

Manish Kumar Shahi

v.

State Of Bihar & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE C.K. PRASAD

Manish Kumar Shahi v. State Of Bihar & Others

Civil Appeal No. 26223/2008 | 19-05-2010

This petition is directed against order dated 15.7.2008 passed by the Division Bench of Patna High Court in CWJC No. 8054 of 2008 whereby the petitioner's challenge to the earmarking of 200 marks for viva voce test as against 850 marks for written test for recruitment to Bihar Civil Service (Judicial Branch) was negatived.

The petitioner was one of the candidates, who had applied for selection pursuant to an advertisement dated 18.11.2005 issued by Bihar Public Service Commission (for short, 'the Commission') for appointment of Civil Judges (Junior Division). After being declared successful in the written examination, the petitioner was interviewed on 7.8.2007. However, his name did not figure in the merit list prepared by the Commission.

After nine months, the petitioner filed writ petition questioning the constitutionality of Appendix- C of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 (for short, 'the Rules') on the ground that the marks prescribed for viva-voce test were excessive and contrary to the law laid down by this Court in *Ashok Kumar Yadav v. State of Haryana* (1985) 4 SCC 417, *Mohinder Sen Garg v. State of Punjab* (1991) 1 SCC 662, *Ashok alias Somanna Gowda v. State of Karnataka* (1992) 1 SCC 28, *Raj Kumar and others v. Shakti Raj and others* (1997) 9 SCC 527 and *Vijay Syal v. State of Punjab and others* (2003) 9 SCC 401. In the counter filed on behalf of the State Government, an objection was raised to the locus standi of the petitioner by asserting that after having participated in the process of selection, he is estopped from questioning the marks prescribed for viva voce test. It was also pleaded that the Commission had recommended the names of 318 candidates to the Department of Personnel and Administrative Reforms and they have already been appointed.

By the impugned judgment, the Division Bench of the High Court non-suited the petitioner on the ground that he moved the Court after taking a chance for being selected on the basis of the provision which he was seeking to challenge. The Division Bench referred to the judgment of this Court in *Madan Lal v. State of Jammu and Kashmir* (1995) 3 SCC 486 and held:

"In the light of the aforesaid legal position, it has to be held and we do hold that the petitioner by his conduct has disentitled himself to any relief in the high prerogative jurisdiction of this Court. He was well aware when he applied to appear in the 26th Judicial Competitive Examination 2005 that out of combined written test and viva voce test of total marks of 1050, 200 marks have been provided for viva voce test. The petitioner had no grievance about the criteria when he applied nor he had any

grievance when he appeared in the written test and the viva voce test. Had he been successful, he would have no grievance at all about the provision of maximum 200 marks for interview. Had he secured higher marks in the viva voce test, he would have been happy with the provision made in the Rules. It is only after the entire selection process has been over and he remained unsuccessful that he thought of raising grievance about unreasonableness of maximum 200 marks fixed for viva voce test. He approached the court much after the entire selection process was over. BPSB had recommended the names of 318 candidates for selection and the Personnel and Administrative Reforms Department, Government of Bihar appointed the selected candidates. The entire selection process has been over. In our view, the same cannot be undone or overturned at the instance of the petitioner who approached the court only after he remained unsuccessful in the examination on the plea that the provision of 200 marks for viva voce test out of total marks 1050 was unreasonable. If out of 318 candidates who were recommended by the BPSB to the State Government for appointment, any candidate did not join, that vacancy has to be carried forward to the next year. There is no challenge to the circular issued by the Personnel and Administrative Reforms Department way back in the year 1977 that any vacancy having remained unfilled due to non-joining of the selected candidates will be carried forward to the next year."

Shri Jayant Bhushan, learned senior counsel argued that the High Court committed a serious error in denying relief to the petitioner by invoking the principle of estoppel/waiver ignoring that he had challenged the constitutionality of the rule by which excessive marks have been prescribed for viva voce test and also questioned the selection made by the Commission on the ground of violation of his fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution. Learned counsel emphasized that the rule of estoppel, waiver and acquiescence cannot be applied in the cases involving violation of the rights guaranteed under Part III of the Constitution. He then submitted that the marks prescribed for viva voce test are highly excessive and contrary to the law laid down by this Court in *Ashok Kumar Yadav v. State of Haryana* (supra).

