

Rakesh Kumar and anr. Vs. Union of India (Uoi) and ors.

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Court : Kolkata

Decided On : Jul-09-2002

Reported in : (2003)1CALLT441(HC)

Judge : Ashim Kumar Banerjee, J.

Acts : [Constitution of India](#) - Articles 14, 16, 19, 21 and 226

Appeal No. : W.P. No. 20647(W) of 1998 and 9413 of 2001

Appellant : Rakesh Kumar and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Uttam Majumder, Adv.

Advocate for Pet/Ap. : Subrata Roy and ;Achin Majumder, Advs.

Judgement :

A.K. Banerjee, J.

1. 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 Supplementary Volume I, Supreme Court Cases, Page 468 (State of Maharashtra and Ors v. Husen S/o Jafar Sheikh and Ors.);

(ii) 1983 Volume III, Service Law Reporter, Page 299 (State of Travancore v. Soumini);

(iii) : AIR 1987 SC454 (Ashok Kurnar Yadav and Ors. v. State of Hariyana and Ors. and State of Hariyana and Anr. v. Subhas Chandra Sharma and Ors. and D.R. Chaudhury and Ors. v. Ashok Kumar Yadav and Ors.);

(iv) : [1987]3SCR1097 (Sri Durgacharan Mishra v. State of Orissa and Ors.);

(v) : (1992)ILLJ87SC (Sri Ashok alias Somanna Gowda and Anr. v. State of Karnataka and Ors.);

(vi) : (1981)ILLJ297SC (Lila Dhar v. State of Rajasthan and Ors.);

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

(i) : (1981)IILLJ297SC (Lila Dhar v. State of Rajasthan): 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) : AIR 1987 SC454 (Ashok Kumar Yadav v. State of Hyderabad and Ors.): 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) : [1987]3SCR1097 (Durgacharan Mitra v. State of Orissa and Ors.): 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) 1994 Supplementary Vol. I, Supreme Court Cases, Page 468 (State of Maharashtra and Ors. v. Hussain): Here also the Apex Court held that no hard and fast 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 mark 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 were 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.