A TANIYA MALIK

v.

THE REGISTRAR GENERAL OF THE HIGH COURT OF DELHI

B (Writ Petition (Civil) No. 764 of 2017)

FEBRUARY 16, 2018

[ARUN MISHRA AND AMITAVA ROY, JJ.]

C *Judicial Service – Delhi Judicial Service Examination, 2015 – Revaluation of answer-sheet and moderation of marks – Petitioners sought re-valuation of the answer-sheet of criminal law paper of the main examination and further sought moderation of marks obtained by the candidates in the examination of 2015 – Held: Supreme Court in case of* Sanjay Singh *has laid down moderation to* D *be appropriate where there are multiple examiners of the same subject – Where number of candidates are limited and only one examiner evaluates, it is to be assumed that there will be uniformity in valuation – In instant case, it is not disputed that only one examiner had evaluated the same part of one subject, therefore, it* E *was not necessary to undertake the process of moderation – Insofar revaluation of answer scripts are concerned, it is a settled proposition of law that in the absence of provision for re-evaluation, it cannot be ordered – Accordingly, for the examination in question, in the absence of provision for revaluation when the examination* F *was held, it could not be resorted to – Delhi Judicial Services Rules, 1970 – Constitution of India – Art.32.*

Judicial Service – Delhi Judicial Service Examination, 2015 – Minimum marks for viva voice – Reasonability of – One of the petitioners was awarded 37% marks; whereas the required minimum G *was 45% in viva voce – Total 64 candidates were called for interview and 63 were selected – Only the said petitioner was declared failed in the viva voce examination – Petitioner contended that the provision prescribing minimum marks for viva voce of judicial services is unreasonable – Held: In instant case, out of 64*

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candidates, only one has failed in the interview – That, in fact, does not show the prejudice but is rather indicative of the fact that performance of the petitioner was such that in spite of the Selection Committee being most liberal, it did not find it appropriate to award even the minimum passing marks to the said candidate – The awarding of marks by Committee could not be said to be inappropriate – Furthermore, in rules, the minimum cut off is prescribed – That could not have been relaxed and moreover, relaxation is a matter of policy and considering the overall circumstances, importance of interview, the decision not to relax cannot be said to be unreasonable.

Judicial Service – Delhi Judicial Service Examination, 2015 – Enhancement of marks by rounding off – Applicable or not – As per advertisement, the candidates were required to obtain 50% marks in aggregate and 40% in each subject in the main examination to be eligible to be called for interview – One of the petitioners had obtained 49.9% marks and pleaded that it be rounded off to 50% and called for an interview – Held: When a particular aggregate is prescribed for eligibility, a person must meet the criteria without relaxation – It is not permissible to enhance the marks by rounding off method to make up the minimum aggregate – Thus, the principle of rounding off method not to be applied in view of requirement to obtain minimum aggregate marks to be called for interview in the instant case.

Judicial Service – Delhi Judicial Service Examination, 2015 – Plea for reduction of minimum cut-off marks – As per advertisement, the candidates were required to obtain 50% marks in aggregate and 40% in each subject in the main examination to be eligible to be called for interview – One of the petitioners pleaded to reduce the minimum cut off marks of individual subjects from 40% to 33% as she had failed only in one subject – Held: There is no fault in prescribing the minimum passing marks for written papers – It may happen in any examination that a person who is having better aggregate may not fair well in one of the papers and may be declared 'failed' – That cannot be ground to order relaxation or to doubt the correctness of the evaluation process – No ground for interference.

A **Dismissing the writ petitions, the Court**

HELD: Whether moderation is required to be ordered.

1.1 Moderation is an appropriate method to bring about uniformity in evaluation. When several examiners manually evaluate answer-scripts of respective/conventional type question papers in regard to the same subject, moderation is adopted as a method to reduce examiner's variability. [Para 12] [358-A-B]

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1.2 This Court in *Sanjay Singh* case has laid down moderation to be appropriate where there are multiple examiners of the same subject. It has also been observed that where a number of candidates are limited and only one examiner will evaluate, it is to be assumed that there will be uniformity in valuation. That is only where several examiners evaluate the same subject. There is difference in average marks and range of marks awarded. There is a 'hawk-dove' effect. Some examiners are liberal and they award more marks; some examiners are strict and they give fewer marks, the same may be moderated. There may be variance in degree of strictness and liberality. It is in order to remove the subjectivity or variability, that the provision of moderation is adopted. It is not the situation in the instant case, hence, the decision in *Sanjay Singh* case rather than buttressing negates the plea of moderation urged on behalf of the petitioners. In the instant case as it is not disputed that only one examiner had evaluated the same part of the one subject. It was not necessary to undertake the process of moderation. [Paras 13 and 14] [361-C-D; 362-E-F]

