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BHANU PRATAP

v.

STATE OF HARYANA AND ORS.

(Civil Appeal No. 6205 of 2011)

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AUGUST 02, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Haryana Civil Services (Judicial Branch) Rules :
C *rr.7(1), 7(2), 8(1), 9 – Haryana Civil Services (Judicial Branch)*
Examination advertised in 2003 for the post of judicial officer
– Qualifying marks in written examination and viva voce for
selection – Rounding off or relaxation in marks or giving
D *grace marks – Permissibility of – Held: In order to qualify in*
the written examination, a candidate has to obtain atleast 33%
marks in each of the papers and atleast 50% qualifying marks
in the aggregate in all the written papers – Candidate cannot
be considered as qualified in the examination unless he
obtains at least 50% marks in the aggregate including viva
E *voce – There is no power provided in the statute nor any such*
stipulation is made in the advertisement and also in statutory
rules permitting any rounding off or giving grace marks so as
to bring up a candidate to the minimum requirement – The
Rules are statutory in nature and no dilution or amendment
F *to such Rules is permissible or possible by adding some*
words to the said statutory rules for giving benefit of rounding
off or relaxation – In the instant case, respondent obtained
total aggregate marks of 508 out of 1020 total marks, i.e.,
49.8% and since marks obtained by him was short of the
G *qualifying marks of 50%, he failed to qualify in terms of r.8 of*
the Rules and was rightly not appointed to the post of judicial
officer.

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**An advertisement was issued in 2003 for filling up 73
posts of Subordinate Judges under the Haryana Civil**

Services (Judicial Branch) Examination. The appellant appeared in the written tests and was declared successful and thereafter he was called for interview. He failed to qualify in terms of Rule 8 of the Haryana Civil Services [Judicial Branch] Rules and was not appointed to the said post. The appellant filed a writ of mandamus before the High Court seeking direction for his appointment to the post of Judicial Officer. In the writ petition, his contention was that he received total aggregate marks of 508 out of 1020 total marks, i.e., 49.8% and since the marks obtained by him was short of the qualifying marks of 50% by just two marks, the same should be rounded off to 50% in aggregate. The High Court dismissed the writ petition. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the Court

HELD: 1.1. Appointment to the post of Subordinate Judge (Haryana Civil Services Judicial Branch) is guided by the Haryana Civil Services [Judicial Branch] Rules, which are statutory in nature. Rule 7(1), 7 (2) and 8(1) specifically deal with the minimum marks that a candidate has to obtain to qualify in the written test and also for selection. In the advertisement issued by the respondents for filling up the said post along with instructions and information for candidates, it was specifically mentioned that the syllabus of the examination would be as contained in Schedule under Rule 9 of para 'C' of the Rules relating to the appointment of Subordinate Judges in Haryana. The said syllabus was set out in detail showing the compulsory papers, description of subjects, maximum marks for each subject. It was also communicated that for viva-voce test there will be 120 marks. The Rules with regard to the conduct of the written examination were also set out therein. In clause (g)(i) thereof it was indicated that no

- A candidate shall be considered to have qualified in the examination unless he obtains at least 50% marks in the aggregate of all papers including viva-voce test. It was also stated thereafter in the advertisement that the merit of the qualified candidates shall be determined by the Haryana Public Service Commission strictly according to the aggregate marks obtained in the written papers and viva-voce. For the viva-voce test, it was provided in the advertisement that it will be a test relating to the matters of general interest and is intended to test the candidate's alertness, intelligence and general outlook. It was reiterated thereunder also that the merit of the qualified candidates would be determined by the Haryana Public Service Commission strictly according to the aggregate marks obtained in the written papers and viva-voce. [Paras 8, 9] [742-F-H; 743-A-G]

