

Arulappa Vs. Union of India (Uoi), Represented by the Secretary to Government, Ministry of Banking and anr.

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Court : Chennai

Decided On : Dec-06-1991

Reported in : (1992)1MLJ631

Appellant : Arulappa

Respondent : Union of India (Uoi), Represented by the Secretary to Government, Ministry of Banking and anr.

Advocate for Pet/Ap. : Mr. S. Elamurugan

Judgement :

1. The prayer in the writ petition is as follows:

For the reasons stated, in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the second respondent dated 3.1.1989 made in Ref. B.SR.B.S.P. Order 11. Rule 88.81410001, quash the same and direct the second respondent to select and appoint the petitioner in the post Code No. 4, Financial Analyst as advertised in Advertisement No. 3/88 dated 18.4.1988 notified for the Scheduled Caste....

2. The case of the petitioner as disclosed in the affidavit filed in support of the writ petition is as follows:

The petitioner belongs to Pallan community, which is notified as the Scheduled Caste. After passing the B.Com., degree in first class the petitioner completed P.G.D.M. (Post Graduate Diploma in Management) Course, which is considered to be superior to M.B.A. course. The second respondent caused an advertisement bearing advertisement No. 3/88, dated 18.4.1988 in all leading newspapers. Through the said advertisement applications were invited from Indian Citizens for appointment to the posts mentioned therein which includes the appointment to the post of Financial Analyst in the participating banks viz., Canara Bank, Syndicate Bank, Vijaya Bank and Corporation Bank. The post of Financial Analyst was categorised under post Code No. 4 and the following educational qualification was prescribed for the said post. M.B.A. in finance or equivalent qualification from IISC/IIM or M.B.A. in finance from any recognised university. Previous experience was not considered as essential. The total number of vacancies in the post of Financial Analyst was mentioned as 32 out of which 8 posts and 4 posts were to be filled only by appointing Scheduled Caste and Scheduled Tribe candidates respectively and the remaining 20 posts were to be filled up from general. According to the procedure prescribed for selection as notified in the advertisement given in the newspapers there will be a written test of objective and descriptive type and such of those candidates who rank sufficiently high in the preliminary examination will be called for an interview. Final selection would be on the basis of the aggregate marks obtained by the candidates in the written examination and in the interview and shall be strictly according to merit. The petitioner submitted his application in the prescribed form for the post of Financial Analyst and he was assigned with roll No. 81410001. Along with the petitioner approximately 45 candidates competed for the vacancies notified for Scheduled Caste candidates. The petitioner appeared for the written examination held on 10.7.1988. The second respondent published the roll number of the candidates who were qualified to be called for interview for the various posts. The petitioner was also called for interview for the post of Financial Analyst and he was called upon to appear for interview on 30.11.1988. Subsequently by the impugned proceedings dated 3.1.1989 made in Ref. No. P.S.R.D., S.B.O. II/R-88-81410001, the petitioner was informed by the 2nd respondent that he had not come within the required ranking prescribed for the post and, therefore, he. was not selected for

the post of Financial Analyst, In the above circumstances, the petitioner has filed the present writ petition seeking the relief referred to in the opening paragraph of this order.

3. The second respondent filed a counter contending that the petitioner appeared for the written test and secured 86 marks out of 200 marks in the written test and hence he was called for the interview and in the interview he secured only 15 marks, out of 100 marks, and therefore, in the aggregate the petitioner had secured only 101 marks out of 300. It is further stated in the counter-affidavit that the Chairman of the Board has fixed a cut-off mark of 125 out of total marks of 300 for the SC/ST candidates and 150 for the general candidates and since the petitioner did not secure the required cut-off marks for appointment to the post of Financial Analyst he was not selected.

4. Mr. S. Elamurugan, learned Counsel for the petitioner raised the following two contentions in this writ petition:

i. The petitioner was not selected for the post of Financial Analyst because he did not secure the required cut-off marks viz., 125 marks out of 300 marks prescribed for the SC/ST candidates by the Chairman of the Board; The Chairman of the Second respondent-Board has no power to fix any cut-off mark particularly when the prescription of cut-off marks for selection to the post of Financial Analyst was not indicated in the selection procedure given in the advertisement and, therefore, the reason given by the second respondent in the impugned order for not selecting the petitioner for the post of Financial Analyst is illegal and therefore, the impugned order is liable to be set aside.

ii. In this case, admittedly 200 marks are reserved for the written examination and 100 marks for viva voce. Reserving 100 marks for viva voce out of 300 is excessive and it gave arbitrary powers to the second respondent in the matter of selection and selection of candidates on the basis of such high percentage of marks reserved for interview was illegal and therefore, the entire selection made by the second respondent is bad and is liable to be set aside.

