

\$~22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 29.01.2021

+ **W.P.(C) 557/2021**

ASEEM SIDDIQUI & ORS.

..... Petitioners

Through: Mr. Anuj Aggarwal, Advocate.

versus

DELHI HIGH COURT

..... Respondent

Through: Mr. Siddharth Aggarwal and Mr. Vishwajeet Singh, Advocates along with Mr. V.K. Mittal, Deputy Registrar (Examination Cell).

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral)

CM APPL. 1465/2021 (for exemption)

1. Exemption allowed, subject to just exceptions.
2. The application stands disposed of.

W.P.(C) 557/2021 & CM APPL. 1464/2021 (for direction)

3. The Petitioners are employees of the Delhi High Court (Establishment Branch), and are working as Despatch Rider / Court Attendants. Petitioner No. 1 is working on probation, whereas the other three Petitioners are

permanent/confirmed employees. They have jointly filed the present petition challenging the circular No.17/EC-2/Exams/DHC dated 30th January, 2020, issued by the Delhi High Court, Registrar (Examination Cell) for filling up of 38 posts of Junior Judicial Assistant/Restorer, under (30%) Departmental Test Quota [*hereinafter referred to as ‘Impugned Circular’*]. The impugned circular was issued in terms of clause (b) of Item No. 25 and 26 of Schedule II to the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972, which is extracted herein below:

<i>Sl. No.</i>	<i>Category of Post & Pay Level</i>	<i>Minimum Qualifications prescribed for appointment to the Posts</i>	<i>Mode of Appointment</i>
25 & 26	<i>Junior Judicial Assistant/Restorer</i> (Pay level-5 of 7 th Pay Commission)	<p><i>a. XXXX XXXX</i></p> <p><i>b. For departmental examination – By promotion from members of the Establishment of the High Court: Matriculation or equivalent with knowledge of English; having five years’ service in any of the category 27 (Chauffeur), 28 [Despatch Van Driver (Rider)], 29 (Despatch Rider), 30 (Despatch Rider-cum-Process Server), 31 (Photocopy Machine Operator Grade-I), 32 (Library Attendant) 33 (Usher), 34 (Photocopy Machine Operator Grade-II), 35 (Court Attendant), 36 [Court Attendant (L), 37 [Court Attendant (S)], 38 [Room Attendant (H)], and 39 (Security Attendant).</i></p>	<p><i>a. XXXX</i></p> <p><i>b. 30% of the vacant posts by promotion from the posts mentioned in Column No. 3 on the basis of written test, Typing test in English with speed of not less than 25 words per minute and interview, subject to their work and conduct report.</i></p>

4. As per the Scheme of Examination, the departmental exam is to be conducted in three stages i.e. Stage-I (Written Test), Stage-II (English Typing Test) and Stage-III (Interview). With respect to Stage-I (Written

Test), it is stipulated that the candidate is required to pass Part-A as well as Part-B, independently, by obtaining 20 minimum passing marks in each part. The relevant provision reads as under:

<i>Stage of Examination</i>	<i>Scheme of Examination</i>
<i>Stage-I (Written Test)</i>	<i>A Written Test of total Maximum 100 Marks of three hours duration (Part-A of 50 Maximum Marks containing questions to test candidate's knowledge of General English and Part-B of 50 Maximum Marks containing questions to test candidate's knowledge of General Knowledge and Current Affairs) <u>with, 20 minimum passing marks for Parts A & B each.</u></i>

5. The Petitioners applied under the impugned circular on 12th February, 2020, and appeared for Stage-I (written examination) held on 29th November, 2020. The result of Stage-I (written examination) was announced on 8th January, 2021, wherein the Petitioners did not obtain the minimum marks required independently/separately in Part-A or Part-B of the Written Examination, and resultantly did not qualify for Stage-II of the process.

6. The grievance of the Petitioners is that although they obtained more than 40% marks in aggregate in the Written Examination, they have been disqualified on account of the afore-noted provision introduced for the first time in the Scheme of Examination, which requires the obtaining of qualifying marks independently in Part-A and Part-B. They contend that in previous years, a candidate was only required to pass the written examination with minimum 40% qualifying marks, and there was no requirement of passing Part-A and Part-B independently/separately, and the aforesaid provision is illegal, unjustified and unconstitutional.

