***** Vs. Unknown**

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Court : Punjab and Haryana

Decided On : May-29-2014

Appellant : ***

Respondent : Unknown

Judgement :

C.W.P No.8244 of 2008 (O&M) ::1:: IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Date of decision : May 29, 2014 1. C.W.P No.8244 of 2008 (O&M) Girish Nath Singh and others, v. NHPC Limited (Previously known as National Hydro Electric Power Corporation Limited) and others.

2. C.W.P No.5397 of 2009 Sunil Kumar Gupta and others, v. NHPC Limited (Previously known as National Hydro Electric Power Corporation Limited) and others.

3. C.W.P No.10298 of 2009 Sanjay Kumar Mall and others, v. NHPC Limited (Previously known as National Hydro Electric Power Corporation Limited) and others. *** CORAM : HON'BLE MR.JUSTICE AJAY TEWARI *** Present : Mr. Rajiv Atma Ram, Sr. Advocate with Mr. Vijay Sharma, Advocate for the petitioners. Mr. Lokesh Sinhal, Advocate for the respondents. *** 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?.

2. To be referred to the Reporters or not ?.

3. Whether the judgment should be reported in the Digest ?. *** Kumar Kishan 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::2:: AJAY TEWARI, J (Oral) This order shall dispose of CWP Nos.8244 of 2008, 5397 and 10298 of 2009, as common questions of law and facts are involved therein. For the sake of convenience, facts are being extracted from CWP No.8244 of 2008. The petitioners have challenged the action of the respondents in introducing cut off marks of 60% to be obtained in the written examination for internal candidates for appointment to the posts of TE/TO in the Discipline of Civil Engineering. Brief facts are that selection for internal candidates admittedly is by way of written test followed by an interview. The precise grievance is that the requirement of obtaining 60% marks was imposed after the selection process was initiated whereas in the previous year it was 55%. (In fact learned counsel for the petitioners would argue that this requirement was imposed after the result had been scrutinized, but learned counsel for the respondents has rightly pointed out that the documents on record do not give rise to an irresistible conclusion that this must have happened). Learned counsel for the petitioners has argued that tinkering with the selection process may be justified when there is requirement for shortlisting. For instance, originally it may be prescribed that persons receiving beyond a certain percentage would be called for interview. However, when the result comes out and it transpires that number of persons to be called for interview is disproportionately large as compared to the posts available, in those circumstances for the purpose of shortlisting and having more manageable numbers, Courts have accepted deviation from the Kumar Kishan 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::3:: normal policy of prior fixation of standards. However, as per him, what has been done in the present case is not only impermissible but otherwise also is highly

impracticable because admittedly against 56 vacancies, 57 persons had applied and 55 appeared and by the imposition of this criteria, only 8 candidates got the required 60% marks. As per him, this clearly violates the mandate of law in K.Manjusree v. State of Andhra Pradesh and another, (2008)3 Supreme Court Cases 512, wherein their Lordships held as follows :-

33. 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 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.

