

VIKRAM SINGH AND ANR.
v.
SUBORDINATE SERVICES SELECTION BARD, HARYANA
AND ORS.

NOVEMBER 15, 1990

[N.M. KASLIWAL AND M. FATHIMA BEEVI, JJ.]

Civil Services:

Haryana Excise and Taxation Inspectorate (State Service, Class III) Rules, 1969—Selection for Excise Inspectors—Viva voce test—Provision of 28.5% of total marks—Whether reasonable.

The Haryana Excise and Taxation Inspectorate (State Service, Class III) Rules, 1969 prescribed 250 marks for the written test and 100 marks for *viva voce* for selection to that service. In the written examination held by the State Subordinate Services Selection Board in 1985 for the post of Excise Inspectors the appellants were declared successful for the general category. They were then interviewed along with others in March 1986.

In the writ petition preferred by the appellants before the High Court seeking a direction to the respondents to declare the result the affidavit filed by the Chairman of the Selection Board stated that they had awarded *viva voce* marks out of 12.2% of the total marks as per the ruling of the Court in *Ashok Kumar Yadav v. State of Haryana*, [1985] Supp. SCR 657. In the amended petition the appellants took the plea that prescribing 100 marks in the Rules for *viva voce* out of the total of 350 marks, i.e. 28.5%, was absolutely arbitrary and contrary to the law so laid down. In the meantime, the Selection Board decided to reinterview the candidates as in its view the requirement of the Rules had not been properly followed by the previous Board in respect of allotting of marks in the *viva voce*. The appellants challenged the said decision as illegal and unconstitutional.

The High Court upheld the Rules on the view that *Ashok Kumar Yadav's* case had no application to the selection made by the Board.

Allowing the appeal, the Court,

HELD: 1: The principle and the ratio of *Ashok Kumar Yadav's* case will apply to the selections made in the instant case also though made by the Subordinate Services Selection Board. [88F]

A *Mohinder Sain Garg v. State of Punjab & Ors.*, (Civil Appeal Nos. 5329-32 of 1990 decided on November 15, 1990) referred to.

Leeladhar v. State of Rajasthan & Ors., [1985] 4 SCC 149 distinguished.

B 2. In the first interview made by applying the correct principle the appellants were selected and put at Sr. Nos. 3 and 4 in the select list for appointment to the post of Excise Inspectors under the general category. They ought to have been given appointment accordingly. [89E]

C 3. Though the second interview on the basis of 100 marks for *viva voce* test was wrong and illegal but still it would not be just and proper to cancel the selections already made as the selected candidates had joined posts long back. [89H-90A]

D 4. The respondents should take suitable steps and pass appropriate orders for appointing the appellants on the post of Excise Inspectors within one month in case they are found otherwise suitable. In case they have become overage during the intervening period, it would not be considered as a disqualification for their appointment on the said posts. [90B]

E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2366 of 1989.

From the Judgment and Order dated 3.6.1988 of the Punjab & Haryana High Court in Civil W.P. No. 4861 of 1986.

F M.S. Gujral, R.K. Garg, M.R. Sharma, A.K. Mahajan, Rajiv Atma Ram, Ashok Mahajan, R.C. Kohli, L.K. Pandey, Mahabir Singh Rana, Rana Ranjit Singh, C.M. Nayar, Prem Malhotra, Ajit Pudussery, B.P. Singh and Ms. Naresh Bakshi, Jagjit Singh, Mrs. Kirti, Kewalramani and K.K. Khurana for the appearing parties.

G The Judgment of the Court was delivered by

H **KASLIWAL, J.** This appeal by grant of special leave is directed against the Judgment of the High Court of Punjab & Haryana dated 3rd June, 1988. The Subordinate Services Selection Board, Haryana by an advertisement dated 7th August, 1985 invited applications for the posts of Excise Inspectors in the Excise and Taxation Department.

Originally the number of posts was 11 but was subsequently raised to 15. These posts of Excise Inspectors are governed by the Haryana Excise and Taxation Inspectorate (State Service, Class III) Rules 1969 (hereinafter referred to as the Rules). It was further provided in the Rules that no candidate shall be deemed to have qualified for *viva voce* unless he obtains a minimum of 33% marks in each paper and 40% in aggregate. There was, however, no minimum marks for the *viva voce*. The total marks of the written papers and *viva voce* was to determine rank of the candidate.

The Selection Board held a written test on 23/24.11.1985. The result of the written test was declared on 15.1.1986. The appellants were declared successful in the written test and were placed at Sl. Nos. 5 & 7 respectively in the general category. According to the Rules following were the papers of the examination.

