[2019] 3 S.C.R. 1060

A RAHUL DUTTA & ORS.

v.

THE STATE OF BIHAR & ORS.

(Writ Petition (C) No. 71 of 2019)

B FEBRUARY 14, 2019

[ARUN MISHRA AND NAVIN SINHA, JJ.]

Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955:

C *r.5A(3) – Constitutional validity of – Challenged in writ petition u/Art. 32 of Constitution – Held: Rule 5A(3) provides that 10% of the total number of candidates appeared in preliminary exam are to be called for final written exam – While in* **Malik Mazhar's** *case it was held that declaration of result of the preliminary written exam for calling candidates for final written exam has to be* D *in the ratio of 1:10 of the available vacancies to the successful candidates – Rule 5A is in violation of what has been laid down in* **Malik Mazhar's** *case – Fixation of 10% of the total number appeared candidates is otherwise also arbitrary and unreasonable as the same substantially restricts the number of candidates to stake* E *their claim in the final exam – There is yet another glaring error in the rule that no minimum passing marks have been prescribed in preliminary exam – However, for the exam in question, it would not be appropriate to fix the marks after the exam was over – Cut off marks provided for the main exam are not going very low and is reasonable, and hence the deficiency in the rule, of not prescribing* F *minimum passing marks in the preliminary exam, would not cause any invalidity in the present exam – The provision contained in r. 5A(3) is struck down – In view of the fact that the State Government has suggested amendment in the Rules and the same is pending, other questions are not dilated upon – Under the present order,* G *since candidates equal to 10 times of the vacancies have to be called, for which time is required for making arrangements, date of exam is extended from 20.2.2019 to a date within six weeks from the date of present judgment i.e. 14.2.2019 – Petitions are allowed.*

Malik Mazhar Sultan (3) and Another v. Uttar Pradesh Public Service Commission and Others **(2008) 17 SCC** H **703 – relied on.**

Case Law Reference

(2008) 17 SCC 703	**relied on**	**Para 3**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 71 of 201.

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

With

W.P. (C) Nos. 92, 158, 179 of 2019.

Gopal Shankaranarayanan, Ms. Pooja Dhar, Ms. Gayatri Verma, Ms. Aishwarya Kane, Rakesh Kumar, Sanjay Yadav, Rahul Kumar, Bishwabandhu, Ms. Nabila Hasan, Satya Mitra, Kshatrshal Raj, Vishal Prasad, Ms. Tanya Chaudhry, Ms. Pragtyusha Priyadarshini (for M/s. Parekh & Co.), Navin Prakash, Keshav Mohan, Rishi K. Awasthi, Prashant Kumar, Santosh Kumar-I, Advs. for the appearing parties.

The following Judgment of the Court was delivered :

1. Writ Petition ….(Diary No.5352/2019) is taken on Board.

2. In the writ petitions filed under Article 32 of the Constitution of India, with respect to the examination of Civil Judge (Junior Division) the candidates are aggrieved by action that has been taken to call 10% of the candidates who have appeared in the preliminary examination would qualify for the final examination.

3. Their main submission is that as per the decision of this Court in Malik Mazhar Sultan (3) and Another v. Uttar Pradesh Public Service Commission and Others, (2008) 17 SCC 703, vacancies have to be filled up by holding preliminary examination and then final written examination followed by viva voce. As per the directions issued by this Court, for the purposes of Civil Judge (Junior Division) by direct recruitment, declaration of the result of the preliminary written examination for calling candidates for final written examination has to be in the ratio of 1:10 of the available vacancies to the successful candidates.

4. Rule 5A of The Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 (hereinafter referred to as 'the Rules') has been inserted vide Notification dated 28.12.2016, same is extracted hereunder:-

A "5A. (1) The Commission may take a Preliminary Test in the event of the number of eligible candidates to be admitted to the written examination being, in its judgment, inordinately large.

(2) The Preliminary test shall comprise two papers – Paper I of General Studies carrying 100 marks, and Paper II of
B Law carrying 150 marks. The papers will consist of objective questions of multiple choice, one being the correct answer. OMR Answer Sheets shall be used and evaluated by computer in the Commission's premises. The Syllabi for the two papers shall be the same as prescribed for General Knowledge and General Science and the Law Papers in the written examination,
C respectively.

(3) Eligible candidates for the written examination shall be selected on the basis of the result of the Preliminary Test, to the extent of 10% of the total number of appeared candidates, rounded off to the nearest hundred; and all candidates obtaining
D equal marks as the last candidate's shall also qualify for the written examination;

Provided that in the event of candidates from the reserved categories, other than the General category, falling short of the percentages fixed for them in the State Government Services
E under the relevant Act vis-a-vis the total number of successful candidates in the Preliminary Test, so many candidates from those categories shall be additionally included, to the extent of the deficit, as per their respective merit, in the list of the successful candidates to take the written examination."

F 5. No doubt about it that Rule 5A(3) clearly provides that only 10% of the total number of candidates appeared have to be called for final written examination as per the rounding off provided in rule 5A(3) of the Rules.

6. After hearing learned counsel for the parties at length, we are
G of the considered opinion that the aforesaid Rule 5A is in violation to what has been laid down by this Court in Malik Mazhar Sultan (supra). In which this Court has observed, on the basis of the proposal which was not objected to. This Court has specified the ratio of calling the candidates for final examination after preliminary examination for Civil
H Judge (Junior Division) by direct recruitment as under:-

"D. For appointment to the posts of Civil Judge (Junior Division) by direct recruitment.