. He has further relied upon Division Bench decisions of this Court in Dr.Lovekesh Kumar and others v. The State of Punjab and others, CWP Kumar Kishan 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::4:: No.18179 of 1997 decided on 08.01.1998 and Amardeep Singh v. State of Punjab and others , CWP No.149 of 1998 decided on 24.02.1998 and has argued that iln both these cases this Court had set aside the process of shortlisting when the number of candidates who had applied were not disproportionately larger than the number of posts advertised. In Dr.Lovekesh Kumar's case (supra) this Court held as follows:- The suggestion that if the candidates of Backward Classes are not subjected to screening, the Commission will be forced to select candidates who do not possess the minimum merit, which is implicit in the argument of Shri Bains, is clearly misconceived. Admittedly, the screening test in the present case is not a part of the final selection. The marks secured by the candidates at the screening test are not taken into consideration for evaluation of the comparative merit of the candidates which is decided exclusively on the basis of viva- voce test/interviews. Rather, the screening test is intended to help the Commission in determining the number of candidates to be called for interviews. Therefore, at the stage of viva- voce, the Commission can weed out those candidates belonging to Backward Classes who are not meritorious or suitable for selection. It would be different situation if the written test is held as part of the exercise undertaken by the Commission to determine the merit of the candidates. In that case the Backward Class candidates will not be entitled to exemption from appearing the test. We shall now deal with the issue whether the action of the Commission to hold screening test for Scheduled Castes (Balmikis & Majhbi Sikhs) is ultra vires to Articles 14 and 16 of the Constitution and whether the petitioners are entitled to be interviewed for the purpose of adjudging their suitability for selection against the reserved posts. The Kumar Kishan contention urged by Shri Dharam Vir Sharma is that the 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::5:: decision of the Commission to hold the screening test ignoring the fact that 27 candidates had applied against the 62 post reserved for their category is wholly arbitrary and subversive of the policy of reservation as well as the directions issued by the government. He submitted that while taking decision to hold the screening test for all categories, the Commission failed to keep in mind the basic object of the screening test, namely, to short list the candidates to be called for interview. Learned counsel submitted that in view of the advertisement the Commission could have held screening test only if the number of applications received in pursuance of the advertisement was very large and it was not possible for the Commission to interview all the candidates. He further submitted that as the number of candidates who had applied against the posts

reserved for Scheduled Castes (Balmikis and Majhbi Sikhs) was less than half of the advertised posts, there was no occasion for the Commission to hold screening test for further reducing the number of candidates to be called for interviews. On the other hand Shri R.S.Bains argued that screening test was held for the purpose of judging the suitability of the candidates at the threshold keeping in view the requirement of maintaining efficiency in the administration as contemplated by Article 335 of the Constitution. Learned counsel submitted that the screening test held by the Commission was in the nature of a competitive test and the petitioners, who have failed to achieve the required standard of suitability, are not entitled to be called for interviews. At the cost of repetition, we deem it necessary to observe that in the absence of any statutory prohibition the Commission has the right to devise appropriate procedure consistent with the constitutional code of equality for making selection for recruitment to public service. In a given case the Commission may adjudge the suitability/merit of the Kumar Kishan candidates by holding a competitive test. In another case it 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::6:: may hold a written test, as well as viva-voce test for evaluating the comparative merit of the candidates. In a third case it may make selection only by interviewing the candidates. Where the number of applications received in pursuance of the advertisement is very large, it is legitimate for the Commission to devise appropriate criteria to reduce the number of candidates to be called for viva-voce test. This can be done by calling only those candidates who possess qualifications higher than the prescribed one or who are having a particular length of service or experience. This can also be done by holding the screening test. The limited element of selection involved in the method of screening test is that a candidate is required to achieve a particular percentage of marks so as to be called for viva-voce test. If the Commission finds that the number of candidates passing the screening test by securing a specified percentage of marks is also very lage it can fix a cut- off point and limit the number of candidates to be called for viva-voce. These methods cannot be frowned upon by the Court unless it is shown that the Commission has acted arbitrarily or that the method devised by it is unfair, irrational or unreasonable.

. In Union of India and another v. T. Sundararaman and others, JT19975) SC48the Hon'ble Supreme Court held as follows:- A careful analysis of the above referred decisions show that for making recruitment to public services by interview the Public Service Commission and other recruiting agencies should interview 3 to 4 candidates against one vacancy/post and if the number of persons who apply in pursuance of the advertisement is large and it is not possible for the Commission etc. to interview all of them, a reasonable and rational method consistent with constitutional and statutory provisions can be devised with a view to short-list the number of candidates or to Kumar Kishan determine a reasonable zone of consideration.

