

SUPREME COURT OF INDIA

Praveen Singh

Vs.

State of Punjab

C.A.No.15354 of 1996

(G. B. Pattanaik and U. C. Banerjee, JJ.)

10.11.2000

JUDGEMENT

BANERJEE, J.:-

1. Arbitrariness being opposed to reasonableness is an antithesis to law. There cannot, however, be any exact definition of arbitrariness neither can there be any straight jacket formula evolved therefor, since the same is dependent on the varying facts and circumstances of each case.

2. The basic facts pertaining to the appeal against the judgment of the High Court depict that the Writ Petition of the appellant was dismissed by the High Court on the ground that there is no infraction of law neither the Public Service Commission in the State of Punjab has deviated from the criteria laid down for selection of candidates for the post of Block Development and Panchayat Officer. Incidentally the grievance of the Writ Petitioner-appellant pertains to violations of the equality clause under Articles 14 and 16 of the Constitution read with provisions of Punjab Development and Panchayat Class II (Service) Rules, 1974.

3. On the factual score it appears that the Punjab Public Service Commission in June, 1993 issued an advertisement for 26 vacancies of Block Development and Panchayat Officers but before the process of selection could be finalised, the Government of Punjab filled up the vacancies through ad hoc appointments by reason wherefor, the Service Commission considered it fit not to proceed with the selection any further. The records depict that these ad hoc appointments, however, by the order of the High Court in a petition under Article 226 stands quashed and the appeal therefrom was dismissed by this Court. This Court, however, while rejecting the appeal was pleased to direct the Public Service Commission (Punjab) to complete the process of selection by 9th July, 1995 and in terms therewith, the Service Commission issued a corrigendum to the advertisement but the vacancies were enhanced from 28 to 44 for reasons of exigencies of the situation. It is against this corrigendum to the advertisement about 4,500 people appeared in written test and subsequently roll numbers of 130 candidates only were published, being eligible to appear in the viva voce test. On 9th July, 1995 the final result was announced and the names and roll numbers of candidates who were found suitable for appointments were published in order of merit. The petitioner's name, however, did not figure in the merit list, which stands challenged in the writ petition before the High Court but the same however stands negated by the High Court and hence the appeal before this Court.

4. The bone of contention raised in the appeal is the non-consideration of the marks secured by the candidates in the written examination while determining the overall merit of the candidates and the real merit has been ignored at the time of preparation of select list by the Service Commission and in this context, strong reliance was placed on the information sheet as circulated by the Service Commission, relevant extracts of which are as below :

"Exam. 1/93

Punjab Public Service Commission, Patiala

Information Sheet and Instructions to Candidates

Block Development and Panchayat

Officers Examination, 1993

Important Note :

xx xx xx xx xx xx xx

Closing Date

.....

Vacancies and Reservations :

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Qualifications :

.....

Scheme of Examination :

3. There will be four papers for written test (a) General knowledge including everyday science;

(b) General English/Essay, (c) Community Development, Panchayat Raj and Agricultural Development (d) Punjabi Language test of matriculation Standard followed by viva voce test. The qualifying standard and syllabus etc. is given in the rules attached.

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12(1). The examination will consist of the following subjects and marks indicated against each :

S. No. Subject Standard of the papers Maximum marks

- | | | |
|----|---|---------------------------------|
| 1. | English/English BA/BSc. Of the Punjab University | 100 |
| 2. | Punjabi (in Gurmukhi Script) Matriculation of Punjab School Education Board | 50 |
| 3. | General Knowledge BA/B.Sc of the Punjab University | 100 |
| 4. | Community Development, Panchayat Raj and Agricultural para 6 below. | 100 As per detailed Syllabus in |
| 5. | Viva Voce | 50 |

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2. No candidate shall be eligible to appear in the viva voce test unless he obtains 33 per cent marks in each paper and 45 per cent marks in aggregate.

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5. Paragraph 12(1) of the document thus expressly provides that the examination shall consist of four different subjects with 100 marks each for three subjects and fifty marks (50) stand earmarked for the 4th vernacular (Punjabi in Gurmukhi script) totalling 350 marks and further 50 marks for viva voce test. The essentiality of viva voce test however stands established by reason of express narration under the scheme of examination' viz. "followed by viva voce test". In the event of there being a written test for elimination, the scheme of the examination would not have been detailed in the manner as it has been so stated. Paragraph 3 of the instructions refers to the rules for laying down the qualifications and the syllabus for the examination. Admittedly, these rules have been framed by the Governor of Punjab in exercise of his power under the proviso to Article 309. Rule 5 of the Rules referred to the qualification that a person can be appointed to the service who possesses the educational and other qualifications specified in Appendix B. In Appendix B, the posts of Block Development and Panchayat Officers appear at item No. 20 and the qualifications mentioned therein are as below :

(i) "Graduate of a recognised University;

Preference to Graduate in Agriculture;

(ii) Knowledge of Pujabi language up to Matriculation or equivalent standard;

(iii) Candidates will be required to qualify the following written tests at the time of recruitment.

