

(2010) 12 AP CK 0008

Andhra Pradesh High Court

Case No: Writ Petition No's. 7493, 8089, 8465, 12741, 13541, 14157, 16060, 16197 and 17217 of 2010

Lanka Annapurna Sree and
Others

APPELLANT

Vs

The Government of Andhra
Pradesh, Home (Courts. C1)
Department and Others

RESPONDENT

Date of Decision: Dec. 2, 2010

Acts Referred:

- Andhra Pradesh State Higher Judicial Services Rules, 2007 - Rule 10, 11, 12, 13, 14
- Constitution of India, 1950 - Article 226

Hon'ble Judges: Samudrala Govindarajulu, J; Goda Raghuram, J

Bench: Division Bench

Advocate: N. Ravi Prasad, in W.P. Nos. 7493, 8089 and 13541 of 2010, M. Panduranga Rao, in W.P. Nos. 8465 and 14157 of 2010, B. Adinarayana Rao, in W.P. No. 12741 of 2010, Krishna Devan, in Writ Petition No. 16060 of 2010, G. Dharma Rao, in Writ Petition No. 16197 of 2010 and Krishna Devan, in Writ Petition No. 17217 of 2010, for the Appellant; M. Bhaskara Lakshmi, S.C. for APHC for Respondent Nos. 2 in W.P. Nos. 7493, 8089, 8465, 12741, 13541, 14157, 16060, 16197 and 17217 of 2010, S.V. Bhatt, for Respondents 3, 4, 6, 11, 14, 15 and 19 in W.P. No. 7493 of 2010 and Respondents 3, 4, 6 and 9 in W.P. No. 12741 of 2010, G.P. for Home for Respondent 1 in W.P. Nos. 7493, 8089, 8465, 12741, 13541, 14157 and 16060 of 2010, K. Ramamohan-Mahadeva, for Respondent 7, 8 and 10 in W.P. No. 12741 of 2010 and Respondent No. 20 in W.P. No. 7493 of 2010, T. Rajinikanth Reddy in W.P. No. 7493 of 2010, Krishna Devan in W.P. Nos. 8089 and 17217 of 2010, V. Ramakrishna Reddy, for Respondent 5 in W.P. No. 16060 of 2010 and Respondent 29 in W.P. No. 8089 of 2010, M.S.R. Subrahmanyam, for Respondents 9, 17, 27, 35, 36 and 43 in Writ Petition No. 8089 of 2009, Srinivas Dammalapati, for Respondent 3 in W.P. No. 16060 of 2010 and Respondent 18 in Writ Petition No. 8089 of 2010, Giridhar Alapati, for Respondent 5 in Writ Petition No. 8089 of 2010, S.M. Subhan in W.P. No. 13541 of 2010, S. Sridhar, for Respondent 6 in Writ Petition No. 16060 and G.P. for Law and Legislative Affairs for Respondent 1 in W.P. Nos. 16197 and 17217 of 2010, for the Respondent

Final Decision: Dismissed

Judgement

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Goda Raghuram, J.

These writ petitions challenge the validity of Notifications Nos. 1/2009-RC and 2/2009-RC (backlog vacancies), dated 28.01.2009 and 18.02.2009, respectively issued by the High Court of Andhra Pradesh calling for applications for recruitment to the post of Civil Judge by direct recruitment and recruitment by transfer and for filling up back-log vacancies (under direct recruitment and recruitment by transfer). The Petitioners are aggrieved by the prescription of minimum marks in the viva-voce test. The notifications stipulate that a candidate to be qualified for recruitment should acquire the minimum marks of ten (10), eight (8) and six (6) for OC; BC; and SC & ST categories, respectively in viva-voce for eligibility for appointment as Civil Judge, whether by direct recruitment or recruitment by transfer. All the Petitioners are either advocates who have applied for direct recruitment or are employed in the several feeder categories stipulated in the Andhra Pradesh Judicial Service Rules, 2007 ("the 2007 Rules") issued in G.O.Ms. No. 119, Law (L.A. & J-SC.S) Department, dated 02.08.2008 as categories from which recruitment by transfer could be made for the post of Civil Judge. All the Petitioners applied for recruitment pursuant to the notifications and have qualified at the written examination. They however could not secure the minimum marks stipulated in the notifications in the viva-voce test and thus failed to obtain appointment. The notifications are challenged on several grounds:

