therefore, there is no gap between the qualifying examination and the admission of the petitioner. He had also appeared for entrance examination to B.E. and has also successfully completed Counselling, hence is entitled for admission.

9. It is not a case that the candidate does not have minimum qualification for admission in the B.E. Course. He is being denied admission only on the ground that there is a gap of 2 years which is fact is not as stated above.

10. For the reasons aforesaid, the writ petition is allowed. The petitioner being eligible and entitled for admission in B.E. Course having also successfully passed the entrance examination for B.E. Course. In the circumstances, the respondent-University is directed to admit the petitioner in B.E. Course aforesaid within a period of one week from the date of production of a certified copy of this order.

11. No order as to costs. *Petition allowed.*

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[(2008) 3 UPLBEC 2174]

DR. B. S. CHAUHAN AND ARUN TANDON, JJ.

Civil Misc. Writ Petition No. 18568 of 2008, decided on April 9, 2008

Noor Ali Ansari **Petitioner**

*Vs.*

State of U.P. and others **Respondents**

**Service—Selection—Post of Lecturer—Petitioner obtained 54.7 per cent marks in graduation examination—Claiming to be read as 55 per cent which is minimum prescribed qualification for the post—Held that the petitioner is not qualified for the post as such he was rightly not called for interview though he was declared successful in the written examination.**

In a competition like this, there may be large number of candidates/ applicants who might have secured marks equal to the petitioner or between 54.75 and 54.99 percent. No factual foundation has been laid down to the effect that in case his marks are rounded up to 55 per cent, no person either of general category or to which the petitioner belongs would stand superseded. (Para 17)

In such a fact situation, it would be greatest injustice to those who had secured better marks than petitioner, but could not secure 55 per cent, the plea of the petitioner is liable to be rejected on this ground also. The validity of the advertisement has been challenged on various grounds *inter-alia* that in the subsequent advertisement, cut-off marks have been reduced from 55 per cent to 50 per cent. A notification which earlier cannot be challenged on a ground that a different criteria had been adopted by the competent authority at a subsequent stage. More so, the process of selection starts from the issuance of the advertisement and is to be complied with in conformity

with the terms and conditions incorporated therein. If for certain reasons, the cut-off marks have been reduced in subsequent advertisement, petitioner cannot take benefit thereof. (Para 18)

**Case law.**—1. 2004 (5) ESC 291; 2. 2003 (2) ESC 1061; 3. 1995 AWC 744; 4. (2004) 2 UPLBEC 1445; 5. JT 1998 (3) SC 223; 6. (2005) 2 SCC 10; 7. (2008) 1 SCC 233; 8. (1997) 11 SCC 410 and 9. (1992) 1 UPLBEC 636—**Referred.**

**Counsel.**—Sri Arvind Srivastava, for the petitioner; Sri H.N. Singh, for the U.P. Higher Education Service Commission and Sri R.B. Pradhan, S.C., for the State.

## ORDER

**By the Court.**—Petitioner is said to be a member of Other Backward Class. He made an application for being considered to the post of Lecturer in terms of Advertisement No. 38 published by the Uttar Pradesh Higher Education Services Commission.

2. According to the petitioner, he was successful in the written examination, but was not called for interview on the ground that he did not fulfil the minimum standard prescribed for the post in question *i.e.* did not secure 55 per cent qualifying marks. To be precise, the controversy relates to rounding up the fraction of the marks obtained by the petitioner in respect of his Graduate examination wherein he obtained 54.7 per cent. His contention is that it should be read as 55 per cent which is the minimum standard prescribed for the post in question in terms of the aforesaid Advertisement.

3. We have heard Shri Arvind Srivastava, learned Counsel for the petitioner; Sri H. N. Singh for U.P. Higher Education Service Commission and Shri R. B. Pradhan, learned Standing Counsel.

4. The facts are not in dispute. The minimum marks required for being considered for the post in question is 55 per cent. The petitioner has admittedly obtained less than 55 per cent, *i.e.* 54.75 per cent.