. 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::7:: In Amardeep Singh's case (supra) a Division Bench of this Court held as follows:- In Ashok Kumar Yadav versus State of Haryana (supra), the Constitution Bench of the Supreme Court recognised the need of interviewing 3 to 4 candidates against one post. Same view has been reiterated in Madhya Pradesh Public Service Commission Versus Navnit Kumar Potdar (supra). In the later decision, their Lordships laid emphasis on the rationality of the decision to shortlist the number of candidates to be called for interview. In Lovekesh Kumar's, the Court unequivocally held that the decision of the Commission to hold the screening test in respect of various categories was taken without application of mind to the relevant facts and in our considered, there is no reason to take a different view in the case of the petitioner merely because the total number of applications received was 49. The Commission, in our view, should have examined the necessity to hold the screening test keeping in view the ratio of 1:3-4 between the posts and the persons to be interviewed. If the Commission had kept this in view, there would have been no occasion to hold the screening test for 49 candidates, who had applied against 40 posts reserved for Ex-Servicemen and their dependents(general category).

. It is the argument of the learned counsel that one of the the basic requirements of a good selection is that the selecting body should considers 3-5 candidates for every vacancy. As per him, the argument of learned counsel for the respondents that it has the right to ensure a minimum standard cannot, per se be termed as

illegal. However, even if such right is conceded the question which arises is whether the prescription of 60 marks is reasonable or arbitrary. Once it has been held that the ideal situation for a selecting body is to have 3-5 candidates for every vacancy a screening test which limits the eligible candidates to 8 against 56 vacancies cannot be held to be reasonable. After all a public employer has to draw balance between Kumar Kishan 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::8:: ensuring a standard of merit and the requirement that public posts should not be left vacant because that might cause greater loss to the public interest. Counsel for the respondents has accepted that on fact the requirement of having 60% minimum marks was imposed after the selection process was over but argued that the present is not a case which would be covered by the decision in K.Manjusree's case (supra) because in the said case the earlier selection criteria had been prescribed wherein minimum marks for written examination had been envisaged but there were no minimum marks envisaged for interview and after the selection process had commenced, requirement of obtaining minimum marks for interview was imposed. He has further placed reliance on Tej Prakash Pathak and others v. Rajasthan High Court and others, 2013(4) SCC540and Yogesh Yadav v. Union of India and others, AIR2013SC) 3372 to contend that the effect of the decision in K.Manjusree's case (supra) has been substantially reduced, if not completely eroded. In Tej Prakash Pathak and others' case (supra), the Hon'ble Supreme Court held as follows :-

14. If the principle of Manjusree's case (supra) is applied strictly to the present case, the respondent High Court is bound to recruit 13 of the best. candidates out of the 21 who applied irrespective of their performance in the examination held.

15. In such cases, theoretically it is possible that candidates securing very low marks but higher than some other competing candidates may have to be appointed. In our opinion, application of the principle as laid down in Manjusree case (supra) without any further scrutiny would not be in the larger public interest or the goal of establishing an efficient administrative machinery.

16. This Court in the case of the State of Haryana v. Subash Chander Marwaha and Others [(1974) 3 SCC Kumar Kishan 220]. while dealing with the recruitment of subordinate 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::9:: judges of the Punjab Civil Services (Judicial Branch) had to deal with the situation where the relevant Rule prescribed a minimum qualifying marks. The recruitment was for filling up of 15 vacancies. 40 candidates secured the minimum qualifying marks (45%). Only 7 candidates who secured 55% and above marks were appointed and the remaining vacancies were kept unfilled. The decision of the State Government not to fill up the remaining vacancies in spite of the availability of candidates who secured the minimum qualifying marks was challenged. The State Government defended its decision not to fill up posts on the ground that the decision was taken to maintain the high standards of competence in judicial service. The High Court upheld the challenge and issued a mandamus. In appeal, this Court reversed and opined that the candidates securing minimum qualifying marks at an examination held for the purpose of recruitment into the service of the State have no legal right to be appointed. In the context, it was held:- `12. 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 more (sic mere) eligibility.' 17. Unfortunately, the decision in Subash Chander Marwaha (supra) does not appear to have been brought to the notice of their Lordships in the case of Manjusree (supra).

