

A.P.State Of Financial Corpn vs C.M. Ashok Raju on 12 July, 1994

Equivalent citations: 1995 AIR 39, 1994 SCC (5) 359, AIR 1995 SUPREME COURT 39, 1994 (5) SCC 359, 1994 AIR SCW 4037, 1994 AIR SCW 4026, (1994) 4 SERVLR 442, 1994 (2) UJ (SC) 771, 1994 (6) SCC 260, (1994) ALLCRIC 855, (1995) SCCRIR 331, (1995) 1 EASTCRIC 179, (1995) 1 MAHLR 425, 1994 UJ(SC) 2 771, (1995) 1 APLJ 53, (1994) 56 DLT 205, (1994) 6 JT 60 (SC), (1994) JAB LJ 693, (1995) 2 LABLJ 117, (1994) 2 LAB LN 1081, (1994) 4 SCT 585, (1995) 1 SERVLJ 37, (1994) 69 FACLR 826, 1994 SCC (L&S) 1104, (1994) 27 ATC 878, (1994) 5 JT 481 (SC)

Author: Kuldip Singh

Bench: Kuldip Singh

PETITIONER:

A.P.STATE OF FINANCIAL CORPN

Vs.

RESPONDENT:

C.M. ASHOK RAJU

DATE OF JUDGMENT12/07/1994

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

REDDY, K. JAYACHANDRA (J)

CITATION:

1995 AIR 39

1994 SCC (5) 359

JT 1994 (5) 481

1994 SCALE (3)149

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- The Board of Directors (the Board) of the Andhra Pradesh State Financial Corporation (the Corporation), on 24-8-1987, approved the promotion criteria in respect of various posts in the service of the Corporation. Thereafter, Office Memorandum dated 1-9- 1987 containing the said criteria was issued. In these appeals, we are concerned with the promotions made to the posts of Manager and above. The Office Memorandum indicated the following criteria for promotion to the post of Manager and above :

"1. A minimum service of 3 years is required to become eligible for promotion to the next higher cadre.

2. The weightages attached to various criteria for considering merit promotions to various cadre personnel is as follows Additional qualifications 10% Length of service in the cadre 15% 3 to 4 years 7/1/4% 4 to 5 years 10/1/4% 5 years and above 15% Performance appraisal 50% Interview 25%"

2. Regarding the performance appraisal, having weightage of 50% marks, the Board, in its meeting dated 24-8-1987 resolved as under:

"FURTHER RESOLVED THAT THE existing confidential reports shall be continued up to the level of Assistant Managers. For Deputy Managers and above, performance appraisal based on self-appraisal reports in the format indicated in the Memorandum shall be introduced prospectively.

FURTHER RESOLVED that at the time of considering promotions, the performance/confidential reports of the preceding 3 years should be taken into account."

3. Performance appraisal was included as one of the criterion for promotion by the Board for the first time. The confidential reports are based on the assessment of a single superior officer whereas the method of performance appraisal is based on the self-appraisal by the officer concerned. It is a method where the employee is asked to give, in his own words, his strong points, weak points and constraints faced by him in the service. The self-appraisal is then considered by the reporting officer who gives his remarks. Finally the higher reviewing authority decides the assessment by weighing both the employee's self-appraisal and the remarks given by the reporting officer. According to the Board, the method of performance appraisal based on self-appraisal was an improvement on the method of assessment by confidential reports. Keeping in view the procedure involved in the performance appraisal system the Board in its resolution, quoted above, decided to introduce the said system prospectively. For the selection in hand it was decided to assess the performance on the basis of confidential reports for the preceding three years.

4. Promotions made to the posts of Manager and above by the orders dated 7-1-1988 and 1-2-1988 were challenged by way of writ petitions before the Andhra Pradesh High Court by those who were not selected. A learned Single Judge of the High Court came to the conclusion that the allotment of 50% marks to performance appraisal under the new promotion policy was on the higher side, assigning 15% marks for seniority to a person who has served for five years and above was palpably low and allocating 25% marks for the interview was on the higher side. On these findings, the

learned Single Judge allowed the writ petitions and quashed the selection and the appointments made by the Board. Writ appeals filed by the Corporation were heard by a Division Bench of the High Court and Lakshmana Rao, J. speaking for the Bench upheld the findings of the learned Single Judge to the effect that 25% marks for interview were excessive. The Bench, however, did not agree with the learned Single Judge that 50% marks for performance appraisal were excessive. The Division Bench reduced the interview marks from 25% to 15% and increased the marks, regarding length of service above 5 years, from 15% to 25%. With these modifications, the Division Bench dismissed the writ appeals, The Corporation filed special leave petitions against the judgment of the Division Bench which were rejected by this Court on 4-10-1991 by the following order:

"The special leave petitions are rejected as withdrawn with liberty to the petitioner to approach the High Court, if it is so advised, to point out the case which has since been pleaded before us."

