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PRAVEEN SINGH
v.
STATE OF PUNJAB AND ORS.

NOVEMBER 10, 2000

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[G.B. PATTANAİK AND UMESH C. BANERJEE, JJ.]

Service Law:

C *Selection—Competitive exam- 44 posts of Block Development and Panchayat Officers—Examination consisting of a written test and viva voce test—4500 candidates participating—Out of the total 450 marks, 400 marks accounted for the written test while 50 marks were for the viva voce—To qualify for the viva voce test, a candidate was required to secure 33% marks in each paper and 45% marks in the aggregate—After written test 130*
D *candidates selected for the viva voce test—44 candidates finally selected solely on the basis of marks obtained in the viva voce test—Appellant not included in the final list—Challenged the said selection in a writ petition before the High Court on the ground of non-consideration of marks obtained in the written test for final selection—Both writ petition and writ appeal dismissed by the High Court—On appeal, Held—An administrative or a*
E *quasi-judicial body clothed with the power of appointment and selection cannot be left unfettered at the cost of fair play, good conscience and equity—Though interview is a significant factor in the appointments still it should not be the sole criterion for selection as it allows creeping in of lacuna—Had written test only been an elimination test, there would have not*
F *been any requirement of qualifying pass marks or any aggregate marks—Reliance on mere 50 marks out of the total of 450 marks thereby avoiding 400 marks is totally unreasonable and arbitrary—The appointments in question set aside—Public Service Commission directed to complete selection process after reconsidering both the written test and the viva voce test—Appointments already made, if any would be subject to the further results to*
G *be declared by the Public Service Commission.*

In June, 1993 Punjab Public Service Commission issued an advertisement for filling up of 26 vacancies of Block Development and Panchayat Officers. However, before finalisation of the selection process, the Government of Punjab filled up the said vacancies through *ad-hoc*

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appointments because of which the Service Commission stopped to proceed with the selection procedure. The said ad-hoc appointments, on being challenged in a writ petition, were quashed by the High Court and an appeal before a Division Bench was also dismissed. Further appeal to this Court was also dismissed with a direction to the Public Service Commission to complete the selection process by 09-07-1995. In compliance of the orders of this Court, the Public Service Commission issued a corrigendum to the earlier advertisement after increasing the number of vacancies from 26 to 44. In response to the said corrigendum, about 4500 people appeared in the written test out of which 130 candidates were selected to appear in the *viva voce*. After the *viva voce*, on 09-07-1995, a merit list of selected candidates was published in which the appellant's name did not appear. The appellant challenged the said merit list in a writ petition before the High Court on the ground of non-consideration of the marks secured by the candidates, in the written examination while determining overall merit of the candidates, as according to the information sheet circulated by the Public Service Commission, out of total 450 marks, written examination accounted for 400 marks and the rest 50 marks for *viva voce*. The said writ petition and an appeal thereon were dismissed by the High Court. Hence this appeal.

The appellant contended that as there existed dual requirement i.e. written test as well as *viva voce* test for selection, the marks obtained in both ought to have formed part of the process of determining the merit and the Service Commission had no authority or jurisdiction to effect the selection solely on the basis of the performance of the candidates in the *viva voce* examination. The respondents contended that since it was not possible to interview about 4500 candidates, the Service Commission resorted to a written admission test in order to facilitate the interview process.

Allowing the appeal, the Court

HELD 1. While it is true that the administrative or the quasi-judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fair play, good conscience and equity. [498-E-F]

J.P. Kulshreshtha & Ors. v. Chancellor, Allahabad University & Ors., AIR, (1980) SC 2141, referred to.

2. Interview, undoubtedly, is a significant factor in the matter of

A appointments. It plays a strategic role but is also allows creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon may lead to a “sabotage of the purity of the proceedings”. [498-H; 499-A]

B *Ashok Kumar Yadav v. State of Haryana, (1985) (3) SLR 200 and Lila Dhar v. State of Rajasthan, AIR (1981) SC 1777, referred to.*

C 3.1. The qualifications prescribed were that the candidates will be required to qualify in the written test at the time of recruitment and the qualification standard in the test has been fixed to be 33% marks in each paper with 45% in the aggregate and paragraph 4 of the Information Sheet in no uncertain terms records that no candidate shall be eligible to appear in the *viva voce* test unless he obtains 33% marks in each paper and 45% marks in the aggregate. [499-G]

