

Vijay Syal And Anr vs State Of Punjab And Ors on 22 May, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4023, 2003 AIR SCW 2954, 2003 (4) SLT 296, (2003) 3 KHCACJ 59 (SC), (2003) 5 ALL WC 3620, (2003) 9 ALLINDCAS 174 (SC), (2003) 5 JT 241 (SC), 2003 (3) SERVLJ 13 SC, 2003 (5) ACE 627, 2003 (5) SCALE 27, 2003 (3) KHCACJ 59, 2003 (2) LRI 662, 2003 (9) SCC 401, 2003 (2) JKJ 197, 2003 SCC (L&S) 1112, (2003) 2 GUJ LH 786, (2003) 3 LAB LN 821, (2003) 3 SCT 903, (2003) 3 ESC 360, (2003) 98 FACLR 246, (2003) 4 SERVLR 452, (2003) 4 SUPREME 299, (2003) 5 SCALE 27, (2003) 7 INDLD 4

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Bench: Arijit Pasayat, Shivaraj V. Patil

CASE NO.:

Appeal (civil) 812 of 2002

PETITIONER:

VIJAY SYAL AND ANR.

RESPONDENT:

STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT: 22/05/2003

BENCH:

SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:

JUDGMENT 2003 Supp(1) SCR 242 The Judgment of the Court was delivered by SHIVARAJ V. PATIL J. These appeals are directed against the common judgment and order dated 4.1.2001 passed by the Division Bench of the High Court. The controversy relates to selection/non-selection of candidates to the posts of Assistant District Transport Officer (for short 'ADTO'). The Punjab Subordinate Selection Board advertised 12 posts of ADTOs on 15.5.1995. Out of them, 7 posts were for the general category, 4 for SC/ST and one was reserved for Ex-servicemen. A written test was conducted on 24.3.1996, the result of which was declared on 1.4.1998, declaring 78 persons successful. Out of these 78 persons, 61 belonged to general category, 15 belonged to SC/ST category and 2 belonged to category of Ex- servicemen. Later, on 22.4.1998, 40 more candidates were declared successful by lowering the standard. Out of these 40 candidates, 21 belonged to general category, 13 to SC/ST category and 6 to Ex-servicemen category. Criteria for selection were framed on 22.4.1998; final result was declared on 15.5.1998 and the appointments were made on 18.5.1998. Out of the candidates selected and appointed, 6 were from the general category, 3 were from SC/ ST

and 1 from Ex-servicemen category. Out of the 78 candidates whose result was declared on 1.4.1998, 4 candidates belonging to general category were selected. However, out of 40 candidates whose result was declared later, 2 candidates belonging to general category were selected. The appellants in these appeals approached the High Court by filing writ petitions for quashing the select list of the candidates published by the authorities in Tribune dated 23.5.1998, for issuing writ of mandamus directing the respondents to consider their claim on the basis of their merit from amongst the candidates originally invited for interview and to issue a writ in the nature of prohibition restraining the respondents from giving effect to the selection made. It may be mentioned here itself that the selected candidates were appointed on 18.5.1998 and having joined the services, they are continuing in service. The High Court considering the rival contentions on their relative merits and after perusing the records did not find any merit in the writ petitions. Consequently, they were dismissed by the impugned common order. Hence, these appeals.

Appellant No. 1 in Civil Appeal No. 812 of 2002 argued his case as party- in-person and submissions were made by the learned counsel on behalf of the other appellants. We may make it clear at the outset that none of the appellants belonged to the category of either SC/ST or Ex-servicemen and their claim is also not against these categories. Hence, we consider it unnecessary to consider the validity of selection of the candidates made in these two categories. In other words, we confine our consideration to the validity of selection of the candidates made in the general category. Mainly, the submissions made on behalf of the appellants were that after declaration of the result of the written examination on 1.4.1998, standard could not have been lowered for making other 40 candidates eligible for the purpose of interview; criteria could not have been framed after declaration of result of the written examination; maximum 21 candidates could have been called for interview in the ratio of 1:3 in the general category on the basis of the merit of the written examination whereas out of 78 candidates whose result was declared on 1.4.1998, more than 60 candidates were from the general category. In this regard, reliance was placed on *Ashok Kumar Yadav and Ors. v. State of Haryana and Ors.*, [1985] 4 SCC 417.

