

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1313 OF 2008
(Arising out of SLP [C] No.18330/2006)

K.Manjusree

... Appellant

Vs.

State of A.P. & Anr.

.... Respondents

With WP [C] Nos.51/2007 and 97/2007 &
SLP [C] No.[CC Nos.7188-89/2007]

J U D G M E N T

R.V. RAVEENDRAN, J.

Leave granted in the special leave petition by K.Manjusree. The selection to ten posts of District & Session Judges (Grade-II) in the Andhra Pradesh State Higher Judicial Service in pursuance of the advertisement dated 28.5.2004 is the subject matter of this appeal by special leave and writ petitions.

2. Selection and appointments to the post of District & Session Judges (Grade II) are governed by the Andhra Pradesh State Higher Judicial Service Rules 1958 (Rules for short). The said Rules provide that one-third of the total number of permanent posts of District and Session Judges (Grade II) should be filled by direct recruitment. It also prescribes the qualifications for appointment, but does not prescribe any procedure for selection. As the Rules only prescribe the qualifications for appointment but did not lay down the selection procedure, the manner and method of selection is decided by the High Court, for every selection, as and when the vacancies are notified for selection.

3. The Government of Andhra Pradesh issued an advertisement dated 28.5.2004 inviting applications for appointment to the following ten posts of District & Sessions Judges (Grade II) in the A.P. State Higher Judicial Service by direct recruitment :

Open category	: 4 (1 Woman)
Backward Class – Group A	: 1 (Woman)
Backward Class – Group B	: 1 (Woman)
Scheduled Caste	: 2 (1 Woman)
Scheduled Tribe	: 1

The advertisement stated that a written examination followed by an interview will be held for selection to the above posts. The last date for receipt of applications was 15.6.2004. In all 1637 applications were received. On scrutiny 1516 applicants were eligible to take the written examination.

4. The Full Court of Andhra Pradesh High Court has authorized its Chief Justice to constitute Committees for the convenience of administration. The resolutions of the Full Court containing the guidelines relating to the functioning of the High Court have been compiled in the form of standing orders. SO 2.13 enumerates the matters to be dealt with by the Full Court. SO 2.14 enumerates the matters to be dealt with by the Administrative Committee. Recruitment of District Judges is a matter to be dealt with by the Administrative committee under SO 2.14. The decision/minutes of the Administrative committee in regard to recruitment of District Judges are thereafter placed before the Full Court for its consideration under SO 2.13.

5. The Administrative committee by its resolution dated 30.11.2004 decided the method and manner of selection. It resolved to conduct the

written examination for the candidates for 75 marks and oral examination for 25 marks. It also resolved that the minimum qualifying marks for the OC, BC, SC and ST candidates shall be as prescribed earlier. As per its direction, the written examination was held on 30.1.2005 and 1026 candidates appeared for the examination. The results were declared on 24.2.2005 and 83 candidates were successful in the written examination. Due to the pendency of some litigation, interviews could not be held immediately. A committee of five Judges was constituted for interviewing the candidates and interviews were held in March 2006. Thereafter, the marks obtained by the 83 candidates in the written examination and in the interview were aggregated and a consolidated merit list of the 83 candidates was prepared in the order of merit on the basis of the aggregate marks. It contained (i) the registration number, (ii) the names of the candidates, (iii) reservation category, (iv) marks secured in the written examination out of 100 marks, (v) marks secured in the interview out of 25 marks, and (vi) the total marks secured in the written examination and interview out of 125. Thereafter, five more merit lists in respect of categories BC-A, BC-B, BC-D, SC and ST were prepared. On the basis of the said lists, the Interview Committee finalized the following list of candidates to be recommended for

appointment as per merit and reservation, and submitted to the Administrative committee with a report dated 3.4.2006 :

DISTRICT AND SESSIONS JUDGES GRADE-II EXAMINATION
(LIST OF CANDIDATES TO BE RECOMMENDED FOR APPOINTMENT)