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F **Revaluation of answer-scripts**

2. It is settled proposition of law that in the absence of provision it cannot be ordered. In *Mukesh Thakur* case it was laid down that in the absence of provision for re-evaluation it cannot be resorted to and the observations which were made in the case of *CPIL v. Registrar General of High Court of Delhi* case, the decision was rendered in 2016 after the examination had already been held, thus the provision for re-evaluation could not have been introduced after the examination had been held. For examination in question in the absence of provision for revaluation

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when the examination was held, it could not be resorted to. [Para 15] [362-F-G; 364-D-E]

Prescription of minimum pass marks in the viva voce examination

3.1 It is desirable to have the interview and it is necessary to prescribe minimum passing marks for the same when the appointment in the higher judiciary to the post of District Judge is involved. The interview is the best method of judging the performance, overall personality and the actual working knowledge and capacity to perform otherwise the standard of judiciary is likely to be compromised. A written examination only tests academic knowledge, which is some time, gained without possessing overall qualities, practical experience of practice and law. [Para 17] [367-G-H; 368-A]

3.2 It was urged that out of 64 candidates, only one has failed in the interview. That, in fact, does not show the prejudice but is rather indicative of the fact that the performance of the petitioner was such that in spite of the Committee being most liberal, it did not find it appropriate to award even the minimum passing marks to the said candidate. The awarding of marks by the Committee could not be said to be inappropriate. In the instant case in the rules, the minimum cut off is prescribed. That could not have been relaxed and moreover, relaxation is a matter of policy and considering the overall circumstances, importance of interview, the decision not to relax cannot be said to be unreasonable. [Para 18] [368-G-H; 369-A-D]

K.H. Siraj v. High Court of Kerala & Ors. **[2006] 2 Suppl. SCR 790 : (2006) 6 SCC 395 – relied on.**

Rounding off of the marks

5. When a particular aggregate is prescribed for eligibility, a person must meet the criteria without relaxation. It is not permissible to enhance the marks by rounding off method to make up the minimum aggregate. Thus the principle of rounding off method could not be applied in view of requirement to obtain minimum aggregate marks to be called for interview in the instant case. [Paras 20 and 22] [371-D; 373-D]

A **Whether minimum cut off marks in the written examination be relaxed from 40% to 33% and whether the Court should interfere on the ground that as a person who has obtained the highest marks, could not clear one of the papers by narrow margin of one mark.**

B **6. The minimum-passing marks in each of the paper could have been prescribed and that is absolutely necessary so as to adjudge the academic knowledge in various subjects. Merely by scoring highest marks in general knowledge and language paper is not going to help. Minimum knowledge in other subjects, civil and criminal law was also requisite and that is true for *vice versa* too, and that is why minimum passing marks had been prescribed and fixation of 40% was quite reasonable and proper and it would be not proper for this Court to interfere in the same. There is no no fault in prescribing the minimum passing marks for written papers. It may happen in any examination that a person who is having better aggregate may not fair well in one of the papers and may be declared 'failed'. That cannot be a ground to order relaxation or to doubt the correctness of the evaluation process. The marks of a candidate who secured highest marks were shown, it became apparent that the performance of the candidate in paper general knowledge and language was far better as compared to the performance in civil and criminal papers. Thus when a single examiner, has done valuation, same yardstick has been applied to all the candidates. There are no grounds to make interference. [Para 23] [373-F-G; 374-A-B]**

F *Ajithkumar P. & Ors. v. Remin K.R. & Ors.* **(2015) 16 SCC 778 – held inapplicable.**

G *Sujasha Mukherji v. The Hon'ble High Court of Calcutta & Ors.* **[2015] 2 SCR 480 : (2015) 11 SCC 395**; *Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr.* **[2010] 7 SCR 189 : (2010) 6 SCC 759**; *The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore v. G. Hemlatha and Ors.* **[2012] 8 SCR 157 : (2012) 8 SCC 568**; *Orissa Public Service Commission & Anr. v. Rupashree Chowdhary and Anr.,* **[2011] 9 SCR 748 : (2011) 8 SCC 108 –**

H **referred to.**

Case Law Reference

(2015) 16 SCC 778	**held inapplicable**	**Para 10**
[2015] 2 SCR 480	**referred to**	**Para 14**
[2010] 7 SCR 189	**referred to**	**Para 15**
[2006] 2 Suppl. SCR 790	**relied on**	**Para 16**
[2012] 8 SCR 157	**referred to**	**Para 21**
[2011] 9 SCR 748	**referred to**	**Para 21**