- A) That the 2007 Rules do not stipulate the requirement of obtaining minimum marks at the viva-voce test for eligibility for appointment;
- B) That they failed to get selection despite obtaining high marks in the written examination on account of not obtaining the minimum qualifying marks at the viva-voce test and therefore the prescription of minimum qualifying marks in the viva-voce is illegal and arbitrary;
- C) That the process of viva-voce was too short and perfunctory to be meaningful; and
- D) That the allocation of 20 marks for viva-voce out of a total of 100 marks is arbitrary and contrary to the binding decisions of the Supreme Court.

2. The 2007 Rules are enjoined to come into force w.e.f. 01.01.2007.

3. Rule 2(f) defines "direct recruitment" to mean appointment of a person, who is not in the service of the Government of India or the Government of the State, to any category in the service through the process of inviting applications directly from all eligible and qualified persons Rule 2(m) defines "recruitment by transfer" to mean appointment of a person, who at the time of his first appointment thereto is either a

confirmed member or an approved probationer in any other category of the service or any other service, through the process of inviting applications from all eligible and qualified persons.

4. Rule 3 specifies the service to comprise inter alia of the category of Civil Judges.

5. Rule 4(2)(d) sets out the method of appointment to the category of Civil Judge and reads:

4d)(i) appointment to the category of Civil Judges shall be made by direct recruitment from among the eligible Advocates on the basis of written and viva-voce tests as prescribed by the High Court and

(ii) Recruitment by transfer on the basis of written and viva-voce tests as prescribed by the High Court from among the confirmed members or approved probationers of:

i) Categories 5 and 6 of Division-I and Categories 1 to 4 of Division-II of the Andhra Pradesh. High Court Service;

ii) Categories 1 to 6 of The Andhra Pradesh Judicial Ministerial Service;

iii) Assistant Public Prosecutors, Senior Assistant Public Prosecutors, Additional Public Prosecutors Grade-II of A.P. State Prosecution Service;

iv) Sections Officers in the Law Department of the Secretariat;

v) Sections Officers in the legislature Department; and

vi) Managers of the officers of the Advocate General; Government Pleaders; Public Prosecutors, Editor, I.L.R.

Provided that one out of every five vacancies in the cadre shall be filled up by means of recruitment by transfer.

6. Rule 5 sets out the eligibility criteria and Sub-rule (2) thereof stipulates eligibility for recruitment to the posts of Civil Judge.

7. Rule 6 sets out the methodology for conducting examination and reads:

6. Methodology for conducting examination:

(1) The High Court from time to time shall notify the number of vacancies for the category of District Judges to be appointed by direct recruitment indicating inter alia, the eligibility criteria, the syllabus, the number of marks allotted for written examination, the qualifying mark to be secured by a candidate, the number of marks allotted for the viva-voce and the minimum to be secured therein by the candidate.

Provided that owing to the contingency it shall be open to the High Court to conduct a screening test which shall be objective type before conducting the written

examination followed up by viva-voce after duly notifying the same.

(2) While the written examination is meant to test the academic knowledge of the candidate, the viva-voce is to test his communication skills; his tact; ability to defuse the situations to control the examination of witnesses and also lengthy irrelevant arguments and the like; and his general knowledge.

(3) The syllabus for written examination shall be from out of the procedural as well as substantive laws, local laws and Constitution of India.

(4) The written examination shall invariably carry 80 marks limiting the viva-voce to the remaining 20 marks.