D 3.2. Reading the two requirements as above, question of having the written test written off in the matter of selection does not and cannot arise. Had it been the intent of the Service Commission, then and in that event question of there being a totality of marks would not have been included therein with specified marks for *viva voce* tests. Neither there would have been any requirement of qualifying pass marks nor there would have been any aggregate marks. [499-H; 500-A, B]

E 3.3. In the event of the interview being the sole criteria and the written test being treated as qualifying test, the Public Service Commission ought to have clearly stated that upon completion of the written elimination test, selection would be made on the basis of the *viva voce* test only. [500-B, C]

F *Ashok & Ors. v. State of Karnataka, [1992] 1 SCC 28, referred to.*

G 4. There is always a room for suspicion for the common appointments if the oral interview is taken up as the only criteria. Of course, there are posts and posts, where interviews can be a safe method of appointment but to the post of a Block Development Officer or a Panchayat Officer wherein about 4500 people applied for 40 posts, interview cannot be said to be a satisfactory method of selection though however it may be a part thereof. In fact there would be advantage of having Rules prescribing the mode and method of appointments and specific marks earmarked for written examinations of various subjects together with totality of marks for *viva voce* test. As a matter
H of fact out of 450 marks only 50 marks have been allotted for interview by

the Service Commission itself - why these 400 marks allotted for a written examination in four different subjects, if interview was to be the guiding factor, there has been however, no answer to the same excepting that the Court ought not to interfere in the matter of selection process in the absence of *malafides* - true it is that in the event the selection is tainted with *malafides*, it would be a plain exercise of judicial power to set right the wrong-but is it also realistic to assume that when the Commission in clear and categorical language recorded that 450 marks would be the total marks for the examination and out of which only 50 marks are earmarked for *viva voce* test, the Commission desired that these 50 marks would be relevant and crucial and the other 400 marks would be rendered totally superfluous and of no effect at all. The language used is rather plain and is not capable of the interpretation as has been held by the High Court. Reliance on 50 marks only and thereby avoiding the other 400 marks cannot be said to be reasonable or devoid of any arbitrariness. [500-C-G]

5. The action of the respondent Commission thus is wholly unreasonable, unfair and not in accordance with the declared principles. Appointment procedure is evident from the documentary evidence disclosed in the proceedings and the Commission ought to have taken note of the written examination results as well. [500-H; 501-A]

6. The appointments in question are set aside and the Public Service Commission is directed to complete the process of selection in terms of the existing Rules so that both the written and the *viva voce* test be taken into consideration for the purpose of appointments. No further advertisement or examination shall take place but reconsideration of the entire process be effected upon due reliance on the written as well as *viva voce* test. The appointments if any, already made shall continue, but shall be subject to the further results which may be declared by the Public Service Commission in regard to filling up of the posts of Block Development and Panchayat Officers. [501-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15354 of 1996.

From the Judgment and Order dated 20.02.96 of the Punjab and Haryana High Court in C.W.P. No. 11538 of 1995.

A.V. Palli, Atul Sharma and Rekha Palli for the Appellant.

P.P. Rao and Ashok K. Mahajan for the Respondent Nos. 3 to 45.

A Jayshree Anand Addl. Advocate General for Punjab, G. Sivabalamurugan and R. Dutta for the State.

The Judgment of the Court was delivered by

B **BANERJEE, J.** Arbitrariness being opposed to reasonableness is an antithesis to law. There cannot, however, be any exact definition of arbitrariness neither can there be any straight jacket formula evolved therefor, since the same is dependent on the varying facts and circumstances of each case.

C The basic facts pertaining to the appeal against the judgment of the High Court depict that the Writ Petition of the appellant was dismissed by the High Court on the ground that there is no infraction of law neither the Public Service Commission in the State of Punjab has deviated from the criteria laid down for selection of candidates for the post of Block Development and Panchayat Officer. Incidentally the grievance of the Writ Petitioner-appellant pertains to violations of the equality clause under Articles 14 and D 16 of the Constitution read with provisions of Punjab Development and Panchayat Class-II (Service) Rules, 1974.

