



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

WRIT PETITION No. 4900 of 2010

SMT.SUDHA AGRAWAL

Versus

M.P.LEGAL SERVICES AUTHORITY AND OTHERS

Appearance:

*Shri M.P.S. Raghuvanshi – Senior Advocate with Shri D.S. Raghuvanshi
-Advocate for petitioner.*

Shri Yogesh Chaturvedi – Advocate for respondent No.1.

Shri B.P. Singh – Advocate for respondent No.2.

Reserved on 27.4.2026

Pronounced on 22.5.2026

ORDER

This petition, under Article 226 of Constitution of India, has been filed seeking following relief (s):-

“i. That, the selection and appointment of the respondent no.2 to the post of District Legal Aid Officer be directed to be set aside.



7(i-a) That, the respondent No.1 M.P. Legal services Authority be also directed to award 5% marks to the petitioner as against greed card.

(ii) That, the respondents be further directed to fillup total 4 posts of District Legal Aid Officer out of unreserved women category and accordingly petitioner having been placed at serial no.4 in the merit list of unreserved women category for the post of District Legal Aid Officer, by setting aside selection/appointment of respondent no.2 to the post in question, she be directed to be appointed as against 4th reserved post of unreserved post women category with all consequential benefit including, seniority, salary and regularization of intervening period.

(iii) That, the other relief doing justice including cost be awarded.”

2. Learned counsel for petitioner submits that respondent No. 1, M.P. Legal Services Authority, has been constituted under an enactment made by the State Legislature. Respondent No. 1 issued an advertisement inviting applications for filling the posts of District Legal Aid Officers. A total of 11 posts (8 for general category and 3 for women) were advertised to be filled from the unreserved category candidates. Subsequently, a corrigendum was issued whereby the total number of posts was increased to 12, out of which 4 posts were reserved for women by extending the benefit of reservation. It was further indicated in the advertisement that the final selection would be made on the basis of merit secured by the candidates in the written examination and oral interview. However, no minimum cut-off marks were prescribed for selection. Pursuant to the advertisement, the petitioner applied and was called for the written examination in which she secured 77 marks. In the interview, she was awarded 6.33 marks out of a total of 25 marks. It is



further submitted that respondent No. 2 has been selected to the post of District Legal Aid Officer contrary to the terms of the advertisement. As per the advertisement, only 8 posts were to be filled from the general category (excluding 4 posts reserved for women). However, at the time of final selection, by disturbing the reservation meant for women candidates in the general category, a total of 9 candidates, including respondent No. 2, were selected instead of 8. One post reserved for women out of 4 was allegedly allotted to a general male candidate which is illegal. Thus, contrary to the advertisement, corrigendum, and the requirement of 33% reservation for women, respondent No. 2 has been selected at serial No. 9 in the merit list. The selection of respondent No. 2 is therefore stated to be contrary to law. It is further submitted that under the Recruitment Rules, 2007, Rule 5(2) provides for 33% reservation for women candidates. By issuing the corrigendum, the respondents had correctly bifurcated the 12 posts into 8 and 4 by applying reservation for women. The name of petitioner appears at serial No. 4 in the merit list of general women category candidates. It is further submitted that at the time of interview, petitioner was required to submit a Green Card, on the basis of which, as per the Government notification, she was entitled to an additional 5% marks. It is further submitted that the respondents changed the criteria for selection after completion of the preliminary examination dated 08.01.2009, the main examination dated 10.05.2009 and the interview process conducted between 31.07.2010 and 01.08.2010, by subsequently fixing cut-off marks (i.e., 85 for unreserved and OBC candidates), which was not mentioned in the advertisement dated 12.06.2008. Therefore, such an illegal condition could



not have been applied to debar the petitioner from selection, particularly when four posts were reserved for women and instead of petitioner, respondent No. 2 has been selected. It is further submitted that it is a settled principle of law that the criteria for selection cannot be changed after the selection process has commenced or been completed. Therefore, the impugned action of the respondents is stated to be *dehors* the rule of law.

