

LILA DHAR

v.

B STATE OF RAJASTHAN & ORS.

August 19, 1981

[O. CHINNAPPA REDDY, A.P. SEN AND BAHARUL ISLAM, JJ.]

C *Selection to a Public Service—Ideal mode—By written examination or by oral test (viva voce), or by a combination of both explained—Rajasthan Judicial Service Rules, Schedule III prescribing the criteria to be considered and the matters to be tested in the viva voce examination—Allocation of 25% of the total marks for the viva voce examination, whether arbitrary so as to offend Articles 14 and 16 of the Constitution.*

D Pursuant to the Rajasthan Judicial Service Rules made by the Governor of Rajasthan in consultation with the Rajasthan Public Service Commission and the High Court of Rajasthan, the Rajasthan Public Service Commission held a competitive examination for recruitment of Munsifs. The competitive examination consisted of a written examination with two papers in law carrying 100 marks each and two papers, one in Hindi and the other in English, each carrying 50 marks and a viva voce examination carrying 100 marks. The viva voce examination was conducted by a Board consisting of Hon'ble Mr. Justice P. D. Kudal, Judge, Rajasthan High Court, Shri Hari Dutt Gupta, Chairman, Rajasthan Public Service Commission, Adaviappa, Member, Rajasthan Public Service Commission and an expert. The expert Member was either Dr. I.C. Saxena, or Shri Kagzi or Shri Jallan who sat by rotation. Out of the 39 candidates (respondents 3 to 41) who were selected for appointment, one belonged to the scheduled caste and the rest belonged to the general category. The last of the candidates belonging to the general category who was selected for appointment obtained a total of 190 marks in the examination, 135 in the written examination and 55 in the viva voce. The petitioner who obtained a total of 189 marks, 159 in the written test and 30 in the viva voce was not selected for appointment. Hence the writ petition, by the petitioner contending: (a) the allocation of so high percentage of marks for the interview test introduced an irredeemable element of arbitrariness so as to offend Articles 14 and 16 of the Constitution; (b) awarding of marks in the interview test in a single lot instead of sub-dividing and awarding marks separately under various heads for the various matters tested in the interview was bad in law.

G Dismissing the writ petition, the Court

H HELD : 1. The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service.

[324 C-D]

1:2. While a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written test: which can evaluate a candidate's initiative, alertness resourcefulness, dependableness, co-operativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgement, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the interview Board. 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.

[325 C-E, 326 F]

2. As regards the weight to be attached respectively to the written test and the oral 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 and for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. [326 F, 327 C-D]

Periakaruppan v. State of Tamil Nadu, [1971] 2 S.C.R. and *Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors.*, A.I.R. 1981 S.C. 487, explained.

3. Ordinarily recruitment to public services is regulated by rules made under the proviso to Article 309 of the Constitution and courts would be usurping a function which is not theirs, if they try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If the courts do that, they will be rewriting the rules but, however, courts would interfere certainly in cases of proven or obvious oblique motives. [330 C-D]

In the instant case, the selection cannot be struck down on the ground that more than due weightage was given to the interview test: (a) 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. 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, Courts have no basis on which to say that twenty five per cent for the interview test is on the high side; (b) 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, and as such no legitimate grievance or hint of arbitrariness could be made against this body; (c) 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

A and (d) the marks obtained by the candidates at the written examination were not made available to the members of the interviewing Board either before or at the time of the interview. [327 E-H, 328 A-C]

B 4. Courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, it is proven or obvious that the method of marking was chosen with oblique motive. In the instant case, the Rajasthan Judicial Rules generally indicate the criteria to be considered in the interview test without dividing the interview test into distinct sub-tests. It is for the interviewing body to take a general decision whether to allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand, the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. [328 D-G]

C *Periakaruppan v. State of Tamil Nadu*, [1971] 2 S.C.R. 430 and *Ajay Hasia etc. v. Khalid Mujib Sheravardi and Ors.*, A.I.R. 1981 S.C. 487, discussed and distinguished.

ORIGINAL JURISDICTION : Writ Petition No. 2701 of 1981.

(Under Art. 32 of the Constitution of India.)

D *S. K. Mehta, P. N. Puri, E. M. Sardul Anam, M. K. Dua and K. M. Jain* for the Petitioner.

V. M. Tarkunde and S. K. Jain for Respondents Nos. 7, 8, 15, 25-28, 29, 31, 33, 38, 41.

E *K. Parasaran Sol. Gen. and Badri Das Sharma* for Respondent No. 1.