7. In this backdrop, the Petitioners have approached this Court seeking directions for : (a) setting aside of the impugned Circular, issued by the Delhi High Court, Registrar (Examination Cell) to the extent it provides that

a candidate is required to qualify Part-A as well as Part-B separately/independently with 20 minimum passing marks in Stage-I (Written Test) of the examination; (b) setting aside the impugned result dated 08th January, 2021 of the Written Test wherein it was declared *inter alia* that the petitioners have failed to pass/qualify the Stage-I (Written Test); (c) to consider the candidature of the petitioners for appointment on the post of Junior Judicial Assistant/Restorer treating them to have qualified the Stage-I (Written Test), without insisting upon the conditions of obtaining 20 marks in Part-A & Part-B each independently/separately.

8. Mr. Anuj Aggarwal, counsel for the Petitioners, contends that there is an acute shortage of JJA/Restorer in this Court. He submits that a recruitment process which started on 3rd February, 2020, for filling up the direct recruitment posts of 132 JJA/Restorer has not been completed and even the written examination has not been conducted till date. He submits that since there are vacant posts of JJA/Restorer, the Petitioners can be appointed against such posts. The condition in the impugned circular, which was introduced for the first time, should not be insisted upon. He further submits that the number of posts advertised under the impugned circular were 38, to which a total of 137 candidates filled the application form, and only 114 appeared in the written examination. Amongst those, only 34 candidates qualified the written test. Thus, presuming all the candidates qualify Stage-II (English Typing Test) as well as Stage-III (Interview), even then 04 posts will still remain vacant. Since the Petitioners have obtained more than 40% qualify marks in total, they can be appointed against the said 04 vacant posts. He further submits that no prejudice will be caused to any candidate in case the Petitioners are allowed to appear in Stage-II of the Written Examination. It is further submitted that the condition of passing Part-A or Part-B of the examination independently and separately defeats the

objective of encouraging and making more appointments from Departmental candidates. In support of his submissions, learned counsel for the Petitioners also relied upon the judgment of this Court in ***Syed Mehedi v. Govt. of NCT of Delhi & Ors.***, 2019 SCC OnLine Del 9015, to contend that since there are vacancies, the Respondent can give a relaxation in the qualifying marks.

9. He also submitted that prior to the declaration of the result, a few similarly situated candidates, who had obtained 40% qualifying marks in the written examination in aggregate, made a representation to the Registrar General, Delhi High Court, seeking *inter alia* a direction to allow the candidates to appear in Stage-II (English Typing Test), i.e. without insisting upon the condition that the candidate must obtain 20 marks in each part of the written examination.

10. We have perused the record and considered the contentions urged by the learned counsel for the Petitioners. In our view, the present petition is completely devoid of merit. The cut off marks in each subject prescribed under the impugned circular are being applied uniformly to all the candidates and therefore there is nothing irregular in this exercise. The cut off marks are fixed by the Examining Body, keeping in view the relevancy of the subject, to shortlist suitable candidates for the service. The Examining Body is well within its rights to adjudge the quality/capacity of the candidates and for this purpose they can prescribe the cut off / minimum marks so that only such candidates are selected, who are suitable and fulfil the standard required for discharge of the duties for the said post. The written examination tests the knowledge of the candidates which is essential for the post applied for. Significantly, the selection criteria was adopted and declared at the time of commencement of the recruitment process. The Petitioners, after having participated in the selection process, cannot insist

upon changing the selection criteria after failing to qualify as per the criteria laid down. In our view, since the mode of selection has been prescribed, it has to be adhered to strictly, and there is no provision shown to us to relax the eligibility criteria. Merely because there are vacancies, would not entitle the Petitioners to seek a relaxation in the eligibility criteria/qualifying marks.

11. Since the Petitioners have failed to secure the qualifying marks in the written examination, we are not persuaded to give any directions as sought for in the present petition. There is no merit in the petition, accordingly the same is dismissed. The pending application also stands disposed of.

12. We may however note that during the course of the arguments, it has been stated that the Petitioners have made a representation to the Hon'ble the Chief Justice of this Court. Needless to say, they shall free to pursue the same, if they so desire.



SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

JANUARY 29, 2021

nd