5. Thereafter, the Corporation, in terms of the liberty granted by this Court, approached the High Court by way of miscellaneous petitions requesting the High Court to consider the matter afresh in the light of various points raised in the petitions. The High Court by the order dated 24-4-1992 dismissed the petitions. These appeals by way of special leave are against the judgment of the Division Bench of the High Court in the writ appeals, order dismissing the review petitions and the order dismissing the petitions which were filed in terms of the liberty granted by this Court.

6. Learned counsel for the contesting respondents have strenuously contended that the special leave petitions against the judgment of the Division Bench of the High Court in writ appeals, having been rejected by this Court, the High Court judgment has achieved finality and, as such, these appeals are liable to be dismissed on that short ground. We do not agree with the learned counsel. This Court while rejecting the petitions as withdrawn, granted liberty to the petitioner to approach the High Court and point out the case which was sought to be pleaded before this Court. In other words, this Court prima facie found the contentions of the petitioner to be plausible and, as such, granted liberty to raise the same before the High Court. The High Court heard the parties at length and passed a reasoned order running into 16 pages. In the facts and circumstances of this case, we are not inclined to agree with the learned counsel that the judgment of the High Court in writ appeals has achieved finality.

7. The Division Bench of the High Court relied upon the judgments of this Court in *Ajay Hasia v. Khalid Mujib Sehravardi*¹, *Lila Dhar v. State of 1* (1981) 1 SCC 722:1981 SCC (L&S) 258: AIR 1981 SC 487:

(1981) 2 SCR 79 *Rajasthan*², *Ashok Kumar Yadav v. State of Haryana*³ and *Ashok alias Somanna Gowda v. State of Karnataka*⁴ and came to the conclusion that allocation of 25% marks for interview was arbitrary and against law. We are of the view that the High Court fell into patent error in reaching the conclusion that 25% marks for interview, in the facts of the present case, were excessive. It is not disputed that no written test was prescribed for promotion to the post of Manager and above.

This Court has authoritatively laid down that the ratio in Ashok Kumar Yadav case³ and other cases in line, is only applicable to those selections where written examination in addition to viva voce test is prescribed. In the, selections/promotions where only viva voce test is provided, no limit can be imposed in prescribing the marks for the interview. This Court in Anzar Ahmad v. State of Bihar⁵ considered the selection made for the posts of Unani Medical Officer where 50% marks were allocated for interview. The question raised before this Court in Anzar Ahmad case⁵ was whether the law laid down by this Court regarding fixation of marks for interview in a selection based on written test and viva voce would apply to a case where there is no written test and the selection is made on the basis of academic performance and interview. The question was answered in the negative and allocation of 50% marks for viva voce test was upheld. While doing so, the earlier decisions of this Court in R. Chitrlekha v. State of Mysore⁶, A. Peeriakaruppan v. State of T.N.⁷, Nishi Maghu v. State of J&K⁸, Ajay Hasia v. Khalid Mujib Sehravardil and Koshal Kumar Gupta v. State of J&K⁹, Lila Dhar v. State of Rajasthan², Ashok Kumar Yadav v. State of Haryana³, Munindra Kumar v. Rajiv Govil¹⁰, State of U.P. v. Rafiquddin ¹¹ and Mehmood Alam Tariq v. State of Rajasthan¹² were taken into consideration. We may quote the following passage from the judgment: (SCC p. 157, para 14) "These observations would indicate that the matter of weight to be attached to interview and the allocation of marks for interview vis- a-vis marks for written examination can arise when written examination as well as viva voce test are both accepted as essential features of proper selection and there is also no hard and fast rule regarding the precise weight to be given to the viva voce test as against written examination, can be laid down and the said weight must vary from service to service according to the requirement of the service. The question of weight to be 2 (1981) 4 SCC 159:1981 SCC (L&S) 588: AIR 1981 SC 1777:

(1982) 1 SCR 320

3 (1985) 4 SCC 417:1986 SCC (L&S) 88: AIR 1987 SC 454:

1985 Supp (1) SCR 657

4 (1992) 1 SCC 28: 1992 SCC (L&S) 38: (1992) 19 ATC 68:

(1991) 2 Scale 796

5 (1994) 1 SCC 150:1994 SCC (L&S) 278: (1994) 26 ATC 504:

JT (1993) 6 SC 168

6 (1964) 6 SCR 368: AIR 1964 SC 1823 7 (1971) 1 SCC 38: (1971) 2 SCR 430 8 (1980) 4 SCC 95: (1980) 3 SCR 1253 9 (1984) 2 SCC 652: 1984 SCC (L&S) 337: (1984) 3 SCR 407 10 (1991) 3 SCC 368: 1991 SCC (L&S) 1052: (1991) 16 ATC 11 1987 Supp SCC 401: 1988 SCC (L&S) 183: (1987) 5 ATC 257: (1988) 1 SCR 794 12 (1988) 3 SCC 241: 1988 SCC (L&S) 757: (1988) 7 ATC 741:

1988 Supp (1) SCR 379 attached to viva voce would not arise where the selection is to be made on the basis of interview only."