5. Let us examine the contentions of the learned Counsel for the petitioner one by one. So far as the first contention is concerned, the learned Counsel for the petitioner submitted that admittedly in the procedure prescribed for selection for the post of Financial Analyst in the advertisement issued in the newspapers calling for applications, it is not mentioned that a candidate in order to get selected must secure a minimum cut-off mark. All that is stated in the advertisement calling for applications, under the heading: 'selection procedure' is as follows:

For posts 1, 2, 3 and 4 : All the candidates who apply with the requisite fee and whose applications are received on or before the prescribed last date will be called for a written test which will be both objective and descriptive type. Such of those candidates who rank sufficiently high in the preliminary examination will be called for an interview. Final selection will be on the basis of the aggregate marks obtained by the candidates in the written examination and interview and shall be strictly according to merit.

The prescription of a minimum cut-off mark is not at all indicated in the selection procedure given in the advertisement. The learned Counsel for the second respondent is also not in a position to point out any rule or regulation which gives power to the Chairman of the Board to fix the minimum cut-off mark for selecting candidates particularly when it is not indicated in the procedure prescribed for the selection of candidates. In *Durgacharan v. State of Orissa* : [1987]3SCR1097 , the Apex Court was considering a case where the Public Service Commission itself, while preparing the select list for the post of Munsifs prescribed minimum qualifying marks for viva voce test and did not select a candidate for not securing the minimum qualifying mark so prescribed and selected candidates securing less number of aggregate marks in written test and viva voce than the candidate in question. In those circumstances, the Apex Court held as follows:

The Rule making authorities have provided a scheme for selection of candidates for appointment to judicial post. Rule 16 prescribes the minimum qualifying marks to be secured by candidates in the written examination. It is 30% of the total marks in all the papers. The candidates who have secured more than that minimum would alone be called for viva voce test. The Rules do not prescribe any such

minimum marks to be secured at the viva voce test. After the viva voce test, the Commission shall add the marks of the viva voce test to the marks in the written examination. There then, Rule 18 states:

The names of candidates will then be arranged by the Commission in the order of merit. This is the mandate of Rule 18. The Commission shall add the two marks together, no matter what those marks at the viva voce test. On the basis of the aggregate marks in both the tests, the names of candidates will have to be arranged in order of merit. The list so prepared shall be forwarded to the Government. The Commission has no power to exclude the name of any candidate from the select list merely because he has secured less marks at the viva voce test.

In the above decision the Supreme Court held that the action of the Public Service Commission prescribing a minimum qualifying marks for a viva voce in the absence of any rule to that effect and excluding a candidate for not securing the minimum marks so prescribed is illegal. The ratio of the above decision of the Supreme Court applies to the facts of the present case. When the prescription of minimum cut-off mark was not indicated anywhere in the procedure prescribed for selection and when the second respondent is not in a position to point out any rule or regulation which gives the power to the Chairman to fix a minimum cut-off mark, the reason given by the respondents in the impugned order and in para 5 of the counter-affidavit for not selecting the petitioner for the post of Financial Analyst cannot be sustained and the impugned order is liable to be set aside. Mr. M.R. Narayanaswami, learned senior counsel for the second respondent drew my attention to paragraphs 4.4 to 4.7 of the Recruitment Scheme for Public Sector Banks, which read thus:

4.4. The Selection will be made on the basis of a written examination, in which all the eligible candidates will be invited to appear, followed by an interview by the Recruitment Board.

4.5. The written examination should be of a high standard and should inter alia aim at testing the specific skills required of a bank officer to meet the changing demands of the banking system.

4.6. The pattern and standard of the written examination should be uniform for all groups of banks. For this purpose guidelines will need to be prepared. The Chairman of all the Recruitment Boards will meet to evolve common guidelines and may seek the assistance of the National Institute of Bank Management in this exercise.

4.7. The All India merit list of the successful candidates shall be drawn up on the basis of the aggregate performance of the candidates in the written test and interview. The weightage to be given for the written examination and interview marks should be uniform for all groups of banks and will be as prescribed in the common guidelines as agreed upon by the Chairman of all Recruitment Boards.' I carefully examined paragraphs 4.4. to 4.7 of the scheme relied on by the learned Counsel for the second respondent. The said paragraphs do not in any way advance the case of the 2nd respondent because they do not speak about the power of the Chairman of the 2nd respondent Board to fix the minimum cut-off mark for selecting the candidates.