Provided that the candidate shall secure a minimum qualifying marks of 40% for O.C. category, 35% for B.C. category, and 30% for S.C. and S.T. category in the written examination and a minimum marks of 10 for O.C. category, 8 for B.C. category and 6 for S.C. and S.T. category in the viva-voce.

(5) The High Court may prescribe departmental competitive examination for accelerated recruitment by transfer.

(6) The High Court may also prescribe the necessary suitability test for recruitment by transfer.

(7) The High Court from time to time shall notify the probable number of vacancies for the category of Civil Judges to be appointed by direct recruitment indicating inter alia, the eligibility criteria, the syllabus, the number of marks allotted for the viva-voce and the minimum to be secured therein by the candidate

Provided that owing to the contingency it shall be open to the High Court to conduct a screening test which shall be objective type before conducting the written examination followed up by viva-voce after duly notifying the same.

(8) While the written examination is meant to test the academic knowledge of the candidate; the viva-voce is to test his academic knowledge as well as communication skills; his tact; ability to defuse the situations to control the examination of witnesses and also lengthy and irrelevant arguments and the like; and his general knowledge.

(9) The syllabus for written examination shall be out of the procedural as well as substantive laws, Civil as well as Criminal Rules of Practice, and Local laws.

(10) The written examination shall invariably carry 80 marks limiting the viva-voce to the remaining 20 marks.

Provided that the candidate shall secure a minimum qualifying marks of 40% for O.C. category, 35% for B.C. category and 30% for S.C. and S.T. category in the written examination and a minimum marks of 10 for O.C. category, 8 for B.C. category and 6 for S.C. and S.T. category in the viva-voce.

8. Rule 7 sets out provisions for reservation for appointments to be made by direct recruitment.

9. Rules 8 to 13 deal with post-appointment aspects such as training, probation, confirmation, discharge of unsuitable probationers, reversion and seniority. Rule 14 sets out provisions regarding temporary appointments. Rule 15 empowers ad hoc appointment of Fast Track Court Judges and Rules 16 to 18 comprise provisions regarding superannuation, posting, transfers and appeal. While Rule 19 deals with the conditions of service including pay and allowances, leave etc., Rules 20 to 25 enumerate miscellaneous provisions applicable to the generality of the members of the service. Rule 26 sets out provisions regarding repeal and savings.

10. The Petitioners' contention is that the provisions of the 2007 Rules do not stipulate the requirement of obtaining minimum marks at the viva-voce test for eligibility for appointment as Civil Judges in general and for recruitment by transfer in particular; and the allocation of 20 marks in the viva-voce out of a total of 100 marks, is arbitrary and contrary to the binding decisions of the Supreme Court. Notwithstanding the generic plea of the arbitrariness in the allocation of 20% marks for viva-voce, invalidation of no provision of the 2007 Rules is sought in any of the writ petitions.

Analysis of Rule 6 of the 2007 Rules:

Rule-6 (already extracted) sets out the methodology of conducting examinations. Sub-rules (1) to (4) set out provisions regarding the conduct of written examination and viva-voce for recruitment to the category of District Judges. Sub-rule (5) enables the High Court to prescribe a departmental competitive examination for accelerated recruitment by transfer.

11. Sub-rules (6) to (10) set out provisions relating to the notification of vacancies, conduct of examination and cognate aspects for recruitment of Civil Judges. Sub-rule (7) empowers the High Court to notify vacancies in the category of Civil Judges for appointment by direct recruitment, duly notifying the eligibility criteria, syllabus, the number of marks allotted for written examination, the qualifying marks to be secured by candidates, number of marks allotted for viva-voce and the minimum marks to be secured therein by the candidates. Sub-rule (7) thus enables the High Court by notification to prescribe the qualifying marks to be secured by a candidate in the written examination and the minimum marks to be secured in the viva-voce, in the case of direct recruitment to the post of Civil Judge. The proviso to Sub-rule (7) deals with conducting of a screening test prior to a written examination (not relevant for the present lis).