Learned Additional Solicitor General and learned senior counsel for the respondents at the outset submitted that they have preliminary objection for the very entertaining of these appeals and considering the contentions advanced on behalf of the appellants on merits having regard to their conduct. According to them, the appellants made deliberate misrepresentation with regard to the allocation of marks stating that 150 marks were for the written test and 100 marks for interview. Further, mala fides were attributed to authorities on the basis of the relation and political influence, which they gave it up before the High Court but again reiterated in the SLPs. According to the learned counsel, these two grounds are good enough to dismiss the appeals by revoking leave granted without examining them on merits. Although, we find justification in these submissions but having heard the parties at length, we consider these appeals on the merits of the contentions as well. On behalf of the respondents, further submissions were made explaining the criteria fixed, in what circumstances, more number of candidates were called for interview and how the selection made was fair and proper. According to them, mere calling more number of candidates for interview did not vitiate the selection made having regard to the facts and circumstances of the case; at any rate, the appellants being lower in merit, even otherwise, could not get any benefit. According to the learned counsel for the respondents, the impugned judgment of the High Court is perfectly valid and

justified. They also submitted that pursuant to the selection made, the selected non- official respondents have been continuing in service since May, 1998, i.e., they are continuing in service for about 5 years by now and as such these are not the fit cases for exercise of jurisdiction under Article 136 of the Constitution of India to interfere with the impugned judgment and order.

It is useful to reproduce the chart furnished at the time of hearing indicating names of candidates, their categories, qualification, marks obtained in written test as well as interview and the total marks:

C.A.NO.	Sr.	Name List*	No.	Category	Qualification	Marks Written Test	Inter view	lest
Total	812/02	1. Umesh Kumar, Appellant	1	G 2(MA-II)	124	12	5	138.5

2. Vijay Kumar, Appellant 1 G 3(MA-II) 126 11 5 140.5

3. Karanbir Singh, Resp.4 1 G 1 (Sports) 127 205 148*5

4. Gurinderjit Singh, Resp.5 I G ----- 127 19 146

5. Tarlochan Singh,Resp.6 1 G ----- 124 71 75 145.75

6. Manjit Singh, Resp. 7 I G 2(MA-I1) 123 20.25 145.25 7 Gurcharan Singh. Resp 8 Angrej Singh. Resp .9 8 II G II G I(NSS) 120 120 22.5 143.5 22.87 142.87

9. Sukhwinder Kumar. Res. 101 SC I(NSS/NCC) 121 19.37 141.37

10. Dhien Singh. Resp. II II SC 2(MA) 119 19.5 140.5 ll.Karam Singh. Respt 12 1 SC 2(MA/LLB) 124 15.75 141.75

12.Jaswant Singh, Respt. 13 11 SC 5(MA=2.

NCC-3) 114 21.5 140.5 5986/02 Zulfikar AM, Appl. 5985/02 Gurdeep Singh, Appl 937/02 Sarpinderjit Singh. Appl. 1 G I G 1 G 2(LLB) 122 122 128 12.25 136.25 14.25 136.25 11.5 141.50 2(MA) Not selected but better than all the Appellants Ram Nath 1 G 1 2 1 2 1 . 7 5 1 4 2 . 7 5 P a r a m j i t S i n g h I G 1 2 3 1 9 1 4 2

*Note - The names of the candidates from among 78 candidates called for interview for the first time are shown as in List-I and names of the candidates from among 40 candidates called for interview are shown as in List-II.

In para 8 of the Writ Petition No. 7349 of 1998 filed by the appellant No. 1 in Civil Appeal No. 812 of 2002, it is averred that he came to know on inquiry that the entire selection had been made in a totally arbitrary and biased manner to help certain selected candidates; respondent No. 8 is the nephew of Shri Jasdev Singh Sandhu,

