

Vikram Singh and Another

Vs

Subordinate Services Selection Board, Haryana and Others

Civil Appeal No. 2366 of 1989

(N.M. Kasliwal, Smt. M.S. Fathima Beevi JJ)

15.11.1990

JUDGMENT

KASLIWAL J

1. This appeal by grant of special leave is directed against the Judgment of the High Court of Punjab and Haryana dated 3rd June, 1988 (reported in AIR 1988 Punj and Har 298) (FB). The Subordinate Services Selection Board, Haryana by an advertisement dated 7th August, 1985 invited applications for the posts of Excise Inspectors in the Excise and Taxation Department. Originally the number of posts was 11 but was subsequently raised to 15. These posts of Excise Inspectors are governed by the Haryana ' Excise and Taxation Inspectorate (State Service, Class III) Rules, 1969 (hereinafter referred to as the Rules). It was further provided in the Rules that no candidate shall be deemed to have qualified for viva voce unless he obtains a minimum of 33% marks in each paper and 40% in aggregate. There was, however, no minimum marks for the viva voce. The total marks of the written papers and viva voce was to determine rank of the candidate.

2. The Selection Board held a written test on 23/24-11-1985. The result of the written test was declared on 15-1-1986. The appellants were declared successful in the written test and were placed at SI. Nos. 5 and 7 respectively in the general category. According of to the Rules following were the papers of the examination;

- 1 . English - 100 Marks
2. Hindi (In Devnagari script) - 50 Marks
3. General knowledge - 100 Marks
4. Viva Voce - 100 Marks.

3. According to the appellants, successful candidates in the written test were interviewed on 12-3-1986. The appellants were also interviewed along with others. After waiting for some time, the appellants represented to the Selection Board for the declaration of the result. As there was unusual delay in the declaration of the results, the appellants and three others filed a writ petition in the High Court of Punjab and Haryana at Chandigarh seeking a direction to the respondents to declare the result of the competition held for the posts of Excise Inspectors. A notice of motion was issued and a counter-affidavit was filed on behalf of the respondent No. 1. In the reply a plea was taken that

283 candidates were interviewed by the Selection Board but the result of 48 candidates was prepared. The correctness of this statement was doubted by the Motion Bench which by its order dated 9th December, 1986 summoned the then Chairman of the Selection Board. On 9th January, 1987 Col. Bhim Singh, Chairman of the Selection Board appeared and he was directed to file an affidavit. Col. Bhim Singh filed the affidavit on 10-1-1987. In the affidavit it was stated that the Board called 290 candidates, out of which 283 appeared for interview during the period 10th March to 13th March, 1986. This was as per the practice of the Board. The Board called all the candidates for interview who qualified in the written test. The Board compiled results of viva voce in respect of all the 283 candidates, who appeared for interview. As per practice till the completion of interview the Board was not informed of the marks obtained by each candidate in the written test. It was further stated in the affidavit that on completion of interviews the Board having gone through the documents i.e. written test result and the viva voce results, came to the conclusion that it will be redundant to go below a particular figure in the written test as viva voce and the written test marks were to be added to get the final selection list. It was also stated in paras 6, and 7 of the affidavit as under:

6. That the Board then directed the Secretary, Subordinate Services Selection Board to produce list of candidates of various categories i.e. General, Scheduled Caste, Backward Caste and Ex-Servicemen. In this the Board directed the Secretary to produce lists of 3 times of the number of vacancies as per the ruling given by the Supreme Court and the practice followed by the Haryana Public Service Commission. The Board also awarded viva voce marks out of 12.5% of the written marks again as per practice followed by Haryana Public Service Commission and the ruling of the Supreme Court. Having seen the written marks the Board was satisfied that no injustice was done to candidates who stood lower than three times of the number of vacancies and their inclusion in the final list would have been an exercise in futility.