12. Sub-rule (8) clearly specifies the relative scope and purposes of written examination and viva-voce. It states that while the written examination is only to test the academic knowledge of the candidates; viva-voce is intended to ascertain the academic knowledge as well as the communication skills, the tact; the ability to

defuse situations; to control examination of witnesses and lengthy arguments; irrelevant arguments and the like; and the general knowledge of a candidate. Sub-rule (9) spells out the contours of the syllabus for a written examination. Sub-rule (10) clearly specifies that the written examination shall invariably carry 80 marks, limiting the viva-voce to the remaining 20 marks. The proviso to Sub-rule (10) enjoins that a candidate shall secure a minimum qualifying marks of 40% for OC category; 35% for BC category and 30% for SC & ST category in the written examination and that 10, 8 and 6 marks shall be the minimum marks to be secured by OC, BC and SC & ST category candidates respectively, in the viva-voce.

13. In oral arguments on behalf of the Petitioners considerable emphasis was put on the interpretation of Sub-rules (7) to (10) of Rule 6 of the 2007 Rules. It was contended that these sub-rules set out the methodology and procedure for direct recruitment to the category of Civil Judges and that these provisions have no application to recruitment by transfer.

14. While there is some ambiguity in the structure of these sub-rules, such textual ambiguity as is contended to exist does not however lead to an inference that these provisions do not prescribe the methodology for or govern the area of recruitment by transfer. It is axiomatic that the unit of any interpretation is the statute read as a whole, in this case and in this context, Rule-6 of the 2007 Rules. Sub-rule (7) specifies that the High Court may periodically notify the probable number of vacancies in the category of Civil Judges to be appointed by direct recruitment indicating inter alia the eligibility criteria, the number of marks allotted for the viva-voce and the minimum to be secured therein.

15. Since Sub-rule (7) empowers the prescription by the High Court inter alia of minimum marks to be secured by a candidate at the viva-voce while issuing a notification calling for applications for direct recruitment, could it be gainfully contended that provisions of the remaining Sub-rules (8) to (10) which deal with the purposes of a written examination vis-a-vis the viva-voce (Sub-rule 8); the generic specification of the syllabus (sub-rule 9); and regarding the allocation of marks in the written examination and the viva-voce and the minimum qualifying marks that should be secured in these two tests (Sub-rule 10), do not structure or do not contain the discretion of the High Court to prescribe the syllabus, the allocation of marks or prescription of minimum marks at the written examination and the viva-voce, in the matter of direct recruitment? Such a construction would be tautological and subverts the substantive purpose of the 2007 Rules. On the construction of Sub-rules (7) to (10) of Rule 6 by the Petitioners there is no power consecrated to the High Court to notify the number of vacancies for recruitment by transfer nor a power to ordain the conduct of a written examination or viva-voce for this method of recruitment. Such a construction, as would lead to absurd results and consequences must be eschewed and we do so.

16. It also requires to be noticed that Sub-rule (6) of Rule-6 enables the High Court to prescribe the "necessary" suitability test for recruitment by transfer. This is a comprehensively structured conferment of power that comprises within itself [even in the absence of Sub-rules (8) to (10)] a power in the High Court to prescribe the methodology and process of testing suitability for recruitment by transfer including prescription of minimum marks at the viva-voce. We are not inclined to interpret the provisions of Rule 6 to mean that Sub-rules (8) to (10) thereof do not contour the discretion and power of the High Court, conferred under Sub-rule (6) in generic terms in the matter of recruitment by transfer, in the areas pertaining to syllabus, the purposes of a written examination and viva-voce or the prescription of minimum marks for the written examination and the viva-voce. In our considered view the provision of sub-rules (8) to (10) of Rule 6 of the 2007 Rules apply to recruitment by transfer as they apply to direct recruitment.