Chairman of the respondent-Board;

sister's husband of Harmail Singh, Minister for Public Works in the present Government is one of the selected candidates; Shri Angrej Singh, respondent No. 9 is politically very-well connected and is a close friend of sitting MLA. In order to help these persons who did not come within the first list, second list was issued. In para 10 of the writ petition, it is asserted that 100 marks were kept for interview as against the total marks of 250 (150 marks for written test + 100 marks for interview) which is totally arbitrary. Thus, 40% marks have been allocated for interview as against 12.2%, which are permissible in law. In the replication to the written statement filed, in para 8, it is stated that relationship of respondent No. 8 with Shri Jasdev Singh Sandhu, the Chairman, is concerned, it is fairly conceded that this has been mentioned wrongly but not with mala fide intention. In the impugned judgment, the question of mala fide is not dealt with, obviously, in view of the replication filed by the appellants to the written statement before the High Court as noticed above. In the impugned judgment, the question of allocation of 100 marks for interview were excess, is also not dealt with as it does not appear to have been urged on behalf of the appellants. Criteria for selection were framed on 22.4.1998. The criteria for selection which was produced is Annexure-R-1 in the writ petition before the High Court clearly indicated total marks for selection 240, out of them 200 marks were allocated for competitive test, 15 marks for additional educational, sports and oilier qualifications and 25 marks were allocated for interview. The appellants were very much aware of Annexure R-1. The impugned order shows that the grievance of the appellants was in regard to the publication of the criteria, subsequent to declaration of the result of written examination; not that 100 marks allocated for interview were excessive. With all this, it is painful to note that the appellants in Civil Appeal No. 812 of 2002 on page K of List of dates stated that 100 marks were kept for interview as against the total marks of 250 (150 marks for written test + 100 marks for interview) It is further stated that the selection has been made in totally biased manner as the nephew of the Chairman of the respondent-Board, the sister's husband of the Minister for Public Works and a friend of known political families in Punjab, have been appointed. It may be stated here itself that those persons were neither made parties nor any particulars were given touching mala fides. At page 34 of SLP in paras K and L, same things are repeated as to the allotment of 100 marks for interview and also mala fides attributed to certain persons to accommodate the private respondents. It is further stated that arbitrarily 100 marks were set apart for interview out of 250 marks in order to help them only and that the entire selection was arbitrary. This is also the state of affairs even with regard to the other appellants in other appeals At the hearing when pointed out, the appellants regretted for the wrong statements and misrepresentation made but added that they were not with any mala fide intention. Looking to the background, specific statements made in the replication filed by the appellant before the High court, being aware of the criteria that the marks for interview were only 25, having given up mala fides and having not urged the same before the High Court and taking note that the appellants have sworn affidavits in support of the SLPs that they understood the accompanying synopsis, list of dates and paragraphs contained in Special Leave Petitions and that they were fully conversant with the facts of the case and that the contents of the affidavit were true to their knowledge and nothing material has been concealed there from and no part of it is false, we find it difficult to accept that the statements were made in the SLPs bonafidely. It appears to us that these statements were made in SLPs to get leave and/or interim orders on the ground of excessive marks allocated for interview and mala fides. In our view, this conduct of the

appellants is condemnable and we may straightaway say without any hesitation that they have disenthralled themselves for any relief on this score.

A bench of three learned Judges of this Court in Hari Narain v. Badri Das, [1964] 2 SCR 203 revoked the special leave granted to the appellant and dismissed the appeal for making inaccurate, untrue and misleading statement in SLP observing that "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with application for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

Again in Rajabhai Abdul Rehman.Munshi v. Vasudev Dhanjibhai Mody, [1964] 3 SCR 480, this Court observed that "exercise of the jurisdiction of the Court under Article 136 of the Constitution is discretionary; it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal."

In the same judgment, Hidayatullah, J. concurring with judgment of Shah J. delivered on behalf of himself and Sarkar J., added that "I have considered the matter carefully. This is not a case of a mere error in the narration of facts or of a bona fide error of judgment which in certain circumstances may be considered to be venial faults. This is a case of being disingenuous with the Court by making out a point of law on a suppositious state of facts, which facts, if told candidly, leave no room for the discussion of law. The appellant has by dissembling in this Court induced it to grant special leave in a case which did not merit it. I agree, therefore, that this leave should be recalled and the appellant, made to pay the costs of this appeal."

Yet again, a bench of three learned Judges of this Court in Udai Chand v. Shanker Lal and Ors., [1978] 2 SCR 809 revoked the special leave and dismissed it after referring to the decisions in Hari Narain and Rajabhai Abdul Rehman Munshi (supra). It was further observed that this Court cannot permit abuses of the process of law and of law courts.

However, even otherwise we proceed to examine on the merits of the contentions urged on either side at length and with all seriousness.

