

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

WRIT PETITION (PIL) NO. _____ OF 2020

IN THE MATTER OF A PUBLIC INTEREST LITIGATION: -

NISHANT KHATRI & ANR. ...PETITIONER

VERSUS

DELHI HIGH COURT

THROUGH ITS REGISTRAR GENERALRESPONDENT

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA SEEKING APPROPRIATE WRIT, ORDER OR DIRECTION IN THE NATURE OF CERTIORARI THEREBY SETTING ASIDE THE RESULT OF DELHI JUDICIAL SERVICE EXAMINATION (WRITTEN) – 2019 DECLARED ON 13-01-2020 AND TO ISSUE DIRECTION FOR FURTHER JUDICIAL SERVICE EXAMINATION.

To

The Hon'ble Chief Justice and His Companion Judges of the Delhi High Court at New Delhi.

MOST RESPECTFULLY SHOWETH: -

1. That the Petitioners are filing the instant writ petition in public interest.
- Petitioner No. 1 is an applicant in the aforesaid examination, though petitioner No. 1 and 2 have no personal interest in the litigation as petitioner no. 1 has only qualified preliminary examination and not qualified the mains examination yet. Also, the petition is not guided by

self-gain or for gain of any other person/institution/body and that there is no motive other than of public interest in filing the writ petition.

2. That the Petitioners have based the instant writ petition on official documents, orders which are part of official record and which are in public domain.
3. That the present petition is filed for the benefit of public at large because if this arbitrary, unfair and biased process is not being stopped then chances are there that incompetent persons will be selected in DJS and due to this public at large will affect. Since these persons are too numerous and have no direct personal interest in the matter, they are unlikely to approach this Hon'ble Court on this issue. Hence the Petitioners herein are preferring this PIL.
4. That the Delhi High Court (on Administrative side) and all 255 applicants for DJS examination-2019 who are called for viva-voce likely to be affected by the orders sought in the writ petition and petitioner has impleaded Delhi High court through its Registrar General as respondent and if Hon'ble court deems it necessary then all 255 applicants who are called for viva-voce may be impleaded as respondent thereof. That as per the knowledge of the petitioners no other persons/bodies/institutions are likely to be affected by the orders sought in the writ petition.
5. That the petitioners are law graduates from University of Delhi in 2019, petitioner no. 1 is a judicial service aspirant and petitioner no. 2 is an advocate enrolled with Delhi bar council. The petitioner has means to pay if any cost is imposed by the Hon'ble Court.

6. The petitioners have not made any representations to the respondent as result of main examination has been declared and now, there is no possible remedy except quashing the result declared by respondent.

Brief Facts

7. The present Writ Petition (PIL) has been filed under Article 226 of the Constitution of India, seeking the issuance of a Writ of Certiorari quashing the Result dated:13/01/2020 of Delhi Judicial Service Examination (written) – 2019 held on 12 & 13 October 2019 and also to issue direction for further Judicial service examination which will be conducted by the respondent in the future.
8. That on 29/08/1970 hon'ble Lieut. Governor, Delhi, in consultation with the High court of Delhi was pleased to make Delhi Judicial service rules, 1970. Recruitment for the post of civil judge is governed by these rules only. A true copy of relevant extract of those rules is attached herewith as **ANNEXURE P-1**.
9. That On 30/07/2019, the Respondent has released a notification for the Delhi Judicial service examination-2019 (Hereinafter called "DJSE-2019) for filling up 45 vacancies [43 existing vacancies and 02 anticipated vacancies] in Delhi Judicial Service. A true copy of the notification is attached herewith as **ANNEXURE P-2**.
10. That On 23/08/2019, the respondent had revised the number of vacancies from 45 to 75 via a corrigendum. A true copy of corrigendum is attached herewith as **ANNEXURE P-3**.
11. That the DJSE-2019 was to be conducted in three stages i.e. preliminary exam, mains exam and interview.