1. English—100 Marks
2. Hindi (In Devnagari script)—50 Marks
3. General knowledge—100 Marks
4. *Viva voce* —100 Marks

According to the appellants, successful candidates in the written test were interviewed on 12.3.1986. The appellants were also interviewed along with others. After waiting for some time, the appellants represented to the Selection Board for the declaration of the result. As there was unusual delay in the declaration of the results, the appellants and three others filed a writ petition in the High Court of Punjab & Haryana at Chandigarh seeking a direction to the respondents to declare the result of the competition held for the posts of Excise Inspectors. A notice of motion was issued and a counter affidavit was filed on behalf of the respondent No. 1. In the reply a plea was taken that 283 candidates were interviewed by the Selection Board but the result of 48 candidates was prepared. The correctness of this statement was doubted by the Motion Bench which by its order dated 9th December, 1986 summoned the then Chairman of the Selection Board. On 9th January, 1987 Col. Bhim Singh, Chairman of the Selection Board appeared and he was directed to file an affidavit. Col. Bhim Singh filed the affidavit on 10.1.1987. In the affidavit it was stated that the Board called 290 candidates, out of which 283 appeared for interview during the period 10th March to 13th March, 1986. This was

A as per the practice of the Board. The Board called all the candidates for interview who qualified in the written test. The Board compiled results of *viva voce* in respect of all the 283 candidates, who appeared for interview. As per practice till the completion of interview the Board was not informed of the marks obtained by each candidate in the written test. It was further stated in the affidavit that on completion of interviews the Board having gone through the documents i.e. written test result and the *viva voce* results, came to the conclusion that it will be redundant to go below a particular figure in the written test as *viva voce* and the written test marks were to be added to get the final selection list. It was also stated in paras 6 & 7 of the affidavit as under:

C 6. That the Board then directed the Secretary, Subordinate Services Selection Board to produce list of candidates of various categories i.e. General, Scheduled Caste, Backward Caste and Ex-Servicemen. In this the Board directed the Secretary to produce lists of 3 times of the number of vacancies as per the ruling given by the Supreme Court and the practice followed by the Haryana Public Service Commission. The Board also awarded *viva voce* marks out of 12.5% of the written marks again as per practice followed by Haryana Public Service Commission and the ruling of the Supreme Court. Having seen the written marks the Board was satisfied that no injustice was done to candidates who stood lower than three times of the number of vacancies and their inclusion in the final list would have been an exercise in futility.

F 7. The Board finally recommended for appointment of 6 candidates out of 19 candidates in the General category 5 candidates out of 15 in the Scheduled Caste, one candidate out of 3 in Backward Class and 3 out of 11 candidates in the Ex-Servicemen category.

G The appellants sought permission of the Court to amend the petition and the prayer was allowed. In the amended petition a plea was taken that according to the Rules the marks for the written test were 250 while those for the *viva voce* were 100 i.e. 40% of the written test marks have been kept for the *viva voce* test. It may be noted that the appellants wrongly calculated the *viva voce* marks as 40% because percentage of *viva voce* marks has to be calculated out of total marks and not merely written test marks. Thus 100 marks for *viva voce* out of

the total marks 350 will come to 28.5%. The appellants also mentioned in the amended petition that the award of interview marks upto 40% (28.5% of the total marks) of the written test marks is absolutely arbitrary and is contrary to the law laid down by the Supreme Court in *Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana and Ors etc. etc.*, [1985] Supp. SCR 657. Even in the selection to the I.A.S. the Union Public Service Commission awards interview marks out of 12.2% of the written test marks.

It has been submitted that the Selection Board had already interviewed the candidates by following the law laid down by the Supreme Court in *Ashok Kumar Yadav's* case and the appellants were put in the select list. The Selection Board however decided that all the candidates who had qualified in the written examination of the Excise Inspectors may be reinterviewed as the requirement of the Rules had not been properly followed in respect of allotting of marks in the *viva voce* and also not prepared the results of the candidates who appeared for interview before the previous Board. According to the appellants this decision was wholly illegal. The action of the Board in seeking to reinterview all the 290 candidates was abundantly illegal. Further, the basis on which reinterview was sought to be held, was again contrary to the law laid down by this Court. The appellants thus challenged the action of the respondents is not declaring the result according to the first interview and its decision to reinterview all the applicants by keeping 100 marks for *viva voce* which was 28.5% of the total marks as illegal and unconstitutional.

The respondents in the reply submitted that the affidavit by Col. Bhim Singh, the then Chairman of the Board was against the Rules applicable to the services and those Rules had been upheld by the full Bench of the Hon'ble High Court. It was further stated in the reply that from the record of the answering respondents it was nowhere mentioned that the previous Board took the decision that marks of the *viva voce* will be awarded to the candidates in view of *Ashok Kumar Yadav's* case. *Ashok Kumar Yadav's* case had no application to the selection made by the answering respondents and it was so held by the full Bench of the High Court. The affidavit of the then Chairman was not supported by the office record and as such the same is not helpful to the petitioners for the decision of the writ petition. During the course of arguments before this Court Mr. Mahabir Singh Learned counsel for the respondents fairly and candidly conceded that the first interview had been made on the basis of *Ashok Kumar Yadav's* case, by taking 12.2% marks for *viva voce* examination instead of 28.5% and

A the appellants had been put in the select list.