- 1.2. A sitting Judge of the Punjab and Haryana High Court was associated as an Expert Advisor at the time of viva-voce test which consisted of 120 marks. The total 120 marks of viva-voce test were divided under four heads evaluating the personal quality of the candidates. The Judge present in the interview graded the candidate 'AS' as 'G', i.e., 'Good' placing him within the mark range of 16-20, whereas the appellant was graded as "P", i.e., 'Poor' placing him within the mark range of 01-05 and the candidate 'VS' was graded as "A+", i.e., 'Above Average' placing him within the mark range of 11-15. The said grading criteria to be awarded by the Judge for evaluating the personal quality of the candidates were circulated to the members of the Selection Committee for viva-voce examination as a guideline before the viva-voce examination. Therefore, the minimum marks which could be given to the appellant in each of the heads, was only one and in this case, the Chairman, and the members of the Commission had given him the maximum marks, i.e., 5 marks, under each of the four heads and consequently

he got 20 marks out of 120 ascribed to the viva-voce examination. A bare reading of the Rules would make it crystal clear that in order to qualify in the written examination, a candidate has to obtain at least 33% marks in each of the papers and at least 50% qualifying marks in the aggregate in all the written papers. The further mandate of the rules was that a candidate would not be considered as qualified in the examination unless he obtains at least 50% marks in the aggregate including viva-voce test. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off. There is no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. No such rounding off or relaxation was permissible. The Rules were statutory in nature and no dilution or amendment to such Rules was permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation. If rounding off is given to the appellant as sought for by him there has to be similar rounding off for a person who has missed 33% in one of the papers just by a whisker. To him and to such a person who could not get 50% in aggregate in the written test, if this rule of rounding off is offered then they would also get qualified. In that event, there would be no meaning of having a rule wherein it is provided that a person must at least have the minimum marks as provided for thereunder. Somewhere a line has to be drawn and that line has to be strictly observed which is like a *Lakshman Rekha* and no variation of the same is possible unless it is so provided under the Rules itself. Both the Selection Committee as also the appointing authority were bound

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A to act within the parameters of the Rules which were statutory in nature and any violation or any relaxation thereof whether by way of giving grace marks or rounding off would be acting beyond the parameters prescribed which would be illegal. [Paras 10, 11, 14, 15, 18] [743-H; 744-A-C-F-H; 745-A; G-H; 746-A-D; 747-C-E]

B *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi* (1990) 3 SCC 655: 1990 (2) SCR 559; *Umrao Singh v. Punjabi University, Patiala and Ors.* (2005) 13 SCC 365: 2005 (5) Suppl. SCR 530 – referred to.

Case Law Reference:

D 1990 (2) SCR 559 referred to Para 16
2005 (5) Suppl. SCR 530 referred to Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6205 of 2011.

E From the Judgment & Order dated 15.11.2007 of the High Court of Punjab & Haryana at Chandigarh in Letters Patent Appeal No. 207 of 2007.

Naresh Kaushik, Sanjeev K. Bhardwaj, Lalita Kaushik for the Appellant.

F Manjit Singh, AAG, D.S. Chauhan, Ruchi Singh, Rajinder Juneja, Asha Jain Madan, Mukesh Jain, Shivika Jain, Parvinder Jain, Vivekta Singh, Tarjit Singh, Kamal Mohan Gupta for the Respondents.

G The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

H 2. In this appeal we are called upon to decide an issue pertaining to an appointment to the Post of Subordinate Judge under the Haryana Civil Services [Judicial Branch] Examination

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which was advertised in 2003 and for which the selection process was completed in 2004. Thereafter two candidates who alone were selected have been appointed and joined their services on 18.03.2005 and 07.07.2005, respectively.

3. Even subsequent thereto advertisements have been issued for filling up similar vacancies in 2008 and 2010 which process was also long completed and persons selected have also been appointed pursuant to the said selection process. We are also informed that in 2011, further 111 posts have been advertised for which selection process has been initiated.

4. The appellant herein submitted his application as against the aforesaid advertisement issued by the respondents in 2003 for filling up 73 posts of Subordinate Judges under Haryana Civil Services [Judicial Branch] Examination. The appellant appeared in the written tests and was declared successful and thereafter he was called for interview. Incidentally out of 3,471 candidates who appeared for the written examination, only 3 persons obtained more than 50% marks in the written examination and were eligible under the extant Rules for being called for interview/viva-voce. All the 3 candidates called for interview duly appeared before the interview board constituted by the Haryana Public Service Commission [for short "the Commission"] in which one of the then Judges of the Punjab and Haryana High Court was called as an Expert Advisor who was present during the process of the interview.