The Preliminary Examination was a screening test and consisted of one paper of multiple objective type questions carrying maximum of 200 marks. Preliminary Examination was conducted for selection to the main examination, the marks obtained in the preliminary examination by the candidates who were declared qualified for admission to the Main Examination (Written) would not be counted for determining their final order of merit, But, there shall be 60% Minimum qualifying marks (120 marks out of 200) in the preliminary examination for general category and 55% (110 marks out of 200) for reserved categories (i.e. Scheduled Castes, Scheduled Tribes and Physically Handicapped) to be qualified for mains examination. However, the number of candidates to be admitted to the main examination (written) would not be more than ten times the total number of vacancies of each category advertised. And after preliminary examination, Delhi Judicial Service Main Examination (Written) was to be conducted for selection of candidates for calling for viva-voce.

The Main Examination (Written) had included the following subjects (each subject to carry the number of marks shown against it): -

SUBJECTS:

Sr.No.	Subjects	Max.Marks
1.	General Knowledge & Language	250
2.	Civil Law I	200
3.	Civil Law II	200
4.	Criminal Law	200

And after mains examination a viva-voce of 150 marks to be conducted. Only those candidates are called for viva-voce who have obtained 40%

marks in each written paper and 50% marks in the aggregate except in the case of candidates belonging to reserved categories (i.e. Scheduled Castes, Scheduled Tribes and Physically Handicapped) in whose case the qualifying marks shall be 35% in each written paper and 45% in the aggregate. Also, A candidate of general category has to secure minimum 50% marks and a candidate of reserved category (i.e. Scheduled Castes, Scheduled Tribes and Physically Handicapped) has to secure minimum 45% marks in viva-voce to be eligible for being recommended for appointment to the service. The marks obtained in the viva-voce will be added to the marks obtained in the Main Examination (Written) and the candidate's position will depend on the aggregate of both. A true copy of scheme of examination is attached herewith as **ANNEXURE P-4.**

12. That the respondent has conducted the preliminary exam for DJSE-2019 on 22/09/2019. The result of 9996 candidates who appeared in preliminary exam was declared on 26/09/2019 and out of 9996 only 353 were shortlisted for mains examination which is to be conducted on 12 & 13 October of 2019. A true copy of the preliminary examination result of 353 candidates who were called for mains examination is attached herewith as **ANNEXURE P-5.**
13. That in between by the intervention of the Hon'ble Delhi high court in the matter of Nishant Basoya vs Registrar General, The High Court Delhi, W.P. (civil) 10592/2019 and in other connected matters, preliminary result was revised on 02/10/2019 and 296 more candidates were included for taking Mains examination. Admit cards for appearing

in Delhi judicial service main examination (written) were issued to total (353+296 = 649) candidates.

14. That Hon'ble high court was pleased to disposed of the W.P. (civil) no.10592/2019 & other connected matters by giving direction as under:

(i) "The results of the 353 candidates already declared eligible to appear in the DJS (Mains) Examination, in terms of the list published on the website of the Delhi High Court on 26th September 2019, are left undisturbed.

(ii) In respect of the answer keys which this Court has found to be erroneous, the High Court will proceed to apply the correct answer keys as decided by this Court and recompute the results in accordance with the applicable rules. By treating the marks obtained by the last of the 353 already shortlisted candidates in the revised list as the cut off marks, a further list of candidates found eligible to sit for the Mains exam will be prepared and published on the website of the Delhi High Court not later than 6 pm on 4th October 2019."

That Hon'ble court while passing these directions did not take the notice of the fact that after recomputation of preliminary examination marks and by considering the marks obtained by the last of the 353 already shortlisted candidates in the revised list as the cut off marks, the cut marks will go down below the minimum qualifying marks i.e. 120 marks out of 200 and also the Number of candidates called for mains examination which was initially 10 times will be more than 20 times after the recomputation of preliminary examination result which would be in the violation of express statutory provisions.

