

BISHNU BISWAS & ORS.

v.

UNION OF INDIA & ORS.

(Civil Appeal Nos. 4255-58 of 2014)

APRIL 2, 2014

[DR. B.S. CHAUHAN AND J. CHELAMESWAR, JJ.]

SERVICE LAW:

Selection - To Group D posts - Interview not being part of the process, equal marks earmarked for written test and interview - Held: Criterion was changed after conducting the written test and admittedly not at the stage of initiation of the selection process - Marks allocated for oral interview were the same as for written test i.e. 50% for each - The manner in which marks were awarded in the interview to candidates indicated lack of transparency - Some candidates were awarded more marks in interview than they got in written test - Direction of High Court to continue with the selection process from the point it stood vitiated does not require interference.

Appointment of appellants to 8 group 'D' posts was challenged on the ground that though interview was not part of the recruitment process, equal marks were earmarked for written test and interview. The Central Administrative Tribunal quashed the appointments. The appellants filed writ petitions before the High Court, which modified the order of the Tribunal to the extent of continuing the recruitment process from the point it stood vitiated.

Dismissing the appeals, the Court

HELD: 1.1 This Court, time and again, has held that it is not permissible for the employer to change the criteria of selection in the midst of selection process. [Para 4] [630-G-H]

- A *Himani Malhotra v. High Court of Delhi*, 2008 (5) SCR 1066 = AIR 2008 SC 2103; *Ramesh Kumar v. High Court of Delhi & Anr.*, 2010 (2) SCR 256 = AIR 2010 SC 3714; *P. Mohanan Pillai v. State of Kerala & Ors.*, 2007 (3) SCR 53 = AIR 2007 SC 2840; *Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.*, (2013) 4 SCC 540; *Tamil Nadu Computer Science BEd Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association & Ors.*, 2009 (10) SCR 522 = (2009) 14 SCC 517; *State of Bihar & Ors. v. Mithilesh Kumar*, 2010 (10) SCR 161 = (2010) 13 SCC 467; and *Arunachal Pradesh Public Service Commission & Anr. v. Taje Habung & Ors.*, 2013 (2) SCR 1134 = AIR 2013 SC 1601 - relied on.

1.2 The courts have always frowned upon prescribing higher percentage of marks for interview even when the selection has been on the basis of written test as well as interview. In *Jasvinder Singh's* case, the Court cautioned observing that in cases of awarding of higher percentage of marks to those who got lower marks in written test in comparison to some who had got higher marks in written examination, an adverse inference from certain number of such instances can be drawn. [para 14 and 19] [634-E; 635-D-E]

- F *Jasvinder Singh & Ors. v. State of J&K & Ors.*, (2003) 2 SCC 132; *Ashok Kumar Yadav & Ors. etc. etc. v. State of Haryana & Ors.* 1985 (1) Suppl. SCR 657 = AIR 1987 SC 454; *Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors.* 1981(2) SCR 79 = AIR 1981 SC 487; *Munindra Kumar & Ors. v. Rajiv Govil & Ors.*, 1991 (2) SCR 812 = AIR 1991 SC 1607; *Mohinder Sain Garg v. State of Punjab & Ors.*, 1990 (3) Suppl. SCR 108 = (1991) 1 SCC 662; and *Kiran Gupta & Ors. etc. etc. v. State of U.P. & Ors. etc.*, AIR 2000 SC 3299; and *Satpal & Ors. v. State of Haryana & Ors.*, 1995 Supp (1) SCC 206 - relied on.

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1.3 The appropriate allocation of marks for interview, where selection is to be made by written test as well as by interview, would depend upon the nature of post and no straight-jacket formula can be laid down. Further, there is a distinction while considering the case of employment and of admission for an academic course. The courts have repeatedly emphasized that for the purpose of admission in an educational institution, the allocation of interview marks would not be very high but for the purpose of employment, allocation of marks for interview would depend upon the nature of post. [para 15] [634-F-H]

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Mehmood Alam Tariq & Ors. v. State of Rajasthan & Ors., 1988 (1) Suppl. SCR 379 = AIR 1988 SC 1451; *State of U.P. v. Rafiquddin & Ors.* 1988 SCR 794 = AIR 1988 SC 162; and *Anzar Ahmad v. State of Bihar & Ors.*, 1993 (3) Suppl. SCR 434 =AIR 1994 SC 141 - referred to.

