

MADHUKAR BAKRU PINGAL
v.
SHRI RAJENDRA D. GAIKWAD AND ORS.

A

SEPTEMBER 13, 1995

[K. RAMASWAMY, B.P. JEEVAN REDDY
AND B.L. HANSARIA, JJ.]

B

Service Law

Selection—Criteria—50% marks for written examination and 50% for viva-voce—Challenge by unsuccessful candidate—Tribunal holding allocation of 50% marks for viva-voce arbitrary—Direction to set aside appointment of selected candidate and appointment of unsuccessful candidate—Held not justified—Supreme Court—Direction to conduct selection on the basis of lower marks in viva-voce and higher marks in written examination.

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The appellant was selected and appointed as Police Patil. The selection criteria prescribed 50% marks for written examination and 50% for *viva-voce* examination. Respondent-1, an unsuccessful candidate, filed an application before the Tribunal which held that allocation of 50% marks in *viva-voce* was arbitrary. Further the Tribunal set aside the appointment of appellant and directed appointment of Respondent-1. In appeal to this Court it was contended for the appellant that the appropriate course for the Tribunal was to direct the authorities to select candidates by prescribing lesser marks for *viva voce* and higher marks for written examination.

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Allowing the appeal, this Court

HELD 1. The direction issued by the Tribunal to appoint the contesting respondent-1 as Police Patil is set aside. Instead, the official respondents are directed to conduct written examination and *viva-voce* test allocating 85% and 15% of marks respectively and consider the cases of all those candidates who appeared at the initial examination and make selection according to rules. Under the interim direction, the appellant is continuing in service and would continue till a candidate is duly selected and appointed. [628-H, 629-A, 628-G]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7081 of 1994.

From the Judgment and Order dated 8.9.94 of the Maharashtra Administrative Tribunal, Bombay in O.A. No. 987 of 1993.

B A. M. Khanwilkar for the Appellant

S.V. Deshpande for the Respondents

The following Order of the Court was delivered :

C On July 27, 1992 applications were invited to fill up the post of Police Patil in the village Ambe, Dindori Taluk of Nasik District. Five persons had applied for the recruitment. The appellant was selected and was appointed as the Police Patil. On challenge being made by the respondent No. 1 before the Tribunal, the Tribunal set aside the appointment order of the appellant. The Tribunal observed that 50% of marks were reserved for written examination and 50% marks were for *viva-voce* and held that the prescription of 50% of marks for *viva-voce* is arbitrary as per the law laid down by this Court. Therefore, the Tribunal set aside the appointment of the appellant and directed to appoint the respondent. Thus, this appeal by special leave.

F Mr. Khanwilkar, learned counsel for the appellant, contended that even assuming that prescription of 50% of marks for *viva-voce* is invalid the appropriate course would have been that a direction was given to the respondent Nos. 2 and 3 to prescribe lesser marks for *viva-voce* and higher marks for written examination and to direct conducting examinations of the candidates who had applied for afresh and considering the cases of the candidates according to law. We find force in the contention. The Tribunal, instead, has given direction to appoint Respondent No. 1 who was not selected by the appointing authority. Under the interim direction, the appellant is continuing in service and would continue till a candidate is duly selected and appointed.

H In these circumstances, we set aside the direction issued by the Tribunal to appoint the contesting respondent No. 1 as Police Patil. Instead the official respondents are directed to conduct written examination and

viva-voce test allocating 85% and 15% of marks respectively and consider the cases of all those candidates who appeared at the initial examination and make selection according to rules. **A**

The appeal is accordingly allowed. No costs.

T.N.A.

Appeal allowed. **B**