6. So far as the second contention of the learned Counsel for the petitioner is concerned, it is admitted that the 2nd respondent prescribed 200 marks for the written examination and 100 marks for viva voce. The learned Counsel for the petitioner relying on the decision of the Supreme Court in *Mohinder Sain Garg v. State of Punjab and Ors.* : (1991)1SCC662, would contend that it would not be reasonable to have more than 15% of the total marks for viva voce in the selection of candidates and as in the present case 33.33% of the total marks, was reserved for viva voce the entire selection is bad and is liable to be set aside. On the other hand, Mr. M.R. Narayanaswami, learned senior counsel appearing for the second respondent submitted that if special circumstances exist it is open to the parties to prescribe highest percentage of marks exceeding 15% of the total marks for viva voce. The learned Counsel for the second respondent further contended that inasmuch as the petitioner has not raised these points in the affidavit filed in support of the writ petition he is not entitled to raise the contentions for the first time in the course of the arguments.

7. In Ashok Kumar Yadhav and Ors. v. State of Haryana and Ors. (1985)1 S.C.R. (Supp.) 657, the Apex Court held that it would be prudent and safe to follow the percentage adopted by the Union Public Service Commission in case of selection to Indian Administrative Service and other allied services. The percentage of marks allotted for the viva voce test by the Union Public Service Commission in the above service was 12.2% and that has been found to be fair and just as directing a proper balance between examination and the viva voce test.

8. In Mohinder Sain Garg v. State of Punjab and Ors. : (1991)1SCC662 , their Lordships of the Supreme Court after referring to Ashok Kumar Yadhav's case (1985)1 S.C.R. (Supp.) 657 and other decisions of the Apex Court has held as follows:

Even if Ashok Kumar Yadhav's case (1985) 1 S.C.R. (Supp.) 657, may not in terms apply in the cases before us to the extent of laying down 12.2% of the total marks for viva voce test which was made applicable for selections to be made by U.P.S.C, we deem it proper to lay down after taking in view the dictum of all the authorities decided so far that the percentage of viva voce test in the present case at 25% of the total marks was arbitrary and excessive. There could be no gainsaying that viva voce test cannot be totally dispensed with, but taking note of the situation and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15 per cent of the total marks in the selection of candidates fresh from college/school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview.

Recently on 11.10.1991 the Supreme Court in Sri Ashok alias Somanna Gowda and Anr. v. State of Karnataka (1991)4 S.C. 160, dealing with the rules provided 33.33% marks for interview out of the total marks, held as follows:

It is not necessary to examine the matter in detail inasmuch as 50 marks for interview out of 150 are clearly in violation of the judgment of this court in Ashok Kumar Yadhav and Ors. v. State of Haryana and Ors. (1988)1 S.C.R. (Supp.) 657 and Mohinder Sain Garg v. State of Punjab and Ors. : (1991)1SCC662 .

Applying the ratio of the decision of the highest court of the land, it has to be held that reservation of 100 marks for viva voce out of 300 marks in the present case is excessive and, therefore, the entire selection made by the 2nd respondent-Board pursuant to the Advertisement No. 3/88 dated 18.4.1988 is bad.

9. In this case, we are faced with a situation that selection for the above post of Financial Analyst has already been made and the selected candidates have already joined the posts long back. The selected candidates have also not been impleaded as parties in the writ petition. In the above circumstances, it would be doing injustice to such candidates who have already been selected and have joined the post and who are not impleaded as parties in the writ petition to quash their selection even if it is held that 33.33% marks kept for viva voce test were excessively high.

10. However, it is seen from the counter-affidavit that 8 posts of Financial Analyst are reserved for Scheduled Caste candidates and that the petitioner and 5 other Scheduled Caste candidates were called for interview and the petitioner and four other Scheduled Caste candidates attended the interview. Only one Scheduled Caste candidate was selected. The petitioner alone, out of other 4 Schedule Caste candidates who attended the interview but not selected has filed the present writ petition challenging the selection. In these circumstances, as the petitioner alone was vigilant in making a grievance it is proper to issue a Writ of mandamus directing the second respondent to select and appoint the petitioner in the post Code No. 4 Financial Analyst as advertised in the Advertisement No. 3/88 dated 18.4.1988, if the petitioner is otherwise found suitable for the post. I am unable to accept the contention of the learned Counsel for the second respondent that without raising this point in the affidavit filed in support of the writ petition, the counsel for the petitioner is not entitled to argue that selection is bad in this case, because, high percentage of marks is prescribed for the interview, in view of the fact that the submissions of the learned Counsel for the petitioner that the selection made by the second respondent is bad on the ground of high percentage of marks reserved for viva voce is based on the decision of the Apex Court and also on the basis of the admitted facts available in this case.

11. Accordingly the writ petition is allowed, the impugned order dated 3.1.1989 made in Ref. B.S.R.B.S.P. Order II Rule 88.81410001 challenged in the writ petition is set aside and the second respondent is directed to select and appoint the petitioner in the post Code No. 4-Financial Analyst-as advertised in Advertisement No. 3/88 dated 18.4.1988. The respondents shall take suitable steps to pass the appropriate orders for appointing the petitioner within two months from the date of receipt of a copy of this order. There will be no order as to costs.

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