Sl. No.	Regn. Number	Name of the candidate	Category	Written Exam. (out of 100)	Interview (out of 25)	Total marks (for 125)
01	1859	Smt. Venkata Jyothrimayee	OC	72	9.6	81.6
02	1775	Smt. C.Sumalatha	OC	61	19.4	80.4
03	1073	Smt.k.Manju Sree	OC	68.5	10.6	79.1
04	1694	A.Hari Haranatha Sarma	OC	64.5	14.4	78.9
05	1009	Smt. G.Anupama Chakravarthy	BC(A)	51	8.6	59.6
06	1590	Smt. V.B.Nirmala Geethamba	BC(B)	59.5	16.4	75.9
07	1059	M.Lakshman	BC(D)	59	8.2	67.2
08	1176	BSV. Prakash Kumar	SC	49	10	59
09	2336	Smt. Girija M.Priyadarshani	SC	48	8.4	56.4
10	1220	N.Tukaramji	ST	36.5	11.4	47.9

6. The Administrative committee considered the report, the merit list and list of recommended candidates proposed by the interview and by resolution dated 4.4.2006 approved the selection of the said ten candidates and directed the said 'select list' be placed before the Full Court on 6.4.2006 for its consideration.

7. The Full Court considered the resolutions of the Administrative committee dated 30.11.2004 and 4.4.2006 and the record of selection. The Full Court impliedly approved the resolution dated 30.11.2004. But it did not agree with the selection list prepared by the Interview committee and approved by the Administrative committee by resolution dated 4.4.2006.

The Full Court authorized the Chief Justice to constitute a committee of Judges for preparing a fresh list of candidates to be recommended for appointment of District & Session Judges (Grade II). Accordingly, the Chief Justice appointed a sub-committee of two Judges on 7.4.2006. The said sub-committee was of the view that the candidates should be evaluated with reference to written examination marks of 75 and interview marks of 25 as per the resolution dated 30.11.2004, instead of being evaluated with reference to written examination marks of 100 and interview of 25, thereby varying the prescribed ratio between written examination marks and interview marks from 3:1 to 4:1. Therefore, it scaled down the marks obtained by the candidates in the written examination with reference to a total of 100, in proportion to a maximum marks of 75. By adding the interview marks of 25, the total marks obtained by the candidates with reference to a total of 100 (as against 125) were recalculated. The sub-committee was also of the view that apart from applying the minimum marks for the written examination for determining the eligibility of the candidates to appear in the interview the same cut off percentage should be applied for interview marks, and those who fail to secure such minimum marks in the interview should be considered as having failed. As the minimum percentage for passing the written examination was 50% for open

category, 40% for backward classes and 35% for SC and ST, only those candidates who secured the minimum of 12.5 marks (open category), 10 marks (BC candidates) and 8.75 marks (SC & ST candidates) were considered as having succeeded in the interview. Consequently, only 31 candidates were found to have qualified both in the written examination and interview and a revised merit list was prepared pruned down to 31 successful candidates. On that basis, nine candidates were recommended for appointment as follows :

**DISTRICT AND SESSIONS JUDGES GRADE –II EXAMINATION, 2005
(LIST OF CANDIDATES TO BE RECOMMENDED FOR APPOINTMENT)**

Sl. No.	Regd. No.	Name of the candidate	Category	Marks in Written Exam (out of 75)	Interview (out of 25)	Total Marks (out of 100)
1	1775	Smt.C. Sumalatha	OC	45.75	19.4	65.15
2	1117	Smt. G.Radharani	OC	46.87	16	62.87
3	1694	A.Hari Haranadha Sarma	OC	48.37	14.4	62.77
4	1590	Smt. V.B.Nirmala Geethamba (BC.B)	OC (W)	44.62	16.4	61.02
5	1186	K.Sreenivas	BC.D	38.25	12.6	50.85
6	1072	Smt.P. Manjula Devi	BC.B(W)	33.75	13.2	46.95
7	1176	BSV. Prakash Kumar	SC	36.75	10	46.75
8	1151	Smt. M.Renuka	BC.A(W)	30	14	44
9	1220	N.Tukaramji	ST	27.37	11.4	38.77

One vacancy relating to 'Scheduled Caste (Women)' was left unfilled as there was no qualified candidate.

