageswara Rao, Sr. Adv. Haris Beeran, Radha Shyam Jena, E.M.S. Anam and C.K. Sasi, Advs. with him for the appellant in C.A. 2539-2540/2005.

T.L.V. Iyer, U.U. Lalit, Sr. Advs., Vipin Nair, P.B. Suresh, V.K. Biju for M/s. Temple Law Firm, K.R. Sasiprabhu, Roy Abraham, Ms. Seema Jain and Himinder Lal, for RR-1.

P.V. Dinesh, Sindhu T.P., Jogy Scaria and Sanjay Misra, in SLP (C) NO. 14140-14141/2005.

Ms. Malini Poduval, E.M.S. Anam, for RR-3 in CA No. 3377-3378/2005 Advs., with them for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : Mr. K.H. Siraj is the appellant in Civil appeal Nos. 2539-2540 of 2005. Aggrieved against the judgment and final order dated 1.3.2005 passed by the High Court of Kerala in Writ Appeal Nos. 1496 & 1584 of 2004 whereby the Division Bench by its judgment and order allowed the appeals filed by the respondent-High Court of Kerala, set aside the judgment of the learned single Judge and held that the selections and appointments made were regular in all respects.

Mr. C.T. Sivanandan and Mr. Shahjahan M. are the appellants in Civil appeal Nos. 3377-3378 of 2005. Aggrieved against the judgment dated 1.3.2005 in Writ appeal No. 1584 of 2004 and O.P. No. 6784 of 2002 of the High Court of Kerala, they filed the above appeals by which the Division Bench set aside the judgment of the learned single Judge.

Special Leave Petition(c) Nos. 14140-14141 of 2005 were filed by Mr. V.R. Manu Manaswini against the common impugned judgment dated 1.3.2005 passed in W.A.No.1497 of 2004 and W.A.No.1719 of 2004 whereby the Division Bench by its final order allowed Writ Appeal No. 1497 of 2004 filed by the High Court of Kerala and dismissed Writ Appeal No. 1719 of 2004 filed by the appellant herein Mr. V.R. Manu Manaswini.

A The short facts are as follows:

The High Court of Kerala by its Notification dated 26.3.2001 invited applications for the appointment to the post of Munsiff-Magistrate in the Kerala Judicial Services in the pay scale of Rs.2500-4000. The relevant part of the Notification reads as under:

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THE HIGH COURT OF KERALA

No. B4-14037/2001 Kochi 682 031

C Dated:26.3.2001

NOTIFICATION

Applications are invited in the prescribed form from qualified candidates for appointment to the post of Munsif-Magistrate in the Kerala Judicial Service.

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1. Scale of pay of the post Rs.2500-4000 (under revision)

2. Probable number of vacancies 70 (53 candidates to be selected by direct recruitment from the Bar and 17 by recruited by transfer)

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3. Methods of recruitment:

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(i) Direct recruitment from the Bar

(ii) Recruitment by transfer.

Selection shall be after holding examinations. written and oral. The written examination shall be held on 11th and 12th August, 2001.

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4. Qualifications:

(i) Direct recruitment...........................

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(ii) Recruitment by transfer...........................

Note:-..

Feeder categories of offers for recruitment by transfer:

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(i) ....

(ii) ....

(iii) ....

(iv) ....

(v) ....

(vi) ....

(vii) ....

(viii) ....

5. Age limit — (i) Direct recruitment ....

Note.

(1) ....

(2) ....

(ii) ....

6. Reservation of appointment — The Rules relating to reservation of appointment for Backward Classes, Scheduled Castes and Scheduled Tribes contained in Part II of the Kerala State and Subordinate Services Rules, 1958 (Rules 14 to 17) shall apply to appointment by direct recruitment.

7. Training..

8. Probation..

9. Tests..

A

10. Scheme of written and oral examinations —

(1) Written examination — The written examination shall consist of the following four papers carrying a maximum of 100 marks each. The time for each paper shall be two and a half hours.

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Paper I ....

Paper II ....

C

Paper III ....

Paper IV ....

(2) Oral Examination : - There shall be an oral examination carrying a maximum of 50 marks for deciding the candidate's general knowledge, grasp of general principles of law, analytical ability and suitability for appointment as Munsif-Magistrate.

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(3) Only candidates who secure not less than 35 per cent marks in each of the papers of the written examination with an overall minimum of 45 per cent of the total marks of written examination and 30 per cent of the marks for the oral examination shall be eligible for appointment provided that the minimum marks required for pass in each paper of the written examination shall be 30 per cent with an overall minimum of 35 per cent of the total marks for candidates belonging to Scheduled Castes/Scheduled Tribes. Fraction of half or more than half shall be regarded as full mark and less than half shall be ignored.

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(4) No candidate who has not secured the minimum marks prescribed above in the written examination shall be called for oral examination.

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(5) The marks secured by the candidates at the oral examination shall be added to the total marks secured by them at the written examination and the names of all those candidates

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shall be arranged in the respective lists on the basis of the total marks secured by them. A

11. Application form and application fee - ....

12. Certificates/Documents - .... B

(i)..

(ii)...

"Certified that Shri/Smt. .... has been actually practising an an...................... Court since and that his/her character and conduct are/were C

Station: Signature, Name & Designation
Date: of the presiding Officer" D

Pursuant to the above Notification, the appellants/petitioners herein submitted their applications. Written test was held in the month of August, 2001. Thereafter they were called for an interview to appear before the Board consisting of five Hon'ble Judges including Hon'ble the Chief Justice on 17.12.2001. The select list was issued by the High Court on 7.2.2002. The appellants filed writ petition praying for quashing the select list insofar as it is contrary to the principles and Rules relating to reservations. They also moved an application for stay to stay the training and appointment of candidates from the select list till the disposal of the writ petition. The learned single Judge passed an order on 16.1.2004 in I.A.No. 425 of 2004 to the effect that the appointments, if any, will be subject to the result of the original petition. On 23.2.2004, the High Court commences the training of the last 20 candidates in the select list. The learned single Judge, by his order dated 6.8.2004, disposed of the original petition declaring that the decision to fill up the candidates appearing in S.Nos. 60,62,64,66,68 and 70 in the select list from open merit candidates as illegal and consequently restrained respondent Nos. 1 & 2 (High Court of Kerala and State of Kerala) from filling up the above posts from the select list. E F G

The High Court preferred the appeal being W.A.No.1496 of 2004 on 9.8.2004 against the judgment of the learned single Judge. The Division H

A Bench by its interim order dated 12.8.2004 admitted the appeal and stayed the order of the learned single Judge. The appellant preferred Special Leave Petition(c) No.17535 of 2004 before this Court against the interim order dated 12.8.2004. This Court on 25.8.2004 issued notice and stayed the operation of the impugned order. This Court disposed of the above special leave petition on 1.11.2004 after recording the statement of the counsel for B the respondents. The order reads thus:

"Delay condoned.

C The petitioner herein has agreed that by the refusal to grant interim order by the appellate Bench of the Kerala High Court, he has filed this SLP after issuance of notice. Respondents are represented herein. We find that the learned counsel appearing for the contesting respondents Mr. C.S. Vaidyanathan, learned senior counsel and Mr. Krishnana Venugopal, learned counsel have stated before this Court D that in the event of writ appeal being allowed, their appointment being quashed and they will not claim equity on the ground that they have jointed the service earlier.