7. The Board finally recommended for appointment of 6 candidates out of 19 candidates in the general category 5 candidates out of 15 in the Scheduled Caste, one candidate out of 3 in Backward Caste and 3 out of 11 candidates in the Ex-servicemen category.

4. The appellants sought permission of the Court to amend the petition and the prayer was allowed. In the amended petition a plea was taken that according to the Rules the marks for the written test were 250 while those for the viva voce were 100 i.e. 40% of the written test marks have been kept for the viva voce test, It may be noted that the appellants wrongly calculated the viva voce marks as 40% because percentage of viva voce marks has to be calculated out of total marks and not merely written test marks. Thus 100 marks for viva voce out of the total marks 350 will come to 28.5%. The appellants also mentioned in the amended petition that the award of interview marks up to 40% (118.5% of the total marks) of the written test marks is absolutely arbitrary and is contrary to the law laid down by the Supreme Court in *Asbok Kumar Yadav v. State of Haryana*, 1985 Supp SCR 657: (AIR 1987 SC 454). Even in the selection to the I.A.S. the Union Public Service Commission awards interview marks out of 12.2% of the written test marks.

5. It has been submitted that the Selection Board had already interviewed the candidates by following the law laid down by the Supreme Court in *Ashok Kumar Yadav's case* and the appellants were put in the select list. The Selection Board however decided that all the candidates who had qualified in the written examination of the Excise Inspectors may be re-interviewed as the requirement of the

Rules had not been properly followed in respect of allotting of marks in the viva voce and also not prepared the results of the candidates who appeared for interview before the previous Board. According to the appellants this decision was wholly illegal. The action of the Board in seeking to re-interview all the 290 candidates was abundantly illegal. Further, the basis on which re-interview was sought to be held was again contrary to the law laid down by this Court. The appellants thus challenged the action of the respondents in not declaring the result according to the first interview and its decision to re-interview all the applicants by keeping 100 marks for viva voce which was 28.5% of the total marks as illegal and unconstitutional.

6. The respondents in the reply submitted that the affidavit by Col. Bhim Singh, the then Chairman of the Board was against the Rules applicable to the services and those Rules had been upheld by the Full Bench of the Hon'ble High Court. It was further stated in the reply that from the record of the answering respondents it was nowhere mentioned that the previous Board took the decision that marks of the viva voce will be awarded to the candidates in view of Ashok Kumar Yadav's case (AIR 1987 SC 454). Ashok Kumar Yadav's case had no application to the selection made by the answering respondents and it was so held by the Full Bench of the High Court (reported in AIR 1988 Punj and Har 298). The affidavit of the then Chairman was not supported by the office record and as such the same is not helpful to the petitioners for the decision of the writ petition. During the course of arguments before this Court Mr. Mahabir Singh learned counsel for respondents fairly and candidly conceded that the first interview had been made on the basis of Ashok Kumar Yadav's case, by taking 12.2% marks for viva voce examination instead of 28.5% and the appellants had been put in the select list.

7. After considering all the cases decided so far on the subject we have given detailed reasons in our judgment given today, in *Mohinder Sain Garg v. State of Punjab* (civil appeal arising out of SLP No. 14292 of 1988) for taking the view, that Ashok Kumar Yadav's case (AIR 1987 SC 454) lays down the guidelines and principles to be applied in the matters of selection to the public services.