5. The word 'minimum' has been defined in The New Lexicon Webster's Dictionary Deluxe Encyclopedic Edition at page 63 and means "the least possible amount, number or degree". Thus, it is clear that 55 per cent is the least possible percentage which the candidate should obtain for being considered eligible for the post in question.

6. In the opinion of the Court, the process of rounding up, in the facts of the case, has no application inasmuch as percentage prescribed is followed by the word 'minimum' under the aforesaid advertisement and the Rules applicable.

7. The Regulations framed under the U.P. Intermediate Education Act, 1921, particularly, Regulations 2, 4 and 10 of Chapter III provide for promotion to Class III post from Class IV contains a note that while determining 50 per cent posts, the portion falling less than half, will be left out and the portion of half or above half will be considered to be one. Thus, in many cases, the Legislature itself has taken care of providing for solution

to such a problem. This aspect has been considered by this Court in *Kedar Nath Maurya and others* v. *District Inspector of Schools and others*, 1995 AWC 744.

8. In *Prana Vir Singh (Dr.)* v. *Chancellor, Chandra Shekhar Azad University of Agriculture and Technology, Lucknow and others*, (2004) 2 UPLBEC 1445, a similar controversy was raised. This Court placing reliance upon the judgment of the Hon'ble Supreme Court in *Post Graduate Institute of Medical Education and Research, Chandigarh* v. *Faculty Association and others*, JT (1998) 3 SC 223, held that while making such calculation of posts to be filled up by reserved category candidates, the Court has to bear in mind that it should not exceed the permissible limit fixed for reserved category.

9. In *Chandra Kant Bhardwaj* v. *State of U.P. and another*, 2004 (5) ESC 291, this Court applied the theory or rounding up while determining the number of vacancies. However, this case a matter determining the number of vacancies. Same formula may be applicable while determining the number of required votes for sending the notice for holding the no confidence motion or for removal of an elected office bearer under various statutes.

10. Counsel for the petitioner has made reference to the judgment of this Hon'ble Supreme Court in the cases of *State of U.P. and another* v. *Pawan Kumar Tiwari and others*, (2005) 2 SCC 10; *Bhudev Sharma* v. *District Judge, Bulandshahr and another*, (2008) 1 SCC 233 and *State of Punjab and another* v. *Asha Mehta*, (1997) 11 SCC 410, and has contended that if the fraction is .5 or above it has to be rounded up so as to read as 1. On the same analogy, the petitioner contends that the marks obtained by the petitioner should be rounded up and should be read as 55 percent.

11. So far as the judgments in *State of U.P. and another* v. *Pawan Kumar Tiwari and others* (supra) and *Bhudev Sharma* v. *District Judge, Bulandshahr and another* (supra) are concerned, they are clearly distinguishable from the facts of the present case inasmuch as in the aforesaid cases, the issue for consideration was regarding the percentage of reservation provided for a particular category. The percentage so provided was not qualified or to be governed by the word *minimum*. The principle of rounding up is based on logic and common sense : if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. More so, while making such a calculation, the Court must keep in mind that the number of reserved vacancies do not exceed the permissible limit *i.e.* 50 per cent.

12. In *Pawan Kumar Tiwari* (supra), the Hon'ble Apex Court refused to found up 1.86 to 2 for Scheduled Tribes observing that no candidate belonging to Scheduled Tribe had challenged the determination, therefore, it is evident from the aforesaid judgment that the law laid down therein is not of universal application.

13. So far as the judgment in the case of *State of Punjab and another* v. *Asha Mehta* (supra) is concerned, the judgment specifically records that it had

been a procedure of the Public Service Commission in all other cases, therefore, the Hon'ble Supreme Court refused to entertain the appeal without recording anything further merely being its order on the principle that practice adopted for a long period should not be disturbed. Such a judgment cannot be relied upon by the petitioner except in support of the contention which has been canvassed before us.