8. The said report and the selection list were considered by the Full court on 28.4.2006 and it was resolved to accept the names of the aforesaid nine candidates in the said list to the State Government for appointment.

The second list contained the names of 5 out of 10 candidates recommended in the first list (Sl. Nos.2,4,6,8 and 10 in the first list were Sl. Nos.1,3,4,7 and 9 in the second list). Five candidates in the first list (Sl. Nos.1,3,5,7 and 9 in the first list) got eliminated as they failed to secure the minimum marks in the interview and four fresh candidates entered the second list (Sl. Nos.2,5,6 and 8 in the second list). No candidate was selected under the category SC (Woman) as no candidate of that category secured the minimum marks in the interview.

9. Two of the candidates whose names were found in the first list and who got excluded in the second list namely K.Manjusri (Sl.No.3) and M.Lakshman (Sl.No.7) filed W.P.Nos.10061/2006 and 10062/2006 in the High Court praying for a declaration that the action of the High Court in preparing the selection list by prescribing minimum qualifying marks for the interview was arbitrary and illegal and seeking a direction to the High Court to redraw the selection list without adopting minimum qualifying marks for the interview. The said writ petitions were dismissed by the High Court by a common judgment dated 30.10.2006.

Civil Appeal arising from SLP [C] No.18330/2006

10. This appeal is by K.Manjusri whose name was found in the first list. She contended that the minimum marks for interview not having been prescribed either under the rules or by the resolution dated 30.11.2004 by the Administrative committee, the action of the Full Court altering the norms for selection by introducing minimum marks for interview, after completion of the selection process, would amount to changing the rules of the game, not only after the game was started but after the game was played.

11. Several applications for impleadment filed by the selected/non-selected candidates have been ordered to be heard along with the main matter. IA No.2 was filed by A.Hariharanatha Sarma, N.Thukaramji, V.B.Nirmala Geethamba and BSV Prakash Kumar whose names were found in both the first and second lists. IA Nos.3 and 5 are filed by G.Anupama Chakravarthy and P.Venkata Jyothirmai who were at Sl.Nos.5 and 1 in the first list (whose names were omitted in the second list). IA No.4 is filed by G.Radha Rani, K.Sreenivas and M.Renuka whose names are found in the second list at Sl.Nos.2,,5,6 and 8. They were also heard. While the

applicants in IA Nos.2,3 and 5 have supported the contentions urged by the appellant, the applicants in IA No.4 have contended to the contrary.

SLP [C] No.[CC Nos.s7188-89/2007]

12. One E.Thirumala Devi whose name is found neither in the first list nor in the second list has filed this SLP. She was not a party in the writ petition before the High Court and has filed this SLP with an application seeking permission to file the SLP and for condoning the delay of 192 days in filing the SLP. She has contended that applying the criterion of minimum qualifying marks in the interview, without notifying the same to the candidates was violative of principles of natural justice. She has contended that the selection procedure was illegal and therefore the entire selection process should be scrapped and High court should be directed to hold fresh selections.

Writ Petition [C] No.51/2007

13. The petitioner Girija M.Priyadarsini, (whose name was in the first list of selected candidates, under the category 'SC- Woman') has contended that minimum qualifying marks could not be applied for interviews. She further

contended that even if resolution dated 30.11.2004 of the Administrative committee is construed as prescribing minimum marks for interview, such minimum marks would be applicable only in regard to open category, backward classes and scheduled Tribes, but not to Scheduled Castes. She submits that the resolution dated 30.11.2004 merely adopts what was prescribed earlier, that is what was resolved earlier on 24.7.2001 and 21.2.2002. She points out the said resolutions did not prescribe any minimum marks in respect of Scheduled Caste candidates; and that therefore, she was entitled to be selected, to the post reserved for 'Scheduled Caste (Woman).