8. This Court in Anzar Ahmad case⁵ referred to Ashok alias Somanna Gowda⁴ and explained the same in the following words : (SCC p. 158, para 19) "In that case selection was made for the post of Assistant Engineer (Civil) and (Mech.) for the Public Works Department and the said selection was made on the basis of the marks obtained in the qualifying examination and the marks secured in the interview. 100 marks were allocated for qualifying examination and 50 marks for interview. Relying on the decisions in Mohinder Sain Garg case¹³ and Ashok Kumar Yadav case³ this Court held that allocation of 50 marks for interview was high and only 15 per cent of total marks be allocated for interview. In that case, however, this Court did not quash the selection that had been made and did not also quash the rules on the basis of which the impugned selection had been made but only directed that the appellants be appointed in case they were found suitable in all other respects according to the rules.

The said decision appears to have been given in the particular facts of that case and it cannot be said to have laid down a law different from that laid down in the earlier decisions of this Court referred to above. We are unable to construe the said decision to mean that the principles which govern the allocation of marks for interview in a selection based on written and viva voce test would also apply to a selection where no written test is held and the selection is based on interview only."

9. We respectfully agree with the ratio in Anzar Ahmad case⁵ and hold that the High Court was not justified in setting aside the allocation of 25% marks for the viva voce test.

10. The Division Bench of the High Court referred to Circular No. 56 dated 22-9-1987 and came to the conclusion that the format provided for performance appraisal in terms of the Board's resolution dated 24-8-1987 was entirely different than the one provided under Circular No. 56. On that reasoning, the Division Bench reached the -following conclusion :

"Thus, it is evident that the Corporation had adopted a procedure different from the one accepted by the Board of Directors in promoting the employees to the categories of Manager and above. This is wholly illegal and improper."

11. The High Court fell into patent error in reaching the above-quoted conclusion. As mentioned above, the Board, in the resolution dated 24-8-1987 had resolved that the method of performance appraisal based on self-appraisal was to operate prospectively. The High Court failed to appreciate that for the selection in hand the merit-assessment could only be done on the basis of confidential reports for the past years. The performance-

13 Mohinder Sain Garg v. State of Punjab, (1991) 1 SCC 662:

1991 SCC (L&S) 555: (1991) 16 ATC 495 appraisal system was introduced on 24-8-1987 and it was to operate thereafter. The resolution of the Board categorically stated that the performance appraisal system is prospective and so far as the selection in hand was concerned, it was to be done on the basis of the past confidential reports for the period of three years. The Corporation in the special leave petition

categorically averred as under :

"It is submitted even though as per the resolution of the Board, self appraisal procedure has to be followed only for future and in fact it cannot be followed for the promotions which were effected in January/February 1988 as there was no scope for any one to file self appraisal report or for the reporting authorities or reviewing authorities to process the same and that too for three years, the only course open was to consider the confidential reports and in fact only confidential reports were considered by DPC and that is the reason why even in the marking system in Column No. 5 what was mentioned was self-appraisal report/confidential reports. However, the learned Judge proceeded on the wrong impression that it was self-appraisal report which was considered and he felt that was not correct, when in fact self-appraisal report was not considered at all. It may also be noticed that DPC awarded marks only for confidential reports and not for self- appraisal reports."

12. The performance having been assessed on the basis of past 3 years' confidential reports, no fault can be found with the same. There is nothing on the record to contradict the categorical stand of the Corporation that no other material except the confidential- reports were taken into consideration for awarding marks. Circular No. 56 dated 22- 9-1987 gave an opportunity to the candidates to give self-explanation of any adverse material in their confidential reports for the past three years. That was not taken into consideration for awarding the marks. As mentioned above, the marks were directly awarded on the basis of the confidential reports. We, therefore, do not agree with the Division Bench of the High Court and set aside its above- quoted finding on this point. We, however, uphold the allocation of 50% marks for performance appraisal based on the confidential reports.

13. The finding of the learned Single Judge as upheld by the Division Bench to the effect that 15% marks for length of service over a period of five years were on the lesser side, is based on no reasoning and is wholly unjustified. No fault can be found with the said allocation.

14. We allow the appeals, set aside the judgment of the Division Bench of the High Court in writ appeals, order in review petitions and the order in the miscellaneous petitions. As a consequence, the writ petitions filed by the contesting respondents before the High Court are dismissed. No costs.