E Recording the above statement, we think it is not necessary to entertain this petition hence this special leave petition is disposed of.

Sd/-	Sd/-
(Ganga Thakur)	(Prem Prakash)
PS to Registrar	Court Master

F The Division Bench of the High Court by its final judgment dated 1.3.2005 allowed the appeal filed by the High court, set aside the judgment of the learned single Judge and held that the selections and appointments made were regular in all respects.

G We heard Mr. L. Nageswara Rao, learned senior counsel ably assisted by Mr. Haris Beeran, Mr. Radha Shyam Jena, Mr. E.M.S. Anam and Mr. C.K. Sasi, learned counsel appearing for the appellants. We also heard Mr. T.L.V. Iyer, learned senior counsel ably assisted by Mr. Vipin Nair, Mr. P.B. Sursh, Mr. V.K. Biju, learned counsel and Mr. K.R. Sasiprabhu, H learned counsel, Mr. P.V. Dinesh, learned counsel and Mr. U.U. Lalit,

learned senior counsel ably assisted by Mr. Roy Abraham for the respondents. A

The arguments of Mr. L.N. Rao, learned senior counsel, was adopted by counsel appearing for the other appellants and the arguments of Mr. T.L.V. Iyer, learned senior counsel, was adopted by the other counsel appearing for the respondents.

B

Mr. Siraj, appellant in C.A.Nos. 2539-2540 of 2005 belongs to Muslim Community (OBC), the first appellant in C.A.Nos. 3377-3378 of 2005 is Scheduled Caste candidate and the second appellant belongs to Muslim Community(OBC) and the third appellant belongs to Hindu Nadar Community (OBC). The petitioner in S.L.P. (C) Nos. 14140-14141 of 2005 is a Scheduled Caste candidate. C

Kerala Judicial Service Rules, 1991 (hereinafter referred to as "the Rules") were made in exercise of the powers conferred by Articles 234 and 235 of the Constitution of India and sub-section(1) of Section 2 of the Kerala Public Services Act, 1968 (19 of 1968). Rule 7 of the Rules reads thus: D

"7. Preparation of lists of approved candidates and reservation of appointments—

(1) The High Court of Kerala shall, from time to time, hold examinations, written and oral, after notifying the probable number of vacancies likely to be filled up and prepare a list of candidates considered suitable for appointment to category 2. The list shall be prepared after following such procedure as the High Court deems fit and by following the rules relating to reservation of appointments contained in rules 14 to 17 of Part II of the Kerala State and Subordinate Services Rules, 1958." E F

(2) The list consisting of not more than double the number of probable vacancies notified shall be forwarded for the approval of the Governor. The list approved by the Governor shall come into force from the date of the approval and shall remain in force for a period of two years or until a fresh approved list is prepared, whichever is earlier." G

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A Sub-clause (1) of Rule 10 of the Rules reads as under:

Qualifications —

(1) No Advocate shall be eligible for appointment to category 2 unless he is having practice at the Bar for a period of not B less than five years and has not completed 35 years of age on the first day of January of the year in which applications for appointment are invited.

Rules 14 to 17 of the Kerala State and Subordinate Services Rules, C 1958 read as under:

"(14) Scheduled Castes and Scheduled Tribes mean the Castes and Tribes declared as such by the President of India under Article 341(1) and 342(1) of the Constitution of India and other D Backward Classes mean the classes declared as such by the State Government under Article 16(4) of the Constitution of India. Lists of such castes, tribes and classes, so declared are included as Lists I, II and III respectively in the Schedule to this part.

E (15) "Service" means a group of persons classified by the State Government as a State or a Subordinate service as the case may be.

Note : Where the context so requires, 'service' means the period F during which a person holds a post or a lien on a post or is member of a service as above defined.

(16) "Special Rules" shall mean the rules in Part III applicable to each service or class of service.

G (17) The Kerala Civil Services (Classification, Control and Appeal) Rules, the rules regulating the pay of the services issued from time to time, the Government servants' Conduct Rules, the Travancore Service Regulations, the Cochin Service Regulations, the Fundamental Rules, the Madras leave Rules, H 1933, Kerala Service Rules and the pension rules for the time

being in force shall, in so far as they may be applicable and except to the extent expressly provided in those rules govern members of every service in the matter of their pay, allowances, leave, leave salary, pension and other conditions of service: A

B Provided that the said rules and regulations shall in their applications to the members of the Secretariat Staff of the Governor be construed as if the functions of the State Government under those rules and regulations were the functions of the Governor."

C *INTERPRETATION OF THE RULES*

According to Mr. L.N. Rao, Rule 7 of the Rules have to be interpreted in the following manner:

D High Court of Kerala shall hold examination written and oral and prepare a list of suitable candidates for appointment to category 2. The wording written and oral means the suitability of a candidate eligible for appointment has to be considered by the aggregate marks of written examination and oral examination. The legislative intention is to take the aggregate marks of both written examination and oral examination to decide E the suitability of the candidate. List has to be prepared after following such a procedure as the High Court deems fit. Procedure means the manner of doing things and not substantive. Fixing a separate minimum cut off marks is not procedural which is an additional eligibility for the post which is contrary to rule 7. Rule 7 is silent as to the fixation of cut off marks which F is for relaxation from time to time for the purpose of reservation. The wording procedure deems fit does not confer any power on the selection Authority so as to take away a right provided elsewhere, reported in *Raja Ram Mahadev Parjapee's* case, 1962 Supp (1)SCR 739 at 749 followed in *Babau Nagar & Ors.* v. *Sree Synthetic* reported in [1984] Supp SCC 128. The selection authority cannot follow any procedure not in violations of the G Rule of reservation.

Clause 10 of the Notification deals with the Scheme of written and oral examination. The marks prescribed for written examination is 400 and 50 for oral examination. The written examination consists of four papers of H 100 marks each. For each paper two and a half hours duration was prescribed.

A As per clause 10(3) of the Notification, the candidates who secure not less than 35% marks of each of the papers of the written examination with an overall minimum of 45% of the written examination and 30% of the marks for the oral examination shall be eligible for appointment provided that the minimum marks required for pass in each paper of the written examination shall be 35% with an overall minimum of 35% of the total marks for B candidates belonging to SCs/STs. Fraction of half or more than half shall be regarded as full marks and less than half shall be ignored.

Clause 10(4) of the Notification stipulates that no candidate who has not secured the minimum marks prescribed above in the written examination C shall be called for oral examination. Clause 10(5) of the Notification states that the marks secured by the candidates at the oral examination shall be added to the total marks secured by them at the written examination and the names of all those candidates shall be arranged in the respective lists on the basis of the total marks secured by them.

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The appellant in C.A.Nos. 2539-2540 of 2005 had obtained a total of 213 marks out of which 200 marks in written examination and 13 marks in oral examination. The first appellant in C.A.Nos. 3377-3378 of 2005 who had secured a total of 162 marks out of which 150 marks in written examination and 12 marks in oral examination. The second appellant who E had secured a total of 208 marks out of which 195 marks in written examination and 13 marks in oral examination. The third appellant who had secured a total of 259 marks out of which 245 marks in written examination and 14 marks in oral examination.

F The petitioner in S.L.P. © Nos. 14140-14141 of 2005 had obtained a total of 321.5 marks out of which 217.5 marks in written examination and 14 marks in oral examination.