Writ Petition [C] No.97/2007

14. The petitioner Kaki Shanti Kumar is a Scheduled Caste candidate. He was not one of the selected candidates either in the first list or in the second list. According to him, having regard to the policy of the State Government contained in the notifications dated 9.1.2004 and 17.2.2005, if any post earmarked for 'Scheduled Caste-Woman' cannot be filled for want of suitable candidate, such post should be filled by a Scheduled Caste-male candidates, by transferring the post to SC (General). He claims that the post

left unfilled earmarked form 'SC – Woman' should have been treated as 'SC – General' vacancy and he ought to have been selected for that post.

Questions for consideration

15. On the contentions urged, the following questions arise for consideration :

(i) What was the procedure (method and manner of selection) prescribed by the Administrative committee for filling the posts advertised on 28.5.2004?

(ii) Whether the list prepared by the Interview Committee and approved by the Administrative committee suffered from any error, irregularity or illegality?

(iii) Whether the procedure adopted by the Full Court in preparing the fresh selection list by applying the requirement of minimum marks for interview also, is legal and valid ?

Re : Question (i)

16. The Rules did not prescribe any procedure for selection. When the posts were advertised, the only criterion for selection that was mentioned was that the selection will be by holding a written examination followed by an interview. The manner of holding written examinations and interviews, the marks for written examination and interview, whether the candidates should secure any minimum marks in the written examination and/or interview, were all yet to be decided.

17. As per the practice followed by the High Court (standing orders referred to above) the entire process of recruitment of District Judges was to be dealt with by the Administrative Committee and the decisions of the Administrative Committee were placed before the Full Court for its consideration and approval. The Administrative Committee at its meeting held on 30.11.2004 considered the method and manner of recruitment to be adopted in regard to the said recruitment and took the following three decisions : (i) that the written examination will be held on 30.1.2005 simultaneously at four centres; (ii) that the marks for the written examination shall be 75 and for oral examination 25; and (iii) that the “minimum qualifying marks for OC/BC/SC/ST shall be as prescribed earlier”. The first two decisions are self contained and clear. In regard to the third decision, it becomes necessary to ascertain what was the minimum qualifying marks for OC/BC/SC/ST which had been prescribed earlier. There was no general prescription of guidelines or norms or criteria for holding the written examination and interview marks therefore. The procedure to be applied in regard to each recruitment was laid down separately by the Administrative Committee as and when the recruitment was done. When the Administrative Committee decided on 30.11.2004 that

the minimum qualifying marks for OC/BC/SC/ST shall be as prescribed earlier it obviously referred to what was prescribed when the previous recruitment was made in 2001-2002. The High Court has produced the relevant minutes relating to such earlier recruitment. It is seen that the Administrative committee had laid down the following method and manner for the recruitment of six posts of District & Session Judges (Grade II) by its resolution dated 24.7.2001 (approved by the Full court on 16.8.2001) :

“Considered and resolved that the mode of examination be by way of written test for 75 marks and oral interview for 25 marks and the minimum qualifying marks for open category is 50 marks, for Backward Classes (B.Cs) 40 marks and Scheduled Tribes (S.Ts) 35 marks in the written examination and the same ratio will apply for oral interview also.”

