

Mohinder Sain Garg Etc. Etc vs State Of Punjab And Ors on 15 November, 1990

Equivalent citations: 1990 SCR, SUPL. (3) 108 1991 SCC (1) 662, AIR ONLINE 1990 SC 78, 1991 (1) SCC 662, 1991 SCC (L&S) 555, (1991) 1 UPLBEC 710, (1991) 2 LAB LN 31, (1991) 1 CUR LR 254, (1991) 1 SERV LR 546, (1991) 16 ATC 495, (1990) 4 JT 704, (1990) 4 JT 704 (SC), (1991) IJR 376 (SC)

Author: N.M. Kasliwal

Bench: N.M. Kasliwal, M. Fathima Beevi

PETITIONER:

MOHINDER SAIN GARG ETC. ETC.

Vs.

RESPONDENT:

STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT 15/11/1990

BENCH:

KASLIWAL, N.M. (J)

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KASLIWAL, N.M. (J)

FATHIMA BEEVI, M. (J)

CITATION:

1990 SCR Supl. (3) 108 1991 SCC (1) 662

JT 1990 (4) 704 1990 SCALE (2) 1014

ACT:

Civil Service:

Excise and Taxation Inspectors-- Appointment of--Examination-Viva voce--Value and importance of--Fixing 25 of total marks Whether arbitrary and excessive--Calling for a large number of candidates--Whether vitiates selection--Quashing of selection-Desirability of.

HEADNOTE:

For filling up 47 posts of Excise and Taxation Inspectors in Punjab, the Chairman, Selection Committee issued an advertisement in newspaper. The advertisement stated that there would be three written papers in English, Punjabi and General Knowledge of Degree Standard and would carry 100

marks each. Those who obtain 33% in each paper and 40% in the aggregate were to be called for interview which would carry 100 marks.

The examination was held and the Selection Committee called more than 1200 candidates for interview. By the time the Selection commenced the vacancies increased to 54. comprising of 28 posts of Taxation Inspectors and 26 posts of Excise Inspectors. After the interview and selection, all the 54 posts were filled, taking into account the reservations made for Scheduled Caste, Backward class, Ex-service-men, dependents of freedom fighters etc. The appellants who were unsuccessful in the interview filed a Writ Petition in the High Court challenging the procedure adopted by the Selection Committee. The High Court dismissed the Writ Petitions following two Judgments of its Full Bench, viz., *Joginaer Singh v. State of Haryana*, AIR 1966 Punjab & Haryana 339 and *Vikram Singh & Ors. v. The Subordinate Services Selection Board, Haryana & Ors.*, AIR 1988 Punjab & Haryana 299. The appellants have preferred the appeals by special leave, against the Judgment of the High Court. The Writ Petitioners have approached this Court direct challenging the selection made.

The appellants and the petitioners contended that since the Selection Committee had called 1200 candidates for interview for only 54 posts, it gave the power of arbitrariness for selection of the candidates. It was impossible to carry out a satisfactory viva voce list if such a large

number of candidates were called for interview. The interview was not only casual but also superficial and stoppy and the assessment made at such interviews can never reflect the true measure of the personality of the candidates. It was also contended that keeping 100 marks for interview, that is 25 per cent of the total marks, gave arbitrary powers to the Selection Committee, and hence violative of Article 14 of the Constitution.

On behalf of the respondents it was contended that the Writ Petitions and appeals were not maintainable since all the respondents in the High Court were not impleaded; that since the selected candidates have already joined the posts such appointments may not be quashed. It was further contended that the observations made in *Ashok Kumar Yadav's* case have no relevance to the present cases since the selection was made by Departmental Selection Committee and not by Public Service Commission; that all the candidates who had qualified in the written examination had to be called for interview irrespective of the number; that marks were awarded by the members of selection Committee who were experts, solely on the basis of the response of candidates and that no excessive marks were awarded to any candidate.

Dismissing the Writ Petitions and one appeal and allowing the other appeals, this Court,

HELD: 1.1. *Ashok Kumar Yadav's* case was decided in 1985

and there is no reason why the State of Punjab did not follow the same for making selections in 1989 for the posts of Excise and Taxation Inspectors. It is no doubt correct that the selection of Taxation and Excise Inspectors is done by a Subordinate Selection body and not by Public Service Commission yet no valid reason has been given as to why that principle should not be applied in these cases as well. Even if the said principle may not in terms apply in these cases to the extent of laying down 12.5% of the total marks for viva voce test which was made applicable for selections to be made by V.P.S.C., the percentage of viva voce test in the present cases at 25% of the total marks is arbitrary and excessive. There could be no gain saying 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. [133G-H; 134A-C]

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1.2. It would be doing injustice to such candidates, who have already been selected and have joined the posts, to quash their selections even if it is held that 25 per cent marks for viva voce test were excessively high. [134D-E]

1.3. Though it was not proper for the Selection Committee to have called as much as 1200 candidates for selection of 54 posts, the selection cannot be vitiated merely on this ground as such action is not tainted by any mala fide or oblique motive. The respondents also stated that they had called all the eligible candidates as the same practice was followed since 1970 and according to the rules all such candidates had qualified in the written examination, and had to be called for interview.

Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana
JUDGMENT:

etc. v. State of Tamil Nadu & Ors., [1971] 2 SCR 430; Miss Nishi Maghu and Ors. v. State of J & K & Ors., [1980] 4 SCC 95; Ajay Hasia & Ors. v. Khalid Mujib Sehravardi and Ors., [1981] 1 SCC 722; Koshal Kumar Gupta & Ors. v. State of J & K and Ors., [1984] 3 SCR 407, relied on.

State of U.P. v. Rafiquddin and Ors., [1987] Supp. SCC 401; Mahmood Alam Tariq and Ors. v. State of Rajasthan & Ors., [1988] 3 SCC 241; distinguished.

Liladhar v. State of Rajasthan & Ors., [1981] 4 SCC 159, referred to.

2. Even if the entire selection is quashed and a direction given to hold the viva voce test afresh by reducing the percentage of marks, it would be a futile exercise so far as the two Writ Petitioners are concerned, as they stood no chance of being selected even remotely. According to Ashok Kumar

Yadav's case candidates should be called only three times the number of seats available for appointment. If that criteria was applied then the two Writ Petitioners had absolutely no chance of being called for interview for the one post of Taxation Inspector in the category of backward class. [135C-E].

Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana & Ors. etc. etc. [1985] Suppl. SCR 657, referred to. 3.1. In the general category 897 candidates had appeared in interview and so far as one of the four appellants, viz., Rajesh Kumar Saili is concerned, he secured 26 marks in interview and his position was 668th. He stood no chance of being called for interview if candidates upto three times the number of the posts were called for interview. Even if the percentage of marks in viva voce was reduced from 25 per cent to 15 per cent he stood no chance of selection even remotely. [135G-H] 3.2. The respondents are directed to appoint the other three appellants belonging to general category on the posts of Taxation Inspector/Excise Inspector as the case may be, if they are otherwise found suitable for these posts. It is further made clear that in case anyone of these appellants has become over-aged during this period, this would not be considered as a disqualification for their appointment to the above post. [136G-H; 137-A] &