Besides the fact that the appellants are reserved category candidates they were thrown out from the zone of consideration on the ground that G they had not secured 30% marks in interview. The respondents and other candidates who had been selected only because they had got 30% marks in interview irrespective of the facts that the total marks of those candidates are less than the marks obtained by the appellants.

H The preparation of the Select List was challenged on the ground that

Rules 14 to 17 of KSSSR Part II had not been complied since the selection was against the Rules of reservation and on the ground of illegal prescription of cut off marks in oral examination made by the first respondent, the selection agency without statutory sanction. A

More than 1800 candidates have applied of which 1292 applicants were found valid. 118 candidates have passed in written examination of which 88 were passed in the interview and select list was prepared among these 88 candidates. B

No supplementary list was prepared by the first respondent with respect to the reserved category candidates. The reserved category candidates who scored sufficient marks to be considered in the merit list were placed in the reserved quota. They have to be placed in the merit list. The reserved vacancies are filled up from the open merit candidates. C

According to Mr. L.N. Rao, the following questions which are posed for the consideration of this Court in these appeals/petitions are as under: D

1. In the absence of specific legislative mandate under rule 7(i) of the Kerala Judicial Service Rules, 1991 prescribing cut off marks in oral examination whether the fixing of separate minimum cut off marks in the interview of further elimination of candidates after a comprehensive written test touching the required subjects in detail in violating of the statute. E

2. Whether the select list (Annexure P-2) is prepared in violation of the principles of reservation as provided under Rules 14 to 17 of the Kerala State Subordinate Service Rules, 1958? F

3. Whether the first respondent-High Court has the power to decide the reserved post are to be de-reserved to carry forwarded in the absence of a decision taken by the government in this regard? G

4. Whether Annexure P-2 List is liable to be strike off at its entirely?

Adverting to the first question, Mr. Rao submitted as follows: H

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1. Annexure P-1 is the Notification dated 26.3.2001 in which Rule 10(3) provides that only candidates who secure not less than 35% marks in each of the papers of the written examination with an overall minimum of 45 % of the total marks of written examination and 30% of the marks for the oral examination shall be eligible for appointment provided that the minimum marks required for pass in each paper of the written examination shall be 30% with an overall minimum of 35% of the total marks for candidates belonging to scheduled castes/scheduled tribes. Fraction of half or more than half shall be regarded as full mark and less than half shall be ignored.

B

C

2. Method of conducting written test is a well known method for screening the candidates for the purpose of interview. Interview was conducted for 118 candidates who had passed in the written examination out of which 9 Muslim candidates and 4 SC/ST candidates and one Nadar Community candidate participated.

D

For the above proposition, learned senior counsel placed reliance on the following judgments of this Court:

E

1. *P.K. Ramachandra Iyer & Ors.* v. *Union of India & Ors.*, [1984] 2 SCC 141
2. *Umesh Chandra Shukla* v. *Union of India*, [1985] 3 SCC 72
3. *Durga Charan Misra* v. *State of Orissa*, [1987] 4 SCC 469.
4. *Dr. Krishna Chandra Sahu & Ors.* v. *State of Orissa & Ors.*, [1995] 6 SCC 1
5. *Praveen Singh* v. *State of Punjab*, [2000] 8 SCC 633
6. *State of Punjab* v. *Manjith Singh*, [2003] 2 SCC 559
7. *Inder Prakash Gupta* v. *State of J & K & Ors.*, [2004] 6 SCC 786

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In *P.K. Ramachandra Iyer & Ors.* v. *Union of India & Ors.* (supra), this Court held as under:

H

"Once an additional qualification of obtaining minimum marks at the *viva voce* test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtained minimum qualifying marks at the *viva voce* test............This was impermissible and contrary to the Rules and the merit list prepared in contravention of the Rules cannot be sustained."

In *Umesh Chanda Shukla* v. *Union of India* (supra), it has been held that the Selection Committee had no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. In the instant case, the Rule is silent as to the fixation of cut off marks in oral examination. Prescription of cut off marks in oral examination for the purpose of elimination following a comprehensive written examination is bad so far it adversely affects meritorious candidates irrespective of the fact of reservation.

Durga Charan Misra v. *State of Orissa* (supra) was a case relating to the selection and appointment of Munsiffs in the State of Orissa, where this Court held that prescribing of minimum marks for *viva voce* test could not be justified as the Rules do not prescribe minimum marks for *viva voce* test. It was also observed by this Court in paragraph 12 of the said judgment that,

"in the light of these discussions, the conclusion is inevitable that the commission in the instant case also has no power to prescribe the minimum standard at *viva voce* test for determining the suitability of candidate."

In *Dr. Krishna Chandra Sahu & Ors.* v. *State of Orissa & Ors.*, (supra), this Court observed as under:

"The members of the Selection Board or for that matter any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the rules made under Art. 309. It is basically the function of the rule making authority to provide for the basis for selection."

So in the instant case, Rule 7 of the Kerala Judicial Service Rules did not provide selection *criteria* for elimination of the candidate by oral examination after a comprehensive written examination. The first respondent

A has no inherent power to prescribe such a *criteria* for selection since the same is arbitrary and illegal.

In this context, the decision of this Court in *Praveen Singh* v. *State of Punjab*, (supra) is very relevant. In that case, the Public Service Commission invited applications for appointment to the post of Block Development B Officer and Panchayat Officer. The Public Service Commission conducted a qualifying written examination for 400 marks of 4 papers and thereafter the persons who qualified in the written test was called for an interview of 50 marks and the merit list was prepared on account of the *viva voce* test only. The qualifying test becomes meaningless and the propriety of selection only C on the basis of the interview was challenged. This Court held that *viva voce* test as sole basis for selection is not proper. In the instant case, only 118 candidates were got qualified out of 1292 candidates appeared in the written examination. The written examination consists of 24 legal subjects divided into four papers of 100 marks each. For each paper, two and a half hours examination was conducted. A comprehensive written examination touching D the required subjects in detail which assess the candidate's general knowledge, intellectual capacity, legal learning and legal grasping. Thereafter conducted an oral examination fixing cut off marks for further elimination of the candidates including backward classes, scheduled castes and scheduled tribes. So the mode of selection procedure is unfair and illegal so far it E considers the interview which figure up 11.1% of the total marks is the sole decisive factor. Such consideration makes the written test meaningless.

Mr. L.N. Rao illustrated the gravity of the situation as follows:

A candidate who secures 350 marks in the written examination and F obtains 14 marks in the oral examination taken out from the zone of the consideration where as the candidate secures 180 marks in the written examination and 15 marks in the oral examination find a place in the merit list. In the present system, the latter having 43% of marks will outweigh the former having 65% of marks on account of the illegal fixation of separate minimum cut off marks in the oral examination. So, the arbitrary G approach of the first respondent prescribed additional qualification with regard to the scheme of selection made the written test meaningless and thereby vitiated the whole process unfair and illegal.

In *Praveen Singh* v. *State of Punjab & Ors.*, (supra), this Court held H that for appointments *viva voce* test as sole basis not proper. In paragraph

9, this Court observed that the "interview should not" be the only method of assessment of the merits of candidates. The vice of manipulation cannot be rules out in *viva voce* test. Though interview undoubtedly is a significant factor in the matter of appointments. It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously, it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a "sabotage of the purity of the proceedings".