The minimum qualifying marks for the written examination was subsequently amended/corrected by Administrative committee at its meeting held on 21.2.2002 (approved by Full Court on 6.3.2002) as follows :

“Considered and resolved to correct the typographical error occurred in the resolution of the Administrative Committee Meeting held on 24.7.2001 mentioning 50 marks, 40 marks and 35 marks instead of 50 percent, 40 percent and 35 percent **i.e. the minimum qualifying marks for Open Category is 50 percent, for Backward classes (B.Cs) 40 percent and Scheduled Tribes (S.Ts) 35 percent in the written examination.**”

18. Let us try to analyse and find out the combined effect of the resolutions dated 24.7.2001 and 21.2.2002. The resolution dated 24.7.2001

prescribed the following marks for the written examination and the interview:

(a) The marks for written examination was 75 marks and the minimum qualifying marks was 50 marks for open category, 40 marks for backward classes and 35 marks for Scheduled Tribes;

(b) The marks prescribed for interview was 25 marks and the minimum qualifying marks for interview was 16.67 marks for open category, 13.33 marks for Backward Classes, and 11.67 marks for Scheduled Tribes (by applying the ratio that was prescribed for written examination).

The resolution dated 24.7.2001 was amended on 21.2.2002 and it was decided to have only minimum qualifying marks in the written test and not for the oral examination. This is evident from the subject placed for consideration on 21.2.2002 and the resolution on the subject. The subject for consideration was : “Minimum qualifying marks in the written examination”. The resolution stated that the minimum qualifying marks was 50% for open category, 40% for Backward Classes and 35% for Scheduled Tribes in the written examination”. It did not prescribe any minimum for the

interviews. Nor was it understood as prescribing any minimum marks for the interview. That the Administrative committee and Full Court intended and in fact proceeded on the basis that there would be no minimum marks for the interview is evident from the fact that in regard to recruitment of 6 posts in 2001-2002, the minimum qualifying marks of 50%, 40% and 35% were applied only for the written examination and no minimum qualifying marks were applied in respect of interviews. We are informed that for the 2001-2002 selections, the procedure adopted was that all candidates who passed the written examination by securing the minimum marks were called for interview and the interview marks were added to the written examination marks for the purpose of preparing the merit list and for the purpose of selection. No minimum marks were applied for interview and no candidate was excluded on the ground of not securing any minimum marks in the interview. It is also not in dispute that even in the earlier selections (held prior to 2001-2002) the High Court had applied minimum marks for interviews. Therefore the only inference is that when the Administrative Committee resolved on 30.11.2004 that the minimum qualifying marks for OC/BC/SC/ST shall be as prescribed earlier what it meant and provided was that there will be minimum qualifying marks for the written examination only, that is 50% for OC, 40% for BC and 35% for ST. It may however be

mentioned that though minimum of 35% was prescribed only for ST candidates in regard to 2001-2002 selections, that percentage was adopted and applied in the written examination for both SC and ST candidates by the resolution dated 30.11.2004.

19. The Administrative Committee of the High court (Chief Justice and five senior Judges) as also the Interview Committee consisting of five Judges (the Chief Justice and four other Judges) all along intended, understood and proceeded on the basis with reference to the current selection that minimum percentage was applicable only to written examination and not for interviews. This is evident from the manner in which interviews were conducted and merit list and selection list were prepared by the Interview Committee and approved by the Administrative Committee. This shows that the Interview Committee conducted the interviews on 13th, 14th, 16th, 17th, 18th, 20th, 24th and 31st of March, 2006 on the understanding that there were no minimum marks for interviews, that the marks awarded by them in the interview will 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. 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 finalizing the list of candidates to be selected - was done by the Selection committee on the basis that there was no minimum marks for interview. To put it differently the game was played under the rule that there was no minimum marks for the interview.