17. As the provisions of Rule 6 [Sub-rules (7) to (10)] are explicit, clear and unambiguous and since the notifications also enjoin and in harmony with the provisions of Rule 6 of the 2007 Rules, the requirement of minimum marks, in written examination as well as in viva-voce, neither of the notifications Nos. 1/2009-RC and 2/2009-RC dated 28.01.2009 and 18.02.2009 nor the process of recruitment and appointment to the notified vacancies in the post of Civil Judge pursuant thereto, violate in any manner the provisions of the 2007 Rules, warranting interference under Article 226 of the Constitution.

18. It also requires to be noticed that the 2007 Rules were issued after due deliberations on the recommendations of the Justice Shetty Commission report. Pursuant to the judgment of the Supreme Court, in [All India Judges' Association and Others Vs. Union of India and Others](#), the First National Judicial Pay Commission under the Chairmanship of Justice K.J. Shetty (Retd.) was constituted by the Government of India on 21.03.1996. It submitted a number of reports with a view to standardize the qualifications and procedure for recruitment of judicial officers and service conditions of the members of the subordinate judiciary. In Paras 8.83 and 8.84, the Commission had suggested that a written examination followed by viva-voce test will be essential for selection of Civil Judges, whether recruitment be by the High Court or the Public Service Commission. In Para 8.84 the Commission recommended that while it is left to the selecting authority to prescribe appropriate marks for the written examination and viva-voce test, the marks allotted to viva-voce should be less than $\frac{1}{3}^{\text{rd}}$ of the marks prescribed for the written examination and that this requirement must be scrupulously observed to avoid the selection being characterized as arbitrary. In the present case the 2007 Rules allocate only 20% of marks for the viva-voce while 80% of the marks are reserved for the written examination.

19. In [K.H. Siraj Vs. High Court of Kerala and Others](#), the Apex Court held that even if the rules did not prescribe any particular minimum or cut-off marks in the oral

examination, the power conferred on the High Court under Rule 7 of the Kerala Judicial Service Rules 1991 to prepare a select list of candidates suitable for appointment as Munsif Magistrates, must be construed as conferring ample power to prescribe and follow such procedure as the High Court considers appropriate, to secure the best available talent suitable for manning the judiciary. It was thus open to the High Court to prescribe bench marks for written and oral tests in order to achieve the purpose of getting the best available talent and that interview is the best mode of testing the suitability of a candidate for a particular position. While the written examination will test the candidates' academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, quality of leadership etc, which are essential for a judicial officer. In *Siraj* the court quoted with approval its earlier decision in *Lila Dhar v. State of Rajasthan* AIR 1981 SC 1777 which pointed out the different purposes of written examination and viva-voce and in the context of appointments to posts in the subordinate judiciary. The decision in *Delhi Bar Association v. Union of India* (2002) 10 SCC 150 also highlighted the special qualities required in a judicial officer and which can be brought out in oral interview. This decision was also cited with approval in *Siraj*. The decisions in [P.K. Ramachandra Iyer and Others Vs. Union of India \(UOI\) and Others](#),; [Umesh Chandra Shukla Vs. Union of India \(UOI\) and Others](#), and [Durgacharan Misra Vs. State of Orissa and Others](#), were distinguished. On behalf of the Petitioner reliance was placed on the judgment in [Hemani Malhotra Vs. High Court of Delhi](#), and [K. Manjusree Vs. State of A.P. and Another](#), These decisions have no relevance to and provide no guidance for the issues presented herein. The principle enunciated in these decisions is that the prescribing of minimum marks after completion of an oral interview or a written test, as the case may be is impermissible. In both these decisions however the prescription of minimum marks both for written examination and interview, or prescription of minimum marks for written examination but not for interview, or prescription of minimum marks for either written examination or interview was held to fall within the domain of the rule making authority. Decisions in *Hemani Malhotra* and *K. Manjusree* are distinguishable since these cases involved the application of cut-off marks without prior intimation and after the process of recruitment had commenced. In *Manjusree*'s case minimum marks were applied after the process of written examination and interview i.e., after the completion of selection process. This was found fault with and held impermissible. In the cases on hand not only do the 2007 Rules, clearly and unequivocally stipulate minimum marks to be applied at the viva-voce as well but even the notifications reiterate this requirement and methodology.