From the chart extracted above in regard to the marks secured by the appellants and the respondents, it is evident that respondents 4-7 (in general category) were in the first list i.e. they

were from out of the 78 candidates. The appellants cannot make grievance as far as these candidates are concerned in the sense that they were in the first list and not in the second list so as to give them advantage. No doubt, respondents 8 and 9 (in general category) were called for interview in the second list out of 40 candidates. Admittedly, the marks secured by these respondents are more than any of the appellants in the general category. It is pointed out that the two candidates namely Ram Nath and Paramjit Singh in general category called in the first list of the interview have secured more marks than all the appellants. Even if the respondents 8 and 9 were to be denied appointment on the ground that they were called for the interview in the second list, the position of the appellants could not improve. One more fact to be kept in mind is that two candidates belonging to Scheduled Castes category having secured higher marks than the appellants could be selected in the general category. Thus, even otherwise, the appellants would not succeed in getting selected for appointments. Merely because 40 more candidates were called for interview without anything more, selection of the candidates does not get vitiated particularly so when malafides were given up and 100 marks were not allocated for interview as wrongly stated by the appellants.

As can be seen from the difference of marks secured by the candidates in interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further marks secured in the interview and the marks secured in written test are also not grossly disproportionate. This apart, out of total marks of 240, only 25 marks were earmarked for interview. So 25 marks for interview out of 240 as against 200 for written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in interview so as to give an advantage or march to an undeserving candidate of their over others who had shown extraordinary merit in written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to Scheduled Castes were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established. The interview marks of 25 as against total marks of 240, cannot be taken as excessive. It comes to 10.4%. Possibly the selection would have been vitiated, if the marks for interview were 100 as against 150 marks for written test as sought to be made out. Unfortunately, for the appellants, their misrepresentation in this regard, is unfolded very clearly as already stated above. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria. The High Court in the impugned order has found that the criteria contained in Annexure R-1 filed in the writ petition was published and that such criteria was adopted earlier also in respect of other selections.

The appellants heavily relied on a decision of this Court by four learned Judges in Ashok Kumar Yadav's case (supra) in support of their contentions that where there is a composite test consisting of written examination followed by viva voce test, the number of candidates to be called for interview on the basis of marks obtained in the written examination should not exceed twice or at the highest thrice the number of vacancies to be filled; further marks allocated to viva voce test

should not be more than 12.2%. The learned counsel for the respondents from the very judgment pointed out that it does not advance the case of the appellants having regard to the facts and circumstances of the cases at hand. In the aforementioned case of Yadav, the facts were that in October, 1980, Haryana Public Service Commission (HPSC) invited applications for recruitment to 61 posts in Haryana Civil Service (Executive) and Allied Services. The recruitment was governed by the Punjab Civil Service (Executive Branch) Rules, 1930 as applicable in the State of Haryana. In response to that advertisement issued by HPSC, about 6000 candidates applied for recruitment and appeared at the written examination. Out of them, over 1300 obtained more than 45% marks and were called for interview. HPSC invited all the 1300 and odd candidates for interview and the interviews lasted for almost half a year. Though originally, applications were invited for recruitment to 61 posts, the number of vacancies during the time taken in the written examination and viva voce test rose to 119. It seems there were some candidates who had obtained very high marks at the written examination but owing to securing poor marks in the viva voce test, they could not come within first 119 candidates and consequently they were not selected. Aggrieved by the non-selection, they filed writ petitions in the I High Court challenging the validity of the selection. It was contended that the marks given in the viva voce test should be ignored and selection should be made only on the basis of the marks obtained by the candidates at the written examination. The writ petitions were allowed by the Division Bench of the High Court. Hence, the appeals were filed before this Court aggrieved by the judgment of the High Court. The High Court took the view that there was reasonable likelihood of bias vitiating the selection process based on the fact that though only 61 vacant posts were advertised over 1300 candidates representing more than 20 times the number of available vacancies were called for viva voce test. The Division Bench pointed out that in order to have proper balance between the objective assessment of a written examination and the subjective assessment of personality by a viva voce test, the candidates to be called for interview at viva voce test should not exceed twice or at the highest, thrice the number of available vacancies. Since the candidates were called 20 times the number of available vacancies, the High Court held that the selection process was vitiated. This Court disagreed with this conclusion reached by the Division Bench of the High Court. While doing so, this Court observed that HPSC was not right in calling for interview all the 1300 and odd candidates; it was difficult to see how a viva voce test for properly and satisfactorily measuring the personality of a candidate can be carried if over 1300 candidates were to be interviewed for recruitment to a service if viva voce test was to be carried out in a thorough and scientific manner, to arrive at a fair and satisfactory evaluation of the personality of a candidate, the interview must take anything between 10 to 30 minutes. This Court, while considering the question whether selection made by HPSC after calling 1300 candidates for interview was vitiated on that account, in paragraph 21, held thus:-