20. Shri P. P. Rao, learned senior counsel appearing on behalf of the High Court submitted that the Resolution dated 21.2.2002 merely corrected a typographical error in the Resolution dated 24.7.2001, regarding minimum marks relating to written examination, and the last portion of the Resolution dated 24.7.2001, relating to interviews, (that is, the portion reading “and the same ratio will apply for oral interview also”) remained unaltered. According to him, when the Administrative Committee passed the Resolution dated 21.2.2002 in regard to the earlier selection and again passed the resolution dated 30.11.2004 in regard to the current selection, to

conduct the examination with minimum qualifying marks as prescribed earlier, the intention was to have minimum marks both for written examination and the interview. We have already examined the resolutions dated 24.7.2001 and 21.2.2002 and held that the combined effect was to apply minimum percentage to only written examination and not for the interview. However, to test the correctness of his contention, we asked the learned counsel for the High Court to explain why the 2001-2002 selections were done without applying minimum marks for interview. He was not in a position to explain why the 2001-2002 selections were made without applying any minimum marks for the interviews, if the resolutions dated 24.7.2001 and 21.2.2002 had really provided that there should be a minimum marks for the interview. The only explanation was that it was due to some oversight or mistake. The said explanation is neither satisfactory nor valid.

Re : Question (ii)

21. The merit list and selection list prepared by the Interview Committee and approved by the Administrative Committee, on the basis that there was

no minimum marks for interview, however, contained one error. The inter se merit of the candidates were prepared with reference to a total of 125 marks, comprising 100 for the written examination and 25 for the interview. But the Administrative Committee had clearly resolved on 30.11.2004 that evaluation of performance should be with reference to a maximum marks of 75 for written examination and 25 for interview. The written examination was however, conducted with reference to a question paper set for a maximum of 100 marks. The interviews, of course, were held with reference to maximum of 25 marks. Therefore, it was necessary to scale down the marks secured by the candidates in the written examination (with reference to a maximum of 100 marks) proportionately to arrive at the marks with reference to a maximum of 75 marks so that the ratio of maximum marks in written examination and interview would be 3:1. If the maximum marks for the written examination was 100 and for the interview was 25, then the ratio between the marks for written examination and interview would be 4:1, thereby altering the prescribed marks, after the selection process had begun. We are, therefore, of the view that the first list requested an arithmetical correction, that is, scaling down of the written examination marks to three-fourth of what was secured by them with reference to a maximum of 100

marks, so that the ratio of 3:1 could be maintained in respect of the marks for written examination and interviews.

Re : Question (iii)

22. When the Administrative Committee placed the merit lists and Selection List before Full Court, apparently objections were raised on two grounds. One related to the failure to provide the minimum of 50%, 40% and 35% marks for interviews, on the interpretation of resolution dated 30.11.2004 read with earlier resolutions dated 24.7.2001 and 21.2.2002. The second objection was that even though the Administrative Committee had resolved that the marks for written examination would be 75 and interview would be 25, at the time of tabulating the marks, the marks secured (out of 100 marks) in the written examination had been taken into account without scaling it down with reference to a maximum of 75 marks. The Full Court therefore, appointed a Sub-Committee of two Judges to examine the matter and prepare a fresh merit list and selection list. The Sub-Committee examined the matter and submitted a revised merit list by incorporating two changes. Firstly, while tabulating the marks, it scaled down the marks secured by the candidates in the written examination with reference to a maximum of 100 marks, in proportion to a maximum of 75 marks so that the final marks were with reference to a base of 75 marks for written examination and 25 marks for interview as resolved on 30.11.2004.

Secondly, it applied the minimum percentage of 50%, 40% and 35% for OC, BC, SC/ST even in regard to interviews and consequently, eliminated those who secured less than the minimum in the interview from the process of selection. The final selection list was prepared with reference to the fresh merit list prepared by incorporating the said two changes.

23. As far as the first change is concerned, we have already held that scaling down is unexceptional as it is in consonance with the criteria decided by the Administrative Committee on 30.11.2004 before commencing the selection process.

24. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for

written examination and not for the interviews. 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. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them – *P. K. Ramachandra Iyer v. Union of India* – 1984 (2) SCC 141, *Umesh Chandra Shukla v. Union of India* – 1985 (3) SCC 721, and *Durgacharan Misra v. State of Orissa* – 1987 (4) SCC 646.

