M.P. Public Service Commission vs Navnit Kumar Potdar on 19 September, 1994

Equivalent citations: 1995 AIR 77, 1994 SCC (6) 293, AIR 1995 SUPREME COURT 77, 1994 AIR SCW 4088, 1994 SCC (L&S) 1377, (1994) 5 SERVLR 273

Author: N.P Singh

Bench: N.P Singh

PETITIONER:
M.P. PUBLIC SERVICE COMMISSION

Vs.

RESPONDENT:
NAVNIT KUMAR POTDAR

DATE OF JUDGMENT19/09/1994

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
VENKATACHALLIAH, M.N.(CJ)

CITATION:
1995 AIR 77 1994 SCC (6) 293
JT 1994 (6) 302 1994 SCALE (4)251

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- Leave granted.

2.The Madhya Pradesh Public Service Commission (hereinafter referred to as 'the Commission'), is the appellant in these appeals, against a common judgment of the High Court passed in the several writ petitions filed by the respondents, questioning the validity of an order, issued by the Commission raising the period of practice as an advocate from five years to seven and half years

while calling applicants for interview, for appointments against the posts of Presiding Officers of the Labour Courts.

3.An advertisement was issued inviting applications for appointment, to the post of Presiding Officers of the Labour Courts constituted under the provisions of M.P Industrial Relations Act, 1960 (hereinafter referred to as 'the Act'). Nine posts of such Presiding Officers had to be filled up, out of which only four posts were available to the general category candidates. In pursuance of the advertisement, several applications were received. In view of Section 8(3)(c) of the Act in the advertisement it was prescribed that the applicant should have practised as an advocate or a pleader for a total period of not less than five years. It appears that in view of the large number of applications received from the general category candidates against 4 posts, a decision was taken by the Commission to call for interview only 71 applicants, although 188 applicants were eligible, as per requirement of the advertisement. Only those candidates were called for interview who had completed seven and half years of practice although in view of Section 8(3)(c), five years of practice as an advocate or a pleader in the Madhya Pradesh was the minimum requirement. According to the writ petitioners, as the statutory requirement under Section 8(3)(c) was only five years of practice as an advocate or a pleader, it was not open to the Commission to raise the said period up to seven and half years and to debar applicants who had applied for those posts and who fulfilled the statutory requirement prescribed under Section 8(3)(c) of the Act.

4.The High Court allowed the said writ petitions taking the view that as the statutory qualifications in respect of the practice was only five years, raising the said period from five to seven and half years amounted to laying down a criterion in violation of the prescribed statutory criterion. A direction was given either to call all the applicants for interview who had completed 5 years of practice as required by Section 8(3)(c) of the Act or to screen the applicants through some test and thereafter to call only such applicants for interview who qualify at the said screening test.

5. The relevant part of Section 8 of the Act is as follows:

> "8. Labour Courts.- (1) The State Government shall, by notification constitute one or more Labour Courts having jurisdiction in such local area or local areas as may be specified in such notification.
>
> (2)The Labour Court shall be presided over by a single person to be appointed by the State Government with the approval of the Chief Justice of the High Court.
>
> (3)A person shall not be qualified for appointment as a Presiding Officer of Labour Court unless-
>
> (a) he has held any judicial office in India for not less than three years; or
>
> (b) he has held any office in the Labour Department not below the rank of a Labour Officer for a period of not less than five years and is a law graduate; or

> (c) he has practised as an advocate or a pleader in Madhya Pradesh for a total period of not less than five years; or From Section 8(3)(c), it is apparent that unless an advocate or a pleader has practised in Madhya Pradesh for a total period of not less than five years, he is not eligible to apply for the post of Presiding Officer of the Labour Courts. From the affidavits filed on behalf of the Commission, it appears that large number of applications had been received for the four posts which were to be filled up from the general category candidates. A decision was taken to call for interview only such candidates who had completed seven and half years of practice, instead of calling for interview all applicants who had put in five years of practice, which was the minimum requirement to make an applicant eligible to apply for the post. Even then for four posts, 71 candidates were to be interviewed.

6.The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate.

7.Herman Finer in his book Theory and Practice of Modem Government at page 779 says:

> "If we really care about the efficiency of the civil service as an instrument of Government, rather than as heaven-sent opportunity to find careers for our brilliant students, these principles should be adopted. The interview should last at least half an hour on each of two separate occasions. It should be almost entirely devoted to a discussion ranging over the academic interests of the candidate as shown in his examination syllabus, and a short verbal report could be required on such subject, the scope of which would be announced at the interview.....

8.The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial

because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for interview with reference to number of available vacancies.

9.In Kothari Committee's Report on the "Recruitment Policy and Selection Methods for the Civil Services Examination" it has also been pointed out in respect of interview where a written test is also held as follows:

> "The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled .....
>
> In this background, it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of the process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences, If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3)(c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) places a bar that no person having less than five years of practice as an advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in conflict with the requirement of Section 8(3)(c) of the Act.

10.This Court in the case of State of Haryana v. Subash Chander Marwaha1 had to consider as to whether the appointments could have been offered only to those who had scored not less than 55% marks when Rule 8 which was under

> consideration, in that case, made candidates who had obtained 45% or more in competitive examination eligible for appointment. This Court held that Rule 8 was a

> step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit and the one higher in rank is deemed to be more meritorious than the one who is lower in the rank. There was nothing arbitrary in fixing the scoring of 55% for the purpose of selection although a candidate obtaining 45% was eligible to be appointed.

11.In the case of Ashok Kumar Yadav v. State of Haryana2 it was said:(SCC p.446, para 20) " