

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2543 of 2025****FOR APPROVAL AND SIGNATURE:**

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE GITA GOPI

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Approved for Reporting

Yes

No

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 Versus

THE HONOURABLE HIGH COURT OF GUJARAT

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Appearance:

MR ND NANAVALI, SENIOR ADVOCATE with MS DISHA N
 NANAVALI(2957) for the Petitioner(s) No. 1

MR SHALIN N MEHTA, SENIOR ADVOCATE with MR HAMISH NAIDU for
 the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE GITA GOPI

Date : 27/02/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present Writ Petition is filed by the Principal Senior Civil Judge, Jamnagar, seeking following reliefs:-

“(A) The Hon'ble Court be pleased to issue a writ of mandamus or certiorari or any other writ, order or direction in the nature of mandamus and be pleased to direct the revaluation of the fourth component (evaluation of judgments) and direct respondent to consider the eligibility of the petitioner for recruitment pursuant to the Recruitment Notice No.RC/1250/2023 dated 26.7.2024 (Annexure P-4) for promotion to the post of District Judge, on the basis of the same;

(B) Pending admission and final hearing of the present petition, this Hon'ble Court be pleased to direct respondent to undertake the reevaluation of the fourth component (evaluation of judgments) and direct the respondent to consider the eligibility of the petitioner for recruitment pursuant to Recruitment Notice No.RC/1250/2023 dated 26.7.2024 (Annexure P-4) on the basis of the same;

(C) Pending admission and final hearing of the present petition, this Hon'ble Court be pleased to restrain the respondent from finalisation of the selection pursuant to the Recruitment Notice No.RC/1250/2023 dated 26.7.2024;

(D) Pending admission and final hearing of the present petition, this Hon'ble Court be pleased to restrain the respondent from filling up 1 post pursuant to the Recruitment Notice No.RC/1250/2023 dated 26.7.2024;

(E) Pending admission and final hearing of the present petition, this Hon'ble Court be pleased to permit the petitioner to participate in the VIVA-VOCE test pursuant to the Recruitment Notice No.RC/1250/2023 dated 26.7.2024, subject to such terms and conditions, as may be deemed fit and appropriate by this Honourable Court;"

2. Thus, a bare perusal of the prayers made in the Writ Petition manifest that the petitioner is aggrieved by the assessment of evaluation of his judgment done by the High Court. It is the case of the petitioner that in case, his judgments, which were called for in view of the advertisement dated 26.07.2024 are assessed properly, he would have qualified for the Viva Voce Test.

3. The facts of the case are that the petitioner was appointed on 23.10.2008 on the post of Civil Judge on probation for a period of two years and thereafter, he was confirmed on 11.06.2011. Presently, he is working as a Principal Senior Civil Judge, Jamnagar. In view of the recruitment undertaken vide Notification dated 12.02.2022 for filling-up the post of District Judges from the quota of 65%, he applied for the same. He also cleared the Written Test after evaluation of Annual Confidential Report (ACR) and assessment of average disposal. For the assessment of the fourth component i.e. the judgments, which have been delivered by him

for the period from 01.01.2020 to 31.10.2022, he supplied the same in the year 2022. The same is referred to in Paragraph No.4.5 of the Writ Petition i.e. Special Civil Suit No.121 of 2006 dated 04.05.2022. The petitioner was placed in Serial No.9 of the Select List.

4. However, in view of litigation pending before the Supreme Court relating to the criterion of merit-cum-seniority for 65% promotional quota, further recruitment process was not undertaken. The Supreme Court, vide judgment dated 17.05.2024, dismissed the Writ Petitions, and thereafter, the recruitment process was undertaken and total 82 vacancies were notified in the recruitment notice dated 26.07.2024. There were 247 eligible Senior Civil Judges, who were included in the zone of consideration and the petitioner's name was placed at Serial No.47 as per the seniority. The promotion / recruitment process was to be conducted in four phases, one of which is securing of minimum 40% marks in the component of ACRs and disposals, and the fourth component was the evaluation of the judgment and only those who had cleared and obtained 40% in the evaluation of the judgments would be thereafter called for Viva Voce Test.

5. The petitioner appeared in the Written Test, which was held on 18.08.2024 and he secured the minimum qualifying marks and was included in Serial No.36 in the list of 229 candidates. His ACRs for last five years and assessment of disposal of last five years was also considered. Thereafter, he was called upon vide communication dated 18.10.2024 issued by the High Court to submit copy of four judgments and accordingly, he submitted two judgments rendered in the civil matters and two judgments delivered in the criminal matters during the period from 01.04.2022 and 31.03.2024. The

said judgments were evaluated by the High Court and the petitioner received 41 marks out of 60%. The petitioner had included three later judgments, whereas one judgment was common from the earlier round of recruitment process. Thereafter, the High Court published the list of Judicial Officers, who had obtained minimum qualifying marks in all the components on 12.02.2025 and they were called for Viva Voce Test. Since the petitioner was not called for, he has filed the present Writ Petition challenging the action of the High Court in assessment of his judgments.

6. Learned Senior Advocate Mr.Nanavaty appearing for the petitioner has submitted that the petitioner cannot be debarred from appearing in the Viva Voce Test on the basis of assessment of four judgments, since in the earlier recruitment process, he was declared pass. It is submitted that there appears to be arbitrariness in assessing his judgments. It is submitted that one of the judgments tendered by him is common and was sent by him in the earlier recruitment process and three judgments were of the later period and hence, as per his assessment, the High Court fell in error in assessing such judgments by not giving the minimum qualifying marks, which are required to be obtained for appearing in the Viva Voce Test. It is submitted that there is no uniformity in assessing the judgments by the High Courts, as there would be various judgments, which the Civil Judges would be tendering to the High Court in view of the requirement of satisfying the fourth component and correspondingly, there would be various assessors-evaluators, who would be assessing such judgments.

6.1 Learned Senior Advocate Mr.Nanavati has tendered the judgment of the Supreme Court in the case of Sujasha Mukherji vs. High Court of Calcutta through Registrar & Ors., (2015) 11 S.C.C.

395 and submitted that as per the aforesaid judgment in cases of evaluation of the marks, which are based on numerous parameters, it would be better that a moderator can be appointed in order to see that there is no variance in assessing the answer papers or answer books. He has also placed reliance on the judgment of the Supreme Court in the case of Sanjay Singh and another vs. U.P. Public Service Commission, Allahabad & Anr., (2007) 3 S.C.C. 720, in support of his submission. Similarly, reliance is also placed on the judgment in the case of Pranav Verma & Ors. vs. Registrar General of the High Court of Punjab and Haryana at Chandigarh & Anr., (2020) 15 S.C.C. 377.

6.2 Learned Senior Advocate Mr.Nanavati has also referred to the ACRs of the petitioner, which are entered on the basis of the judgments, rendered for the last five years. It is submitted that the ACRs indicate that he is an excellent and outstanding officer and his judgments were outstanding and hence, the assessment and evaluation done by the High Court in assessing his four judgments, is arbitrary and inconsistent. Thus, it is urged that the present petitioner may be allowed to participate in Viva Voce Test.

7. Vehemently opposing the present petition, learned Senior Advocate Mr.Shalin Mehta for the respondent has submitted that the Writ Petition is bereft of any merit as the assessment of the judgments done by the High Court is subjective and all the judgments on which the reliance is placed by the learned Senior Advocate Mr.Nanavati, will not apply in the case, as the same pertain to evaluation / re-evaluation of the answer-sheets, which comprises of thousands of candidates and the evaluation of such answer-sheets is also done by various examiners. It is submitted

that all these judgments relate to the competitive examination and none of the judgments refer to any assessment of the judgments delivered by the Civil Judges. Thus, it is urged that the present Writ Petition may not be entertained.

8. We have heard the learned counsel appearing for the respective parties at length. As mentioned hereinabove, the petitioner has filed the present Writ Petition being aggrieved by the assessment of his judgments done by the High Court. We need not repeat the facts. In view of the recruitment process, the present petitioner had tendered four judgments, two civil and two criminal for the purpose of evaluation of the marks, which comprises of the fourth component. It is the case of the petitioner that one judgment, out of these four judgments, was common in the earlier recruitment process and hence, there is inconsistency in assessment of the judgment, which he has tendered. While placing reliance on the judgments of the Supreme Court, as mentioned hereinabove, it is his case that an uniformity should have been maintained by the High Court by adopting the procedure enunciated by the Supreme Court in the case of *Sujasha Mukherji (supra)*. It is also the case of the petitioner that in absence of any uniformity and in wake of the fact that there are various judgments, which would be tendered by various Civil Judges for assessment and the assessors-evaluators would also be different, the mechanism, as suggested by the Supreme Court, should be adopted as it leads to discriminatory and arbitrary treatment. We may, at this stage, clarify that the judgments of each of the Civil Judges are different and the assessors-evaluators of the judgments, which has been done by the High Court, are also different. It is not that all the judgments, which are tendered by the Civil Judges, are common