It was also observed that the freedom for appointing authorities to adopt any procedure for selection cannot be at the cost of fair play, god conscience and equity.

In the case of *State of Punjab* v. *Manjith Singh* (supra), Public Service Commission's power to shortlist candidates for appointment has been considered. It has been decided that commission can shortlist candidates. But not by fixing minimum qualifying marks. Commission cannot impose any extra qualification/standard for maintaining efficient in services.

In *Indre Prakash Gupta* v. *State of J & K & Ors.* (supra), this Court while dealing with the J & K Public Service Commission (Conduct of Business and Procedure) Rules, 1980 *vis-á-vis* J & K Medical Education (Gazetted) Services Recruitment Rules, 1979 held as follows:

> "The Public Service Commission is a body created under the Constitution. Each State constitutes its own Public Commission to meet the constitutional requirement for the purpose of discharging its duties under the Constitution. Appointment to service in a State must be in consonance with the constitutional provisions and in conformity with the autonomy and freedom of executive action. Section 133 of the Constitution imposes duty upon the State to conduct examination for appointment to the services of the State. The Public Service Commission is also required to be consulted on the matters enumerated under Section 133. While going through the selection process the Commission, however, must scrupulously follow the statutory Rules operating in the field. It may be that for certain purposes, for example, for the purpose of shortlisting; it can lay down its own procedure. The Commission, however, must lay down the procedure strictly in consonance with the statutory Rules. It cannot take any action which *per se* would be violative of the statutory Rules or makes the same inoperative for

A all intent and purport. Even for the purpose of shortlisting, the Commission cannot fix any kind of cut off marks."

whether the fixing of separate minimum cut off marks in the interview of further elimination of candidates after a comprehensive written test touching the required subjects in detail is violating of the statute.

B

Mr. L:N. Rao submitted that in the present case, apart from the candidates belonging to backward classes, SC/ST candidates are also disqualified for selection by fixing 30% minimum cut off marks for the oral examination which is arbitrary because unequal are treated alike. Clause C 10(3) of the Notification did not contemplate 30% cut off marks in interview for SC/ST candidates. Moreover, the selection agency has no inherent power to prescribe selection criteria. The first respondent has no authority to override the legislative intention. The Legislature did not provide criteria for selection by exclusion of candidates by oral examination. Rule 7 of the Kerala Judicial Service Rules did not provide a selection criteria based on D the exclusion of candidates on account of not securing a separate minimum cut off marks in the oral examination. Hence, the system followed by the High Court is in clear violation of the Rules and the principles laid down by this Court in catena of decisions and also against the norms suggested by Shetty Commission with regard to the Judicial Service appointments.

E

Whether there is violation of Rules of reservation as contemplated under Rules 14 to 17 of the KSSSR 1958

For this proposition, the following aspects are to be considered;

F

1. Clause 6 of the Notification clearly states that "the Rules relating to reservation for appointment for backward classes, scheduled castes and scheduled tribes contained in Part II of the KSSSR, 1958 (Rules 14-17) shall apply to appointment by direct recruitment." It is in clear terms the first respondent admitted that the Rules of reservation shall be followed. Thereby the first G respondent is estopped from denying the fact that the Rules of reservation is not necessarily be followed in the event of sufficient number of reservation, candidates were got qualified in the selection process. Where a statute requires a particular formality to be complied with there is no estoppel where such H statutory requirement is violated. In the present system, there is

every chance of illegal elimination. In order to give effect to the Rules or reservation, there should be some relaxation in selection criteria. This aspect has been accepted by this Court in a number of decisions. A

2. The SC/ST community is entitled to 10% reservation and Muslim community is entitled to 12% reservation under the provisions of KSSSR and Rules 14 to 17 of the same are applicable in the instant case. According to the Select List (Annexure P-2), only five Muslim candidates and 1 SC/ST candidate were appointed. The remaining candidates in the list can be appointed in merit or reservation if followed the Rules in strict sense. The reservation roster provided in KSSSR for Muslim candidates are 6,16,26,30,46,56,66,76,80,86 and 96. B C

3. "Backward classes a rational classification recognized by our Constitution, therefore, differential treatment in standards of selection are within the concept of equality." [Para 44 in *State of Kerala* v. *N.M. Thomas,* AIR (1976) SC 490]. The reservation rosters are to be filled up from the reservation candidates alone, that is reserved for their community (*R.K. Sabharwal* v. *State of Punjab & Ors.,* [1995] 2 SCC 745. The reservation rosters are to be strictly followed as per the Rules. No deviation is permissible [*Union of India* v. *Virpal Singh,* AIR (1996) SC 448]. This Court held that candidates of reserved category selected on their own merit are not to be counted as reserved category candidates. A reserved candidate comes in the merit list is to be considered in merit rather than reservation. D E F

4. 82nd Constitution Amendment (2000) provides that nothing in Article 335 shall prevent the State from making any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks with respect to examination/job/promotion. So there should be relaxation in selection criteria with respect to reserved candidates. The non-creamy layer section of the Muslim community is socially and educationally most backward. They cannot be equated with a high pedestal than the scheduled castes and scheduled tribes. Backward class is a caste within the ambit of Article 15(4) and Article 16(4). G H

A So, the non-creamy layer section of the Muslim community is allotted 12% reservation by the State of Kerala.

5. In order to fill up reserved quota, the *inter se* merit of the reserved candidates has to be taken into account. In *State of Andhra Pradesh* v. *Vijaya Kumar*, AIR 1995 SC 1648, this Court B held that the reservation is permissible under the Constitution and that cannot be whittled down in any manner. So, the reservation is the policy of the State and for which Rules 14-17 of KSSSR are provided for protecting the constitutional mandate under Art.15.

C 6. What is meant by reservation and the effect of reservation is much discussed in *Ajith Singh & Ors.* v. *State of Punjab & Ors.*, AIR 1999 SC 2471. In paragraph 38, this Court held as under:

> "It must be noted that whenever a reserved candidate goes for selection at the initial level (say level 1) he is not going D through the normal process but gets appointment to a post reserved for his group. That is what is meant by reservation." That is the effect of reservation."

So, the reservation is a legally accepted aspect. Therefore, in the case E of reservation of candidates, there should be relaxation in the selection procedure. In the present case, the first respondent did not prepare a supplementary list consisting the names of the candidates in reservation quota. For the compliance of Rules 14 to 17 of KSSSR, there should be a supplementary list as per Kerala Public Service Commission Rules of Procedure Rules 4(iv) and 12. So supplementary list of candidates coming F under the reserved categories has to be prepared and the same is to be considered as part of the rank list for the purpose of filling up of reserved candidates. Articles 15(4) and 16(4) mandate maximum possible reservation shall be given to socially educationally backward classes including Scheduled castes and scheduled tribes in order to bring them in the main stream.

G (7) The Division Bench without any factual foundation relied on the decision of this Court in *State of Bihar* v. *Bal Mukund Shah*, [2004] 4 SCC 640. In that case, this Court discussed the legislative competence of the State Government under Art.309. It was held that legislation for reservation in Judicial appointments can only be made after consultation with the High H Court. In that case, Bihar Government made a legislation prescribing 50%

posts of District Judges under reservation quota without consulting the High Court. In the instant case, the High Court has no case that the reservation is not applicable. Judicial Service Rules of 1991 is made in consultation with the High Court under Art. 234 of the Constitution of India.