After considering all the cases decided so far on the subject we have given detailed reasons in our judgment given today, in *Mohinder Sain Garg v. State of Punjab & Ors.*, (Civil appeal Nos. 5329-32 of 1990 for taking the view, that *Ashok Kumar Yadav's* case lays down the guidelines and principle to be applied in the matters of selection to the Public Services.

The present case relates to the selection of Excise Inspectors by the Haryana Government and *Ashok Kumar Yadav's* case was a case relating to the recruitment to the posts of Civil Services (Executive Branch), State of Haryana. It was clearly directed in *Ashok Kumar Yadav's* case that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consists of a written test followed by a *viva voce* test, the marks allocated for the *viva voce* test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. It was also observed that whenever selections are made by the Haryana Public Service Commission in future, they shall be made on the basis that the marks allocated for the *viva voce* test shall not exceed 12.2% in case of candidates belonging to the general category and 25% in case of ex-service officers. In our view the present selection made on the basis of rules making a provision for 28.5% of marks for *viva voce* test was highly excessive and in clear violation and disregard of the principle laid down in *Ashok Kumar Yadav's* case. It is no doubt correct that in that case a direction was given in respect of the selections to be made to the Haryana Civil Services (Executive Branch) and other allied services and to the selections to be made in future by the Haryana Public Service Commission, but in our view the principle and the ratio of *Ashok Kumar Yadav's* case will apply to the selections made in the present case also though by the Subordinate Service Selection Board. Learned counsel appearing for the respondents were unable to satisfy us that for selections for the posts of Excise Inspectors, it was just and reasonable to keep 28.5% marks for the *viva voce* test.

G It was contended on behalf of the respondents that *Leeladhar v. State of Rajasthan & Ors.*, [1985] 4 SCC 149 still holds good in which 25% marks kept for *viva voce* examination was held to be good. It was also submitted that *Leeladhar's* case was not overruled in *Ashok Kumar Yadav's* case but was rather affirmed. We see no force in the above contention. *Leeladhar's* case is totally distinguishable. In that

case their Lordships were considering the question of selection to Rajasthan Judicial Service by written examination as well as *viva voce* test. In that case it was observed that the Rajasthan Judicial Service Rules under consideration were made by the Governor of Rajasthan in consultation with the High Court of Rajasthan and the Rajasthan Public Service Commission. Both High Court and the Public Service Commission were independent bodies, outside executive control, occupying special positions and enjoying special status under the Constitution. The Court also took into consideration that the interview test in that case was 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. It was observed that there can surely be no legitimate hint of arbitrariness against this body. Another factor worthy of consideration as noted in the above case was that the selection was not of raw graduates freshly out of college but of persons who had already received a certain amount of professional training. Source material as such in that case was different from the present case and in the peculiar facts and circumstances of *Leeladhar's* case it was held that 25% of the total marks was not an exaggerated weightage. In the above circumstances *Leeladhar's* case was distinguished in *Ashok Kumar Yadav's* case. As already mentioned above ratio of *Ashok Kumar Yadav's* case is fully applicable in the case in hand before us.

It may be noted that in the first interview made on the basis of keeping 12.2% marks for *viva voce*, the appellants were selected and put at S. Nos. 3 & 4 in the select list. Learned counsel for the appellants submitted that the appellant Vikram Singh had obtained 146 marks and appellant Nawab Singh 145 marks in the written papers and in the first interview made on the basis of the principle laid down in *Ashok Kumar Yadav's* case, were selected for appointment to the post of Excise Inspectors under the general category. Mr. Mahabir Singh appearing on behalf of the State was unable to refuse the above contention and further made a statement that in case this Hon'ble Court would give a direction for their appointment, the State Government will make posts available for them. We have already taken the view that keeping 100 marks for *viva voce* test i.e. 28.5% of the total marks was unreasonable and against the principle laid down in *Ashok Kumar Yadav's* case. The two appellants were in fact interviewed by the first Selection Board and by applying the correct principle were also selected for appointment to the post of Excise Inspectors and they ought to have been given appointment on the post of Excise Inspectors on the basis of their selection by the first Selection Board. Though the second interview on the basis of 100 marks for *viva voce* test was wrong

- A and illegal but we do not think it just and proper to cancel the selections already made, as the selected candidates have already joined posts long back. We, therefore, allow this appeal, set aside the order of the High Court and direct the respondents to give appointments to the appellants Vikram Singh and Nawab Singh on the post of Excise Inspector in case they are found otherwise suitable for such post. It is further made clear that in case the appellants have become overage during the intervening period, it would not be considered as a disqualification for their appointment on the above posts. The respondents should take suitable steps and pass appropriate orders for appointing the appellants within one month of the communication of this order.
- B
- C The parties shall bear their own costs.

P.S.S.

Appeal allowed.