

# SUPREME COURT OF INDIA

Jasvinder Singh

Vs.

State of J and K

(Doraiswamy Raju and Shivaraj V. Patil JJ.)

20.12.2002

## JUDGMENT

### **D. Raju, J.**

1. The above appeals have been filed against the common Judgment dated 29th May, 1998 in a batch of appeals-LPA (SW) 85 of 1997 etc. and those in which subsequently the same was followed of a Division Bench of the High Court of Jammu and Kashmir at Jammu whereunder, while allowing the appeals, the Division Bench set aside the judgment of the learned Single Judge and ordered the dismissal of the writ petitions. The subject matter in issue pertains to a challenge to the selections made for the appointment of Sub-Inspectors of Police - Executive/Armed Police in the State. Applications were invited by Public notices dated 20th August, 1991, fixing the last date for receipt from all eligible persons, indicating the required qualifications, therefor. Candidates, it was proclaimed will have to undergo (a) physical measurement test; (b) outdoor test; (c) written test and (d) viva voce test. After conducting all such tests the list of candidates approved for appointment was said to have been published on 26-11-1992, consisting of about 110 names and the same was subject to verification of character and antecedents, medical fitness and fulfilment of other formalities. Subsequently, it appears that out of 18 selected candidates summoned for verification twelve candidates presented themselves and out them nine were found to be in shortage of chest measurements and one found to be of under height and therefore excluded from the list of candidates to be appointed. The appellants who filed writ petitions participated in the selections but could not be selected for one or the other reason and aggrieved they filed writ petitions in the High Court challenging the selections. The learned Single Judge who heard the writ petitions found and in the course of the order specifically recorded that the controversy in the cases stood narrowed down to two grounds viz. (i) the marks allocated for viva-voce at 25 in comparison to the marks earmarked for written test at 100, worked out to 20 % and the same being in excess of 12 1/2 % stood vitiated on account of the law declared by this Court in the decision reported in : *Ashok Kumar Yadav and others vs. State of Haryana and others*<sup>1</sup> and therefore the selections stood vitiated and are liable to be set aside and (ii) that the marks in viva-voce was not properly awarded and that not only there was a farce of an interview of every candidate within few minutes but questions put were also irrelevant and not related to the selection for the posts in question. Over ruling the objections of the respondent State and authorities of the Department, the learned Single Judge held (a)

that the marks allocated at 25 for the viva-voce was against the law declared by this Court in Ashok Kumar Yadav's case (supra) and therefore stood vitiated and (b) on going through the records it was found that the marks in the interview seem to have been awarded with a conscious effort to bring up candidates who figured with low marks in the written test by awarding more marks in the viva-voce and low marks awarded to those who secured higher percentage in written test. Therefore the learned Single Judge held that there is no option but to believe that the marks were given in the viva-voce for extraneous consideration. Thereupon the learned Single Judge expressed the view that he was not inclined to quash the appointment of selected candidates which may upset the whole department and operate harshly upon the selected candidates, and instead directed that all those writ petitioners falling in general category who had obtained 56 marks or above in the written examination shall be entitled for appointment as Sub-Inspectors of Police, since the last candidate already selected and appointed in general category had obtained 56 marks in the Written Examination.

2. On further appeal before the Division Bench, the learned Judges on an analysis of the case law on the subject, came to the conclusion that the Prescription of 25 marks for viva-voce test in the present case cannot held to be not in consonance with the judicial precedents. It was also observed that the decision in Ashok Kumar Yadav's case (supra) has been noticed in subsequent judgments of this Court wherein even higher percentage viz., upto 50% was also upheld and it would not be apt for the Court to deny the right/power of the Government, in this regard. Consequently, it was held that prescription of 25 marks for viva-voce in the case did not suffer from the vice of arbitrariness. Therefore, the judgment of the learned Single Judge has been set aside and the writ petitions challenging the selection were dismissed. Heard the learned counsel appearing on either side, and the counsel for some of the respondents sailing with the appellants.