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 764 of 2017

Under Article 32 of the Constitution of India

WITH

W. P. (C) No. 996, 896, 831, 832, 885, 938, 1046, 1063 and 1081 of 2017

W. P. (C) No. 39 of 2018.

R. S. Suri, R. Basant, Sanjay Hegde, Raju Ramachandran, Sr. Advs., Kulbir Singh Mallik, Sandiv Kalia, Ms. Nabila Hasan, Lugman S. Hasan (For Dr. Sushil Balwada), Nachiketa Joshi, Aviral Kashyap, Ms. Reshmi Rea Sinha, Parveen Kumar Aggarwal, Sanjay Jain, Ms. Jasmine Damkewala, Percival Billowria, Vikram Singh, Ms. Kimpok Loya, Rajeev Sharma, Deepak Goel, Kamal Kumar Pandey, Pardeep Gupta, Parinav Gupta, Ms. Mansi Gupta, Sanjauy Chakraborty, Wazir Singh Malik (for Dr. (Mrs.) Vipin Gupta), Prashant Bhushan, Ms. Neha Rathi, Pramit Saxena, Rahul Aggarwal, Amit Pratap Singh, Annam D. N. Rao, A. Venkatesh, Sudipto Sircar, Rahul Mishra, Ms. Tulika Chikker, Ishwar Mohanty, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ARUN MISHRA, J. 1. The writ petitions have been filed under Article 32 of the Constitution of India, questioning the Delhi Judicial Service, 2015 Examination for which an advertisement was issued on 3.10.2015. 100 vacancies were advertised. The examination was to be held in two stages – preliminary, thereafter, – main examination (written) for selection of candidates for viva voce. Out of the 100 posts advertised, 68 were of the General Category; SC 12; ST 20; out of them 41, 7 and

A 17 were the backlog vacancies of respective categories. Two vacancies were reserved for physically handicapped (blind/low vision) and two vacancies for physically handicapped candidates (Ortho.). The appointments were to be subject to the outcome of W.P. (C) No. 514 of 2015 and C.A. No.1086 of 2013 pending in this Court and W.P. (C) No. 2828 of 2010 pending in the High Court of Delhi.

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2. In Writ Petition[C] No.764 of 2017 – *Taniya Malik v. Registrar General of the High Court of Delhi*, prayer has been made to reduce the minimum cut off marks of individual subjects from 40% to 33% and in the alternative, the Delhi High Court be directed to relax the criteria for calling for interview.

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3. Petitioner has urged that result of the main examination was announced on 12.7.2017. In the preliminary examination that was held, out of 8534 candidates, 914 cleared it and they appeared in the main examination. As per the advertisement, the candidates were required to obtain 50% marks in aggregate and 40% in each subject in the main

D examination to be eligible to be called for interview. The result of the main examination was announced on 12.7.2017 and only 64 students, 58 from general category and 6 from reserved category were selected for viva voce test. The petitioner contended that normally for an interview, three times the number of incumbents are to be called as compared to

E the number of seats notified as apparent from past practice. The petitioner submitted a representation for rationalizing the minimum qualifying marks to 33% instead of 40%. However needful was not done.

4. In W.P.[C] No.832 of 2017 prayer has been made to direct re-evaluation of all the papers of the said examination by an independent

F Expert Committee headed by a retired Judge of this Court. Alternative prayer has been made to direct re-evaluation of the answer-sheet of criminal law paper of the main examination of the petitioner. Prayer has also been made to direct moderation of marks obtained by the candidates in the Examination of 2015 in the light of the decision of this Court in *Sanjay Singh & Anr. v. U.P. Public Service Commission, Allahabad*

G *& Anr.* (2007) 3 SCC 720, and to quash the criteria of calling for viva voce for those candidates who had obtained 40% marks in each written paper as provided under Rule 15 of the Delhi Judicial Services Rules, 1970. It is averred that as only a minuscule number of 24 candidates could obtain more than 50% marks in Criminal Law paper, *prima facie*

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it appears that Criminal Law paper has been very strictly marked and marks given do not reflect the actual performance of the candidates.

5. In W.P. [C] No.996 of 2017 – *Ms. Swati Gupta v. Registrar General, High Court of Delhi*, a prayer has been made to quash the result of the examination and prayer for revaluation of the papers has been made. Petitioner has obtained 49.9% marks. She has prayed that it be rounded off to 50% as is normally done and she should be called for interview.

6. In WP [C] No.1081 of 2017 – *Naveen v. Registrar General, High Court of Delhi*, prayer has been made to set aside the result of viva voce dated 25.9.2017 so far as the petitioner has been declared not qualified in viva voce test and to declare him qualified for selection on the vacant post available in his reserved category or to conduct fresh viva voce and the provision prescribing minimum marks for viva voce of judicial services is unreasonable. Petitioner has been awarded 37% marks; whereas the required minimum was 45% marks in viva voce. Total 64 candidates were called for interview as against 100 vacancies that were advertised and 63 have been selected. Only the petitioner had been declared failed in the viva voce examination. The High Court should have relaxed the marks for interview. In rest of petitions, the relief prayed is more or less similar to aforesaid writ petitions.

7. In the counter affidavit filed by the Registrar General of High Court Delhi, it is contended that after participating in the process of selection under the Delhi Judicial Services Rules, 1970 (for short, 'the 1970 Rules'), it is not open to question the process of the examination. The preliminary examination is a screening test carrying maximum marks of 200. Minimum qualifying marks in the preliminary examination were 60% for general and 55 for reserved categories. The main examination (written) consisted of 4 papers, namely, G.K. & Language, Civil Law-I, Civil Law-II and Criminal Law and carried a weightage of 250, 200, 200 and 200 marks respectively. Each paper is divided into two parts, *viz*., Part A and Part B. A separate individual examiner examined each part of all the papers. There were no multiple examiners for each part.It was necessary to obtain minimum 40% marks and 35% marks respectively in each of the four papers; total of Part A and Part B, and also secure at least 50% marks and 45% marks respectively in aggregate in all the four papers in order to qualify for the next stage *i.e.* viva voce.

A 8. It is further pleaded that calling the number of candidates would depend upon the number of qualified candidates in the written examination. Unqualified candidates could not have been called for interview. Senior-most officers of the Delhi Higher Judicial Services were responsible for setting up of the examination papers and evaluating the answer-sheets. As a separate individual examiner did the evaluation, B the question of moderation/rationalization as demanded by the petitioners did not arise. The practice adopted for evaluation of answer sheet is that the roll number is kept secret from the examiner. A code number is written on both sides of the first page of answer-sheet. Copies of answer-sheets were supplied to the petitioner after the declaration of the result. C In *CPIL v. Registrar General of High Court of Delhi* in W.P. [C] No.514 of 2015, the suggestions given by this Court were to be kept in view for future examinations. The order was passed on 26.7.2016 much after the main examination had been held. The modalities of the examination had been worked out much before the decision of this Court in the said matter. Thus, it was not possible to implement the said decision. D There is no procedure or provision for revaluation of answer-sheets in the said examination held for 2015 vacancies under the 1970 Rules. No model answers were provided to the examiners.

9. In the case of *Naveen v. Registrar General, High Court of Delhi*, W.P. [C] No.1081 of 2017 it is the stand taken that viva voce E carries 150 marks; candidates in General Category must secure 50% marks and candidates of Reserved Category must secure 45% marks to be eligible for recommendation for appointment to the service. The marks obtained in the viva voce were to be added to the marks obtained in the main examination to determine the merit position of the successful F candidates. The petitioner secured only 55 marks out of 150 marks, *i.e.* 37%, hence, was not eligible for being recommended for appointment to the service. Even though all the vacancies could not be filled, it does not imply that the cut off of 45% marks fixed for interview should be removed. Fixation of cut off marks could not be said to be arbitrary or unreasonable. Viva-voce plays an important role in judging candidates' caliber/personality, G perception and suitability.

10. Learned counsel appearing for the petitioners urged that fixation of 40% cut off marks in written paper was not appropriate. Even the candidate who has secured the highest marks could not obtain the requisite minimum marks in one of the papers and missed by a whisker *i.e.* by H

one mark. There was an unduly harsh marking of criminal law paper. Only a few candidates could obtain more than 50% marks. It does not sound to logic that the candidate who has obtained highest marks in aggregate, would fail in one of the papers, thus the case is fit for directing the moderation as held in *Sanjay Singh* (supra) and *Ajithkumar P. & Ors. v. Remin K.R. & Ors.* (2015) 16 SCC 778. Reliance has also been placed on the decision in *Sujasha Mukherji v. The Hon'ble High Court of Calcutta & Ors.* (2015) 11 SCC 395. Prayer has also been made to reduce the cut off in written papers to 33% from 40%. In the case of *Swati Gupta* (supra), additional ground has been urged to round off the marks from 49.9% to 50% to make her eligible for viva voce. In the case of WP [C] No.832/2017 – *Charu Dhankar v. Registrar General of the High Court of Delhi*, in addition, it was urged that revaluation of answer-sheets of criminal law paper be ordered and the requirement of obtaining 40% marks be set aside. In the case of *Naveen v. Registrar General, High Court of Delhi*, a prayer has been made not to fix the minimum marks for viva voce. It was urged that fixation of minimum passing marks in interview was unreasonable and alternative prayer has been made to relax the minimum passing marks for the SC category candidates for selection. It was urged that petitioner was the only person who has failed in the interview. Out of 64 candidates, 63 had been cleared in interview.

11. *Per contra*, it was contended on behalf of the High Court of Delhi that in case of *Sanjay Singh* (supra), there were multiple examiners as such moderation was ordered. In case where a single examiner has examined all the papers, moderation is not at all required. Minimum pass marks have been fixed considering the importance of the Higher Judicial Service and as the appointment was to be made on the post of Higher Judicial Service. Minimum marks for interview were also rightly prescribed. In the written examination it was necessary to obtain aggregate of 50% for General Category, thus there was no question of rounding off. A candidate who obtains lesser marks than the minimum prescribed for aggregate could not have been called for interview by the process of rounding off. Lower marks were prescribed for reserved category candidates as compared to General Category candidates. For General Category, passing marks in interview were 50% whereas passing marks for reserved category candidates were 45%.

12. First we take up the question whether moderation is required to be ordered. Moderation is an appropriate method to bring about uniformity in evaluation. When several examiners manually evaluate answer-scripts of respective/conventional type question papers in regard to the same subject, moderation is adopted as a method to reduce examiner's variability. For the purpose of issuance of direction for moderation reliance has been placed on the decision of this Court in *Sanjay Singh* (supra) in which, it was observed:

> "23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer- scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer-scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer-scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer-scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiner evaluate the answer-scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer- scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer-scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is 'Hawk-Dove' effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer-script is given to different examiners, there is all likelihood of different marks being assigned. If a very well written answer-script goes to a strict examiner and a mediocre answer-script goes to a liberal examiner, the mediocre answer-script may be awarded more marks than the excellent answer-script. In other words, there is

'reduced valuation' by a strict examiner and 'enhanced valuation' by a liberal examiner. This is known as 'examiner variability' or 'Hawk-Dove effect'. Therefore, there is a need to evolve a procedure to ensure uniformity interse the Examiners so that the effect of 'examiner subjectivity' or 'examiner variability' is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:

(i) The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/Judges. Where the case of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer-scripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer scripts. But this by itself does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or eroticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top-level answer scripts and some answer books selected at random

A from the batches of answer scripts valued by each examiner. The top-level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks etc. may also be prepared in respect of the valuation of each examiner.)

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggest upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are revalued either by the Head Examiner or any other Examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the Examiners. In such a situation, one more level of Examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.

The above procedure of 'moderation' would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.

> 27. But some Examining Authorities, like the Commission, are of the view that scaling can be used, not only where there is a need to find a common base across different subjects (that is bringing the performance in different subjects to a common scale), but also as an alternative to moderation, to reduce examiner variability (that is where different examiners evaluate answer scripts relating to the same subject)."

13. This Court in *Sanjay Singh* (supra) has laid down moderation to be appropriate where there are multiple examiners of the same subject. It has also been observed that where a number of candidates are limited and only one examiner will evaluate, it is to be assumed that there will be uniformity in valuation. That is only where several examiners evaluate the same subject. There is difference in average marks and range of marks awarded. There is a 'hawk-dove' effect. Some examiners are liberal and they award more marks; some examiners are strict and they give fewer marks, the same may be moderated. There may be variance in degree of strictness and liberality. It is in order to remove the subjectivity or variability, that the provision of moderation is adopted. It is not the situation in the instant case, hence, the decision in *Sanjay Singh* (supra) rather than buttressing negates the plea of moderation urged on behalf of the petitioners.

14. In relation to plea of moderation, reliance has also been placed on the decision of this Court in *Sujasha Mukherji v. High Court of Calcutta through Registrar & Ors.* (2015) 11 SCC 395. In the said case there were three examiners *i.e.* multiple examiners and moderation had not been adopted. Only re-assessment was carried out. The proper mode of moderation was not followed as observed in *Sanjay Singh* (supra). Mean marks were not computed to liquidate 'hawk-dove' syndrome. Marks awarded by the first examiner were more or less unchanged as compared to other. In the said context, this Court in *Sujasha Mukherjee* (supra) has observed:

> "11. Revaluation as envisaged in the paragraph 23 of *Sanjay Singh v. U.P. Public Service Commission* (2007) 3 SCC 720 has to be undertaken by the Head Examiner/Paper Setter who, as has already been noted, is non-existent in the present case. The effort would be to eradicate the 'hawk-dove' syndrome, and this is achieved by computing the 'mean' and, thereafter, to add or deduct,

A across the board, in all the Answer-sheets. It cannot be disputed that this is not what has transpired in the present case since quite apparently moderation has been carried out in respect of the assessment/marking of the 2nd Examiner and that too in Paper No. II. So far as most of the candidates whose answer scripts had been reassessed afresh, the reduction averages 10 marks which, therefore, constitutes the mean. Therefore, the deduction of as many as 18 marks so far as the Appellant is concerned is not logical or justified as a consequence of moderation. We also think that a moderator should give a long and serious thought to the correctness of his assessment on the realization he finds that the top-most candidate stands disqualified by the purported exercise of moderation. As we have already noted above, instead of deducting 18 marks if even 15 marks had been deducted, the Appellant who has scored the highest marks before moderation and the second highest marks even after moderation, would have qualified for being called to the Interview/viva voce. A grave injustice has been caused to the Appellant. The learned Division Bench should have been alive to this injustice since it had before it the judicial determination of the learned Single Judge. We shall abjure from making any further observation."

It is apparent that in *Sujasha Mukherjee* (supra) the method of moderation as envisaged in *Sanjay Singh* (supra) was not followed. As such this Court interfered. However, in the instant case as it is not disputed that only one examiner had evaluated the same part of the one subject. In our considered opinion it was not necessary to undertake the process of moderation.

15. Now we take up the second submission with respect to revaluation of answer-scripts. It is settled proposition of law that in the absence of provision it cannot be ordered. In *Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr.* (2010) 6 SCC 759, this Court has considered various decisions and observed:

"24. The issue of revaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. ParitoshBhupeshKurmarsheth wherein this Court rejected the contention that in absence of provision for re-evaluation, a

direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/ Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under: (SCC pp. 39-40 & 42, paras 14 & 16)

> "14. ...It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act...
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> 16. ...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. "

25. This view has been approved and relied upon and re-iterated by this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission, (2004) 6 SCC 714 observing as under: (SCC pp. 717-18, para 7)

> "7. ….Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totaling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence

A of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks."

(emphasis added)

A similar view has been reiterated in Dr. Muneeb-Ul-Rehman B Haroon (Dr.) v. Govt. of J&K State (1984)4 SCC 24; Board of Secondary Education v. PravasRanjan Panda (2004) 13 SCC 383; Board of Secondary Education v. D. Suvankar (2007) 1 SCC 603; W.B. Council of Higher Secondary Education v. Ayan Das (2007)8 SCC242; and Sahiti v. Dr. N.T.R. University of Health Sciences (2009) 1 SCC 599. C

26. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/ Regulations, the Court should not generally direct revaluation."

In *Mukesh Thakur* (supra) it was laid down that in the absence D of provision for re-evaluation it cannot be resorted to and the observations which were made in the case of *CPIL v. Registrar General of High Court of Delhi* (supra), the decision was rendered in 2016 after the examination had already been held, thus the provision for re-evaluation could not have been introduced after the examination had been held. In our opinion, for examination in question in the absence of provision for E revaluation when the examination was held, it could not be resorted to.

16. Coming to the question of prescribing the minimum pass marks in the viva voce examination, in our opinion it is rightly observed by this Court in *K.H. Siraj v. High Court of Kerala & Ors.* (2006) 6 SCC 395, that interview is the best method to assess the ability of the candidate F and to judge the capacity and minimum marks can also be prescribed. In case a candidate fails in an interview it cannot be said that he is suitable for the job of a Munsif Magistrate. This Court observed:

"54. In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the G 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, ability to take decisions, qualities of leadership etc. which are also essential for a judicial officer. H

55. We may usefully refer to a decision of this Court in Lila Dhar v. State of Rajasthan (1981) 4 SCC 159 in 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.' (SCC pp. 162-63, para 4)
>
> * * *
>
> '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. (SCC p.163, para5)

A ***

'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 that it was not within the power of the Government to provide
B such high marks for interview or that there was any arbitrary exercise of power. (SCC p.166, para 9)"

56. In Mohan Kumar Singhania and Ors. v. Union of India and Ors. : AIR 1992 SC 1, S. Ratnavel Pandian, J. speaking for the Bench, observed as under: (SCC p.608, paras 18-21)

C "18. Hermar Finer in his textbook under the caption The Theory and Practice of Modern government states:

'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.'

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

'Viva Voce - the examination will be in matters of general
E 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.'

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

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

21. This Court in *Lila Dhar v. State of Rajasthan* (1981) 4 SCC 159 while expressing the view about the importance and significance of the two tests, namely, the written and interview has observed thus: (SCC p.164, para 6)

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

57. The qualities which a Judicial Officer would possess are delineated by this Court in *Delhi Bar Association v. Union of India* (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 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/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 benchmark for the oral interview, a benchmark which is actually low as it requires 30% for a pass. 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."