Sl. No.	Description	Date
7.	Declaration of result of preliminary written examination a] Result may be put on the website and also published in the Newspaper b] The ratio of 1 : 10 of the available vacancies to the successful candidates be maintained	15th June

8. These directions would not be applicable to the judiciary in the Sikkim High Court in view of a very small cadre of judiciary in that State."

7. The fixation of 10% of the total number of appeared candidates in preliminary examination to be called for final written examination is otherwise also arbitrary and unreasonable as the same substantially restricts the number of candidates to stake their claim in the final examination. By virtue of the operation of the Rule for 349 available seats total number of candidates being called for final written examination of General Category is 902 and for reserved categories it is 198 and the total number is 1100. The number of seats reserved out of 349 is 50% on rounded off comes approximately to 174 seats. The number of reserved category candidates being called to stake their claim in their final examination is nearly 198 only. The ratio approximately is 1:1 whereas it has to be 1:10. Whereas in unreserved category the total number of candidates called by operation of the aforesaid Rule 5A(3) is 902. For approximately 175 seats reserved for General Category the number of candidates which are refixed to be called is in the ratio of 1:10 to the number of vacancies would be 1750, so also for reserved category. Thus, we are of the opinion that the aforesaid Rule is clearly arbitrary and violates the decision of this Court in Malik Mazhar Sultan (supra) on restrict competitive field unreasonably. No useful purpose is going to be served by restricting the number of candidates for final written examination.

8. Apart from that there is yet another glaring error in the Rule that no minimum passing marks have been prescribed in preliminary examination. The ratio of 1:10 is only applicable when these number of

successful candidates are available and obtaining of the minimum passing marks in preliminary examination should be necessary, out of the successful candidates available out of them in the ratio of 1:10 are required to be called for final written examination. The candidates with minimum passing marks only can be permitted to stake their claim in the final examination. It is assured by the all concerned stakeholders i.e. State of Bihar, High Court of Patna as well as the Bihar Public Service Commission that they would ensure the minimum passing marks are fixed under the Rules for preliminary examination separately for general as well as for reserved category in a reasonable manner. Let that be done for future examination. However, for the examination in question, it would not be appropriate to fix the marks now after examination is over.

9. For final written examination in case 10% candidates are called vis-a-vis to the available vacancies the cut off marks percentage-wise for different categories, as tentatively calculated by the Bihar Public Service Commissions is as under:-

"No. of Candidates proposed to be qualified for the Main Examination according to 10% of the total number of appeared candidates rounded off to nearest 100 (without 5% less rider):

Category	% of Reservation	No. of Male Candidates	No. of Female Candidates	Total No. of Candidates
Unreserved (01)	50%	648 Cut Off Marks: 171 (68.95%)	332 Cut Off Marks: 163 (65.72%)	980
SC (02)	16%	191 Cut Off Marks: 124 (50.00%)	102 Cut Off Marks: 103 (41.53%)	293
ST (03)	1%	12 Cut Off Marks: 135 (54.43)	06 Cut Off Marks: 119 (47.98%)	18
EBC (04)	21%	251 Cut Off Marks: 129 (52.01%)	125 Cut Off Marks: 109 (43.95%)	376
BC (05)	12%	99 Cut Off Marks: 154 (62.09%)	55 Cut Off Marks: 144 (58.06%)	154
Orthopaedically Handicapped (OH)	1% out of total vacancies	18	04	22 Cut Off Marks: 147 (59.27%)
Total	–	1219	624	1843

10. As apparent from the above table, cut off marks are not going very low obviously the data provided is provisional one and is subject to corrections of error, if any, in calculating the percentage or the number of candidates in the category of male or female etc. The cut off is quite reasonable and the aforesaid deficiency in Rule of not prescribing the passing marks in the preliminary examination would not cause any invalidity in the examination already held in any manner whatsoever. However, this fixation of cut off marks by the Bihar Public Service Commission and permission granted by this Court to call the aforesaid candidates would not be treated as deciding the question minimum passing marks for preliminary examination which have to be fixed by the State Government under the Rules.

11. In the circumstances, we have no hesitation to strike down the provision contained in Rule 5A(3) of the Rules. We place it on record that the State of Bihar has also suggested the amendment in the Rules in the letter dated 15.01.2019 and the same is pending consideration before the High Court and it has to be placed before the Full Court on administrative side. Let the High Court take a decision in accordance with law on the aforesaid proposal and also duly considering the decision of this Court in Malik Mazhar Sultan (supra).

12. With respect to the prayer made in the writ petition(s), with respect to providing horizontal reservation to the women candidates it is being provided. Thus, the submission raised about providing horizontal reservation does not survive.

13. In the circumstances, as the examination is scheduled to be held on 20.02.2019, as Bihar Public Service Commission has submitted that now under this order candidates equal to 10 times of the vacancies have to be called, it would take some time in dispatch of roll numbers, allotment of centre and making other arrangements. Let final written examination be held within six weeks from today. In case it is necessary to pray for extension of time fixed by this Court for final selection, it is open to the High Court of the State of Bihar to apply for extension of time before an appropriate Bench.

A 14. Resultantly, Rule 5A(3) of the Rules is struck down and the writ petitions are, accordingly, allowed. We make it clear that we are not dilating upon the other questions as the High Court is considering the proposal for amendment in the Rules.

15. Pending application(s), if any, shall stand disposed of.

B

Kalpana K. Tripathy Petitions allowed.