5. It transpires from the records that in the interview conducted by the Commission total marks allocated for the interview/viva-voce test were 120 and one Shri Vivek Nasir obtained 72 marks out of 120, whereas, Shri Anubhav Sharma was awarded 60 marks out of 120. However, the present appellant could get only 20 marks out of the total marks of 120 for the interview. Since he failed to qualify in terms of Rule 8 of the Haryana Civil Services (Judicial Branch) Rules [for short "the Rules"] he was not appointed to the said post.

A 6. Feeling aggrieved the appellant filed a Writ Petition before the Punjab and Haryana High Court at Chandigarh which was registered as CWP No. 12205 of 2005 in which he sought for a writ of mandamus directing his appointment to the post of Judicial Officer. In the Writ Petition his contention was that
 B since he received total aggregate marks of 508 out of 1020 total marks, i.e., 49.8% and since the marks obtained by him was short of 50% by just two marks the same should be rounded off to the qualifying marks of 50% in aggregate in terms of Rule 8 of the Rules. It was contended that shortage of the percentage
 C of half or less was to be rounded off and when the petitioner had obtained 49.8% in the whole aggregate after viva voce test, he should have been treated to have obtained 50% and should have been deemed to have qualified.

D 7. The aforesaid contention of the appellant, however, was rejected by the Single Judge of the High Court and the Writ Petition filed by the appellant was dismissed, which order was further upheld by the Division Bench on appeal. Being aggrieved by the dismissal of his Writ Petition and Letters Patent Appeal, the appellant filed the present appeal in this
 E Court, on which we heard the learned counsel appearing for the parties who had also taken us through the entire records.

F 8. Appointment to the post of Subordinate Judge (HCS Judicial Branch) is guided by Haryana Civil Services [Judicial Branch] Rules, which are statutory in nature. Rule 7(1), 7 (2) and 8(1) specifically deal with the minimum marks that a candidate has to obtain to qualify in the written test and also for selection. The said provisions are extracted hereinbelow for ready reference: -

G "7(1) No candidate shall be credited with any marks in any paper unless he obtains at least thirty three per cent marks in it.

H (2) No candidate shall be called for the viva-voce test unless he obtains at least fifty per cent qualifying marks in the aggregate of all the written papers and thirty three per

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cent marks in the language paper, Hindi in (Devnagri Script). A

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8(1) No candidates shall be considered to have qualified B
in the examination unless he obtains at least 50% marks
in the aggregate papers including viva-voce test."

9. In the advertisement issued by the respondents for filling C
up the said post along with instructions and information for
candidates it was specifically mentioned that the syllabus of the
examination would be as contained in Schedule under Rule 9
of para 'C' of the Rules relating to the appointment of
Subordinate Judges in Haryana. The said syllabus was set out D
in detail showing the compulsory papers, description of
subjects, maximum marks for each subject. It was also
communicated that for viva-voce test there will be 120 marks.
The rules with regard to the conduct of the written examination E
were also set out therein. In clause (g)(i) thereof it was indicated
that no candidate shall be considered to have qualified in the
examination unless he obtains at least 50% marks in the
aggregate of all papers including viva-voce test. It was also
stated thereafter in the advertisement that the merit of the
qualified candidates shall be determined by the Haryana Public F
Service Commission strictly according to the aggregate marks
obtained in the written papers and viva-voce. For the viva-voce
test it was provided in the advertisement that it will be a test
relating to the matters of general interest and is intended to test
the candidate's alertness, intelligence and general outlook. It
was reiterated thereunder also that the merit of the qualified G
candidates would be determined by the Haryana Public Service
Commission strictly according to the aggregate marks
obtained in the written papers and viva-voce.

