

Rakesh Kumar and Another Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: July 9, 2002

Acts Referred: Constitution of India, 1950 " Article 14, 16, 19, 21, 226

Citation: (2003) 1 CALLT 441

Hon'ble Judges: Ashim Kumar Banerjee, J

Bench: Single Bench

Advocate: Subrata Roy and Achin Majumder, for the Appellant; Uttam Majumder, for the Respondent

Judgement

A.K. Banerjee, J.

Both the writ petitioner applied for the post of sub-inspector (executive). However, writ petitioners became

unsuccessful in getting the employment. According to them although the private respondent got lesser mark in the written test the appointment was

given to the private respondents. Hence, this writ petition.

2. In the recruitment process there had been two stages of examination, written test for 200 marks and interview for 100 marks. Both the writ

petitioners got higher marks than the private respondents. However, they failed in the interview having scored less than 40% marks and as such

they were not given any employment.

3. It was contended on behalf of the writ petitioner that the rules provided for written test, physical efficiency test and interview. The rules were

silent with regard to allotment of marks in respect of interview. However, the respondent authority relying on a circular issued by the Director

General, Railway Protection Force dated 14th January, 1988 made it clear that a successful candidate must obtain 40 marks out of 100 marks in

the interview to qualify.

4. According to the writ petitioner the said circular was contrary to the recruitment rules and was contrary to the well settled principles of law laid

down by the Apex Court.

In support of such contention the writ petitioner relied upon the following decisions ;

(i) 1994 Supp1 sc 468 (State of Maharashtra and Ors v. Husen S/o Jafar Sheikh and Ors.);

(ii) 1983 3 SLR 299 (State of Travancore v. Soumini);

(iii) Ashok Kumar Yadav and Others Vs. State of Haryana and Others, ;

(iv) Durgacharan Misra Vs. State of Orissa and Others, ;

(v) Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, ;

(vi) Lila Dhar Vs. State of Rajasthan and Others, ;

5. Before deciding this issue let me first consider the view of the Apex Court on the subject issue.

(i) Lila Dhar Vs. State of Rajasthan and Others, In this decision the selection process in judicial service was impugned on the ground that too much

weightage was given on the interview. The Apex Court held that it was for the interview board to decide the manner of allotment of marks in the

interview. The Apex Court also held that there could not be any magic formula in these matters and Courts could not sit in judgment over the

methods in marking employee by the interview bodies unless it was proven or obvious that the method of marking was chosen with oblique motive.

6. Paragraph 8 of the said judgment is relevant herein and is quoted below :

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 can not be any magic formula 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.

(ii) Ashok Kumar Yadav and Others Vs. State of Haryana and Others, : Four Bench decision of the Apex Court held that if both written

examination and viva voce test are accepted as essential feature of proper selection in given case the question may arise as to weight to be

attached respectively to them. Considering that aspect the Apex Court further held that there could not be hard and first rule regarding the precise

weight given to viva voce test as against the written examination. It must vary from service to service according to the requirement of the service. It

was further held that the Court did not possess the necessary equipment and it could not be right for the Court to pronounce upon it.

(iii) Durgacharan Misra Vs. State of Orissa and Others, : In the said case the selection process was held to be bad by the Apex Court in view of

fixing of qualifying marks contrary to rules as per advice of a sitting judge of a High Court. In the said case before the Apex Court the concerned

rule provided that a candidate after scoring prescribed qualifying marks in the written examination would be called for viva voce test and after the

viva voce test the total marks obtained in the written examination and viva voce test would be the total mark and there was no qualifying marks

fixed by the said rule. Hence, the non-consideration of a candidate on the ground that he did not obtain the qualifying marks in the viva voce test

fixes as per the advice of a sitting judge of High Court for selection of a Munsif was held to be bad.

(iv) State of Karnataka Vs. Sureshbabu Puk Raj Porral, : Here also the Apex Court held that no hard and first rule could be laid down as to the

percentage of minimum marks to be prescribed for clearing the viva voce test because much would depend on the adverse effect which must enter

consideration for evaluating the candidates worth.

7. Considering the aforesaid decisions my understanding of the law as held by the Apex Court is as follows :

(i) If the rules permit, there could be fixation of the minimum marks in the written test as well as viva voce test.

(ii) In case rule does not permit to fix a qualifying marks for viva voce another subsequent advice by way of clarification or otherwise being

contrary to rule would be bad and would vitiate the selection process.

8. In the instant case the recruitment procedure had suggested two stages of examination being written test and viva voce. The qualifying marks for

viva voce was fixed on the basis of a circular issued by the Director General, Railway Protection Force subsequent to the initiation of the selection

process. It is true that the viva voce test might be equally important so as written test. When the recruitment process started initially by making

invitation to the public which did not suggest the minimum mark for the interview, subsequent notification issued after the initiation of the selection

process contrary to the rules issued by way of clarification is liable to be quashed and set aside.

9. The respondent in the Affidavit-in-Opposition contended that although the private respondents scored lesser mark in the written test they were

considered for appointment by giving priority over the petitioners in view of the fact that the petitioner could not qualify in the viva voce test by

crossing the bench mark fixed by the subsequent circular issued by the concerned authority as and by way of clarification. Such clarification in my

view could not be had at a stage when the selection process was on. Moreover, it was not consistent with the relevant recruitment rules.

10. In the result, writ petition succeeds.

11. The gradation list prepared by the respondent authority by disqualifying the candidates for not being eligible for appointment because of not

crossing bench mark in viva voce test fixed by the circular dated 14th January, 1998 is quashed and set aside. The respondent authority is directed

to prepare the said list without taking into account the qualifying marks fixed for the interview and is directed to give appointment accordingly in

order of merit on the basis of the total marks obtained by the candidates including the petitioner and the private respondents.

Writ petition is thus disposed of accordingly. There would be no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.