Learned counsel for the respondents argued that after having taken a chance to be selected on the basis of criteria specified in Rule 14 read with Appendix-C and the advertisement, the petitioner cannot turn around and challenge the selection. Shri Jayant Bhushan responded to this argument by making a statement that his client is not interested in pressing his challenge to the selection as a whole and will feel satisfied if a direction is given to the High Court and the State Government to consider his case for appointment against the available vacancies.

We have considered the respective arguments. Rule 14 of the Rules and relevant portions of Appendix-C, which have bearing on the decision of this petition, read as under:-

"14. The examination shall be held according to the syllabus specified in Appendix 'C' to these rules which are liable to alteration from time to time by government after consultation with the High Court and the Commission.

APPENDIX 'C'

SYLLABUS FOR THE COMPETITIVE EXAMINATION

PRESCRIBED UNDER RULE 14 OF THE BIHAR CIVIL

SERVICE (JUDICIAL BRANCH) (RECRUITMENT) RULES,

1955

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[Questions in all non-language subjects may be answered either in English or in Hindi (In Devanagri script)]

Subjects Marks

1. Compulsory-

(1)General Knowledge (including 150

current affairs)

(2)Elementary General Science 100

(3)General Hindi 100

This compulsory paper will be a qualifying subject in which all candidates shall be required to secure a minimum of 30 marks but the marks secured in this paper will not be added for the purpose of determination of merit.

2. Optional-Candidates must appear in subject No.4 and select any three out of the remaining five subjects-

(4)Law of Evidence and Procedure 150

(5)Constitutional Law of India and 150

England

(6)Hindu Law and Muhammandan Law 150

(7)Law of Transfer of Property and 150

Equity including Law of Trusts and

Specific Relief

(8)Law of Contracts and Torts 150

(9)Commercial Law 150

3. Viva Voce test 200

xxxx xxxx xxxx"

The aforementioned provision was also incorporated in para (vi) of the advertisement issued by the Commission.

The question whether the marks prescribed for viva voce test/interview are excessive and selection made in accordance with the criteria like the one specified in Rule 14 read with Appendix-C and para (vi) of the advertisement issued by the Commission has been considered by this Court in several cases including those upon which reliance has been placed by learned counsel for the petitioner. Although, no straitjacket formula has been judicially evolved for determining whether the prescription of particular percentage of marks for viva voce test/interview introduces an element of arbitrariness in the process of selection or gives unbridled power to the recruiting authority/agency to select less meritorious candidates, by and large, the courts have not found any Constitutional infirmity in prescribing of higher percentage of marks for viva voce test/interview for recruitment to judicial services, administrative services and the like.

In *Lila Dhar v. State of Rajasthan and others* (1981) 4 SCC 159, a three-Judge Bench rejected the petitioner's challenge to the recruitment to Rajasthan Judicial Service on the ground that the marks prescribed for interview (25%) were highly excessive and observed:

"Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. That was what was decided by this Court in *Periakaruppan v. State of Tamil Nadu*, *Ajay Hasia v. Khalid Mujib Sehravardi* and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview-test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview-test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission.

In this background, let us now examine the situation presented by the Rajasthan Rules. The Rajasthan Judicial Service Rules have been made by the Governor of Rajasthan in consultation with the High Court of Rajasthan and the Rajasthan Public Service Commission. The High Court may be expected to know the precise requirements of the judicial service of the State and the calibre of the available source- material, while the Public Service Commission is an expert body thoroughly conversant with recruitment policies and selection methods. Both the High Court and the Public Service Commission are independent bodies, outside executive control, occupying special positions and enjoying special status under the Constitution. Neither is an outside agency. Both are well-acquainted with the particular needs of their State and the people. If the Governor, in consultation with the High Court and the Public Service Commission of the State makes rules stipulating seventy-five per cent of the marks for the written examination and twenty-five per cent for the interview-test, on what basis can a court say that twenty-five per cent for the interview-test is on the high side? It must not also be forgotten that the interview test is generally conducted and was, in the present case, conducted by a body consisting of a Judge of the High Court, the Chairman and a Member of the Public Service Commission and a special invitee expert. There can surely be no legitimate grievance or hint of arbitrariness against this body. Yet another factor worthy of consideration is that the candidates expected to offer themselves for selection are not raw graduates freshly out of college but are persons who have already received a certain amount of professional training. The source-material is such that some weightage must be given to the interview-test and can it possibly be said that twenty-five per cent of the total marks is an exaggerated weightage. We may add here that it has been made clear by the Chairman, Rajasthan Public Service Commission on whose behalf a counter-affidavit has been filed before us that the marks obtained by the candidates at the written examination were not made available to the members of the Interview Board either before or at the time of the interview. We are

unhesitatingly of the view that the selection cannot be struck down on the ground that more than due weightage was given to the interview- test."