14. The case in hand is squarely covered by the Division Bench judgment of this Court in *Vali Pati Tripathi* v. *Director, Medial Education and Training, Jawahar Bhawan, Ashok Marg, Lucknow and others,* 2003 (2) ESC 1061, wherein this Court considered large number of its earlier judgments making calculations to find out the exact number of members required for removal of an elected office bearer of the local bodies, particularly, *Wahid Ullah Khan* v. *District Magistrate, Nainital and others,* AIR 1993 All 249 and *Rajan Seth* v. *State of U.P. and others,* (1992) 1 UPLBEC 636, and came to the conclusion that where *inter se* merit of the candidates is to be examined, the rounding up theory is not applicable. In the said case, the candidate seeking admission in the MBBS course could not secure the exact qualifying marks *i.e.* at least 50 per cent and her contention that marks secured by her to the extent of 49.67 per cent be rounded up and be read as 50 per cent was rejected.

15. It is admitted by Shri Arvind Srivastava, learned Counsel for the petitioner that against the said judgment and order in *Vani Pati Tripathi* (supra), the Hon'ble Supreme Court has rejected the Special Leave Petition.

16. In view of the above, we do not see any cogent reason to take a view contrary to the view taken by the Division Bench of this Court earlier in the case of *Vani Pati Tripathi* (supra).

17. In a competition like this, there may be large number of candidates/ applicants who might have secured marks equal to the petitioner or between 54.75 and 54.99 percent. No factual foundation has been laid down to the effect that in case his marks are rounded up to 55 per cent, no person either of general category or to which the petitioner belongs would stand superseded.

18. In such a fact situation, it would be greatest injustice to those who had secured better marks than petitioner, but could not secure 55 per cent, the plea of the petitioner is liable to be rejected on this ground also. The validity of the advertisement has been challenged on various grounds *inter-alia* that in the subsequent advertisement, cut-off marks have been reduced from 55 per cent to 50 per cent. A notification which earlier cannot be challenged on a ground that a different criteria had been adopted by the competent authority at a subsequent stage. More so, the process of selection starts from the issuance of the advertisement and is to be complied with in conformity with the terms and conditions incorporated therein. If for certain reasons, the cut-off marks have been reduced in subsequent advertisement, petitioner cannot take benefit thereof.

19. In view of the aforesaid, writ petition lacks merit and is accordingly dismissed. *Petition dismissed.*

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[(2008) 3 UPLBEC 2178]

SUPREME COURT

DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.

Civil Appeal No. 1633 of 2008 [Arising out of SLP (C) No. 3473 of 2007]

[From the final Judgment and order dated 15.12.2006 of the High Court of Kerala at Eranakulam in CRP No. 1260 of 2003], decided on February 27, 2008

**Vidyodaya Trust** **Appellant**

*Vs.*

**Mohan Prasad R. and others** **Respondents**

**Civil Procedure Code, 1908, Section 92—Indian Trusts Act, 1882, Section 34—Civil suit—Leave of Court for filing suit against a trust—Grant of leave without notice to other party trust—Despite opposition by the trust—Revision and writ petition filed by trust were dismissed by the High Court—On further appeal Supreme Court directed the High Court to hear the revision on merits—High Court again dismissed the revision holding that despite certain inadequacies grant of leave for filing the suit was proper and called for no interference—On appeal held that it is the object or purpose for filing the suit and not essentially the relief which of great importance in cases governed by Section 92—Since the suit was not filed for vindicating public rights but related to *inter se* disputes between the trustees for vindication for some personal rights, grant of leave was wrong and cannot be sustained.**

On a close reading of the plaint averments, it is clear that though the color of legitimacy was sought to be given by projecting as if the suit was for vindicating public rights the emphasis was on certain purely private and personal disputes. (Para 23)

To put it differently, it is not every suit claiming reliefs specified in Section 92 that can be brought under the Section; but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought. The Courts have to be careful to eliminate the possibility of a suit being laid against public trusts under Section 92 by persons whose activities were not for protection of the interests of the public trusts. In that view of the matter of the High Court was certainly wrong in holding that the grant of leave was legal and proper. The impugned order of the High Court is set aside. The appeal is allowed but without any order as to costs. (Para 25)