17. In our considered opinion, it is desirable to have the interview and it is necessary to prescribe minimum passing marks for the same when the appointment in the higher judiciary to the post of District Judge is involved. The interview is the best method of judging the performance, overall personality and the actual working knowledge and capacity to perform otherwise the standard of judiciary is likely to be compromised. A written examination only tests academic knowledge, which is some time, gained without possessing overall qualities, practical experience of

practice and law. In written exam, even the person with no caliber who takes decision by cramming may obtain better marks. When the Judges of the High Court too are appointed by adjudging the performance and intellect, an interview would be indispensable for judicial post. As ultimately, they also come to adorn the chair of a Judge and Judges of subordinate and higher judiciary to deliver justice to masses, the criteria of experience of practice for direct recruitment of 7 years whether actually gained can be adjudged only by interview, communicating skills and by elucidation of certain aspects which would not be possible by written exam alone. In *Siraj* (supra), it was emphasized that interview is the main fulcrum for judging the suitability of the candidate for appointment as District Judge in the higher judiciary. In our opinion that is absolutely necessary. When we consider past practice earlier when the written examination was not prescribed, the High Court used to select the candidates for higher judiciary only by the method of interview. Now additional safeguards of written examination have been added. The importance of interview for the post of the higher judiciary has increased than ever before it is absolutely necessary to weed out unworthy elements/ crammers and in our considered opinion it is not only appropriate but also absolutely necessary to prescribe the minimum pass marks so as to weed out unworthy element so as to segregate grain from the chaff. There is a vast difference between having the experience that is required for a Judge that cannot solely be adjudged on the basis of written performance, and for which overall personality, intelligence test is absolutely necessary. Without that it would not be appropriate to make appointments in judiciary. Thus in our opinion the prescription of minimum 45% marks for reserved category candidates could not be said to be uncalled for. Merely by the fact that some more posts were advertised and they are lying vacant, it could not have been a ground to relax the minimum marks for interview after the interview has already been held. It would not have been appropriate to do so and the High Court has objected to relaxation of minimum passing marks in viva voce examination in its reply and as the power to relax is to be exercised by the High Court and since it has opposed such a prayer on reasonable ground and the institutional objective behind such prescription, we are not inclined to direct the High Court to relax the minimum marks.

18. It was urged that out of 64 candidates, only one has failed in the interview. That, in fact, does not show the prejudice but is rather

indicative of the fact that the performance of the petitioner was such that in spite of the Committee being most liberal, it did not find it appropriate to award even the minimum passing marks to the said candidate. In our opinion, the awarding of marks by the Committee could not be said to be inappropriate. No malice has been attributed; as such we find no scope for interference on the aforesaid ground. Reliance has been placed on *Ajithkumar* (supra) in which the Commission has relaxed the criteria to call various reserved category candidates who secured marks out of the cut off marks. This Court has observed that challenge to the decision of the Service Commission to relax cut off marks with respect to reserved category candidates could not succeed in the earlier round of litigation. There was relaxation of cut off marks for reserved category candidates in the preliminary examination not governed by rules. In the instant case in the rules, the minimum cut off is prescribed. That could not have been relaxed and moreover, relaxation is a matter of policy and considering the overall circumstances, importance of interview, the decision not to relax cannot be said to be unreasonable. The decision has no application.

19. Even otherwise the petitioners have undertaken the exam with the stipulation of minimum cut off marks in written and oral examination and then having failed, they cannot turn round and are estopped to contend to the contrary. This Court in *K. Siraj* (supra) has observed that when the candidates participated in the interview with the knowledge that for selection they have to clear the prescribed minimum pass marks, on being unsuccessful in interview, could not turn around and challenge that the prescription of minimum marks was improper. They are estopped to contend it as observed in *K.H. Siraj* (supra) thus:

> "72. The appellants/petitioners, in any event, are not entitled to any relief under Article 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 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: (KLT pp.441-42, para 5)

A "....On the basis of the aggregate marks in both the tests, the selection has to be made. In I.C.A.R's case, 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 (1985) 3 SCC 721 also *Umesh Chandra* (1985) 3 SCC 721, 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.

C The High Court also relied on *P.K. Ramachandra Iyer's case* (1984) 2 SCC 141 and *Umesh Chandra's case* (Supra).

73. 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 and Ors. v. State of J & K* [1995] 3 SCC 486 as under: (SCC p.493)

> "9. 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, 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 Supp SCC 285, it has been clearly laid down by a Bench of three learned Judges of this Court that 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."

74. 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."

20. With regard to question as to rounding off of the marks, in our opinion, when a particular aggregate is prescribed for eligibility, a person must meet the criteria without relaxation. It is not permissible to enhance the marks by rounding off method to make up the minimum aggregate.