3. *Per contra*, learned counsel for respondent No. 1 submits that the selection was to be made on the basis of merit secured in the written examination and oral interview. It is further submitted that the Selection Committee of respondent No. 1 had also decided to fix cut-off marks at 85 out of 225 for candidates belonging to the General (unreserved) category. A copy of the minutes of the meeting dated 01.08.2009 has been filed as Annexure R/1. Therefore, the contention of the petitioner that no cut-off marks were fixed is incorrect. It is further submitted that as per the said meeting, cut-off marks of 85 out of 225 were fixed not only for the General (unreserved) category but also for OBC, SC, and ST categories. As per the mark sheet, the petitioner obtained 83.33 marks in total and did not secure the prescribed cut-off marks of 85; hence, she was not eligible for selection. Accordingly, respondent No. 2, Shri Chandresh Kumar Mandaloi, who secured higher marks, has rightly been selected for the post of District Legal Aid Officer. It is further submitted that neither the advertisement (Annexure P/2) nor the Recruitment Rules contain any provision for awarding an additional 5% marks to Green Card holders. Therefore, the petitioner cannot claim any such benefit. It is further submitted that petitioner did not submit a Green Card at the time of the interview and in any case, she was not a Green



Card holder on the last date of submission of the application form. It is further submitted that the Selection Committee has the power, under the proviso to Rule 4(2) of the M.P. District Legal Aid Officer (Recruitment) Rules, 2007, to prescribe cut-off marks. There is no illegality in fixing such cut-off marks. In cases where appointments are made by selection from among eligible candidates, it is open to the authority, with a view to maintaining a high standard of competence, to fix a benchmark higher than the minimum eligibility. The post of District Legal Aid Officer being a responsible post, the fixation of cut-off marks is in accordance with law. It is denied that the criteria for appointment were changed during the selection process. It is further submitted, relying upon the judgment of the Hon'ble Supreme Court in the case of ***Rajesh Kumar Daria v. Rajasthan Public Service Commission***, reported in (2007) 8 SCC 785, that women candidates are required to be adjusted in their respective quota, subject to their securing the requisite merit. Reservation cannot operate de hors merit; therefore, since the petitioner did not secure the prescribed cut-off marks, she cannot claim the benefit of reservation. It is further submitted that as per paragraph 5 of the circular dated 18.02.1997, if a suitable woman candidate is not available in the selection process, the vacant post is not to be carried forward and may be filled by a male candidate of the same category. In the present case, the petitioner, being a woman candidate, failed to secure the cut-off marks, whereas respondent No. 2 secured 86.39 marks and has thus been rightly selected. There is no encroachment upon the reservation meant for women candidates. The selection has been made strictly on the basis of merit and the cut-off marks fixed at 85 by respondent No. 1. Respondent No. 2, though



placed at serial No. 9, secured 86.39 marks, whereas the petitioner secured only 83.33 marks; therefore, he has been selected as the petitioner did not fall within the zone of merit, even in the women category. Learned counsel for respondent No. 1 has also placed reliance upon the judgment of the Hon'ble Supreme Court passed on 16.8.2013 in the case of *Yogesh Yadav v. Union of India & Ors.* [Civil Appeal No. 6799/2013] and submitted that shortlisting of candidates by fixing a benchmark is permissible to select the best candidates on a rational and reasonable basis.