25. In *Ramachandra Iyer* (supra), this Court was considering the validity of a selection process under the ICAR Rules, 1977 which provided for minimum marks only in the written examination and did not envisage obtaining minimum marks in the interview. But the Recruitment Board (ASRB) prescribed a further qualification of obtaining minimum marks in the interview also. This Court observed that the power to prescribe minimum marks in the interview should be explicit and cannot be read by implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm. This Court held that as there was no power under the rules for the Selection Board to prescribe the additional qualification of securing minimum marks in the interview, the

restriction was impermissible and had a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidates at written test and interview. This Court observed :

“Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtaining minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by the ASRB on the ground that he has not obtaining qualifying marks at viva voce test. This was impermissible and contrary to rules and the merit list prepared in contravention of rules cannot be sustained.”

26. In *Umesh Chandra (supra)*, the scope of the Delhi Judicial Service Rules, 1970 came up for consideration. The rules provided that those who secured the prescribed minimum qualifying marks in the written examination will be called for viva voce; and that the marks obtained in the viva voce shall be added to the marks obtained in the written test and the candidate's ranking shall depend on the aggregate of both 27 candidates were found eligible to appear for viva voce on the basis of their having secured the minimum prescribed marks in the written examination. The final list was therefore, expected to be prepared by merely adding the viva voce marks to the written examination marks in regard to those 27 candidates.

But the final list that was prepared contained some new names which were not in the list of 27 candidates who passed the written examination. Some names were omitted from the list of 27 candidates who passed the written examination. It was found that the Selection Committee had moderated the written examination marks by an addition of 2% for all the candidates, as a result of which some candidates who did not get through the written examination, became eligible for viva voce and came into the list. Secondly, the Selection Committee prescribed for selection, a minimum aggregate of 600 marks in the written examination and viva voce which was not provided in the Rules and that resulted in some of the names in the list of 27 being omitted. This Court held neither was permissible. Dealing with the prescription of minimum 600 marks in the aggregate this Court observed :

“There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. It is stated in paragraph 7 of the counter-affidavit filed in Writ Petition 4363 of 1985 that the Selection Committee has inherent power to select candidates who according to it are suitable for appointment by prescribing the minimum marks which a candidate should obtain in the aggregate in order to get into the Delhi Judicial Service..... But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service. The prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an addition requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by clause (6) of the Appendix..... We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different

from the minimum already prescribed by the Rules in its Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal.”

27. In *Durgacharan Misra* (supra), this Court was considering the selection under the Orissa Service Rules which did not prescribe any minimum qualifying marks to be secured in viva voce for selection of Munsifs. The rules merely required that after the viva voce test the State Public Service Commission shall add the marks of the viva voce test to the marks in the written test. But the State Public Service Commission which was the selecting authority prescribed minimum qualifying marks for the viva voce test also. This Court held that the Commission had no power to prescribe the minimum standard at viva voce test for determining the suitability of candidates for appointment of Munsifs.

28. In *Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve* – 2001 (10) SCC 51, this Court observed that ‘the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.’ In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the

game has been played and the results of the game were being awaited. That is unacceptable and impermissible.

29. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want 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.

30. It was submitted that Administrative Committee and Interview Committee were only delegates of the Full Court and the Full Court has the absolute power to determine or regulate the process of selection and it has also the power and authority to modify the decisions of the Administrative Committee. There can be no doubt about the proposition. The Administrative Committee being only a delegate of the Full Court, all decisions and resolutions of Administrative Committee are placed before the Full Court for its approval and the Full Court may approve, modify or reverse any decision of the Administrative Committee. For example when the resolution dated 30.11.2004 was passed it was open to the Full Court, before the process of selection began, to either specifically introduce a provision that there should be minimum marks for interviews, or prescribe a different ratio of marks instead of 75 for written examination and 25 for interview, or even delete the entire requirement of minimum marks even for the written examination. But that was not done. The Full Court allowed the Administrative Committee to determine the method and manner of selection