It is pertinent to mention here that hon'ble court disposed of that petition in a period of 2 days only, Hon'ble court only decided those issues which were raised by the parties thereon. Neither the petitioners nor the respondents brought this in the notice of the court that by this order statutory provision are being violated as petitioners were interested in taking mains examination and respondent were interested in conducted the mains examination on the notified date only. Petitioners and respondents in their own interests kept the Hon'ble court in dark. After revising the preliminary examination result many candidates were called for mains examination who were even securing less than minimum qualifying marks. A true copy of the revised result of preliminary examination is attached herewith as **ANNEXURE P-6**.

15. That after revising the preliminary examination result it was in the knowledge of the respondent that minimum qualifying was i.e. 60% marks has been reduced for the unreserved category. If marks were reduced for unreserved category then it would have also been done in the case of reserved category candidates in the same proportion as done in the unreserved category candidates because Delhi Judicial Service rules, 1970 mandates that there **shall be a difference of 5% marks** in qualifying criteria of Unreserved and reserved category candidates in preliminary examination. The last candidates in unreserved category called for mains examination in new list was with 116.25 marks, means cut off marks for unreserved category was reduced from 60% to 58% and it was not done in the case of reserved category where the cut off was same as before i.e. 55%.

16. That respondent has conducted the mains examination on 12 & 13 October, 2019 and then the result of 649 candidates who were issued

admit cards for appearing in Delhi judicial service main examination (written) held on 12 & 13 October 2019 was declared on 13/01/2020. The respondent while declaring the result of DJSE mains examination also declared the marks secured by all candidates. A true copy of the result/marks of all candidates is attached herewith as **Annexure P-7**.

17. That a total of 255 candidates were shortlisted for viva-voce i.e.

SC = 19 Candidates for 17 seats

ST = 2 Candidates for 27 seats

General/unreserved = 234 Candidates for 31 seats

18. That the respondent has released schedule for viva-voce on 01/02/2020 and as per that schedule viva-voce is going to be conducted on 12 Feb. to 13 Feb. 2020 then from 17 Feb. to 20 Feb. and then from 24 Feb. to 26 Feb. 2020. A true copy of viva-voce schedule is attached herewith as **ANNEXURE P-8**.

19. That Hon'ble Supreme court on 13/12/2019 in the matter of **Pranav Verma Vs. The registrar general of the high court of Punjab & Haryana, W.P. (C) No. 565/2019** decided that marks of main (written) examination shall not be disclosed before viva-voce. Supreme court in para 27 of judgement expressly directs that;

“As regards the petitioners’ plea that marks of the Main Exam should be disclosed before conducting viva-voce, we are of the considered opinion that such a practice may not insulate the desired transparency, rather will invite criticism of likelihood of bias or favouritism. The broad principles to be laid down in this regard must be viewed keeping in view the selections for various categories of posts by different Selecting Authorities, for such a self-evolved criterion cannot be restricted to Judicial Services only. If the Members of the Interviewing

Boards are already aware of the marks of a candidate secured in the Written Examination, they can individually or jointly tilt the final result in favour or against such candidate. The suggested recourse, thus, is likely to form bias affecting the impartial evaluation of a candidate in viva-voce. The acceptance of the plea of the petitioners in this regard will also run contrary to the authoritative pronouncement of this Court in **Ashok Kumar Yadav and Others v. State of Haryana**. As the written examination assesses knowledge and intellectual abilities of a candidate, the interview is aimed at assessing their overall intellectual and personal qualities which are imperative to hold a judicial post. Any measure which fosters bias in the minds of the interviewers, therefore, must be done away with.”

20. That respondent even after this judgement which came in December, 2019 declared the marks of mains (written) examination before viva-voce which is blatantly in the violation of Supreme court Judgements.