E On the factual score it appears that the Punjab Public Service Commission in June, 1993 issued an advertisement for 26 vacancies of Block Development and Panchayat Officers but before the process of selection could be finalised, the Government of Punjab filled up the vacancies through ad hoc appointments by reason wherefore, the Service Commission considered it fit not to proceed with the selection any further. The records depict that these ad hoc appointments, however by the order of the High Court in a Petition under Article 226 stands quashed and the appeal therefrom was dismissed by this Court. This Court, however, while rejecting the appeal was pleased to direct F the Public Service Commission (Punjab) to complete the process of selection by 9th July, 1995 and in terms therewith, the Service Commission issued a corrigendum to the advertisement but the vacancies were enhanced from 28 to 44 for reasons of exigencies of the situation. It is against this corrigendum to the advertisement about 4,500 people appeared in written test and G subsequently roll numbers of 130 candidates only were published, being eligible to appear in the *viva voce* test. On 9th July, 1995 the final result was announced and the names and roll numbers of candidates who were found suitable for appointments were published in order of merit. The petitioner's name, however, did not figure in the merit list, which stands challenged in the Writ Petition before the High Court but the same however stands negated by H the High Court and hence the appeal before this Court.

A	3. General Knowledge	BA/BSc. Of the Punjab University	100
	4. Community Development Panchayat Raj and Agricultural	As per detailed Syllabus in para 6 below.	100
B	5. <i>Viva Voce</i>		50
	xxx	xxx	xxx
C	2. No candidate shall be eligible to appear in the <i>viva voce</i> test unless he obtains 33 per cent marks in each paper and 45 per cent marks in aggregate.		
	xxx	xxx	xxx

D Paragraph 12(1) of the document thus expressly provides that the examination shall consist of four different subjects with 100 marks each for three subjects and fifty marks (50) stand earmarked for the 4th vernacular (Punjabi in Gurmukhi script) totaling 350 marks and further 50 marks for *viva voce* test. The essentiality of *viva voce* test however stands established by reason of express narration under the scheme of examination' viz. "followed by *viva voce* test". In the event of there being a written test for elimination, E the scheme of the examination would not have been detailed in the manner as it has been so stated. Paragraph 3 of the instructions refers to the rules for laying down the qualifications and the syllabus for the examination. Admittedly, these rules have been framed by the Governor of Punjab in exercise of his power under the proviso to Article 309. Rule 5 of the Rules F referred to the qualification that a person can be appointed to the service who possesses the educational and other qualifications specified in Appendix B. In Appendix B, the posts of Block Development and Panchayat Officers appear at item No. 20, and the qualifications mentioned therein are as below:

- G (i) "Graduate of a recognised University;
Preference to Graduate in Agriculture;
- (ii) Knowledge of Punjabi language upto Matriculation or equivalent standard;
- H (iii) Candidates will be required to qualify the following written tests at the time of recruitment;

- | | | |
|---|-----------|---|
| (i) General Knowledge | 100 marks | A |
| (ii) General English/Essay of
BA Standard | 100 marks | |
| (iii) Community Development
Panchayati Raj and Agricultural
Development | 100 marks | B |
| (iv) Punjabi language test of
matriculation standard | 50 marks | |
| (v) <i>Viva Voce</i> | 100 marks | C |

The qualifying standard in the test will be 33% pass marks in each paper and 45 per cent in the aggregate.”

It is on the basis of the rules together with the information sheet as noticed herein before, that the High Court came to the conclusion that there is no arbitrariness in the matter of selection of candidates. The said finding stands challenged before us principally on the ground that there is existing a dual requirement *viz.*, written test as also the *viva-voce* test and the marks obtained therein in both counts ought to have formed part of the process of determining the merit and the Public Service Commission had no authority or jurisdiction to effect the selection solely on the basis of the performance of the candidates at the *viva voce* examination. The respondents however contended that since it was not possible to interview about 4,500 candidates, the Public Service Commission resorted to a written elimination test in order to facilitate the interview process or the *viva voce* test. It was contended that as a matter of fact 130 candidates have been called for the *viva voce* test out of 4,500 approximately as against 44 vacant posts: A short digitation from the facts however may not be totally unjustified at this juncture by reason of enormity of the issue of available employment opportunity. 4,500 persons applied for 40 vacancies - a rather sordid state of affairs, - employment opportunities are so meagre as compared to the need and the situation has reacted its optimum without any indication even of a descending trend. Needless to record that this is not in Punjab only but this is reflected every State in the country - in some States the ratio being still higher - we are however not expressing any opinion but recording factum only so as to focus the magnitude of the problem.

