

DR. KAVITA KAMBOJ VS.

HIGH COURT OF PUNJAB AND HARYANA & ORS.

Citation: Civil Appeal Nos. 2179-2180 of 2024; 2024 INSC 192

Date of Order: 13th February 2024

Bench: CJI Dr. D.Y. Chandrachud, Justice JB Pardiwala, Justice Manoj Misra

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FACTS

Haryana Superior Judicial Service Rules enforced on 10th January 2007 regulates recruitment and service conditions. Rule 6 mentions about recruitment to be done from three sources i.e., 65% by promotion on basis of principle of merit cum seniority and a suitability test, 10% by Limited Departmental Competitive Examination (LDCE) and 25% by direct recruitment on basis of written test & viva voce conducted by the High Court. Rule 8 mentions the procedure for promotion i.e., written exam of 75 marks and viva voce of 25 marks and examine legal

knowledge and efficiency in legal field; additionally take into consideration annual confidential reports of preceding five years.

On 29th January 2013, the High Court clarified that in terms of Rule 8(a) an aggregate of 50 marks is required to be considered for promotion. But on 11th November 2021 a resolution was passed in meeting of recruitment and promotion committee, it was decided that to be eligible for promotion, a candidate has to secure 50% marks in written exam and 50% marks in viva voce. The said resolution was approved by Full Court at a meeting on 30th November 2021. On 24th August 2022, the process of filling up the vacancies was initiated and it was communicated to 39 candidates. The written exam and viva voce was conducted, and 13 names were recommended for promotion on 23rd February 2023.

On 2nd March 2023, clarification was sought by Chief Secretary of Government of Haryana from Registrar (judicial) about criteria of merit & suitability test. The State Government sought clarification regarding certain senior judicial officers who were not recommended despite their seniority. The High Court responded that appointments were made strictly following Rule 6(1)(a), which prescribes merit-cum-seniority. The State Government decided not to accept the High Court's recommendations, claiming that the "settled procedure" under Article 233 read with Article 309 and the Rules had not been followed. Writ petitions were filed both by the recommended candidates seeking implementation of the recommendations and by unsuccessful candidates challenging the new criteria requiring 50% marks in both the written test and viva voce separately. The High Court, in its judgment dated 20th December 2023, directed the State of Haryana to accept its recommendations. The matter was then appealed to the Supreme Court.

RULE

Table of cases cited

Case	Principle cited for
All India Judges' Association v. Union of India, (2002) 4 SCC 247 [2 nd AIJA case]	the suitability of candidates for promotion as District Judges from amongst in-service candidates is required to be adjudged. Apart from the requirement of conducting a suitability test and a viva

	voce, Rule 6(1)(b) read with Rule 8 requires the ACRs of the preceding five years to be taken into consideration.
Sivanandan C T v High Court of Kerala 2023 SCC Online SC 994	Where a breach of the principles of natural justice is alleged for a failure to provide a hearing, an additional layer has been provided in decisions of this Court to the effect that such a breach will not necessarily invalidate the action in the absence of prejudice to the candidates.
Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159	In the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied.
Taniya Malik v. Registrar General of the High Court of Delhi, (2018) 14 SCC 129	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.
Sant Ram Sharma V. State of Rajasthan, 1967 SCC OnLine SC 16	Consideration of merit along with seniority in the procedure of promotion is not violative of Article 14 and 16 of the Constitution.
KH Siraj V. High Court of Kerala, (2006) 6 SCC 395	Even though Rule 7 was silent on the question of minimum marks for oral examination, it was open to the High Court to supplement the Rules.
Chandra Mohan v. State of Uttar Pradesh, (1967) 1 SCR 77	The duty to consult is so integrated with the exercise of the power that the power can be exercised only in consultation with the person or persons designated therein.
State of Haryana v. Under Prakash Anand HCS, (1976) 2 SCC 977	The vesting of complete control over the subordinate Judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State.