"We do not think that the selections made by the Haryana Public Service Commission could be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview, though on the view taken by us that was not the right course to follow and not more than twice or at the highest thrice, the number of candidates should have been called for interview. Something more than merely calling an unduly large number of candidates for interview must be shown in order to invalidate the selections made. That is why the Division Bench relief on the comparative figures of

marks obtained in the written examination and at the viva voce test by the petitioners, the first 16 candidates who topped the list in the written examination and the first 16 candidates topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, and observed that these figures showed that there was reasonable likelihood of arbitrariness and bias having operated in the marking at the viva voce test. Now it is true that some of the petitioners did quite well in the written examination but fared badly in the viva voce test and in fact their performance at the viva voce test appeared to have deteriorated in comparison to their performance in the year 1977-78. Equally it is true that out of the first 16 candidates who topped the list in the written examination, 10 secured poor rating in the viva voce test and were knocked out of the reckoning while 2 also got low marks in the viva voce test but just managed to scrape through to come within the range of selection. It is also true that out of the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, 12 could come in the list only on account of high marks obtained by them at the viva voce test, though the marks obtained by them in the written examination were not of sufficiently high order. These figures relied upon by the Division Bench may create a suspicion in one's mind that some element of arbitrariness might have entered the assessment in the viva voce examination. But suspicion cannot take the place of proof and we cannot strike down the selections made on the ground that the evaluation of the merits of the candidates in the viva voce examination might be arbitrary. It is necessary to point out that the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indoubtably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness. Moreover, apart from only three candidates, namely Trilok Nath Sharma, Shakuntala Rani and Balbir Singh one of whom belonged to the general category and was related to Shri Raghubar Dayal Gaur and the other two were candidates for the seats reserved for Scheduled Castes and were related to Shri R.C.Marya, there was no other candidate in whom the Chairman or any members of the Haryana Public Service Commission was interested, so that there could be any motive for manipulation of the marks at the viva voce examination. There were of course general allegations of casteism made against the Chairman and the members of the Haryana Public Service Commission, but these allegations were not substantiated by producing any reliable material before the Court. The Chairman and member of the Haryana Public Service Commission in fact belonged to different castes and it was not as if any particular caste was predominant amongst the Chairman and members of the Haryana Public Service Commission so as even to remotely justify an inference that the marks might have been manipulated to favour the candidates of that caste. We do not think that the Division Bench was right in striking down the selections made by the Haryana Public Service Commission on the ground that they were vitiated by arbitrariness or by reasonable likelihood of bias."

In that case the marks allocated for viva voce test came to 22.2% of the total number of marks kept for the competitive examination. This percentage of 33.3% was in the case of Ex-service officers and 22.2% was in the case of other candidates.

As regards the allocation of marks for interview, in paras 23 and 24 of the same judgment it is stated thus:-

"23. This Court speaking through Chinnappa Reddy, J pointed in *Lila Dhar v. State of Rajasthan*, [1982] 1 SCR 320 that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the Court and the Court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left" to the wisdom of the experts. It is not for the court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments, where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters by courts. The expert bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test.

24. It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by viva voce test, much depending on the constitution of the interview board."

Even having found allocation of 22.2% marks for viva voce test were unreasonable and excessive, selection was not upset as stated hereunder:-

"28. But the question which then arises for consideration is as to what is the effect of allocation of such a high percentage of marks for the viva voce test, both in case of ex-service officers and in case of other candidates, on the selections made by the Haryana Public Service Commission. Though we have taken the view that the percentage of marks allocated for the viva voce test in both these cases is excessive, we do not think we would be justified in the exercise of our discretion in setting aside the selections made by the Haryana Public Service Commission after the lapse of almost two years. The candidates selected by the Haryana Public Service Commission have already been appointed to various posts and have been working on these posts since the last about two years. Moreover the Punjab Civil Set vice (Executive Branch) Rules, 1930 under which 33.3% marks in case of ex-service officers and 22.2% marks in case of other candidates have been allocated for the viva voce test have been in force for almost 50 years and everyone has acted on the basis of these rules. If selections made in accordance with the prescription contained in these rules are now to be set aside, it will upset a large number of appointments already made on the basis of such selections and the integrity and efficiency of the entire administrative machinery would be seriously jeopardized. We do not therefore propose to set aside the selections made by the Haryana Public Service Commission though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test."