(i) General Knowledge 100 marks

(ii) General English/Essay of BA Standard 100 marks

(iii) Community Development, Panchayati Raj and Agricultural Development marks

100

(iv) Punjabi language test of matriculation standard 50 marks

(v) Viva Voce 100 marks

The qualifying standard in the test will be 33% pass marks in each paper and 45 per cent in the aggregate."

6. It is on the basis of the rules together with the information sheet as noticed herein before that the High Court came to the conclusion that there is no arbitrariness in the matter of selection of candidates. The said finding stands challenged before us principally on the ground that there is existing a dual requirement viz., written test as also the viva voce test and the marks obtained therein in both counts ought to have formed part of the process of determining the merit and the Public Service Commission had no authority or jurisdiction to effect the selection solely on the basis of the performance of the candidates at the viva voce examination. The respondents however contended that since it was not possible to interview about 4,500 candidates, the Public Service Commission resorted to a written elimination test in order to facilitate the interview process or the viva voce test. It was contended that as a matter of fact 130 candidates have been called for the viva voce test out of 4,500 approximately as against 44 vacant posts : A short digression from the facts however may not be totally unjustified at this juncture by reason of enormity of the issue of available employment opportunity. 4,500 persons applied for 40 vacancies - a rather sordid state of affairs, - employment opportunities are so meagre as compared to the need and the situation has reacted its optimum without any indication even of a descending trend. Needless to record that this is not in Punjab only but this is reflected every State in the country - in some States the ratio being still be higher - we are however not expressing any opinion but recording factum only so as to focus the magnitude of the problem.

7. Turning on to the contentions as raised by the respondent herein that the written test on the wake of the documentary evidence available in the records cannot but be termed to be a mere qualifying test and since Service Commission has proceeded to select the candidates on the basis of the performance of the candidates at the viva voce examination the actions cannot be faulted in any way neither can the same be ascribed to be arbitrary or capricious.

8. Relying upon the aforesaid, however, the High Court observed that even though the rule is not

properly articulated but on a rational interpretation, there is no escape from the conclusion that passing of the written test with 33% marks in each paper and 45% marks in aggregate does not ipso facto entitle a candidate to be called for viva voce/ interview. The High Court however proceeded on the right of the employer for short listing and screening since the same has been recognised by the law Courts keeping in view the ground reality, as it is otherwise a well-nigh impossibility for the selecting agency to interview all the candidates. The High Court also took into consideration the number of candidates and the time that shall be otherwise consumed in the event of interview of a larger number of people and as such the High Court came to the conclusion that the Punjab Public Service Commission was justified in adopting a rational yardstick for short listing the number of candidates for viva voce test and no arbitrariness or illegality can be attributed therein and the factum of judging the merits of the candidates on the basis of viva voce test being prevalent in the Punjab Public Service Commission since the year 1978 has also been taken into consideration by the High Court. While it is true that the administrative or quasi judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fairplay, good conscience and equity. This Court in the case of J.P. Kulshreshtha v. Chancellor, Allahabad University, AIR 1980 SC 2141 : (1980 Lab IC 692 : 1980 All LJ 571) did recognise the undetectable manipulation of results being achieved by remote control tacits and masked as viva voce test resulting (in) the sabotaging of the purity of proceedings. This Court held "interviews as such are not bad but polluting it to attain illegitimate ends is bad."

9. What does Kulshreshtha's case (supra) depict? Does it say that interview should be only method of assessment of the merits of the candidates? The answer obviously cannot be in the affirmative. The vice of manipulation, we are afraid cannot be ruled out. Though interview undoubtedly a significant factor in the matter of appointments. It plays a strategic role but it also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a "sabotage of the purity of the proceedings". A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate thereon neither we even wish to sound a contra note. In Ashok Kumar's case, Ashok Kumar Yadav v. State of Haryana, (1985) 3 Serv LR 200 : (AIR 1987 SC 454 : 1986 Lab IC 1417), this Court however in no uncertain terms observed : There can therefore be no doubt that the viva voce test performs a very useful function in assessing the personal characteristics and traits and in fact test the man himself and is therefore, regarded as an important tool along with the written examination.

(Emphasis supplied)

10. The situation envisaged by Chinnappa Reddy, J. in Lila Dhar's case, Lila Dhar v. State of Rajasthan, AIR 1981 SC 1777 : (1981 Lab IC 1515) on which strong reliance was placed is totally different from the contextual facts and the reliance thereon is also totally misplaced. Chinnappa Reddy, J. discussed about the case of services to which recruitment has necessarily been made from persons of mature personality and it is in that perspective it was held that "interview test may be the only way subject to basic and essential academic and professional requirements being satisfied". The facts in the present context deal with Block Development Officers at the Panchayat level. Neither the job requires mature personality nor the recruitment should be on the basis of interview only,

having regard to the nature and requirement of the concerned jobs. In any event, the Service Commission itself has recognised a written test as also viva voce test. The issue therefore pertains as to whether on a proper interpretation of the rules read with the instructions note, the written examination can be deemed to be a mere qualifying examination and the appointment can only be given through viva voce test a plain reading of the same however would negate the question as posed.