21. This Court, *in The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore vs. G. Hemlatha and Ors.*, (2012) 8 SCC 568, held as impermissible the rounding-off of eligibility criteria in relation to qualifying examination for admission to the PG Course in MSc (Nursing). Relying upon the decision rendered in *Orissa Public Service Commission & Anr. vs. Rupashree Chowdhary and Anr.,* (2011) 8 SCC 108, this Court observed:

"8. In *Orissa Public Service Commission and Anr. v. Rupashree Chowdhary and Anr.* (2011) 8 SCC 108 this Court in somewhat similar fact situation considered whether the eligibility criteria could be relaxed by the method of rounding-off. The Orissa Public Service Commission published an advertisement inviting applications from suitable candidates for the Orissa Judicial Service Examination, 2009 for direct recruitment to fill-up 77 posts of Civil Judges (JD). Pursuant to the advertisement, the first Respondent therein applied for the said post. She took the preliminary written examination. She was successful in the said examination. She, then, took the main written examination. The list of successful candidates, who were eligible for interview, was published in which the first Respondent's name was not there.

A She received the mark sheet. She realized that she had secured 337 marks out of 750 i.e. 44.93% of marks in the aggregate and more than 33% of marks in each subject.

9. As per Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 (for short "the Orissa Rules"), B the candidates who have secured not less than 45% of the marks in the aggregate and not less than a minimum of 33% of marks in each paper in the written examination should be called for viva voce test. Since the first Respondent therein had secured 44.93% marks in aggregate she was not called for interview/viva voce. The first Respondent approached the Orissa High Court. The C High Court allowed the writ petition. The appeal from the said order was carried to this Court.

10. After considering the Orissa Rules, this Court in *Rupashree Chowdhary case* (2011) 8 SCC 108 held that Rule 24 thereof made it clear that D

> "in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% marks in the aggregate in all the written papers in the main examination." (SCC p. 111, para 10)

E This Court observed that when emphasis is given in the rule itself to the minimum marks to be obtained, there can be no relaxation or rounding-off. It was observed that no power was provided in the statute/rules permitting any such rounding-off or giving grace marks. It was clarified that: (SCC p. 112, para 10)

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> "10…. The [Orissa] 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 giving the benefit of rounding-off or relaxation."

11. In our opinion, the ratio of this judgment is clearly applicable G to the facts of this case. Judgment of the Full Bench of Allahabad High Court in *Vani Pati Tripathi v. Director General, Medical Education and Training and Ors.* AIR 2003 All 164 and judgment of the Full Bench of Punjab and Haryana High Court in *Kuldip Singh, Legal Assistant, Punjab Financial Corporation v. The State of Punjab and Ors.* (1997) 117 PLR 1, were cited before

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us because they take the same view. However, in view of the authoritative pronouncement of this Court in Orissa Public Service Commission (supra), it is not necessary for us to discuss the said decisions.

12. No provision of any statute or any rules framed thereunder has been shown to us, which permits rounding-off of eligibility criteria prescribed for the qualifying examination for admission to the PG course in M.SC (Nursing). When eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding that learned Single Judge was right in rounding-off of 54.71% to 55% so as to make Respondent 1 eligible for admission to PG course. Such rounding-off is impermissible."

22. Thus the principle of rounding off method could not be applied in view of requirement to obtain minimum aggregate marks to be called for interview in the instant case.

23. Coming to question whether minimum cut off marks in the written examination be relaxed from 40% to 33% and whether we should interfere on the ground that as a person who has obtained the highest marks, could not clear one of the papers by narrow margin of one mark. It was also urged that the person having the highest marks has not been called for interview and as he could not clear the minimum percentage in one of the written paper and persons having lesser marks in aggregate have been called for interview. In our opinion minimum-passing marks in each of the paper could have been prescribed and that is absolutely necessary so as to adjudge the academic knowledge in various subjects. Merely by scoring highest marks in general knowledge and language paper is not going to help. Minimum knowledge in other subjects, civil and criminal law was also requisite and that is true for *vice versa* too, and that is why minimum passing marks had been prescribed and fixation of 40% was quite reasonable and proper and it would be not proper for this Court to interfere in the same. We find no fault in prescribing the minimum passing marks for written papers. It may happen in any examination that a person who is having better aggregate may not fair well in one of the papers and may be declared 'failed'. That cannot be a ground to order relaxation or to doubt the correctness of the evaluation

process. When we were shown the marks of a candidate who secured highest marks, it became apparent that the performance of the candidate in paper general knowledge and language was far better as compared to the performance in civil and criminal papers. Thus when a single examiner, has done valuation, same yardstick has been applied to all the candidates. We find no ground to interfere on the various grounds urged by the petitioners.

24. We place on record as pointed out by learned counsel on behalf of the High Court of Delhi that suggestions made by this Court in the decision rendered in *CPIL* (supra) have been carried out for subsequent examinations for 2016.

25. Resultantly, we find no ground to make interference. The writ petitions being devoid of merits are hereby dismissed. No costs.

Ankit Gyan Writ Petitions dismissed.