3. This Court in Ashok Kumar Yadav's case (supra) observed that both written examination and viva voce test are accepted as essential features of proper selection and that there cannot be any hard and fast rule regarding the precise weight to be given to the viva-voce test as against written examination, which may vary from service to service according to the requirement of that particular service, the minimum qualifications prescribed, the age group from which selection is to be made, the body to which the task of holding the viva- voce is entrusted and a host of other factors. It was also observed that all such are essentially matters for determination by experts and it would not be right for the Court to pronounce upon it unless "exaggerated weight has been given with proven or obvious oblique motives." Thereupon while adjudging the issue as to whether the allocation of as high a percentage of marks as 33.3 % in case of ex-service officers and 22.2 % in case of other candidates, this Court adverted to the pattern of marks and found that the highest marks obtained in the written examination by ex-officers worked out only to a ratio of 22.2% as against the marks obtained in the viva-voce worked out to an inordinately high percentage of 76. What was considered to be the vitiating factor was the spread of marks in the viva voce test being enormously large compared to the spread of marks in the written examination leaving room with greater laxity at their command and for arbitrary exercise of the same with so higher percentage of 33.3 % for viva voce. So far as candidates other than ex-service members, viz.,

the general category are concerned, the percentage of 22.2 % was considered to be very high tested by the same standards. Proceeding further as to the question what should be the proper percentage of marks to be allocated for the viva voce test in such cases it was observed that marks allocated for the viva voce test shall not exceed 12.2 % of the total marks taken into account for the purpose of selection. This Court finally observed there in as follows: "We would therefore direct that in case ex-service officers, having regard to the fact that they would ordinarily be middle aged persons with personalities fully developed, the percentage of marks allocated for the viva voce test may be 25. Whatever selections are made by the Haryana Public Service Commission in the future shall be on the basis that the marks allocated for the viva voce test shall not exceed 12.2 % in the case of candidates belonging to the general category and 25 % in the case of ex-service officers." In *Mahmood Alam Tariq and others vs. State of Rajasthan and others*<sup>2</sup> prescription of 33% as minimum qualifying marks of 60 out of total 180 marks set apart for viva voce examination does not by itself incur any constitutional infirmity. In *Manjit Singh, UDC and others vs. Employees State Insurance Corporation and another*<sup>3</sup> this Court held that in the absence of any prescription of qualifying marks for the interview test the same 40 % as applicable for written examination was reasonable. In *Anzar Ahmed vs. State of Bihar and others*<sup>4</sup> this Court exhaustively reviewed the entire case law on the subject including the one in Ashok Kumar Yadav's case (supra) and upheld a selection method which involved allocation of 50 % marks for academic performance and 50 marks for the interview. The very observations in Ashok Kumar Yadav's case (supra) would go to show that there cannot be any hard and fast rule of universal application for allocating the marks for viva voce viz-a-viz the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases. What ultimately required to be ensured is as to whether the allocation, as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Judged from the above the Division Bench could not be held to have committed any error in sustaining the allocation of 25 marks (20 %) for viva voce as against 100 marks for written examination for selection of candidates in the present case. The learned Single Judge, in our view, has adopted a superficial exercise and proceeded on a misunderstanding of the real ratio of the decision in Ashok Kumar Yadav's case (supra). Further, the learned Single Judge appears to have applied the ultimate decision in the said case, to the case on hand drawing certain inferences on mere assumptions and surmises or some remote possibilities, without any proper or actual foundation or basis, therefor.

4. The learned Single Judge also seem to have been very much carried away by few instances noticed by him as to the award of higher percentage of marks in viva voce to those who got lower marks in written test as compared to some who scored higher marks in written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances cannot provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in written test will or should be presumed to have fared well in viva voce test also and the Expert opinion about as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart the variation of written test marks of those who were found to have been awarded higher marks in viva voce viz-a-viz those who secured higher marks in the written test but not so in the viva voce cannot be

said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case. There was no specific allegation of any mala fides or bias against the Board constituted for selection or any one in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot be said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates all those who have obtained 56 marks in written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such serious infirmity in law to call for our interference.

5. For all the reasons stated above, the appeals fail and shall stand dismissed but with no costs.

<sup>1</sup>*AIR 1987 SC 454*

<sup>2</sup>*AIR 1988 SC 1451*

<sup>3</sup>*1990 (2) SCC 367*

<sup>4</sup>*1994 (1) SCC 150*