11. A close look at the qualification as prescribed and the information sheet, however, in our view would depict otherwise. The qualification prescribes that the candidates will be required to qualify for the following written test at the time of recruitment and the qualification standard in the test has been fixed to be at 33% pass marks in each paper with 45% however in the aggregate (emphasised) and paragraph 4 of the Information sheet, as above, in no uncertain terms records that no candidate shall be eligible to appear in the viva voce test unless he obtain 33% marks in each paper and 45 % marks in the aggregate.

12. Reading the two requirements as above, in our view question of having the written test written off in the matter of selection does not and cannot arise. Had it been the intent of the Service Commission then and in that event question of there being a totality of marks would not have been included therein and together with specific marks for viva voce tests, would not have been there neither there would have any requirement of qualifying pass marks nor there would have any aggregate marks as noticed above.

13. Further, in the event, the interview was the sole criteria and the written test being treated as qualifying test, the Public Service Commission ought to have clearly stated that upon completion of the written elimination test, selection would be made on the basis of the viva voce test only as is available in the decision of *Ashok v. State of Karnataka*, (1992) 1 SCC 28 : (1991 AIR SCW 2764 : AIR 1992 SC 80 : 1991 Lab IC 2407). Be it noted that there is always a room for suspicion for the common appointments if the oral interview is taken up as the only criteria. Of course, there are posts and posts, where interviews can be a safe method of appointment but to the post of a Block Development Officer or a Panchayat Officer wherein about 4,500 people applied for 40 posts, interview cannot be said to be a satisfactory method of selection though however it may be a part thereof - In the factual score we have the advantage of having the Rules prescribing the mode and method of appointments and specific marks are earmarked for written examination of various subjects together with totality of marks for viva voce test. As a matter of fact out of 450 marks only 50 marks have been allotted for interview by the Service Commission itself - why these 400 marks allotted for a written examination in four different subjects, if interview was to be the guiding factor; there has been however, no answer to the same excepting that the Court ought not to interfere in the matter of selection process in the absence of mala fides - true it is that in the event the selection is tainted with mala fides, it would be a plain exercise of judicial power to set right the wrong - but is it also realistic to assume that when the Commission in clear and categorical language recorded that 450 marks would be the total marks for the examination and out of which only 50 marks are earmarked for viva voce test, the Commission desired that these 50 marks would be relevant and crucial and the other 400 marks would be rendered totally, superfluous and of no effect

at all. The language used is rather plain and is not capable of the interpretation as is being presented before us during the course of hearing and has been held by the High Court. Reliance on 50 marks only and thereby avoiding the other 400 marks cannot in our view having due regard to the language used, be said to be reasonable or devoid of any arbitrariness.

The action of the respondent Commission, thus is wholly unreasonable, unfair and not in accordance with the declared principles. Appointment procedure is evident from the documentary evidence disclosed in the proceedings and the Commission ought to be taken note of the written examination results as well. As a matter of fact the High Court while recording its acceptance to the method of selection on the basis of the viva voce test only, was pleased to observe as below :

"However, we consider it absolutely imperative to observe that the Government should get the rules examined and make proper amendment so that its intention of making distinction between qualifying test and viva voce test does not remain obscure. We also direct the PPSC to take extra precautions while issuing any future advertisement so that no inconsistency remains between the rules and the contents of the advertisement."

The High Court admittedly therefore found inconsistency and obscurity in the entire process and as a matter of fact, the High Court has suggested incorporation of proper amendments in the rules so as to avoid confusion and obscurity. We are however, constrained to note that having come to a finding about the inconsistency and obscurity in the process, the High Court thought it fit to decry the claim of the writ petitioner being the appellant herein on the plea of the employer's right but the documents through which the right flows indicates a contra situation and as such the action suffers from the vice of arbitrariness and unreasonableness warranting intervention of this Court. On the wake of the above, the order of the High Court stands set aside and quashed. Consequently the appointments are also set aside. The Public Service Commission is directed to complete the process of selections in terms of the existing rules so that both the written and the viva voce test be taken into consideration for the purpose of effecting appointments. It is made clear that no further advertisement or examination shall take place but reconsideration of the entire process be effected upon the reliance on the written as well as viva voce test. The process be completed within a period of 3 months from the date thereof. It is further made clear that the appointments if any, already made shall continue, but shall be subject to the further results which may be declared by the Public Service Commission in regard to filling up of the posts of Block Development and Panchayat Officers. The appeal thus stands allowed. There will however be no order as to costs.

Appeal allowed.