(8) The learned single Judge is of the view that the Select List (Ann. P-2) can be interfered with only to the extent that the decision to fill up S.Nos. 60, 62, 64, 66, 70 which are reserved posts from the open merit candidates. The learned single Judge has observed in paragraph 10 of his judgment that, "But under the pretext of shortlisting many qualified candidates were irregularly and illegally taken out from the zone of consideration for the reason that they had not obtained qualifying marks in the total examination. Annexure P-2 (Select List) published by the High Court is in clear violation of the provisions of the Rules. So, it is very clear that the procedure adopted by the first respondent–High Court made the written test meaningless. It can be seen that the Annexure P-2 list is prepared not as per the merit and rules of reservation since the open merit candidates are arranged in the reservation quota. The reservation candidates who come out in merit also placed in the reserved quota instead of placing them in the merit list. That is against the dictum laid down in *R.K. Sabharwal's* case (supra). The illegality strikes at the root of appointment cannot be validated. So, it is for the interest of justice, equity and good conscience the entire list is to be quashed and the same is to be re-arranged in the order of merit considering the aggregate marks secured by the candidate in the written as well as oral examination strictly following Rules 14 to 17 of the KSSSR to secure reservation under Art. 15(4) of the Constitution of India. The procedure adopted by the first respondent is not legally valid since statutory requirements have been violated.

ESTOPPEL

It is submitted by Mr. L.N. Rao that estoppel is not available to the respondents inasmuch as the Division Bench itself while allowing the appeal of the respondent, specially rejecting the contentions of plea of estoppel in paras 47 and 48 of the impugned judgment. According to Mr. Rao, none of the respondents before this Court has neither challenged the said findings nor filed any cross-appeal in this regard. He would, therefore, submit that it is impermissible to the respondent to take the plea of estoppel where they themselves have waived of their right to file cross appeal challenging the said findings in para 48 of the impugned judgment. He

A would further submit that there is no plea of estoppel against the violation of statutory rules. Similarly there cannot be any plea of estoppel against the Constitution. It is submitted that the appellants/petitioners have approached this Court against the violation of their fundamental right also being unequal or treated alike by fixing equal cut off marks for all candidates thereby violating Arts. 14 & 16 of the Constitution of India. For this proposition, B Mr. Rao relied on a Constitution Bench decision of this Court in *Olga Tellis & Ors.* v. *Bombay Municipal Corporation,* AIR (1986) SC 180 in which this Court held that there can be no estoppel against Constitution and that the Constitution is not only the paramount law of the land but it is the source and sustenance of all laws. In this regard, he invited our attention to C paragraphs 28 and 29 of the above decision.

Concluding his elaborate submissions, Mr. Rao submitted that the prayer of the appellants/petitioners is not to quash the select list published by the High Court in its entirety and that the select list may be redone on the basis of the aggregate marks obtained by the candidates in the written and D oral examination as envisaged in Rule 7(i). It is submitted that by doing this only 5 or 6 candidates will be affected.

Elaborating, Mr. Rao submitted that if this Court is not inclined to redo the list as aforesaid, the case of the appellants/petitioners before this Court be considered on individual basis. The appellants/petitioners are age barred E and will not be able to attempt another examination. It is stated that there are 50 vacancies existing and so the interest of the appellants/petitioners can be protected if this Court issues a direction to accommodate the 5 appellants/ petitioners before this Court which will not cause any prejudice to any of the respondents.

F *Per contra,* Mr. T.L.Vishwanatha Iyer, learned senior counsel, appearing for the respondents made elaborate submissions by way of reply to the arguments advanced by Mr. Rao. In regard to his main submissions made on behalf of the appellants in challenge of the decision of the Division Bench accepting the High Court's appeal and reversing the judgment of the learned G single Judge, Mr. T.L.Vishwanatha Iyer submitted that the selection in question was pursuant to the Notification issued by the High Court of Kerala on 26.3.2001 notifying 70 vacancies of Munsif Magistrates to be filled up. We have already reproduced the Notification in paragraphs supra. He invited our attention to clause 10 of the Notification which prescribed a scheme of written and oral examination to be taken by the candidate. The H written examination was to consist of four papers carrying 100 marks each,

the subjects for which the examinations were to be held being specified in the Notification. There was also to be an oral examination carrying 50 marks for deciding the candidate's general knowledge, grasp of general principles of law, analytical ability and suitability for appointment as Munsif Magistrate. Sub-clause 3 provides that only candidates securing not less than 35% marks in each of the four papers of the written examination with an overall minimum of 45% of the total marks of the written examination and 30% of the marks for the oral examination shall be eligible for appointment. There was a relaxation of the marks in the written examination in favour of candidates belonging to Scheduled castes and Scheduled Tribes. The rank list is to be prepared of the eligible candidates, i.e. those who secure the minimum in the written and oral examinations, as stated above, adding together the marks of the written and oral examinations. The Notification itself stated that the candidates belonging to the Scheduled Castes and Scheduled Tribes will be given a pre-examination training. This was done with a view to equip them for the examination.

It is pertinent to notice that Rules of 1991 were formulated after the integration of the Civil and Criminal wings of the Judiciary and formation of the cadre of Munsif Magistrate at the entry point. Two earlier selections had been made in 1991 and 1998 in accordance with the same procedure as laid down in the Notification dated 26.3.2001 by prescribing the securing of minimum marks in the written and oral examinations as a condition of eligibility. The same procedure was followed in the impugned selection also.

It is also pertinent to notice that the prescription of a minimum mark for the oral examination as a condition of eligibility for appointment was questioned in the High Court by an aspirant by name Remani, by filing a writ petition. That writ petition was dismissed by a learned single Judge in 1996 (2) KLT 439, wherein the learned single Judge upheld the prescription of a minimum mark for the oral examination as valid and in accordance with Rule 7 of the Rules. This decision made on the judicial side was binding on the administrative side of the High Court and was followed in the subsequent selection in 1998 and in the impugned selection.

The oral examination in this case was conducted by the Chief Justice and four seniormost Judges, to whom the marks in the written test were not available at the time of the interview. The Judges had to assess the suitability of the candidates for selection as Munsif Magistrate, keeping in mind various factors. The Judges have awarded marks and found that the appellants

A have not been able to secure even 30% marks which has been prescribed as the minimum for eligibility.

Mr. T.L.V. Iyer also pointed out that over 1200 candidates had taken the written examination and out of them, a total of 118 secured the minimum marks prescribed for the written examination. These 118 were B interviewed by the five Judges including the Chief Justice. Of these, 88 secured over 30% marks of the 50 marks prescribed for the oral examination. 88 candidates who were thus successful and eligible to be considered were arranged in the order of merit following the rules of reservation prescribed in Rules 14 to 17 of the KSSSR. The list so prepared was forwarded to C the Government for appointment to 70 vacancies notified.

It was also stated that 88 eligible candidates as aforesaid contained 37 persons belonging to reserved categories like other backward classes, Scheduled Castes/Scheduled Tribes. Of these, 8 persons got appointed in the open merit quota and the rest 29 got appointed in the reservation quota. D 70 persons recommended to be appointed contained all these 37 candidates including 29 who got selected and ranked in the reservation quota. It may be mentioned that none of the eligible candidates belonging to the reserved categories failed to secure appointment and all of them found a place in the list of 70 persons selected for the appointment.