4. Heard learned counsel for the parties and perused the record.

5. Indisputably, respondent No.1, M.P. Legal Services Authority, issued an advertisement for appointment to the post of District Legal Aid Officer. Initially, 11 posts were advertised which were later increased to 12 by corrigendum out of which 4 posts were reserved for women candidates. The advertisement provided that selection would be based on marks obtained in the written examination and interview but no minimum cut-off marks were prescribed. The petitioner appeared in the selection process and secured 77 marks in the written examination and 6.33 marks in the interview. It is the grievance of the petitioner that respondent No.2 was selected contrary to the advertisement and reservation policy as one post reserved for women candidates was allegedly allotted to a male candidate. The name of petitioner appeared at serial No.4 in the merit list of women candidates and she was also entitled to additional 5% marks on the basis of Green Card benefits. **After conducting the interview, the respondents illegally introduced cut-off marks of 85 for unreserved and OBC candidates, though no such condition was mentioned in the advertisement.** According to the



petitioner, the criteria for selection could not have been changed after commencement of the selection process and therefore, the impugned action of the respondents is arbitrary and contrary to law.

6. Ultimate object of any selection process for entry into public service to secure best and most suitable for job, avoiding patronage and favoritism. In various judicial pronouncement, the law governing recruitment to public services has been colloquially termed as “ the rules of the game.” The “game” is the process of selection and appointment. Courts have consistently found upon tinkering with the rules of the game once the recruitment process commences. This has crystallised into an oft-quoted legal phrase that “ the rules of the game must not be changed midway, or after the game has been played.” Cut-off date with reference to which eligibility has to be determined is the date appointed by the relevant service rules where no such cut-off date is provided in the rules, then it will be the date appointed in the advertisement inviting applications; and if there is no such date appointed then eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received.

7. On the above facts, a Reference was made to the Constitutional Bench as to whether the decision in ***K. Manjusree v. State of A.P.***, (2008) 3 SCC 512 was per incuriam inasmuch the earlier decision in ***State of Haryana v. Subash Chander Marwaha***, (1974) 3 SCC 220, had not been noticed by the Supreme Court while pronouncing its decision in ***K. Manjusree (supra)***. Relevant paragraph 1 of the judgment of the ***Tej Prakash Pathak v. High Court of Rajasthan***, (2013) 4 SCC 540, is quoted below for ready reference and convenience:



“1. A three-Judge Bench of this Court while accepting the salutary principle that once the recruitment process commences the State or its instrumentality cannot tinker with the “rules of the game” insofar as the prescription of eligibility criteria is concerned, wondered whether that should apply also to the procedure for selection. In that context, doubting the correctness of a coordinate Bench decision in K. Manjusree for not having noticed an earlier decision in Subash Chander Marwaha, vide order dated 20.03.2013, it was directed that the matter be placed before the Chief Justice for constituting a larger Bench for an authoritative pronouncement on the subject.”

8. Considering the submissions made by the learned counsels for the parties appearing therein, the Supreme Court divided its discussion into the following parts:

“21. To effectively analyse and adjudicate upon the questions referred, we would divide our discussion into following parts:

21.1. (a) When the recruitment process commences and comes to an end;

21.2. (b) Basis of the doctrine that “rules of the game” must not be changed during the course of the game, or after the game is played;

21.3. (c) Whether the decision in K. Manjusree is at variance with earlier precedents on the subject;

21.4. (d) Whether the above doctrine applies with equal strictness qua method or procedure for selection as it does qua eligibility criteria;

21.5. (e) Whether procedure for selection stipulated by Act or Rules framed either under the proviso to Article 309 of the Constitution or a statute could be given a go-by;

21.6. (f) Whether appointment could be denied by change in the eligibility criteria after the game is played.”



9. It then considered the decision in *K. Manjusree (supra)* and as to whether it was at variance with earlier precedents, and while holding that it was not so, observed as under:

“36. What is important in *K. Manjusree* is that the minimum marks for the interview was fixed after the interviews were over. In that context, it was observed:

(a) that the game was played under the rule that there was no minimum marks for the interview, therefore introduction of the requirement of minimum marks for interview, after the entire selection process consisting of written examination and interview was completed, would amount to changing the rules of the game after the game was played; and

(b) if the interviewers had to proceed on the basis that there were minimum marks to be secured in the interview for being considered for selection and that the marks awarded by them would have the effect of barring or ousting any candidate from being considered for selection, the awarding of marks might have been markedly different.