GROUND

21. That the recruitment process adopted by the respondent is arbitrary, biased and in the express violation of the statutory rule i.e. Delhi Judicial service rules 1970 and principle of natural justice.
22. That Delhi Judiciary service rule, 1970 expressly says that minimum qualifying marks in the preliminary examination **shall be** 60% for General/Unreserved category then neither the respondent nor any court of law can reduce this Minimum qualifying criterion to any extent. As the word used in statute is “**Shall**” which makes it mandatory. These marks are set to check the competency of a candidate for writing main examination. This test is conducted to check the basic legal knowledge,

speed and mental stability of a candidate in the examination. Reducing this minimum qualifying criterion will affect the Judicial efficiency because a sub-standard or incompetent candidate may be recruited as a civil judge

23. That respondent while reducing the minimum qualifying marks of general category candidate from 60% to 58% and by not reducing the qualifying marks of reserved category candidate in same proportion violated the principle of egalitarian equality. Hence, the recruitment process is violative of article 14, 16, 19 and 21 of the constitution of India.

24. That the examination process adopted by respondent is arbitrary and biased because of the fact that the respondent had disclosed the marks obtained by candidates in their main (written) examination before viva-voce. Due to disclosure of marks of the main examination before viva-voce, there always remains a pre conceived notion bias in the mind of interview board towards those candidates who have obtained more marks or are among the topper of the written examination. The biasness will always be inclined towards those candidates who have secured more marks in written examination as compared to others. The reason of biasness is that such candidates are deemed to be intelligent over others as no human being is expected to sit as a blank sheet in the interview board when the marks of written examination are already in public domain. It is pertinent to mention here that written exam and interview are two completely different set of examination with very different and clear objectives. The former is to evaluate the legal acumen of candidates but later is to enquire and assess the overall personality of person along with his suitability for jobs. It is highly

unfair and against the set norms of any examination if the marks of interview are decided on the basis of his or her written examination. It may be possible that a candidate may be topper in main examination but his all over personality is not suitable for the subject job. The reverse is also possible, meaning thereby, any candidate may have secured low marks comparatively in main examination, but he has excellent personality with judicial mind and more fit in all dimensions for subject job.

Due to disclosure of marks of main (written) examination this preconceived biasness is not unwarranted as it has been proved times and again by the final results of Delhi Judicial examination for civil judge in previous years. In all previous year's results, a set pattern by interviewing board is adopted according to which more marks are given to candidates who have secured more marks in written exam. These marks of interview runs parallelly with the marks scored in written paper. This pattern of disclosure of written marks before viva-voce is not followed in any of judicial service examination or other esteemed examination like UPSC or UGC. Honourable Apex court has also clarified categorically in the case of **Pranav Verma Vs. The registrar general of the high court of Punjab & Haryana, W.P. (C) No. 565/2019** that the disclosure of written examination marks before viva-voce may leads to biasness or favouritism and such practice must be done away with as if the Members of the Interviewing Boards are already aware of the marks of a candidate secured in the Written Examination, they can individually or jointly tilt the final result in favour or against such candidate. Thus, the practice of disclosing written examination marks before viva-voce is likely to form bias

affecting the impartial evaluation of a candidate in viva-voce. Hence, the practice adopted by respondent is violative of principle of natural justice as well law established by apex court.

25. That the recruitment process adopted by the respondent falls down on the both test of biasness i.e. real likelihood of bias test and reasonable suspicion test because if marks of written examination are in public domain and for selection one has to secure 50% minimum marks in the viva-voce then any sane person would say that interview board can easily tilt the result in favour or against any of the candidates because now interview board would be knowing that how much marks a candidate would be required to fall in into merit. By adopting such a biased recruitment process respondent not only made the viva-voce process as mere formality but also leaving space for nepotism or favouritism.

26. The Petitioners have not filed any other petition, suit or application in any manner regarding the matter of dispute in this Hon'ble Court, or any other High Court or before Hon'ble Supreme Court or any other Court throughout the territory of India. The Petitioners have no other better remedy available.

PRAYER

It is, therefore, most respectfully prayed that pending final orders this Hon'ble Court may graciously be pleased to:

- (i) To issue a writ of certiorari to quash the Mains (written) examination result declared by the respondent on 13/01/2020.
- (ii) To issue a writ of mandamus to declare lowering down the Minimum qualifying marks i.e. 60% in preliminary examination to 58% by respondent was ultra vires/unconstitutional.