This Court in Ashok Kumar Yadav's case, aforementioned, found allocation of 12.2% marks for viva voce test was fair and just and in that view directed that marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. Even judged by this standard in the present appeals, the marks allocated for viva voce test being 25 as against total marks of 240 are less than 12.2% i.e. well within the ambit of direction given. In that case, this Court declined to exercise discretion to set aside the selection made by the HPSC after the lapse of 2 years taking note that the selected candidates had already been appointed to various posts.

In All India State Bank Officers' Federation and Ors. v. Union of India and Ors., [1997] 9 SCC 151, this Court observed, "there can be no rigid or hard and fast rule that the interview marks can only be 15 per cent and no more. The percentage of marks for viva voce or interview which can be regarded as unreasonable will depend on the facts of each case. Decisions of this Court show that no rigid rule, relating to percentage of marks for interview of general universal application can or has been laid down. What the interview or viva voce marks should be may vary from service to service and the office or position or the purpose for which the interview is to be held. But the interview marks should not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection."

This Court in a recent decision in Jasvinder Singh and Ors. v. State of J&K and Ors., [2003] 2 SCC 132, after referring to earlier decisions, pointed out that the very observations made in Ashok Kumar

Yadav's case show that there cannot be any hard and fast rule of universal application for allocating the marks for viva voce vis-a-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases; what ultimately is required to be ensured is as to whether the allocation as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Para 7 of the said judgment reads:-

"7. In *Mehmood Alam Tariq v. State of Rajasthan*, [1988] 3 SCC 241, prescription of 33% as minimum qualifying marks of 60 out of total 180 marks set apart for viva voce examination does not by itself incur any constitutional infirmity. In *Manjeet Singh v. ESI Corpn.* [1990] 2 SCC 367 this Court held that in the absence of any prescription of qualifying marks for the interview test the same 40% as applicable for written examination was reasonable. In *Anzar Ahmad v. State of Bihar*, [1994] 1 SCC 150 this Court exhaustively reviewed the entire case law on the subject including the one in *Ashok Kumar Yadav* case and upheld a selection method which involved allocation of 50% marks for academic performance and 50 marks for the interview. The very observations in *Ashok Kumar Yadav* case would go to show that there cannot be any hard-and-fast rule of universal application for allocating the marks for viva voce vis-a-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases. What ultimately required to be ensured is as to whether the allocation, as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Judged from the above the Division Bench could not be held to have committed any error in sustaining the allocation of 25 marks (20%) for viva voce as against 100 marks for written examination for selection of candidates in the present case. The learned Single Judge, in our view, has adopted a superficial exercise and proceeded on a misunderstanding of the real ratio of the decision in *Ashok Kumar Yadav* case. Further, the learned Single Judge appears to have applied the ultimate decision in the said case. to the case on hand drawing certain inferences on mere assumptions and surmises or some remote possibilities, without any proper or actual foundation or basis, there for."

The observations made in para 8 of the same judgment in somewhat similar circumstances which have negative impact on the contentions urged on behalf of the appellants are:-

"8. The learned single Judge also seems to have been very much carried away by few instances noticed by him as to the award of higher percentage of marks in viva voce to those who got lower marks in the written test as compared to some who scored higher marks in the written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances can not provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in the written test will or should be presumed to have fared well in the viva voce test and also and the expert opinion about as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart, the variation of written test

marks of those who were found to have been awarded higher marks in viva voce vis-a-vis those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case I here was no specific allegation of any mala fides or bias against the Board constituted for selection or anyone in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot be said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates of all those who have obtained 56 marks in the written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such serious infirmity in law to call for our interference."