E The select list so prepared in accordance with the reservation Rules was forwarded to the Government for approval under Rule 7(2) of the Rules. Government approved the same, after due scrutiny of all aspects and all the 70 persons have been appointed as Munsif Magistrates after undergoing the statutory training and are now functioning as Munsif F Magistrates.

In this background, two questions raise by Mr. L.N. Rao have to be considered.

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

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

H So far as the first submission is concerned, we have already extracted

Rule 7 in paragraph supra. Rule 7 has to be read in this background and High Court's power conferred under Rule 7 has to be adjudged in this basis. The said Rule requires the High Court firstly to hold examinations written and oral. Secondly the mandate is to prepare a select list of candidates suitable for appointment as Munsif Magistrates. The very use of the word 'suitable' gives the nature and extent of the power conferred upon the High Court and the duty that it has to perform in the matter of selection of candidates. The High Court alone knows what are the requirements of the subordinate judiciary, what qualities the Judicial Officer should possess both on the judicial side and on the administrative side since the performance of duties as a Munsif or in the higher categories of subordinate Judge. Chief Judicial Magistrate or District Judge to which the candidates may get promoted require administrative abilities as well. Since the High Court is the best Judge of what should be the proper mode of selection, Rule 7 has left it to the High Court to follow such procedure as it deems fit. The High Court has to exercise its powers in the light of the constitutional scheme so that the best available talent, suitable for manning the judiciary may get selected.

What the High Court has done by the Notification dated 26.3.2001 is to evolve a procedure to choose the best available talent. It cannot for a moment be stated that prescription of minimum pass marks for the written examination or for the oral examination is in any manner irrelevant or not having any nexus to the object sought to be achieved. The merit of a candidate and his suitability are always assessed with reference to his performance at the examination and it is a well accepted norm to adjudge the merit and suitability of any candidate for any service, whether it be the Public Service Commission (I.A.S., I.A.F. etc.) or any other. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition in Rule 10 of the Notification dated 26.3.2001. The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as bench mark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high powered body like High Court to evolve its own procedure as it is the best Judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high powered constitutional authority is left with such power and it has evolved the procedure which is germane

A and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in [2006] 1 SCC 779 wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper.

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

The place of the High Court in the matter of administration of justice was very elaborately and poignantly delineated by S.B. Majmudar, J., speaking for the Constitution Bench in *[2000] 4 SCC 640*, said that the very D responsible and onerous duty is cast on the High Court under the Constitutional scheme and it has been given a prime and paramount position in this matter, with the necessity of choosing the best available talent for manning the subordinate judiciary. The repercussions of wrongful choice is also pointed out in the said judgment.

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

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

We may usefully refer to a decision of this Court in *Sahkari Ganna Vikas Samiti Ltd.* v. *Mahabir Sugar Mills (P) Ltd.*, [1981] 4 SCC 149 in H which this Court observed as under:

"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.

The ideal in recruitment is to do away with unfairness."

....

....

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

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

"While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention

A that it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power."

In *Mohan Kumar Singhania & Ors.* v. *Union of India & Ors.*, [1992] suppl. 1 SCC 594 , S. Ratnavel Pandian, J. speaking for the Bench, observed B as under:

"Hermer Finer in his textbook under the caption *The Theory and Practice of Modern government* states:

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

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

"*Viva Voce* – the examination will be in matters of general interest : it is intended to test the candidate's alertness, intelligence and intellectual outlook. The candidate will be accorded an opportunity of furnishing the record of his life and education."

E

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

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

"This Court in *Lila Dhar* v. *State of Rajasthan*, [1984] 2 SCC G 159 while expressing the view about the importance and significance of the two tests, namely, the written and interview has observed thus:

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

A The qualities which a Judicial Officer would possess are delineated by this Court in *Delhi Bar Association* v. *Union of India & Ors.*, [2002] 10 SCC 159. A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy

B irrelevant arguments and the like. Existence of such capacities can be brought out only in an oral interview. It is imperative that only persons with a minimum of such capacities should be selected for the judiciary as otherwise the standards would get diluted and substandard stuff may be getting into the judiciary. Acceptance of the contention of the appellants/

C petitioners can even lead to a postulate that a candidate who scores high in the written examination but is totally inadequate for the job as evident from the oral interview and gets 0 marks may still find it a place in the judiciary. It will spell disaster to the standards to be maintained by the subordinate judiciary. It is, therefore, the High Court has set a bench mark for the oral interview, a bench mark which is actually low as it requires 30% for a pass.

D The total marks for the interview are only 50 out of a total of 450. The prescription is, therefore, kept to the bare minimum and if a candidate fails to secure even this bare minimum, it cannot be postulated that he is suitable for the job of Munsif Magistrate, as assessed by five experienced Judges of the High Court.

E In this connection, reference may be made to the decision in *Manjeet Singh, UDC & Ors.* v. *Employees State Insurance Corporation & Anr.*, [1990] 2 SCC 367 at 371 wherein the Rules did not prescribe any minimum marks for the interview. The advertisement for the job set a minimum of 40% to the written test and without a minimum for the interview. However,

F candidates with less than 40% at the interview were not selected. The selection was upheld by this Court relying on a judgment of Punchhi,J in *Rajesh Sood* v. *Director-General, Employees State Insurance Corporation,* (1985) 2 Service Law 699. In *Union of India & Anr.* v. *Amrik Singh & Ors.*, [1994] 1 SCC 269, though there was no specification in the statutory Rules regarding the minimum length of service for promotion, such prescription

G was laid by administrative instructions. In para 7, this Court said that the instructions so issued were not inconsistent with the Rules. Reference may also be made to a decision of this Court in *Jasbir Singh & Ors.* v. *State of Punjab & Anr.*, [2002] 1 SCC 124, in which the relevant Rules did not specify as to the relevant date for considering the age qualification. The

H advertisement, however, fixed a cut off date, which was contended to be

A illegal. This Court held that the said prescription was for the purpose of implementation of the Rules regarding age.

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

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

It has been held by this Court in *Madhya Pradesh Public Service Commission* v. *Navnit Kumar Potdar & Anr.*, [1994] 6 SCC 293 that in a D selection based interview, it was open to the Selecting Board to insist on a higher qualification than that prescribed by the Rules. In that case, five years' experience was the prescribed qualification. But this Court held that there was nothing wrong in confining the selection to candidates with experience of 7½ years.

E Thus it is seen that apart from the amplitude of the power under Rule 7 it is clearly open for the High Court to prescribe bench marks for the written test and oral test in order to achieve the purpose of getting the best available talent. There is nothing in the Rules barring such a procedure from being adopted. It may also be mentioned that executive instructions can always F supplement the Rules which may not deal with every aspect of a matter. Even assuming that Rule 7 did not prescribe any particular minimum, it was open to the High Court to supplement the Rule with a view to implement them by prescribing relevant standards in the advertisement for selection. Reference may be made to the decision of this Court in *State of Gujarat* v. *Akhilesh C. Bhargav & Ors.*, [1987] 4 SCC 482.