18. This Court in the case of Manjusree (supra) relied upon P.K. Ramachandra Iyer and Others v. Union of India and Others [(1984) 2 SCC141, Umesh Chandra Shukla v. Union of India and Others [(1985) 3 SCC721 and Durgacharan Misra v. State of Orissa and Others [(1987) 4 SCC646. In none of the cases, the decision in Subash Chander Marwaha (supra) was considered.

19. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the `rules of the game' insofar as the prescription of eligibility criteria is concerned as was done in the case of C. Channabasavaiah v. State of Mysore [AIR1965SC1293 etc. in order to avoid manipulation of the recruitment

process and its results. Whether such a principle should be applied in the context of the `rules of the game' stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, Kumar Kishan therefore, order that the matter be placed before the 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::10:: Hon'ble Chief Justice of India for appropriate orders in this regard.

. In Yogesh Yadav's case (supra), the Hon'ble Supreme Court of India held as follows :-

15. The decision taken in the instant case amounts to short listing of candidates for the purpose of selection/appointment which is always permissible. For this course of action of the CCI, justification is found by the High Court noticing the judgment of this Court in the State of Haryana vs. Subash Chander Marwaha & Ors. (1974) 3 SCC220 In that case, Rule 8 of the Punjab Civil Service (Judicial Branch) Service Rules was the subject matter of interpretation. This rule stipulated consideration of candidates who secured 45% marks in aggregate. Notwithstanding the same, the High Court recommended the names of candidates who had secured 55% marks and the Government accepted the same. However, later on it changed its mind and High Court issued Mandamus directing appointment to be given to those who had secured 45% and above marks instead of 55% marks. In appeal, the judgment of the High Court was set aside holding as under: `It is contended that the State Government have acted arbitrarily in fixing 55 per cent 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), Part C speaks of Selection for appointment.. Even as there is no constraint on the State Government in respect of the number of appointment to be made, 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 Kumar Kishan Government with a view to maintain high- 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::11:: standards of competence to fix a score which is much higher than the one required for mere eligibility.' 16. Another weighty reason given by the High Court in the instant case, while approving the aforesaid action of the CCI, is that the intention of the CCI was to get more meritorious candidates. There was no change of norm or procedure and no mandate was fixed that a candidate should secure minimum marks in the interview. In order to have meritorious persons for those posts, fixation of minimum 65% marks for selecting a person from the OBC category and minimum 70% for general category, was legitimate giving a demarcating choice to the employer. In the words of the High Court: `In the case at hand, as we perceive, the intention of the Commission was to get more meritorious candidates. There has been no change of norm or procedure. No mandate was fixed that a candidate should secure minimum marks in the interview. Obtaining of 65% marks was thought as a guidelines for selecting the candidate from the OBC category. The objective is to have the best hands in the field of law. According to us, fixation of such marks is legitimate and gives a demarcating choice to the employer. It has to be borne in mind that the requirement of the job in a Competition Commission demands a well structured selection process. Such a selection would advance the cause of efficiency. Thus scrutinized, we do not perceive any error in the fixation of marks at 65% by the Commission which has been uniformly applied. The said action of the Commission cannot be treated to be illegal, irrational or illegitimate.' Learned counsel has further argued that in every previous selection, similar procedure of fixing minimum marks was resorted to and at different times different minimum marks were prescribed but the same have never been challenged. In fact, as per him, it is only the Civil Engineers who have challenged the present selection whereas the said selection on similar basis was not only for Civil Engineering but was for Electrical Engineering, Information and Technology Engineering and Electronic and

Kumar Kishan 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P No.8244 of 2008 (O&M) ::12:: Communication Engineering also. He has also urged that no employer can be faulted for wanting to maintain high standards. In my opinion, the judgments cited by counsel for the respondents hold more weight and it has to be conceded that the decision in K.Manjusree's case (supra) cannot be made applicable to the facts of the present writ petitions. Consequently, finding no merit in these writ petitions, the same are dismissed with no order as to costs. (AJAY TEWARI) May 29 , 2014. JUDGE `kk' Kumar Kishan 2014.05.29 12:28 I attest to the accuracy and integrity of this document High Court Chandigarh