20. In [Ramesh Kumar Vs. High Court of Delhi and Another](#), the relevant facts are that the High Court of Delhi issued an advertisement to fill up 20 vacancies in the cadre of District Judge-13 to be filled up from the general category, 3 from SC candidates

and 4 from ST candidates. All the vacancies reserved for SC candidates could not be filled up since only one person was found suitable. The writ Petitioners were unsuitable as they could not secure the required minimum marks in the interview. They challenge the fixation, of cut-off marks at the interview. The advertisement clearly indicated that a general category candidate must secure 50% marks and reserved category candidate 45% marks in the viva-voce. The Supreme Court quoted with approval the decisions in *State of U.P. v. Rafiquddin* (1987) Supp SCC 401 ; [Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others](#), ; [Majeet Singh, UDC and others Vs. Employees" State Insurance Corpn. and another](#), ; *Siraj & leela Dhar* (supra) and *Ashok Kumar Yadav v. State of Haryana* (1985) 4 SCC 417 and distinguished the judgments in [B.S. Yadav and Others Vs. State of Haryana and Others](#), ; *Dugacharan Misra, P.K. Ramachandra Iyer, Umeshchandra Shukla and Manjusree* (supra) and dismissed the writ petition.

21. As already noticed, the provisions of the statutory Rules are not challenged in these writ petitions. Clearly in view of the mandate of the 2007 Rules and clear stipulation in the notifications dated 28.01.2009 and 18.2.2009, every candidate is aware of the requirement of acquiring minimum marks in the viva-voce depending upon the category to which he/she belongs.

22. The Petitioners appeared at the viva-voce and could not secure the minimum marks. They are thus also estopped from questioning the process of selection. In the facts and circumstances of the case the challenge to the notifications is also misconceived - vide [Madan Lal and Others Vs. State of Jammu and Kashmir and Others](#), ; [Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others](#),

W.P. No. 17217/10:

There is additional contention and therefore an issue, in this writ petition. This writ is by an advocate who belongs to the BC-A community. She applied for direct recruitment to the post of Civil Judge pursuant to the notification dated 28.01.2009. In para-10 of the writ petition she asserts that pursuant to her requisition under the Right to Information Act, 2005, she was supplied a copy of her answer sheet in the written examination and the marks secured by her at the viva-voce. She secured 7.80 marks in the viva-voce and claims to have secured 48.50 marks in the written examination. She claims that her marks in the written examination were however recorded wrongly as 47.50 marks. It is her assertion that in page-11 of her answer sheet (as furnished to her under the Right to Information Act) 3+1 marks was awarded but one mark was omitted in the totaling and the total marks obtained by her is shown as 47♦ instead of 48♦.

23. We have perused the answer sheet of the Petitioner and it is apparent that only 3 marks were awarded for her answer to Q.No. 6(a) and not 3+1 as contended by the Petitioner. The Petitioner appears to have mistaken a marginal line made by the valuation officer for a grammatically inaccurate phrase in a part of the answer to

Q.6(a). The valuation officer himself in the totaling of marks received by the Petitioner has recorded the Petitioner has having obtained 47♦ marks out of 80. In the final check list prepared for the Petitioner's answer sheet also the number of marks awarded for Q.6(a) is recorded as 3, after verification. We are satisfied that the Petitioner's assertion that there was a wrong totaling is based on a misapprehension. She received only 3 marks for her answer to Q.6(a) and the total of 47♦ marks awarded is thus correct. Even otherwise as the Petitioner being a BC-A candidate secured only 7.80 marks in the viva-voce and failed to secure the minimum eligibility marks (8 marks) for the viva-voce, is not eligible for appointment.

24. On the aforesaid analysis there are no merits. The writ petitions are accordingly dismissed, but in the circumstances without costs.