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1.4 In the instant case, the rules of the game were changed after conducting the written test and admittedly not at the stage of initiation of the selection process. The marks allocated for the oral interview were the same as for written test i.e. 50% for each. The manner in which marks were awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test was given only 20 marks in the interview while large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. [para 20] [635-G-H; 636-A-B]

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1.5 The fact that today the so called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at

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A least in respect of age as the advertisement was issued more than six years ago. Thus, in the facts of this case, the direction of the High Court to continue with the selection process from the point it stood vitiated does not require interference.[para 20] [636-B-C]

B Case Law Reference:

	2010 (2) SCR 256	relied on	Para 6
	2008 (5) SCR 1066	relied on	Para 7
C	2009 (10) SCR 522	relied on	Para 7
	2010 (10) SCR 161	relied on	Para 7
	2013 (2) SCR 1134	relied on	Para 7
	2007 (3) SCR 53	relied on	Para 8
D	(2013) 4 SCC 540	relied on	Para 9
	1985 (1) Suppl. SCR 657	relied on	Para 13
	1991 (2) SCR 812	relied on	Para 13
E	1990 (3) Suppl. SCR 108	relied on	Para 13
	AIR 2000 SC 3299	relied on	Para 13
	1981 (2) SCR 79	relied on	Para 14
	1995 Supp (1) SCC 206	relied on	Para 14
F	1988 (1) Suppl. SCR 379	referred to	Para 16
	1988 SCR 794	referred to	Para 17
	1993 (3) Suppl. SCR 434	referred to	Para 18
	(2003) 2 SCC 132	relied on	Para 19

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4255-4258 of 2014.

H From the Judgment & Order dated 05.04.2013 of the High Court of Calcutta in WPCT Nos. 607, 608, 609 and 610 of 2012.

Mahabir Singh, Aishwarya Bhati, Amit, Pawan Kr. Saini, A
Tarun Kaushik, B.K. Das, Sukesh Ghosh for the Appellants.

Neeraj Shekhar, R. Balasubramaniam, K.V. Jagdeshvaran, B
G. Indira, Dileep Poolakkot, Harshad V. Hameed for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. These appeals arise out of the
common judgment and order dated 5.4.2013, passed by the
High Court of Calcutta, Circuit Bench at Port Blair in W.P.C.T. C
Nos.607-610 of 2012 partly allowing the appeals against the
judgment and order dated 24.8.2012, passed by the Central
Administrative Tribunal, Calcutta (Circuit Bench, Port Blair)
(hereinafter referred to as the 'Tribunal') allowing the O.A.
No.124/AN/2010 and quashing the appointment orders dated D
5.2.2009 and 4.6.2009.

2. Facts and circumstances giving rise to these appeals
are:

A. That an advertisement dated 4.2.2008 was published E
by the respondent authorities calling for applications from
eligible candidates as well as from those who were registered
with the Employment Exchange for appointment to the 8 posts
of Group 'D' staff. The recruitment rules only provided for a
written examination having 50 maximum marks. F

B. The written examination was held on 25.1.2009 which
was given by 870 candidates out of which 573 candidates
obtained 20 and above marks.

C. A press notice dated 27.1.2009 was issued calling the G
successful candidates for interview, though such interview was
not part of the recruitment process.

D. The interviews were conducted and a final result sheet
was published. In pursuance thereto, appointment letters were H

A issued to the appellants herein.

B E. Challenging the said appointments, the unsuccessful candidates filed Original Application before the Tribunal which was allowed, quashing such appointments as equal marks were earmarked for both the written examination and interview which is impermissible in law and that the interview was never part of the recruitment process and thereby ordering initiation of fresh recruitment process.