Turning on to the contentions as raised by the respondent herein that

A the written test on the wake of the documentary evidence available in the records cannot but be termed to be a mere qualifying test and since Service Commission has proceeded to select the candidates on the basis of the performance of the candidates at the *viva voce* examination the actions cannot be faulted in any way neither can the same be ascribed to be arbitrary or capricious.

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Relying upon the aforesaid, however, the High Court observed that even though the rule is not properly articulated but on a rational interpretation, there is no escape from the conclusion that passing of the written test with 33% marks in each paper and 45% marks in aggregate does not *ipso facto*

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entitle a candidate to be called for *viva voce*/interview. The High Court however proceeded on the right of the employer for short-listing and screening since the same has been recognised by the law courts keeping in view the ground reality, as it is otherwise a well-nigh impossibility for the selecting agency to interview all the candidates. The High Court also took into consideration the number of candidates and the time that shall be otherwise

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consumed in the event of interview of a larger number of people and as such the High Court came to the conclusion that the Punjab Public Service Commission was justified in adopting a rational yardstick for short-listing the number of candidates for *viva voce* test and no arbitrariness or illegality can be attributed therein and the factum of judging the merits of the candidates

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on the basis of *viva voce* test being prevalent in the Punjab Public Service Commission since the year 1978 has also been taken into consideration by the High Court. While it is true that the administrative or quasi-judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the

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cost of fair play, good conscience and equity. This Court in the case of *J.P. Kulshreshtha & Ors. v. Chancellor, Allahabad University & Ors.*, AIR (1980) SC 2141 did recognise the undetectable manipulation of results being achieved by remote control tactics and masked as *viva voce* test resulting the sabotaging of the purity of proceedings. This Court held "interviews as such are not bad

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but polluting it to attain illegitimate ends is bad".

What does *Kulshreshtha's* case (supra) depict? Does it say that interview should be only method of assessment of the merits of the candidates? The answer obviously cannot be in the affirmative. The vice of manipulation, we are afraid cannot be ruled out. Though interview undoubtedly a significant

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factor in the matter of appointments, it plays a strategic role but it also allows

creeping in of a lacuna rendering the appointments illegitimate. Obviously it is an important factor but ought not to be the sole guiding factor since reliance thereon only may lead to a “sabotage of the purity of the proceedings”. A long catena of decisions of this Court have been noted by the High Court in the judgment but we need not dilate thereon neither we even wish to sound a contra note. In *Ashok Kumar's case Ashok Kumar Yadav v. State of Haryana*, (1985) 3 SLR 200 this Court however in no uncertain terms observed: There can therefore be no doubt that the *viva voce* test performs a very useful function in assessing the personal characteristics and traits and in fact tests the man himself and is therefore regarded as an important tool along with the written examination (emphasis supplied).

The situation envisaged by Chinnappa Reddy, J. in *Lila Dhar's case Lila Dhar v. State of Rajasthan*, AIR (1981) SC 1777 on which strong reliance was placed is totally different from the contextual facts and the reliance thereon is also totally misplaced. Chinnappa Reddy, J. discussed about the case of services to which recruitment has necessarily been made from persons of mature personality and it is in that perspective it was held that “interview test may be the only way subject to basic and essential academic and professional requirements being satisfied” The facts in the present context deal with Block Development Officers at the Panchayat level. Neither the job requires mature personality nor the recruitment should be on the basis of interview only, having regard to the nature and requirement of the concerned jobs. In any event, the Service Commission itself has recognised a written test as also *viva voce* test. The issue therefore pertains as to whether on a proper interpretation of the rules read with the instructions note, the written examination can be deemed to be a mere qualifying examination and the appointment can only be given through *viva voce* test - a plain reading of the same however would negate the question as posed.

A close look at the qualification as prescribed and the information sheet, however, in our view would depict otherwise. The qualifications prescribes that the candidates will be required to *qualify for the following written test at the time of recruitment and the qualification standard in the test has been fixed to be at 33% pass marks in each paper with 45% however in the aggregate* (emphasised) and paragraph 4 of the Information sheet, as above, in no uncertain term records that no candidate shall be eligible to appear in the *viva voce* test unless he obtains 33% marks in each paper and 45% marks in the aggregate.