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We shall now advert to the decisions relied on by Mr. L.N. Rao :

1. *P.K. Ramachandra Iyer & Ors.* v. *Union of India & Ors.*, (supra)

H 2. *Umesh Chandra Shukla* v. *Union of India,* (supra)

3. *Durga Charan Misra* v. *State of Orissa*, (supra)

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These decisions do not deal with a situation like Rule 7. Even otherwise, these decisions are totally distinguishable as was virtually conceded by the appellants/petitioners' learned counsel as recorded by the High Court in paragraph 27 of the judgment which reads as under:

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> "Before we examine the rest of the issues, this could be a resting point, so as to take notice of the reply made. It has to be observed that these points highlighted practically go unanswered. Of course, valiant effort had been mad by Mr. Sudhkara Prasad, learned counsel appearing for the respondent, to salvage the situation. He had to agree that the decisions relied on by the learned Judge, referred to earlier, may not apply on all fours. But the submission is that substantial rights cannot at all be circumscribed by a prescription for adopting a procedure. When the Rule does not give power to the authority to prescribe minimum cut off marks, the discretion has to be understood as circumscribed............"

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This apart, those cases deal with particular situations based on interpretation of the Rules concerned in those cases. In *Ramachandra Iyer's* case (supra), Rule 14 (paragraph 43 of the judgment) mandated that the marks at the written test and the oral examination have to be aggregated and the merit list prepared on the basis of such aggregation of marks. Therefore, the marks obtained at the written test and the oral test were both relevant whatever be the percentage, in the preparation of the merit list. Nevertheless, the examining Board prescribed minimum for *viva voce* test and eliminated those who failed to get the minimum. Resultantly, candidates who would have found a place in the rank list based on the aggregate of the marks for the two tests stood eliminated because they did not get the minimum in the *viva voce* test. This was contrary to Rule 14 and that was the reason why the prescription of minimum marks for *viva voce* test was held invalid in *Ramachandra Iyer's* case (supra). That this is the reason evident from a reading of paragraph 44 of the judgment where, *inter alia*, this Court observed as under:

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> "Neither Rule 13 nor Rule 14 nor any other Rule enables the ASRB to prescribe minimum qualifying marks to be obtained by the candidates at the *viva voce* test. On the contrary, the language

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A of rule 14 clearly negatives any such power in the ASRB when it provides that after the written test if the candidate has obtained the minimum marks, he is eligible for being called for *viva voce* test and final merit list would be drawn up according to the aggregation of marks obtained by the candidates in the written test plus *viva voce* examination."

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"....This prescription of impermissible additional qualification has a direct impact on the merit list because the merit list has to be prepared according to the aggregate marks obtained by the candidates at the written test plus *viva voce* test. Once an additional qualification of obtaining minimum marks at the *viva voce* test is adhered to, a candidate who may figure high in the merit list was likely to be rejected on the ground that he has not obtained qualifying marks at the *viva voce* test."

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D The decision is, therefore, based on Rule 14 and the necessity to aggregate the marks at the written test and the oral test.

Similar is the question in *Durga Charan Misra* v. *State of Orissa,* (supra) where the decision turned on Rule 18 of the Orissa Judicial Service Rules. The said Rule is quoted in para 6 of that judgment and it requires

E the marks obtained at the *viva voce* test to be added to the marks obtained in the written examination and merit list to be prepared in accordance with the aggregate of these two marks. It was, therefore, held that the prescription of a minimum of 30% at the *viva voce* test and elimination of candidates accordingly a counter to this express provision in Rule 18. This case is

F analogous to the decision in *P.K. Ramachandra Iyer's* case (supra) and what is stated earlier as the distinguishing feature of *P.K. Ramachandra Iyer's* case applies equally to this decision as well.

The third case is *Umesh Chandra Shukla* v. *Union of India,* (supra). In that case, the Delhi High Court had made a list of 27 candidates after

G eliminating those who had not obtained the requisite minimum at the test conducted for the purpose. However, the High Court modified the select list prepared in accordance with the Rules by awarding moderation marks to those who did not obtain the prescribed minimum marks at the written test and the *viva voce*. This was held to be bad because awarding marks by

H moderation amounted to amendment of the Rules which could not be done

by the High Court or the Selection Committee. This decision, therefore, turned on the interpretation of the Rules involved in that case and violation thereof by the High Court by adding moderation marks is contrary to the Rules. This case is also, therefore, distinguishable and has no application to the case on hand. The learned single Judge relied on these three decisions to decide against the High Court. Apart from the fact that these decisions are distinguishable and pertain to the Rules involved in those cases, the learned Judge did not correctly appreciate the amplitude of Rule 7 and the wide powers conferred on the High Court to evolve its own procedure under the said Rule.

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Rule of Reservation

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Contention No. 2 relates to correctness of the application of the Rule of reservation. This point, in our opinion, will arise for consideration only if the first contention of the appellants/petitioners is accepted. If that contention is rejected, the question of considering this point will not arise. In fact, in that event, the appellants/petitioners are not even entitled to question the correctness of the list, as laid down by this Court in *Dr. Umakant Saran* v. *State of Bihar & Ors.*, [1973] 1 SCC 485 and only those who are eligible or in the zone of consideration can question the legality or otherwise of a select list. It is the submission of Mr. T.L.V. Iyer that the Select List has been prepared fully in accordance with Rules 14-17 of the Rules. The appellants/petitioners' challenge is the filling up of slot Nos. 60, 62, 64, 66, 68 and 70 which come within the reservation slots by candidates in the merit list. This is misconceived and incorrect. Rule 15(a) & (b) of KSSSR specially mandates that if candidate belonging to a particular community—OBC, SC/ST is not available to fill up any particular slot, then it should be passed over and filled up by a candidate available from the next reserved community and so on. If no member of a reserved community is ultimately available for filling up that slot, that slot should be filled up by an open merit candidate. That is the position here. There were no eligible reserved candidates available for filling up the aforesaid slots 60 etc. As mentioned earlier, from all the reserved candidates, 37 of them available among the 88 eligible candidates had already been given place above Slot No. 60 and there was not a single reserved candidate available to fill up slots 60 etc. Therefore, under Rule 15, the aforesaid slots had mandatorily to be filled up by open merit candidates. It is not possible for the Government to keep those vacancies unfilled particularly, when there was a total of 70 vacancies to be filled up

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A and open merit candidates were also available. Non-filling up of those vacancies by open merit candidates would have resulted in violation of Rule 15. In fact, the Division Bench had gone into this aspect and examined this matter with reference to Rules and found that there was no departure from Rules 14 to 17 in the preparation of the list.

B The list so prepared in accordance with the reservation Rules was forwarded to the Government and the Government, in its turn, examined the matter again in all its aspects and approved the same.

Mr. L.N. Rao cited the decision in the case of *Rajasthan Public* C *Service Commission & Anr.* v. *Harish Kumar Purohit & Ors.*, [2003] 5 SCC 480. He raised the contention that the so called de-reservation had to be done only by the Government and not by the Selecting authority viz. the High Court. This question is not relevant in this context. There is no question of de-reservation so far as the case on hand is concerned for the reason that it was an application of Rule 15 and the filling up of the posts by D open merit candidates as required therein. There is no de-reservation involved at all. The High Court has only followed the mandate of Rule 15.