dealing with particular law. The Civil Judges, on their own wisdom, looking to their own assessment, send their best judgments. However, the same are to be assessed by the High Court by examining the peculiar facts, appreciation of evidence proper application of provisions of law. The parameters, suggested by the Supreme Court in the aforesaid judgments, would not apply in the present case as the judgments, which are sent, are unique and different corresponding to a particular Judge. The assessment is also not done by a single assessor, but it has been evenly distributed amongst the evaluators. Thus, in this case, it is impossible to maintain uniformity as the assessment of the judgments would be subjective depending on various aspects on which the judgement is premised. The petitioner or the candidates would definitely feel that what they have sent is of their best ability and they would expect 100% marks from these judgments. However, the High Court, while examining such judgments, is not swayed away by the expectation of a Civil Judge, when he sends such judgment. The assessment has been done by an individual assessor and the judgments are also not common. The assessment is also subjective in nature. At this stage, looking to these facts and the entire mechanism, there is no scope of accepting the mechanism of moderation, as directed by the Supreme Court in the case of *Sujasha Mukherjee (supra)*. All the decisions, on which reliance is placed refer to the assessment, evaluation, examination and computation of written test of various papers of different subjects. The assessment / appraisal of judgements does not remotely connect to the Written Test. We may, at this stage, refer to the judgment of the Supreme Court in the case of Dr.B.R. Ambedkar University, Agra vs. Devarsh Nath Gupta & Ors., 2023 LiveLaw S.C. 131. The Supreme Court, with regard to assessment

of answer-sheet, has observed thus:-

"13. It is hardly a matter of doubt that the Statute governing the examination in question does not provide for re-evaluation and scrutiny of the answer sheets. Moreover, the award of marks in the descriptive type answers essentially remains a matter of subjective assessment and the Court would not be entering into that arena of assessment, which remains reserved for the examiner/evaluator. Therefore, in the ordinary circumstances, with reference to the enunciations aforesaid, the process as adopted by the High Court could not have been given our imprimatur. However, on the peculiar facts and in the exceptional circumstances of the present case, we are refraining from interfering in the substantive part of the relief granted to the writ petitioner, particularly for the reasons that a direct prohibition in the Statute in question has not been shown; the original examiner seems to have totally omitted to award the marks in relation to answer Nos. 2, 5(a) and 5(b); the process of evaluation by other examiners has been adopted and taken forward by the High Court by providing for awarding of average of the marks of the three examiners; and any interference at this length of time might entail serious adverse consequences to the writ petitioner. However, we need to make it clear in no uncertain terms that non-interference in the present case is not to be construed as any endorsement by this Court to the process adopted by the High Court."

9. Thus, the Supreme Court has held that the award of the marks in the descriptive type answers essentially remains a matter of subjective assessment and the Court would not be entering into arena of assessment, which remains reserved for the examiner / evaluator. Same analogy has to be adopted in the matter of assessment of judgments. The appellant cannot claim his right of declaring him successful on the substratum of one common judgment. The assessment of three other judgements has independent assessment value, and has no bearing on one judgment which was common. If such analogy is adopted then, in the written examination also his marks are also required to be allocated on the premise of earlier recruitment process. As far as the support taken by the petitioner on his Confidential Report for questioning the assessment done by the High Court of his judgment is concerned, the same also does not merit acceptance. The entries

in the Confidential Report do not have any nexus in awarding marks on the assessment of judgments. Both the components operate in different realm. If the submission advanced by the petitioner is accepted, then the entire exercise for calling upon the judgments from the Civil Judges and its assessment will be a futile exercise, and the marks of fourth component can be directly allocated on the basis of the Confidential Reports, and there would not be any need for assessment of judgments. Such an approach will be an anathema to the recruitment process.

10. In the present set of facts, we cannot step into the shoes of the assessor-evaluator, who has assessed the judgments of the petitioner on his subjective satisfaction and has allotted the marks. The questioning of the assessment of the judgments will have serious adverse consequences, and will dent the sanctity of the process of recruitment. The present petition, being *sans* merit, is rejected.

(A. S. SUPEHIA, J)

(GITA GOPI,J)

Maulik/s1/5