10. As stated hereinbefore, a sitting Judge of the Punjab H
and Haryana High Court was associated as an Expert Advisor

A at the time of viva-voce test which consisted of 120 marks. The total 120 marks of viva-voce test were divided under four heads evaluating the personal quality of the candidates as follows: -

“a) Awareness, outlook, Subject knowledge 30 marks and general interest

B b) Articulation and expression 30 marks
c) Intelligence and alertness 30 marks
d) Poise, bearing and other qualities 30 marks”

C The Judge of the High Court was to classify a candidate as Expert Advisor under the following categories: -

	“Class		Marks Range
	Excellent	(E)	26-30
D	V. Good	(G+)	21-25
	Good	(G)	16-20
	Above average	(A+)	11-15
E	Average	(A)	06-10
	Poor	(P)	01-05”

11. It is brought out on records that the Judge present in the interview graded Anubhav sharma as ‘G’, i.e., ‘Good’ placing him within the mark range of 16-20, whereas Bhanu Partap was graded as “P”, i.e., ‘Poor’ placing him within the mark range of 01-05 and Vivek Nasir was graded as “A+”, i.e., ‘Above Average’ placing him within the mark range of 11-15. The aforesaid grading criteria to be awarded by the Judge for evaluating the personal quality of the candidates were circulated to the members of the Selection Committee for viva-voce examination as a guideline before the viva-voce examination. Therefore, the minimum marks which could be given to the appellant in each of the heads, was only one and in this case, the Chairman, and the members of the Commission had given

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him the maximum marks, i.e., 5 marks, under each of above-mentioned four heads and consequently he got 20 marks out of 120 ascribed to the viva-voce examination.

12. Counsel appearing for the appellant submitted before us that since the appellant had received 49.8% in aggregate in all the tests including viva-voce, the same could and should have been rounded off to 50% in aggregate which would have entitled the appellant to be selected for appointment to the aforesaid post. Counsel also submitted that during the earlier selection immediately preceding the selection in question there was the requirement of grading under three factors/categories only and the same came to be varied/increased in the selection in question from three to six. He contended that this increasing of grading factors/categories from three to six envisages much wider criteria in the selection process in question which amounted to arbitrariness.

13. The aforesaid submissions of the counsel appearing for the appellant were however refuted by counsel appearing for the respondents by submitting that the respondents have strictly and minutely followed and complied with the Rules which are statutory in nature and, therefore, the present appeal has no merit at all. He also submitted that there cannot be addition of any marks unless the same is specifically permitted and provided either under the Rules or in the advertisement and, therefore, there was no illegality or arbitrariness in the selection in question.

14. In the light of the records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The relevant Rules have already been extracted above. A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written examination a candidate has to obtain at least 33% marks in each of the papers and at least 50% qualifying marks in the aggregate in all the written papers. The further mandate of the rules is that a candidate would not be considered as qualified in the examination unless he obtains at least 50% marks in the

- A aggregate including viva-voce test. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off as sought to be submitted
B by the counsel appearing for the appellant.

C 15. There is no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation.

D 16. We may also draw support in this connection from a decision of this Court in *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi* reported in (1990) 3 SCC 655. In the said judgment this Court has laid down that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

F 17. In the case of *Umrao Singh Vs. Punjabi University, Patiala and Ors.* reported in (2005) 13 SCC 365 this Court while dealing with the power of Selection Committee for relaxation of norms held thus: -
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H "Another aspect which this Court has highlighted is scope for relaxation of norms. Although Court must look with respect upon the performance of duties by experts in the

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respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In *P.K. Ramchandra Iyer and Ors. v. Union of India and Ors.* (1984)ILLJ314SC this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."

18. Let us also examine the issue from another angle. If rounding off is given to the appellant as sought for by him there has to be similar rounding off for a person who has missed 33% in one of the papers just by a whisker. To him and to such a person who could not get 50% in aggregate in the written test, if this rule of rounding off is offered then they would also get qualified. In that event, there would be no meaning of having a rule wherein it is provided that a person must at least have the minimum marks as provided for thereunder. Somewhere a line has to be drawn and that line has to be strictly observed which is like a *Lakshman Rekha* and no variation of the same is possible unless it is so provided under the Rules itself. Both the Selection Committee as also the appointing authority are bound to act within the parameters of the Rules which are statutory in nature and any violation or any relaxation thereof whether by way of giving grace marks or rounding off would be acting beyond the parameters prescribed which would be illegal.

19. In that view of the matter, we find no merit in this appeal, which is dismissed but leaving the parties to bear their own costs.