and also allowed it to conduct the examination and interviews with reference to the method and manner determined by the Administrative Committee. Once the selection process was completed with reference to the criteria adopted by the Administrative Committee and the results were placed before it, the Full Court did not find fault with the criteria decided by the Administrative Committee (as per resolution dated 30.11.2004) or the process of examinations and interviews conducted by the Administrative Committee and Interview Committee. If the Full Court had found that the procedure adopted in the examinations or interviews was contrary to the procedure prescribed, the Full Court could have set aside the entire process of selection and directed the Administrative Committee to conduct a fresh selection. The resolution dated 30.11.2004 was approved. It did not find any irregularity in the examination conducted by the Administrative Committee or the interviews held by the Selection Committee. The assessment of performance in the written test by the candidates was not disturbed. The assessment of performance in the interview by the Selection Committee was not disturbed. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the

Full Court approved the resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible.

31. The Division Bench of the High Court while considering the validity of the second list, has completely missed this aspect of the matter. It has proceeded on an erroneous assumption that the resolution dated 30.11.2004 of the Administrative Committee prescribed minimum marks for interviews. Consequently, it erroneously held that the Administrative Committee had acted contrary to its own resolution dated 30.11.2004 in not excluding candidates who had not secured the minimum marks in the interview and that the Full Court had merely corrected the wrong action of the Administrative Committee by drawing up the revised merit list by applying marks for interview also. The decision of the Division Bench therefore, cannot be sustained.

CONCLUSION

32. We therefore, find that the judgment of the Division Bench of the High Court has to be set aside with a direction to the AP High Court to redraw the merit list without applying any minimum marks for interview. The merit list will have to be prepared in regard to 83 candidates by adding the marks secured in written examination and the marks secured in the interview. Thereafter, separate lists have to be prepared for each reservation category and then the final selection of 10 candidates will have to be made. The scaling down of the written examination marks with reference to 75 instead of 100 is however, proper.

33. In view of our said decision, WP(C) No.51/2007 and WP(C) No.97/2007 do not survive for consideration. As a candidate is available under the category of SC (Woman) and she will be selected, the question of considering whether that post should be transferred to SC (General) does not arise.

34. The SLP by Thirumala Devi is not maintained. She was not a selected candidate, either in the first list or second list. She did not challenged the

process of selection by filing a writ petition. She was not a party to the writ petitions. She is in no way aggrieved as she will not be selected, by adopting either method. There is also a delay of 190 days. Therefore, the said SLP is liable to be rejected on the ground of delay and on the ground it is not maintainable.

35. In view of the above, we dispose of the matter as follows :

(i) The application for impleadment (IAs 2, 3, 4 & 5 filed in SLP(C) No.18330/2006) are allowed.

(ii) The civil appeal filed by K. Manjusree is allowed and the judgment of the High Court is set aside. The High Court is directed to prepare a fresh merit list in regard to 83 candidates with reference to their marks in written test and interview without applying any minimum marks for interviews and thereafter finalise the selections in accordance with law.

(iii) The appointments of five candidates in pursuance of our interim order need not be disturbed. The said five candidates will find a place in the selection list even when it is redone, though their ranks/reservation category may vary. Their rank and seniority will depend upon the fresh selection list

of ten candidates to be drawn and not on the appointment made in pursuance of the interim order.

(iv) WP(C) No.51/2007 and WP(C) No.97/2007 are dismissed.

(v) The application for permission to file SLP by Thirumala Devi is rejected. As a consequence SLP (CC) No.7188-89/2007 is rejected.

.....CJI
[K. G. Balakrishnan]

.....J
[R. V. Raveendran]

.....J
[J. M. Panchal]

New Delhi;
February 15, 2008.