

Constable Subhash Chander Vs. the State of Punjab and ors.

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Court : Punjab and Haryana

Decided On : Mar-27-2006

Reported in : (2006)143PLR338

Judge : M.M. Kumar, J.

Appeal No. : Civil Writ Petition No. 14282 of 1991

Appellant : Constable Subhash Chander

Respondent : The State of Punjab and ors.

Advocate for Def. : Rakesh Verma, AAG

Advocate for Pet/Ap. : M.S. Kang, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of mandamus directing the respondent to appoint the petitioner as Assistant Sub Inspector on the basis of his merit in the test held in the year 1990.

2. Brief facts of the may first be noticed.

The petitioner has claimed that he has a brilliant academic record as he has obtained a degree in B.Com by obtaining 1st Class in April, 1988 from the Punjab University. Thereafter, he qualified M.A. Part I in the subject of Economics in April, 1989. He has also narrated his various sports activities. In response to an advertisement dated 12.8.1990 (Annexure P.3), the petitioner applied for appointment on the post of Assistant Sub Inspector of Police. He had passed the written test and was called for interview. He appeared for interview before the Departmental Selection Committee comprising of Inspector General of Police as its Chairman and other Deputy Inspector General of Police as member thereof. For the written test 100 marks were allocated and for viva voce 50 marks were assigned. After passing the written test by securing 58.30 marks, the petitioner was subjected to viva voce and he secured 18.25 marks in the viva. Thus, the total marks of the petitioner comes to 76.55. According to the record produced before me the last candidate at serial No. 131 has secured 80.50 marks (57 in the written test plus 23.50 in the viva). The name of the petitioner, however, figured at serial no. 171 according to the record.

3. The stand of the respondents in the written statement is that there is no illegality committed by them by allocating 100 marks for the written test and 50 marks for viva. According to the respondents, the same criterion for allocation of marks to the written test and viva has been followed in the earlier selection held in 1989 which has been upheld by a Division Bench of this Court in the case of *Jai Pal Singh v. State of Punjab and Ors.*, C.W.P. No. 1681 of 1989, decided on 30.1.1990.

4. It is pertinent to mention that the instant writ petition came up for consideration on an earlier occasion on 21.1.1992. A Division Bench of this Court has allowed this writ petition. However, the order passed by the Division Bench was set aside by Hon'ble the Supreme Court by observing that the judgment of the Supreme Court in the case of *Shri Ashok Alas Somana Gowada and Anr. v. State of Karnataka and Ors.* 1992(1) S.C.C. 28 has been referred as a passing observation without any attempt to indicate the ratio which could be applied to the present case. It was further held by the Hon'ble Supreme Court that the judgment in the case of *Sri Ashok (supra)* was not at all applicable to the present case. The

Division Bench judgment has been set aside vide order dated 13.1.1993 while remanding the case to this Court and treating the same as admitted. The observations of their Lordships in this regard read as under:

It has been stated in the Special Leave Petition that the total marks obtained by the respondent at the test were 76.55 whereas the last candidate from the general category to be appointed as Assistant Sub Inspector obtained 80.50 marks. The learned Counsel for the appellant further stated that many other candidates, who failed to secure adequate marks for the purpose of selection, secured higher marks than the respondent and, since they have not impleaded as parties in the writ petition, the writ petition is fit to be dismissed on that ground alone. The High Court having come to final decision in favour of the respondent without advertent to the merits of the other candidates, acted in error. Learned Counsel for the respondent attempted to support the case of the respondent on some other grounds which have not been mentioned by the High Court. We at this stage cannot go into such arguments. We are of the view that the writ petition must be re-heard on merits by the High Court. Accordingly, we set aside the impugned judgment and order, allow the appeal and remit the case to the High Court for fresh disposal in accordance with law. There will be no order as to the costs in this Court.