In Civil Appeal No. 937 of 2002 the learned counsel for the appellant urged an additional ground that 5 marks fixed for higher educational qualifications were not given to the appellant. According to him the appellant had additional qualifications of M.A. and LL.B.; he ought to have been given additional marks for M.A. as well as LL.B., but only 2 marks were given for both the qualifications together, which affected his chance of selection. It appears that this point was not urged before the High Court and no opportunity was available to the respondents to meet this point. However, during the course of hearing, based on the criteria fixed for selection, it was explained to us by the learned counsel for the respondents that for additional educational qualifications 5 marks were set apart. Out of them maximum marks available to the highest educational qualification of a candidate were to be given and not that marks were to be given to every additional educational qualification. It is better to look at the criteria, which was filed as Annexure R-1 in the writ petition, which is reproduced hereunder: -

"ANNEXURE R-1 CRITERIA/FORMULA ADOPTED FOR SELECTION OF CANDIDATES FOR THE POST OF NAIB TEHSILDAR BY THE SUBORDINATE SERVICES SELECTION BOARD, PUNJAB

(ii) Marks allotted for Additional Educational, sports 15 and other Qualifications

(iii) Marks allotted for interview/ (VIVA-VOCE) 25 I. A. Marks allotted for Educational Qualification

(ii) M.A./M.Sc./M.Tech and other post graduate degrees 2nd Division and

Note: The candidate will be given the marks on the basis of his/her highest qualification and not on the basis of his/her each qualification lower than this.

II. B. SPORTS/EXTRA CURRICULAR ACTIVITIES 5

(i) Sports A Certificate I

(iii) N.S.S. III. INTERVIEW Interview marks of the Board will be 25 and the system for awarding the marks would be same as approved separately for all categories. Sd/-

(Jasdev Singh Sandhu) Chairman

14.1.1999

Sd/-

(Kulbir Singh Randhawa)

Member

Sd/-

(Parkash Singh Gardhiwal)

Member

Sd/-

(Jarnail Singh Wahid) Member"

Sd/-

(Ashok Loomba)

Member

Sd/-

(Virsa Singh Valioha) Member

From Annexure R-1 it is clear that total marks for selection were 240. Marks allocated for competitive test were 200, marks allocated for additional educational, sports and other qualifications were 15 and marks allocated for interview (Viva voce) are 25. Marks allocated for educational qualifications are 5 and maximum marks are 5 for Ph.D., for post graduation in first division 3 marks, for second and third divisions 2 marks, for LL.B. 2 marks and any other qualification 1 mark. If the argument of the learned counsel for the appellant is to be accepted, it may result in anomalous situation. Suppose, a candidate, who possesses three additional qualifications including Ph.D., in that event he would be entitled 5 marks for Ph.D. and additional marks for every additional educational qualifications. Then the total marks to be assigned to a candidate for the educational qualifications shall be more than 5 marks. In the case of the appellant, although he had two additional educational qualifications, the maximum marks to which he was entitled for highest qualification were given. Hence he cannot make any grievance. This being the position, we do not find any merit in the contention. Hence it is rejected.

In Civil Appeal No. 5985 of 2002 it was urged that no marks were given to the appellant for additional educational qualifications. It appears that this point also was not raised before the High Court and similarly no opportunity was available to the respondents to meet the point. The learned counsel for the appellant contended that the appellant had additional post graduation qualification and no marks were given to him. It was brought to our notice by showing the original record that in the application form no mention was made about additional post graduation qualification acquired by the appellant and no record or certificate was placed before the authorities at appropriate time to

show that the appellant had acquired additional qualifications. Hence the contention has no merit and consequently it is rejected.

In these appeals, the non-official respondents having been appointed in May, 1998, are continuing in service almost for a period of five years. On this ground as well as looking to the conduct of the appellants in making misrepresentation to this Court and finding no merit in these appeals, we should decline to interfere with the impugned judgment and order. It may be noted that even in the Ashok Kumar Yadav 's case (supra) this Court set aside the judgment of the Division Bench of the High Court by rejecting the challenge to the validity of the selection made by the HPSC.

In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice.

Before we part with these cases, we must observe that the misrepresentation made by the appellants in the SLPs supported by an affidavit require serious action but we refrain from taking any further action in view of the apology and regret expressed by the appellants during the hearing. But, we administer a warning to them to be careful in future and not to make any misrepresentation or false statement before any court and impose cost also.

For the reasons stated and discussion made above, these appeals are dismissed but with cost of Rs.10,000/- (Rs. 5000 to be paid by each of the appellants) in Civil Appeal No. 812 of 2002 and Rs. 5,000 in each one of the remaining appeals to be paid by the appellants which amount shall be deposited with the Legal Aid Committee of the Supreme Court.