Reading the two requirements as above, in our view question of having

A the written test written off in the matter of selection does not and cannot arise. Had it been the intent of the Service Commission, then and in that event question of there being a totality of marks would not have been included therein and together with specified marks for *viva voce* tests, would not have been there neither there would have any requirement of qualifying pass marks nor there would have any aggregate marks as noticed above.

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Further, in the event, the interview was the sole criteria and the written test being treated as qualifying test, the Public Service Commission ought to have clearly stated that upon completion of the written elimination test, selection would be made on the basis of the *viva voce* test only as is available

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in the decision of *Ashok & Ors. v. State of Karnataka*, [1992] 1 SCC 28. Be it noted that there is always a room for suspicion for the common appointments if the oral interview is taken up as the only criteria. Of course, there are posts and posts, where interviews can be a safe method of appointment but to the post of a Block Development Officer or a Panchayat Officer wherein about 4500 people applied for 40 posts, interview cannot be said to be a satisfactory

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method of selection though however it may be a part thereof - In the factual score we have the advantage of having the Rules prescribing the mode and method of appointments and specific marks are earmarked for written examinations of various subjects together with totality of marks for *viva voce* test. As a matter of fact out of 450 marks only 50 marks have been allotted

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for interview by the Service Commission itself - why these 400 marks allotted for a written examination in four different subjects, if interview was to be the guiding factor: there has been however, no answer to the same excepting that the Court ought not to interfere in the matter of selection process in the absence of *mala fides* - true it is that in the event the selection is tainted with *mala fides*, it would be a plain exercise of judicial power to set right the wrong-

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but is it also realistic to assume that when the Commission in clear and categorical language recorded that 450 marks would be the total marks for the examination and out of which only 50 marks are earmarked for *viva voce* test, the Commission desired that these 50 marks would be relevant and crucial and the other 400 marks would be rendered totally, superfluous and of no effect

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at all. The language used is rather plain and is not capable of the interpretation as is being presented before us during the course of hearing and as has been held by the High Court. Reliance on 50 marks only and thereby avoiding the other 400 marks cannot in our view having due regard to the language used, be said to be reasonable or devoid of any arbitrariness.

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The action of the respondent Commission thus is wholly unreasonable,

unfair and not in accordance with the declared principles. Appointment procedure is evident from the documentary evidence disclosed in the proceedings and the Commission ought to have taken note of the written examination results as well. As a matter of fact the High Court while recording its acceptance to the method of selection on the basis of the *viva voce* test only, was pleased to observe as below: A

“However, we consider it absolutely imperative to observe that the Government should get the rules examined and make proper amendment so that its intention of making distinction between qualifying test and *viva voce* test does not remain obscure. We also direct the PPSC to take extra precautions while issuing any future advertisement so that no inconsistency remains between the rules and the contents of the advertisement.” B C

The High Court admittedly therefore found inconsistency and obscurity in the entire process and as a matter of fact, the High Court has suggested incorporation of proper amendments in the rules so as to avoid confusion and obscurity. We are however, constrained to note that having come to a finding about the inconsistency and obscurity in the process, the High Court thought it fit to deny the claim of the writ petitioner being the appellant herein on the plea of the employers' right but the documents through which the right flows indicates a contra situation and as such the action suffers from the vice of arbitrariness and unreasonableness warranting intervention of this Court. On the wake of the above, the order of the High Court stands set aside and quashed. Consequently the appointments are also set aside. The Public Service Commission is directed to complete the process of selections in terms of the existing rules so that both the written and the *viva voce* test be taken into consideration for the purpose of effecting appointments. It is made clear that no further advertisement or examination shall take place but reconsideration of the entire process be effected upon due reliance on the written as well as *viva voce* test. The process be completed within a period of 3 months from the date thereof. It is further made clear that the appointments if any, already made shall continue, but shall be subject to the further results which may be declared by the Public Service Commission in regard to filling up of the posts of Block Development and Panchayat Officers. The appeal thus stands allowed. There will however be no order as to costs. D E F G

R.C.K.

Appeal allowed.