N.L. Jain and Badri Das Sharma for Respondent No. 2.

F *Badri Das Sharma* for Respondent No. 3.

The Judgment of the Court was delivered by

G CHINNAPPA REDDY, J. What is the ideal mode of selection to a Public Service, by written examination, by oral test (viva voce), or by a combination of both? If the last, what is the proper, relative weight that should be attached to the written examination and the oral test? Is the oral test so pernicious in practice, as suggested by some, that it should be abandoned without regrets or the weight to be attached to it be made minimal? Has any such consensus emerged among the informed and the cognoscenti as to require the Court to scrap a selection as arbitrary on the sole ground that the weight accorded to the oral test appeared to be high?

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Pursuant to the Rajasthan Judicial Service rules made by the Governor of Rajasthan in consultation with the Rajasthan Public Service Commission and the High Court of Rajasthan, the Rajasthan Public Service Commission held a competitive examination for recruitment of Munsifs. The competitive examination consisted of a written examination with two papers in law carrying 100 marks each and two papers, one in Hindi and the other in English, each carrying 50 marks and a viva voce examination carrying 100 marks. The viva voce examination was conducted by a Board consisting of Hon'ble Mr. Justice P. D. Kudal, Judge, Rajasthan High Court, Shri Hari Datt Gupta, Chairman, Rajasthan Public Service Commission, Adaviappa, Member, Rajasthan Public Service Commission and an expert. The expert Member was either Dr. I. C. Saxena, or Shri Kagzi or Shri Jallan who sat by rotation. Schedule III of the Rajasthan Judicial Service rules prescribes the criteria to be considered and the matters to be tested in the viva voce examination. The relevant paragraph is as follows :

"In interviewing the candidates, the suitability for employment to the judicial service shall be decided with reference to his record at the school, College and University and his character, personality, address and physique. The questions which may be put up to him may be of a general nature and will not necessarily be academic or legal. The candidates will also be put questions to test the general knowledge including knowledge of current affairs and present day problems. The marks so awarded shall be added to the marks obtained in the written test by each candidate".

The result of the competitive examination was announced by the Rajasthan Public Service Commission on March 12, 1981 and respondent Nos. 3 to 41 were declared selected for appointment. Out of the 39 candidates who were selected for appointment, one belonged to the scheduled castes and the rest belonged to the general category. The last of the candidates belonging to the general category who was selected for appointment obtained a total of 190 marks in the examination, 135 in written examination and 55 in the viva voce. The petitioner who obtained a total of 189 marks, 159 in the written test and 30 in the viva voce was not selected for appointment. He has filed the present writ petition under Art. 32 of the Constitution questioning the selection.

A Shri Mehta learned counsel for the petitioner raised two principal contentions before us. The first was that the entire selection was vitiated by the allocation of 25 percent of the total marks for the viva voce examination. The submission was that the allocation of so high a percentage of marks for the interview-test introduced an irredeemable element of arbitrariness so as to offend Articles 14 and

B 16 of the Constitution. In support of this submission reliance was placed on the decisions of this Court in *Ajay Hasia etc. Khalid Mujib Sehravardi & Ors. etc.*(¹) Shri Mehta's second contention was that marks were awarded in the interview-test in a single lot instead of sub dividing and awarding marks separately under various heads for the various matters tested in the interview. Reliance was

C placed on *Periakaruppan v. State of Tamil Nadu* (²).

The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services". "The ideal in recruitment is to do away with unfairness(³)". "Competitive examinations were the answer to the twin problems represented by democracy and the requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency.....By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved(⁴)". "Open competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull"; everyone stands on his own feet. The system is not only highly democratic it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence(⁵).

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G How should the competitive examination be devised? The

(1) AIR 1981 S.C. 487.

(2) [1971] 2 S.C.R. 430.

(3) United Nations Handbook on Civil Service Laws and Practice.

(4) Public Personnel Administration by O. Glenn Stahl.

(5) Introduction to the study of Public Administration by Leonard White.

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Kothari Committee on Recruitment Policy and Selection methods in their report said:

“A system of recruitment almost totally dependent on assessment of a person’s academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow..... We venture to suggest that our recruitment procedures should be such that we can select candidates who can not only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems”.