The above observation (b) lends credence to the submission made before us that a change in the eligibility cut off, after evaluation is done, denies the evaluator an opportunity to modulate the marks for placing the candidate in a category to which he/she, in the view of the evaluator, is entitled to be placed.

37. In the reference order the correctness of the decision in *K. Manjusree* has been doubted on two counts : (a) if the principle laid down in *K. Manjusree* is applied strictly, the High Court would be bound to recruit 13 of the “best” candidates out of the 21 who applied irrespective of their performance in the examination held, which would not be in the larger public interest or the goal of establishing an efficient administrative machinery; and (b) the decision of this Court in



Subash Chander Marwaha was neither noticed in K. Manjusree nor in the decisions relied upon in K. Manjusree.

38. Insofar as the first reason to doubt K. Manjusree is concerned, we are of the view that the apprehension expressed in the referring order that all selected candidates regardless of their suitability to the establishment would have to be appointed, if the principle laid down in K. Manjusree, is strictly applied, is unfounded. Because K. Manjusree does not propound that mere placement in the list of selected candidates would confer an indefeasible right on the empanelled candidate to be appointed.

39. The law in this regard is already settled by a Constitution Bench of this Court in Shankarsan Dash, in the following terms: “7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

40. As regards the second reason (i.e. K. Manjusree, not considering earlier decision in Subash Chander Marwaha, it would be appropriate for us to first examine the facts of Marwaha case. In Subash Chander Marwaha against 15 vacancies in Haryana Civil Service (Judicial Branch) a select list of 40 candidates, who obtained minimum 45% or more marks in the competitive examination, was prepared. The State Government, however, which was the appointing authority,



made only 7 appointments from amongst top seven in the select list. Candidates who were ranked 8, 9 and 13 filed writ petitions in the High Court for a direction to the State Government to fill up the remaining vacancies as per the order of merit in the select list. The State Government contested the petitions by claiming that in its view, to maintain high standards of competence in judicial service, candidates getting less than 55% marks in the examination were not suitable to be appointed as Subordinate Judges. The High Court allowed the writ petition by taking a view that the State Government was not entitled to impose a new standard of 55% of marks for selection as that was against the rule which provided for a minimum of 45% only.

41. After taking note of the relevant extant rules (i.e. Rules 8 and 10) this Court allowed the State's appeal with the following observations:

“10. ... The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. The true effect of Rule 10 ... is that if and when the State Government propose to make appointments of Subordinate Judges the State Government: (i) shall not make such appointments by travelling outside the list, and (ii) shall make the selection for appointments strictly in the order the candidates have been placed in the list published in the Government Gazette. In the present case neither of these two requirements is infringed by the Government. They have appointed the first seven persons in the list as Subordinate Judges. Apart from these constraints on the power to make the appointments, Rule 10 does not impose any other constraint. There is no constraint that the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence.



11. It must be remembered that the petition is for a mandamus. This Court has pointed out in *Rai Shivendra Bahadur v. Nalanda College* that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly misconceived.

12. It was, however, contended by Dr Singhvi on behalf of the respondents that since Rule 8 ... makes candidates who obtained 45% or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55% as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii) ... speaks of “selection for appointment”. Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for mere eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a



minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. That the Punjab Government later on fixed a lower score is no reason for the Haryana Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who got less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened Rule 8 of..." (emphasis supplied)

42. A close reading of the judgment in Subash Chander Marwaha would disclose that there was no change in the rules of the game qua eligibility for placement in the select list. There the select list was prepared in accordance with the extant rules. But, since the extant rules did not create any obligation on the part of the State Government to make appointments against all notified vacancies, this Court opined that the State could take a policy decision not to appoint candidates securing less than 55% marks. With that reasoning and by taking into account that appointments made were of top seven candidates in the select list, who had secured 55% or higher marks, this Court found no merit in the petition of the writ petitioners.