5. I have heard the learned Counsel for the parties and perused the record.

6. M.S. Kang, learned Counsel for the petitioner has argued that in cases where the authorities have preferred to resort to the method of holding written test, the marks required to be allocated to the viva voce should not exceed 12-1/2 percent. According to the learned Counsel any violation of the afore-mentioned principle would result into infraction of just and fair play as envisaged by Article 14 of the Constitution because if excessive marks are allocated to the viva test the authorities could resort to an arbitrary method of damaging those meritorious candidates who have scored well in the written test by awarding them low marks in viva. In support of his submission learned Counsel has placed reliance on two judgments of the Supreme Court in the cases of Ashok Kumar Yadav and Ors. v. State of Haryana and Anr. : AIR 1987 SC 454 and Mohinder Sain Garg v. State of

Punjab 1991(3) R.S.J. 568. Mr. Kang has further submitted that the answer sheets produced by the respondents before the Court would show that the marking of answers is improper as even correct answers have not been marked properly.

6. Mr. Rakesh Verma, learned State counsel has argued that the Division Bench judgment of this Court in the case of Jai Pal Singh (supra) has upheld the criterion of allocating 100 percent marks in the written test and 50 marks for the viva voce. Learned State Counsel has further submitted that the judgments of Hon'ble Supreme Court in the case of Ashok Kumar Yadav (supra) and Mohinder Sain Garg (supra) do not apply to the facts of the present case because a perusal of the record would show that the Selection Committee has not resorted to any such arbitrary action of awarding excessively high marks in the viva voce. He has then pointed out that the answer sheet of the petitioner produced by the respondents cannot be subjected to any doubt.

7. Having heard the learned Counsel for the parties, I am of the considered view that this petition is liable to be dismissed because the selection of Assistant Sub Inspectors made in the year 1989 was subject matter of challenge in Jai Pal Singh's case (supra) and the argument which has been raised in the instant petition that the marks assigned for viva voce test should not exceed 12.5 marks was rejected by placing reliance on a Full Bench judgment of this Court in the case of Vikram Singh and Ors. v. The Subordinate Services Selection Board and Anr. 1988(5) S.L.R. 78 on the judgment of the Supreme Court in Lila Dhar v. State of Rajasthan and Ors. : (1981) 11 LLJ 297 SC. In the case of Vikram Singh (supra) the matter concerned appointment to the posts of Excise and Taxation Inspectors where 28.5 marks were allocated for the viva voce test and the same was upheld. The Division Bench also upheld the allocation of 50 marks for the viva voce test out of total of 150 marks (100 for the written test and 50 marks for viva voce). The basic rationale discernible from the judgments of the Supreme Court in Lila Dhar's case (supra), Ashok Kumar Yadav's case (supra) and Mohinder Sain Garg's case (supra) is that there are no hard and fast rules which could be applied to the viva voce test requiring the allocation of particular percentage of marks. After analyzing the various judgments, their Lordships of the Supreme Court in para 25 of the judgment in Ashok Kumar Yadav's case has concluded as under: There cannot

be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirements of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors, It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon if, unless to use the words of Chinnappa Reddy, J. in Liladhar's case 'exaggerated weight has been given with proven or obvious oblique motives.

(emphasis in original)

9. When the aforementioned criterion is applied to the facts of the present case it becomes evident that 33 percent marks to the viva test have been allocated by keeping in view the nature of the service an Assistant Sub Inspector has to perform. The Committee which interviewed the candidates is comprised of senior officers like Inspector General of Police (Zonal) as its Chairman and the Deputy Inspector General of Police as its member. The record further shows that the marks for the via voce test have not been awarded arbitrarily with oblique motive of damaging the career of the brilliant officers who have secured higher marks in the written test. Therefore, no legal infirmity could be found in the criterion of allocating 33 percent marks to the viva voce test.

10. The other argument that the answer sheets should be re-evaluated is equally devoid of merit because there is no rule permitting re-evaluation of answer sheets. Moreover, the answers given to the petitioner cannot be gone into by the Court as it is a job which is left to the experts. I am further of the view that if an Examiner has preferred one answer over the other which might be incorrect then he has followed the same yardstick for all the candidates and thus every body has been treated alike. Viewed from that angle, the submission made by the learned Counsel for the petitioner would fall to the ground. Therefore, there is no merit in this submission of the learned Counsel and the same is hereby rejected.

11. No other argument has been raised.

12. As a consequence of the above discussion, this petition fails and the same is dismissed without any order as to costs.

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