(iii) To issue a writ of certiorari to quash the viva schedule released by respondent on 01/02/2020 for DJSE-2019.

(iv) To issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

NEW DELHI

Drafted & Filed By: -

PETITIONER NO. 1-IN-PERSON



IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)
WRIT PETITION (PIL) NO. _____ OF 2020

IN THE MATTER OF A PUBLIC INTEREST LITIGATION: -

NISHANT KHATRI & ANR.

...PETITIONERS

VERSUS

DELHI HIGH COURT

THROUGH ITS REGISTRAR GENERAL

.....RESPONDENT

1. That I am the petitioner no. 1 above named.
2. I have filed the present petition as a Public Interest Litigation.
3. I have gone through the Delhi High Court (public Interest Litigation) Rules, 2010 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor anybody in whom I am interested would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. This petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.
5. I have done whatsoever inquiry/investigation which was in my power to do, to collect all data/material which was available and which was relevant

for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material /information which may have enabled this court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.

6. That the content of the accompanying writ petition is true to my knowledge. No material has been concealed and no part is false.

7. That the Annexure P-1 to P-8 to the accompanying writ petition are true copies of the originals and I have compared the said annexures with their respective originals and certify them to be true copies thereof.



DEPONENT

IN VERIFICATION

Verified at New Delhi on this day of February, 2020 that the contents of the above affidavit are true and correct to my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

DEPONENT

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

C.M. No.

OF 2020

IN

WRIT PETITION (PIL) NO.

OF 2020

IN THE MATTER OF A PUBLIC INTEREST LITIGATION: -

NISHANT KHATRI & ANR.

...PETITIONERS

VERSUS

DELHI HIGH COURT

THROUGH ITS REGISTRAR GENERAL

.....RESPONDENT

STAY APPLICATION

To

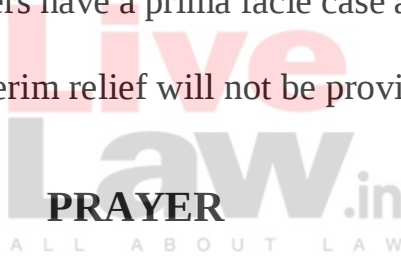
The Hon'ble Chief Justice and His Companion Judges of the Delhi High
Court at New Delhi.

MOST RESPECTFULLY SHOWETH: -

1. The present Writ Petition (PIL) has been filed under Article 226 of the Constitution of India, seeking the issuance of a Writ of Certiorari quashing the Result dated:13/01/2020 of Delhi Judicial Service Examination (written) – 2019 held on 12 & 13 October 2019 and also to issue direction for further Judicial service examination which will be conducted by the respondent in the future.
2. That the brief facts of the petition are not repeated herein for the sake of brevity and the same may be read as part and parcel of the application also.
3. That if the recruitment process which is in the violation of express statutory provision and principle of natural justice if not being stayed

then the Public at large will suffer an irreparable loss because incompetent or sub-standard candidates will be recruited as a Civil Judge.

4. That the balance of convenience lies in favour of Petitioners because if the Respondent conduct the viva-voce a few days/weeks later then it will not cause any hardship to the Respondent but on the other hand if the viva-voce process is not being stayed then the purpose of filling this petition will be frustrated and incompetent or sub-standard candidates will be recruited as a Civil Judge and the public at large will suffer.
5. That the Petitioners have a prima facie case and the matter will become infructuous if interim relief will not be provided to the Petitioners.



It is, therefore, most respectfully prayed that pending final orders this Hon'ble Court may graciously be pleased to:

- (i) Grant ad-interim stay on the viva-voce process till the disposal of this writ petition (PIL).
- (ii) pass such other or further order/ orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Drafted & Filed By: -

New Delhi

Dated:

(NISHANT KHATRI)
Petitioner No.1-In-Person