SUBMISSIONS

Unsuccessful candidates

The unsuccessful candidates, while referring to the *second AIJA* case, argued that selecting a candidate for promotion from in-service candidates should be based on their track record as

reflected in the annual confidential reports. They contended that the new criteria discriminated against candidates seeking promotion in the 65% quota compared to those seeking in the 10% quota, as no cut-off was prescribed. Similarly, they argued that the new requirements were disclosed only after the process was complete, leaving candidates unaware of the changed criteria. This, they claimed, violated the principle of fairness and good governance as laid down in the case of *Sivanandan CT*. Additionally, they pointed out that the longstanding practice requirement should have been made through an amendment in rules or regulations. They also mentioned that the High Court was informed of 38 vacancies but only 13 candidates were selected, which they felt infringed upon the public interest.

State of Haryana

The state of Haryana contended that the criteria for selection and modifying its resolution should be determined after consulting the state government, based on the principles outlined in Articles 233, 234, and 235. They further argued that there is inherent subjectivity in setting minimum marks for interviews. Additionally, it was clarified that the government was not informed of the change in criteria.

High Court

The High Court argued that the ways to test merit and suitability is mentioned in rule 8 and the high court has administrative power under article 233 and 235 to supplement the rules whose they are silent. Referring to the *second AIJA* case, it was argued that there are 3 categories in recruitment i.e., direct, limited competitive exam and promotional. Since they are distinct and have valid classifications, the argument of discrimination is baseless. It was argued that no harm was done to the candidates by not declaring the minimum eligibility cut-off as it does not change the way of preparation. The high court stated that they have sole power in the matters of appointment in the District Judiciary.

ANALYSIS

All India Judges Association

The Hon'ble Court analysed the *AIJA* case, which provided historical context for the rules governing the recruitment to Higher Judicial Services. It was determined that there are three distinct recruitment methods for the Higher Judicial Service, each serving a unique purpose.

Although the overarching goal is to fill vacancies, these methods cater to candidates at different career stages, necessitating different treatment and evaluation. Therefore, in-service candidates seeking promotion cannot be compared to candidates pursuing direct recruitment or those participating in the LDCE. Referring to the case of *Lila Dhar* and *Taniya Malik*, the Hon'ble Court acknowledged the significance of the viva voce examination in such cases. Since the candidates are not fresh graduates but are already practicing law and seeking a position in the Higher Judicial Services, it is reasonable to expect them to possess legal knowledge. Consequently, the High Court's decision to maintain minimum qualifying marks for the viva voce examination was not wrong.

Supplementing rules

The Hon'ble court analysed rules 6(1)(a) and 8 and observed that these rules are silent on how merit and suitability are determined. The case of *Sant Ram Sharma* was referred to, which held that considering merit along with seniority for promotion is not a violation of Article 14 and 16. It was further held that since rules 6(1)(a) and 8 are completely silent on prescribing minimum eligibility, administrative instructions can modify the terms. Although these instructions do not amend or supersede the rules, they can simply fill the gaps. Referring to the case of *KH Siraj*, it was held that the high court can prescribe minimum qualifying marks.

Sivanandan CT

The Supreme Court distinguished this case from *Sivanandan C T*, where the statutory rules had specifically indicated that the merit list would be prepared based on aggregate marks, and the scheme had explicitly stated there would be no separate cut-off for the viva voce. In the present case, the Rules were silent, and the High Court had the authority to modify its earlier Resolution.

Article 233, 234 & 235 of the Constitution of India

The Hon'ble Court analysed the Articles 233, 234 & 235 in depth by referring to various landmark judgments such as the cases of *Chandra Mohan* and *Inder Prakash Anand HCS*, reaffirmed that in cases of appointment to District Court, the High courts have the sole power.

Furthermore, the Hon'ble Court clarified that the High court could issue administrative instructions in cases where the rules are silent, but the said instructions have to be through Full

Courts resolution. It was held that the State Government exceeded its authority by referring the issue to the Union Government when they could have consulted with the respective High Court as per the Constitution.

CONCLUSION

The Supreme Court concluded that the State Government was in error in finding fault with the process followed by the High Court. The Court affirmed the High Court's judgment and dismissed the appeals. The Court upheld the High Court's authority to prescribe minimum eligibility requirements of 50% in both the written test and viva voce independently for candidates seeking promotion to the Higher Judicial Service.

Chambers of Vanshika Mittal