8. The present case relates to the Selection of Excise Inspectors by the Haryana Government and Ashok Kumar Yadav's case was a case relating to the recruitment to the posts of Civil Services (Executive Branch), State of Haryana. It was clearly directed in Ashok Kumar Yadav's case that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consists of a written test followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. It was also observed that whenever selections are made by the Haryana Public Service Commission in future shall be made on the basis that the marks allocated for the viva voce test shall not exceed 12.2% in case of candidates belonging to the general category and 25% in case of ex-service officers. In our view the present selection made on the basis of rules making a provision for 28.5% of marks for viva voce test was highly excessive and in clear violation and disregard of the principle laid down in Ashok Kumar Yadav's case. It's no doubt correct that in that case a direction was given in respect of the selections to be made to the Haryana Civil Services (Executive Branch) and other allied services and to the selections to be made in future by the Haryana Public Service Commission, but in our view the principle and the ratio of Ashok Kumar Yadav's case will apply to the selections made in the present case also though by the Subordinate Service Selection Board. Learned counsel appearing for the respondents were unable to satisfy us that for selections for the posts of Excise Inspectors, it was just and reasonable to keep 28.5% marks for the viva voce test.

9. It was contended on behalf of the respondents that *Leeladhar v. State of Rajasthan*, (1981) 4 SCC

159: (AIR 1981 SC 1777) still holds good in which 25% marks kept for viva voce examination was held to be good. It was also submitted that Leeladhar's case was not overruled in Ashok Kumar Yadav's case (AIR 1987 SC 454) but was rather affirmed. We see no force in the above contention. Leeladhar's case is totally distinguishable. In that case their Lordships were considering the question of selection to Rajasthan Judicial Service by written examination as well as viva voce test. In that case it was observed that the Rajasthan Judicial Service Rules under consideration were made by the Governor of Rajasthan in consultation with the High Court of Rajasthan and the Rajasthan Public Service Commission. Both High Court and the Public Service Commission were independent bodies, outside executive control, occupying special positions and enjoying special status under the Constitution. The Court also took into consideration that the interview test in that case was conducted by a 'body consisting of a Judge of the High Court, the Chairman and a Member of the Public Service Commission and special invitee expert. It was observed that there can surely be no legitimate or hint of arbitrariness against this body. Another factor worthy of consideration as noted in the above case was that the selection was not of raw graduates freshly out of college but of persons who had already received a certain amount of professional training. Source material as such in that case was different from the present case and in the peculiar facts and circumstances of Leeladhar's case it was held that 25% of the total marks was not an exaggerated weightage. In the above circumstances Leeladhar's case was distinguished in Ashok Kumar Yadav's case. As already mentioned above ratio of Ashok Kumar Yadav's case is fully applicable in the case in hand before us.

10. It may be noted that in the first interview made on the basis of keeping 12.2% marks for viva voce, the appellants were selected and put at S. Nos. 3 and 4 in the select list. Learned counsel for the appellants submitted that the appellant Vikram Singh had obtained 146 marks and appellant Nawab, Singh 145 marks in the written papers and in the first interview made on the basis of the principle laid down in Ashok Kumar Yadav's case (AIR 1987 SC 454), were selected for appointment to the post of Excise Inspectors under the general category. Mr. Mahabir Singh appearing on behalf of the State was unable to refute the above contention and further made a statement that in case this Hon'ble Court would give a direction for their appointment, the State Government will make posts available for them. We have already taken the view that keeping 100 marks for viva voce test i.e. 28.5% of the total marks was unreasonable and against the principle laid down in Ashok Kumar Yadav's case. The two appellants were in fact interviewed by the first Selection Board and by applying the correct principle were also selected for appointment to the post of Excise Inspectors and they ought to have been given appointment on the post of Excise Inspectors on the basis of their selection by the first Selection Board. Though the second interview on the basis of 100 marks for viva voce test was wrong and illegal but we do not think it just and proper to cancel the selections already made, as the selected candidates have already joined posts long back. We, therefore, allow this appeal, set aside the order of the High Court and direct the respondents to give appointments to the appellants Vikram Singh and Nawab Singh on the post of Excise Inspector in case they are found otherwise suitable for such post. It is further made clear that in case the appellants have become overage during the intervening period, it would not be considered as a disqualification for their appointment on the above posts. The respondents should take suitable steps and pass appropriate orders for appointing the appellants within one month of the communication of this order.

11. The parties shall bear their own costs.

Appeal allowed.

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