C F. The appointees/appellants challenged the said order before the High Court. The High Court upheld the reasoning of the Tribunal but modified the order to the extent of continuing the recruitment process from the point it stood vitiated.

D G. In pursuance of the judgment and order of the High Court, termination letters were issued to the appellants.

Hence, these appeals.

E 3. Shri Mahabir Singh, learned senior counsel duly assisted by Ms. Aishwarya Bhati, learned counsel appearing for the appellants has submitted that the employer has a right to prescribe for a higher qualification or a stringent test than prescribed under the statutory rules in order to select the best candidates and once the selection is over and the candidates appeared without any protest, they cannot be permitted to do a to do a somersault and challenge the selection as a whole. Thus, the judgments impugned i.e. of the Tribunal as well as of the High Court are liable to be set aside.

G 4. Per contra, Shri R. Balasubramaniam, learned counsel appearing for the respondents has opposed the appeals contending that it was not permissible for the employer to change the rule of the game after the selection process commenced even if the employer is entitled for prescribing a higher qualification or a stringent test than prescribed under the rules. In the instant case as the finding of fact has been recorded

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by the courts below that there had been no transparency in awarding the marks in interview and the interview marks could not be same as that of the written test, the court should not grant any indulgence in such case. Hence, the appeals are liable to be dismissed.

5. We have heard learned counsel for the parties and perused the record.

6. This Court has considered the issue involved herein in great detail in *Ramesh Kumar v. High Court of Delhi & Anr.*, AIR 2010 SC 3714, and held as under:

"11. In *Shri Durgacharan Misra v. State of Orissa & Ors.*, AIR 1987 SC 2267, this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the Rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in *B.S. Yadav & Ors. v. State of Haryana & Ors.*, AIR 1981 SC 561, *P.K. Ramachandra Iyer & Ors. v. Union of India & Ors.*, AIR 1984 SC 541 and *Umesh Chandra Shukla v. Union of India & Ors.*, AIR 1985 SC 1351 wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the Rules is likely to cause irreparable and irreversible harm.

12. Similarly, in *K. Manjusree v. State of A.P.*, AIR 2008 SC 1470, this Court held that selection criteria has to be adopted and declared at the time of commencement of the

A recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

13. Thus, the law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva voce."

7. In *Himani Malhotra v. High Court of Delhi*, AIR 2008 SC 2103, this Court has held that it was not permissible for the employer to change the criteria of selection in the midst of selection process. (See also: *Tamil Nadu Computer Science BEd Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association & Ors.*, (2009) 14 SCC 517; *State of Bihar & Ors. v. Mithilesh Kumar*, (2010) 13 SCC 467; and *Arunachal Pradesh Public Service Commission & Anr. v. Tage Habung & Ors.*, AIR 2013 SC 1601).

8. In *P. Mohanan Pillai v. State of Kerala & Ors.*, AIR 2007 SC 2840, this Court has held as under :

"It is now well-settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as was prevailing on the date of vacancy should ordinarily be

followed."

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9. The issue of the change of rule of the game has been referred to the larger Bench as is evident from the judgment in *Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.*, (2013) 4 SCC 540.

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10. However, the instant case is required to be considered in the light of the findings of facts recorded by the Courts below:-

The Tribunal after appreciating the evidence on record, recorded the following findings:

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"The applicant had secured 47 marks out of 50 in the written examination. He was given only 20 marks in the interview whereas persons like Miss Zeenath Begum, Mr. Mohsin, Mr. Bishnu Biswas, Mr. Mohan Raof, Mr. Bharati Bhusan, Mr. Dilip Bepari and others got equal marks in the interview as in the written examination or more distorting results. For instance, Mr. Bishnu Biswas got 34 marks in the written examination and was given 45 marks in the interview. Similarly, Mr. Dilip Bepari got 36 marks in the written examination and got 45 marks in the interview. In case of Shri Bishnu Biswas he was not qualified as per recruitment rules since he did not possess the prescribed 8th pass certificate for the post. Directions have been sought from the Tribunal to set aside the appointment orders of the private respondents as per orders of 5.2.2009 and 4.6.2009."

