

PUNJAB AND HARYANA HIGH COURT

Rajesh Sood

Vs

Director General Employees State Insurance Corporation

C.W.P. No. 4914 of 1984

(M.M. Punchhi, J.)

07.08.1985

JUDGMENT

M. M. Punchhi, J.

1. This judgment shall dispose of Civil Writ Petitions Nos. 4914 of 1984 and 535 of 1985 since common questions of law and fact arise therein.

2. The four petitioners in the first case and the sole petitioner in the second one are employees of the State Insurance Corporation working at its Regional Office, Punjab/Haryana, at Chandigarh. The Corporation, invited applications for recruitment to the post of Insurance Inspectors through advertisement No. 328/83 dated 6-8-1983 published by the Central Employment Exchange. That is evident from Annexure P. 1. Initially, fifty-five Inspectors were sought to be recruited but the number was later increased. The procedure for selection was set out in the advertisement. The selection had to be made on the total marks secured by the candidates in the written test and the sequential interview. All the petitioners qualified in the written test and were called for interview. In the final result, they were declared unsuccessful which has given rise to this petition.

3. The grouse of the petitioners is to the effect that their result had to be based on adding their marks obtained at the interview with the marks obtained in the written test and the final result testing thereupon. Defence of the Corporation is that the petitioners had to obtain qualifying marks in the written test sequentially entitling them to an interview and then again obtain qualifying marks in the interview enabling them to have the result of both thereof totalled in order to compile the final result.

4. In order to appreciate the respective contentions, it deserves highlighting that the procedure and method of recruitment of insurance Inspectors stands provided in Regulation 3 read with the Schedule framed by the State Insurance Corporation under section 97 of the Employees State Insurance Act, 1948 with the approval of the Central Government. The regulation provides thus :

"The method of recruitment to the said post, age limit, qualifications and other matters connected therewith, shall be as specified in columns 4 and 6 to 13 of the said Schedule.

And column 11 of the Schedule provides that 33 1/3% of the total posts are to be filled in by direct recruitment through a competitive test and interview."

5. Now the expression "a competitive test and interview" being fairly wide leaves considerable residue or discretion with the Corporation to regulate the test and interview. The advertisement in the instant case is available in Annexure P. 1 which provides :

"Those who qualify in the written examination will be called for interview, Primarily selection will be made on the total marks secured in the written examination and the interview."

6. The petitioners base their claim on the language of the advertisement and stress that there could be no qualifying marks for the interview as the advertisement specifically taled of qualifying marks for the written examination but none for the interview. Reliance has been placed on their behalf on *P. K. Ramachandra Iyer and others v. Union of India and others*¹, to contend that in a similar situation the Supreme Court had found that the appointing authority in that case had committed a serious legal error in prescribing and ultimately adopting minimum qualifying marks at the viva voce test and drawing up merit list on that impermissible method. On the same analogy, it has been asserted that dehors the qualifying marks in the viva voce test, the respondents be directed to declare the results of the petitioners obtained on aggregating the marks obtained in both the tests. To counter the argument, Mr. Mongia, learned counsel for the respondents, has brought to my notice the following extract from the judgment afore-referred to :-

"On a combined reading of Rules 13 and 14, two things emerge. It is open to the Board to prescribe minimum marks which the candidates must obtain at the written test before becoming eligible for viva voce test. After the candidate obtains minimum marks or more at the written test and he becomes eligible for being called for viva voce test, he has to appear at the viva voce test. Neither R. 13 nor R. 14 nor any other rule enables the ASRB to prescribe minimum qualifying marks to be obtained by the candidate at the viva voce test. On the contrary, the language of Rule 14 clearly negatives any such power in the ASRB when in provides that after the written test if the candidate has obtained minimum marks, he is eligible for being called for viva voce test and the final merit list would he drawn up according to the aggregate of marks obtained by the candidate in written test plus viva voce examination. The additional qualification which ASSRB prescribed by itself namely, that the candidate must have a further qualification of obtaining minimum marks in the viva voce test does not find place in Rr. 13 and 14. it amounts virtually to a modification of the Rules. By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and irreversible harm".

7. The observations of the Supreme Court are a measure of interpretation of the relevant rules 13 and 14. The Court was impressed that when the rule making body clearly specified that only those candidates would be called for viva voce test who had qualified by obtaining minimum

marks, then by necessary implication the rule making body had impliedly excluded prescribing any minimum marks for viva voce test. In other words, what was meant was that if one situation was covered and the other was deliberately left out, it necessarily implied that the rule intended to cover up one and only one situation and not the other. But here, as we noticed earlier, the regulation is silent on the subject except providing that direct recruitment has to be through a competitive test and an interview and no requirements for minimum marks have been provided expressly as qualifying factors. The wide language of the regulation, as said before, has left considerable discretion with the Corporation to prescribe qualifying marks. The advertisement referred to, though using the language that there were qualifying marks in the written examination, cannot be said to have totally excluded that there would be no qualifying marks in the interview. Rather, the very job of the Insurance Inspector, as has been claimed by the respondents, is a job of public relations whereby the incumbent has to come face to face with the public requiring of him to possess a pleasing personality etc. goes to show that some qualifying marks, high or low, were inherently to be there for qualifying in the viva voce test. It is idle to contend that if a person qualified in the written examination and obtained at the interview zero marks, he was entitled to have his result declared on the basis of the written examination. The regulation laid emphasis both on competitive test and interview ; both processes divergent in quality in the context. They could not be said to be two limbs of the same competitive test. Thus, I have no hesitation in coming to the conclusion that even if the word of the advertisement is taken to be sacrosanct, though not holding so for obvious reasons, it was inherent that there would be some qualifying marks for the interview and the aggregate of both the qualifying marks in the written test and the interview would form the basis of the final result. The observations of the Supreme Court afore-quoted had necessarily to follow on the interpretation of the relevant rules and as such can have no universal applicability so as to apply to the instant case. Based on a statement in the advertisement, the contention, as raised by the petitioners, is repelled squarely leading to the dismissal of the petition.

8. To be fair to the learned counsel for the respondents, It was sought to be urged by him that neither the High Court has the territorial jurisdiction to go into this matter nor can any relief be granted to the petitioners in the absence of their impleading the successful candidates who have secured jobs under the results finally announced. Neither of the contention need be dealt with in view of the repelling of the main contention of the petitioners.

9. For what has been said above, this petition fails and is hereby dismissed. No costs.

Petition dismissed.

Cases Referred.

1983 (3) SLR 495