In *State of U.P. v. Rafiquddin and others* 1987 Supp SCC 401, the Court referred to the ratio of the judgment in *Lila Dhar v. State of Rajasthan and others* (supra), refused to nullify the selection made for recruitment to the U.P. Civil Service (Judicial Branch) and observed:

"In *A.K. Yadav v. State of Haryana* a Constitution Bench of this Court approved the view expressed in *Lila Dhar* case. The Court observed there cannot be any hard and fast rule regarding the weight to be given as against the written examination. It must vary from service to service; according to the requirement of the service, the minimum qualification, prescribed age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. The court does not possess the necessary equipment and it would not be right for the court to pronounce upon it. In *Lila Dhar* case 25 per cent of marks fixed for viva voce test was upheld. In *A.K. Yadav* case selection made by the Haryana Public Service Commission for appointment to the post of Haryana Civil Service (Executive and other allied services) was under challenge. The Court held that allocation of 33.3 per cent for viva voce was high as it opened door for arbitrariness and in order to diminish it if not eliminate the same the percentage needs to be reduced. The Constitution Bench made observation that marks for viva voce test should not exceed 12.2 per cent. In spite of these observations the Constitution Bench did not interfere or strike down the selection instead it directed the Commission to give one more opportunity to the aggrieved candidates to appear at the competitive examination. In the instant case there has been no allegation of mala fides or arbitrariness against the Commission which held the viva voce test."

In *Mehmood Alam Tariq and others v. State of Rajasthan and others* (1988) 3 SCC 241, the Court distinguished the earlier judgments in *Ajay Hasia v. Khalid Mujib Sehravardi* (1981) 1 SCC 722, *Ashok Kumar Yadav v. State of Haryana* (1985) 4 SCC 417, relied upon *Lila Dhar v. State of Rajasthan and others* (supra) and held that prescription of 33% marks for interview for recruitment to the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1962, Rajasthan Administrative Service Rules, 1954, Rajasthan Police Service Rules, 1954, Rajasthan Forest Service Rules, 1962 and Rajasthan Forest Subordinate Service Rules, 1963 is not violative of Articles 14 and 16 of the Constitution.

Some of the observations made in that judgment are extracted below:

"On a careful consideration of the matter, we are persuaded to the view that the prescription of minimum qualifying marks of 60 (33 per cent) out of the maximum marks of 180 set apart for the viva voce examination does not, by itself, incur any constitutional infirmity. The principles laid down in the cases of *Ajay Hasia*, *Lila Dhar*, *Ashok Kumar Yadav*, do not militate against or render impermissible such a prescription. There is nothing unreasonable or arbitrary in the stipulation that officers to be selected for higher services and who are, with the passage of time, expected to man increasingly responsible positions in the core services such as the Administrative Services and the Police Services should be men endowed with personality traits conducive to the levels of performance expected in such services. There are features that distinguish, for instance, Accounts Service from the

Police Service -- a distinction that draws upon and is accentuated by the personal qualities of the officer. Academic excellence is one thing. Ability to deal with the public with tact and imagination is another. Both are necessary for an officer. The dose that is demanded may vary according to the nature of the service. Administrative and Police Services constitute the cutting edge of the administrative machinery and the requirement of higher traits of personality is not an unreasonable expectation."

The same view has been reiterated in the *Anzar Ahmad v. State of Bihar and others* (1994) 1 SCC 150, *P. Mohanan Pillai v. State of Kerala and others* (2007) 9 SCC 497 and *K.A. Nagamani v. Indian Airlines and others* (2009) 5 SCC 515.

In view of the law laid down in the above mentioned judgments, it must be held that earmarking of 200 marks for viva voce test as against 850 marks for written examination does not violate the doctrine of equality embodied in Articles 14 and 16 of the Constitution.

We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in *Madan Lal v. State of J. & K.* (1995) 3 SCC 486, *Marripati Nagaraja v. Government of Andhra Pradesh and others* (2007) 11 SCC 522, *Dhananjay Malik and others v. State of Uttaranchal and others* (2008) 4 SCC 171, *Amlan Jyoti Borooah v. State of Assam* (2009) 3 SCC 227 and *K.A. Nagamani v. Indian Airlines and others* (supra).

In the result, the special leave petition is dismissed.

As a sequel to dismissal of the special leave petition, application for intervention/impleadment is disposed of as having become infructuous.