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11. The High Court considered these issues and recorded the finding of fact that undoubtedly awarding of marks in the above manner indicated lack of transparency in the matter.

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12. The High Court has further held that distribution of marks equally both in the written test and in the interview is not permissible at all. In the instant case, there has been 50 marks for the written test as well as 50 marks for interview though the

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A rules did not envisage holding of the interview at all.

13. This Court in *Ashok Kumar Yadav & Ors. etc. etc. v. State of Haryana & Ors.*, AIR 1987 SC 454 held that allocation of 22.2% marks for the viva voce test was excessive and unreasonably high, tending to leave room for arbitrariness.

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(See also : *Munindra Kumar & Ors. v. Rajiv Govil & Ors.*, AIR 1991 SC 1607; *Mohinder Sain Garg v. State of Punjab & Ors.*, (1991) 1 SCC 662; *P. Mohanan Pillai (supra)*; and *Kiran Gupta & Ors. etc. etc. v. State of U.P. & Ors. etc.*, AIR 2000 SC 3299).

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14. In *Satpal & Ors. v. State of Haryana & Ors.*, 1995 Supp (1) SCC 206, this Court disapproved allocation of 85% of total marks for interview observing that such fixation was conducive to arbitrary selection. While deciding the said case the court placed reliance upon the Constitution Bench judgment in *Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors.*, AIR 1981 SC 487, wherein the court had held that 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. Thus, it is evident that the courts had always frowned upon prescribing higher percentage of marks for interview even when the selection has been on the basis of written test as well as on interview.

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15. The appropriate allocation of marks for interview, where selection is to be made by written test as well as by interview, would depend upon the nature of post and no straight-jacket formula can be laid down. Further there is a distinction while considering the case of employment and of admission for an academic course. The courts have repeatedly emphasized that for the purpose of admission in an education institution, the allocation of interview marks would not be very high but for the purpose of employment, allocation of marks for interview would depend upon the nature of post.

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16. In *Mehmood Alam Tariq & Ors. v. State of Rajasthan & Ors.*, AIR 1988 SC 1451, this Court had upheld fixation of 33% marks as minimum qualifying marks for viva test. A

17. In *State of U.P. v. Rafiquddin & Ors.*, AIR 1988 SC 162, this Court upheld the fixation of 35% marks as minimum qualifying marks in the viva test for selection for the recruitment to the post of a judicial magistrate. B

18. In *Anzar Ahmad v. State of Bihar & Ors.*, AIR 1994 SC 141, allocation of 50% marks for viva test and 50% marks for academic performance was upheld by this Court while considering the appointment of Unani Medical Officer observing that court must examine as to whether allocation of such higher percentage may tend to arbitrariness. C

19. In *Jasvinder Singh & Ors. v. State of J&K & Ors.*, (2003) 2 SCC 132, this Court upheld the allocation of 20% marks for viva test as against 80% marks for written test for selection to the post of Sub-Inspector of Police. However, the Court cautioned observing that the awarding of higher percentage of marks to those who got lower marks in written test in comparison to some who had got higher marks in written examination, an adverse inference from certain number of such instances can be drawn. However, in absence of any allegation of mala fides against the Selection Committee or any Member thereof, a negligible few such instances, would not justify the inference that there was a conscious effort to bring some candidates within the selection zone. D
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20. In the instant case, the rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process. The marks allocated for the oral interview had been the same as for written test i.e. 50% for each. The manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview G
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- A while large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview.
- B The fact that today the so called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.
- C Thus, in the facts of this case the direction of the High Court to continue with the selection process from the point it stood vitiated does not require interference.

D In view of the above, the appeals are devoid of merit and are accordingly dismissed. No costs.

R.P.

Appeals dismissed.