Mr. L.N. Rao made a further contention based on the above decision that the de-reservation of any post has to be done by the Government. This contention, in our view, has also no force. Assuming that this is a case of de-E reservation, the High Court only forwarded the list to the Government and it is the Government who approved the same. De-reservation, if any, of the posts was, therefore, done only by the Government and not by the High Court. But as stated earlier, the question of de-reservation does not arise, as this is a case of application of the mandate of Rule 15. In the circumstances, F the second contentions raised by Mr. L.N. Rao is also incorrect and untenable, apart from the fact that the appellants/petitioners who are not eligible candidates are not entitled to contest the validity of the select list on this ground. Since they are ineligible for appointment, no relief, in any case, be afforded to them in any event.

G The appellants/petitioners, in any event, are not entitled to any relief under Art. 226 of the Constitution of India for more reasons than one. They had participated in the written test and in the oral test without raising any objection. They knew well from the High Court's Notification that a minimum marks had to be secured both at the written test and in the oral test. They H were also aware of the High Court decision on the judicial side reported in

Remany v. *High Court of Kerala,* 1996 (2) KLT 439. This case deals with prescription of minimum qualifying marks of 30% for *viva voce* test. C.S. Rajan, J., in the above judgment, observed as under:

> "......On the basis of the aggregate marks in both the tests, the selection has to be made. In I.C.A.R's case, AIR 1984 SC 541 also the relevant rules did not enable the selection Board to prescribe minimum qualifying marks to be obtained by the candidate at the *viva voce* test. In the *Delhi Judicial Service's* case also (AIR 1985 SC 1351, the rules did not empower the committee to exclude candidates securing less than 600 marks in the aggregate. Therefore, in all these cases, the Supreme Court came to the conclusion that prescription of separate minimum marks for *viva voce* test is bad in law because under the rules, no minimum qualifying marks were prescribed."

The High Court also relied on *P.K. Ramachandra Iyer's* case (supra) and *Umesh Chandra's* case (Supra).

The appellants/petitioners having participated in the interview in this background, it is not open to the appellants/petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this Court in paragraph 9 of *Madan Lal & Ors.* v. *State of J & K & Ors.,* [1995] 3 SCC 486 as under:

> "Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitions as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview,

A then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla* v. *Akhilesh Kumar Shukla*, [1986] suppl SCC 283, it has been clearly laid down by a Bench of three learned Judges of this Court that
B when the petitioner appeared at the examination without protect and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

C Therefore, the writ petition filed by the appellants/petitioners should be dismissed on the ground of estoppel is correct in view of the above ruling of this Court. The decision of the High Court holding to the contrary is in *per incuriam* without reference to the aforesaid decisions.

The writ petitions have also to fall on the ground of absence of
D necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was,
E therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to
F Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties also.

One more factor has also to be noticed in regard to the civil appeals
G filed by Mr. K.H. Siraj which, in our opinion, is also hit by *res judicata*. His writ petition in the High Court was O.P. No. 5219 of 2002. That was partly allowed without giving him any relief for a direction for appointment. On the other hand, the High Court set aside the selection of candidates occupying Rank Nos. 60, 62, 64, 66, 68, and 70. The High Court filed Writ Appeal No.
H 1496 of 2004 before the Division Bench. Mr. K.H. Siraj himself filed W.A.

No.1584 of 2004 against that part of the impugned judgment which was against him. Candidates occupying Rank Nos. 60 etc. who are affected by the judgment had themselves filed W.A.Nos. 1498, 1510, 1526, 1527, 1541, 1588 and 1574 of 2004. All these appeals filed by the High Court and by these parties were allowed setting aside the judgment of the learned single Judge. Mr. K.H. Siraj's appeal (W.A. 1584/2004) was dismissed. However, Mr. Siraj has chosen to file appeals only against the decision in W.A.No. 1496/2004 filed by the High Court and W.A. No. 1584 of 2004 filed by himself and has not chosen to file any appeal against the decision in the other appeals, W.A.No. 1498 of 2004 etc. filed by the affected parties. The decision therein has become final and, therefore, operates as *res judicata* and Mr. K.H. Siraj's appeal is to be dismissed as such.

Mr. L.N. Rao, concluding his arguments, sought to the argument of sympathy. The flimsy plea was made by him in this regard. We are unable to countenance the plea of sympathy. The appellants/petitioners could not secure even the minimum of 30% marks prescribed by the High Court. The five learned Judges including the Chief Justice who had interviewed the candidates in an objective way, have found these appellants/petitioners as not suitable for the job and, therefore, not awarded them even the minimum marks required in the oral test. As pointed out earlier, there is no *mala fide* or bias attributed to the selection committee. It is irrelevant to say that they failed to make only one or two marks when it is evident that they were not able to score even the very low minimum of 30% marks prescribed for the oral test.

Likewise, the request of Mr. L.N. Rao for relaxation of the age qualification in future selection in so far as the appellants/petitioners are concerned is again not a valid request. This is a case where the High Court has gone strictly by the Rules and found the appellants/petitioners as unsuitable. When the Constitutional mandate is that the High Court should perform its duty in having the best available talent chosen for the subordinate judiciary, it is not possible to dilute the standards by any process. It is only this *mandate* of the Constitution, that the select committee in this case has performed and found the appellants/petitioners unsuitable. There is no case for any relaxation of age in future recruitment to be given so far as the appellants/petitioners are concerned.

Mr. Uday U. Lalit, learned senior counsel appearing for respondent Nos. 6, 7, 8 & 9 in C.A. Nos. 2539-2540 of 2005. He also advanced the

A similar arguments as that of Mr. T.L.V. Iyer. He also submitted that since *mala fides* is not alleged, the selection made by five Hon'ble Judges of the High Court should not be interfered with. He also advanced the argument on Rule 7. On the question of equality, Mr. Uday U. Lalit submitted that the list was published in the year 2002 and that is more than four years after and that the respondents were selected and once they selected, they B seized to be advocates and that since then they are working and, therefore, to put the clock back completely at this distance of time is not proper. Mr Lalit also placed reliance on the decision of this Court in *Manjeet Singh, UDC & Ors.* v. *Employees State Insurance Corporation & Anr.*, (supra) which in turn refers to the views expressed by Punchhi,J (as he then was) C in decision *Rajesh Sood* v. *Director-General, Employees State Insurance Corporation* (supra).

The Division Bench summoned the original files and verified as to whether proper procedure has been followed in the pattern of awarding of marks and prepared of the lists. The learned Judges in paragraph 50 of their D judgment observed as under:

> "....The compilation of records are immediately done, and at every stage, the senior Judges including the Chief Justice, who were in office, had been closely monitoring the selection process. The details of marks awarded in the written and oral examinations E were available, as arising from the selection process. Details of candidates with permissible amount of secrecy and the marks respectively secured by them were available, under the signature of the Chief Justice and his companion Judges. The records reveal that principles of rotation have been borne in mind."

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For the foregoing reasons, we are of the opinion that the appellants in the civil appeals and petitioners in the special leave petitions are not entitled to any of the reliefs prayed for as they have not made out any valid or sustainable ground. We, therefore, set aside the judgment passed by the learned single Judge and affirm the judgment passed by the Division Bench G which, in our opinion, does not warrant interference.

Accordingly, the civil appeals and the special leave petitions are dismissed. There shall be no order as to costs.

S.K.S. Appeals and Special Leave
H petitions dismissed.