It is now well recognised that while a written examination assesses a candidate’s knowledge and intellectual ability, an interview test is valuable to assess a candidate’s overall intellectual and personal qualities. While a written examination has certain distinct advantage over the interview test there are yet no written tests which can evaluate a candidate’s initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness, in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the interview Board. *O. Glenn Stahl* in his *Public Personnel Administration* points out:

“Any form of written test possesses certain administrative advantages over the oral and performance types. The written form is much easier and cheaper to administer. It can be given to a large number of individuals at the same time, thus conserving the time of the examiners. As a general rule it is easier to evaluate objectively, and the technical proficiency demanded in rating is usually, although not always, less.—The oral test has long served as a basic selection tool in private employment but has been more slowly accepted in the public field. This conservatism arises out of three considerations : (1) the difficulty of developing valid and reliable oral tests; (2) the difficulty of securing a reviewable record of an oral test; and (3) public suspicion of the oral as a channel for the exertion of politi-

A cal influence through the destruction of anonymity. Despite these acknowledged disadvantages, however, orals have been used increasingly in public personnel testing and have become important instruments wherever tests of personal attributes are considered essential. As we have noted no satisfactory written tests have yet been devised for measuring such personal characteristics as initiative, ingenuity and ability to elicit cooperation, many of which are of prime importance. When properly employed, the oral test today deserves a place in the battery used by the technical examiner.....The general principle is that resort should never be had to an oral if the relevant factor to be tested can be measured at some other point in the examining process. The reason is that the reliability of the oral, even under the best of conditions, tends to be lower than that of the well designed written test. The oral test should be confined, then, to the evaluation of relevant traits which cannot be measured in any other way” (p. 92)

In the United Nations Hand Book on Civil Service Laws and Practice it is said :

E “.....the written papers permit an assessment of culture and intellectual competence. The interview permits an assessment of qualities of character which written papers ignore; it attempts to assess the man himself and not his intellectual abilities”.

F 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 Tamilnadu*, *Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc.*, (supra) 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 eye 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 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 of 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 percent of the marks for the written examination and twenty five percent for the interview test, on what basis can a Court say that twentyfive percent for the interview test is on the high side? It must not also be forgotten that the interview test is generally conducted

A 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 legitime 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.

E The second ground of attack must fail for the same reason as the first ground of attack. The rules themselves do not provide for the allocation of marks under different heads at the interview test. The criteria for the interview test has been laid down by the rules. It is for the interviewing body to take a general decision whether to allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, as we said, it is proven or obvious that the method of marking was chosen with oblique motive.

H Both the cases cited before us *Periakaruppan's* case and *Ajay Hasia's* case were cases of admission to colleges. We have already pointed out that the provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public services. In fact in *Periakaruppan's* case, even in the case of college admissions the Court observed :

“While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention that it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power”.

It is true that in *Periakaruppan's* case the Court held that the non allocation of marks under various heads in the interview test was illegal but that was because the instructions to the Selection Committee provided that marks were to be awarded at the interview on the basis of five distinct tests. It was thought that the failure to allocate marks under each head or distinct test was an illegality. But, in the case before us, the rule merely and generally indicates the criteria to be considered in the interview test without dividing the interview test into distinct, if we may so call them, sub-tests. We do not think that *Periakaruppan's* case, which, as we said, deals with admission to a college, affords any true guidance to us. *Ajay Hasia's* case was also a case of admission to a college. The Court while upholding the interview test as not irrational or irrelevant though unsatisfactory and capable of abuse, made the following observation :

“We would, however, like to point out that in the matter of admission of colleges or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification”.

The Court then proceeded to consider the next question raised before them, whether the allocation of 33 1/3 percent of the total marks for the interview test vitiated the selection procedure as arbitrary and unreasonable. It was held that it did and reference was made to the fact that even for selection of candidates for the Indian Administrative Service the marks allocated for the interview test were only 12.2 percent of the total. It was then observed, “under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid”. The observations of the Court were made, primarily

A in connection with the problem of admission to colleges, where naturally, academic performance must be given prime importance. The words "or even in the matter of public employment" occurring in the first extracted passage and the reference to the marks allocated for the interview test in the Indian Administrative Service examination were not intended to lay down any wide, general rule that

B the same principle that applied in the matter of admission to colleges also applied in the matter of recruitment to public services. The observation relating to public employment was per incuriam since the matter did not fall for the consideration of the Court in that case. Nor do we think that the Court intended any wide construction of their observation. As already observed by

C us the weight to be given to the interview test should depend on the requirement of the service to which recruitment is made, the source material available for recruitment, the composition of the interview Board and several like factors. Ordinarily recruitment to public services is regulated by rules made under the proviso to Art. 309 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be rewriting the rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motive. There is none in the present case. The Writ Petition is therefore dismissed but

E in the circumstances there will be no order regarding costs.

V.D.K.

Petition dismissed.