43. On the other hand, in K. Manjusree, the eligibility criteria for placement in the select list was changed after interviews were held which had a material bearing on the select list. Thus, Subash Chander Marwaha dealt with the right to be appointed from the select list whereas K. Manjusree dealt with the right to be placed in the select list. The two cases therefore dealt with altogether different issues. For the foregoing reasons, in our



view, K. Manjusree could not have been doubted for having failed to consider Subash Chander Marwaha.

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52. Thus, in our view, the appointing authority/recruiting competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.

53. The decision in K. Manjusree does not prescribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list.”

10. From a reading of the above, it would be apparent that the Supreme Court found that while in *K. Manjusree (supra)*, the minimum qualifying marks for the interview had been prescribed after the interview had already been conducted, thereby denying an opportunity even to the evaluator to modulate the marks for placing the candidate in appropriate category to which he/she, in the view of the evaluator, is entitled to be placed, in Subash Chander Marwaha (*supra*), the cut-off marks had been prescribed to appoint



the candidates found suitable for the job on offer, and applying the principle that it is for the State Government to decide whether to make appointments to all notified vacancies or not, and that a candidate cannot claim indefeasible rights to appointment only because he/she is placed in the selected list, it was held that the cut off marks can be prescribed.

11. Similarly, while considering the case of ***Hemani Malhotra vs. High Court of Delhi, (2008) 7 SCC 11***, the Supreme Court again emphasized that the object of any process of selection for entering into a public service is to ensure that a person most suitable for the post is selected. Therefore, a certain degree of discretion is necessary to be left to the employer to devise the method/procedure for selection of candidate most suitable for the post, subject to Articles 14 and 16 of the Constitution of India as also rules/statutes governing service and reservation. It was held that ***K. Manjusree (supra)*** and ***Hemani Malhotra (supra)*** do not proscribe setting of benchmarks for various stages of the recruitment process, but mandate that it should not be set after the stage is over, in other words after the game has already been played, however, said rules do not apply with equal strictness to steps for selection. Therefore, where there are no rules or the rules are silent on the subject, administrative instructions may be issued to supplement and fill in the gaps in the rules. It concluded the discussion on the issue raised, in the following terms:

“65. We, therefore, answer the reference in the following terms:

65.1. Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;



65.2. Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

65.3. The decision in K. Manjusree lays down good law and is not in conflict with the decision in Subash Chander Marwaha. Subash Chander Marwaha deals with the right to be appointed from the select list whereas K. Manjusree deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;

65.4. Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;

65.5. Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;

65.6. Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.”

12. Before advertizing to the merit of the case, it is profitable to refer the Rules Madhya Pradesh Legal Aid Officer (Recruitment Rules), 2007 and the relevant extracts of Rule 4 reads as under for ready reference and convince:

4. Appointing Authority and Method of appointment:-



(1) All appointments to the post of District Legal Aid Officer shall be made by the Madhya Pradesh State Legal Services Authority by direct recruitment on the basis of selection.

(2) The candidates shall be selected on the basis of written examination conducted by the Madhya Pradesh State Legal Services Authority and Viva-Voce thereafter:

Provided that the procedure and curriculum for holding examination for selection of the candidates shall be prescribed by the Madhya Pradesh State Legal Services Authority:

Provided further that the Executive Chairman shall be the Chairman of the Selection Committee and shall preside over the Selection Committee.

(3) The examination shall be conducted every year as far as possible on the basis of availability of the vacancies by the Madhya Pradesh State Legal Services Authority for selection of candidates.

13. The Rules of Madhya Pradesh Legal Aid Officer (Recruitment Rules), 2007 does not provide anything about the minimum cut off marks for the interview and the law is settled that after commencement of the recruitment process the eligibility criteria is not to be altered. [*Mohd. Sohrab Khan v. Aligarh Muslim University, (2009) 4 SCC 555 : (2009) 1 SCC (L&S) 917*] Such alteration/change, therefore, deprives a person of the guarantee of equal opportunity in matters of public employment provided by Article 16 of the Constitution. The reference order [*Tej Prakash Pathak v. High Court of Rajasthan, (2013) 4 SCC 540 : (2013) 2 SCC (L&S) 353*] therefore acknowledges this legal position and in clear terms



accepts that “the rules of the game” cannot be changed after commencement of the recruitment process insofar as the eligibility criteria is concerned.

14. Candidates participating in a recruitment process have legitimate expectation that the process of selection will be fair and non-arbitrary. The basis of doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. This doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure. [Sivanandan C.T. case, (2024) 3 SCC 799, para 18]

15. Reliance upon the case of **K. Manjusree (supra)** is quoted below:

“22. ... the interview committee conducted the interviews on 13-3-2006 ... on the understanding that there were no minimum marks for interviews, that the marks awarded by them in the interview would not by itself have the effect of excluding or ousting any candidate from being selected, and that marks awarded by them in the interviews will merely be added to the written examination marks, for preparation of the merit list and selection list. We are referring to this aspect, as the manner of conducting interviews and awarding marks in interviews, by the five members of the interviewing committee would have been markedly different if they had to proceed on the basis that there were minimum marks to be secured in the interview for being considered for selection and that the marks awarded by them would have the effect of barring or ousting any candidate from being considered for selection. Thus, the entire process of selection—from the stage of holding the examination, holding interviews and finalising the list of candidates to be selected—



was done by the Selection Committee on the basis that there was no minimum marks for the interview. *To put it differently the game was played under the rule that there was no minimum marks for the interview.*

27. ... Therefore, *introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible.*

33. ... We may clarify that prescription of minimum marks for any interview is not illegal. *We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. **But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process.** If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."*

(emphasis supplied)

35. *The discernible ratio in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] is that the criterion for selection is not to be*



changed after completion of the selection process, though in absence of rules to the contrary the Selection Committee may fix minimum marks either for written examination or for interview for the purposes of selection. But if such minimum marks are fixed, it must be done before commencement of selection process. This view has been followed by another three-Judge Bench of this Court in Ramesh Kumar v. High Court of Delhi [Ramesh Kumar v. High Court of Delhi, (2010) 3 SCC 104 : (2010) 1 SCC (L&S) 756] wherein the law on the issue has been summarised thus : (SCC p. 109, para 15)

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

16. The Supreme Court in case of ***M.S. Mudhol (Dr.) v. S.D. Halegkar, (1993) 3 SCC 591*** has held as under:

6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or



the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the court should find itself impelled to interfere with the appointment by a writ of *quo warranto* even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of *quo warranto* would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ.

17. After conducting the interview, the respondents illegally introduced cut-off marks of 85 for unreserved and OBC candidates, though no such condition was mentioned in the advertisement. Accordingly, in view of the law laid down in *Tej Prakash* (supra), the action of the respondents in prescribing cut-off marks for unreserved and OBC candidates, despite there



being no such stipulation in the advertisement dated 12.06.2008, is held to be arbitrary and unsustainable in law. The petitioner, being otherwise meritorious and wrongfully denied appointment due to such illegal prescription of cut-off marks, is entitled to appropriate relief. However, considering the fact that respondent No.2 has been continuing in service since the year 2010 and more than sixteen years have elapsed from the date of selection, this Court is of the considered opinion that her appointment ought not to be disturbed at this belated stage, particularly when equities have accrued in her favour by virtue of long continuation in service. The principles laid down by the Hon'ble Supreme Court in ***M.S. Mudhol (supra)*** are fully applicable in the present case. Consequently, while protecting the appointment of respondent No.2, the respondents are directed to accommodate and appoint the petitioner against an available post and if no post is available, create a post for him and give all consequential benefits, including notional seniority. Since the petitioner was denied appointment for no fault attributable to him, he shall also be entitled to 50% back wages. The aforesaid exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

18. The petition is, accordingly, ***disposed of***.

(Anand Singh Bahrawat)
Judge

Ahmad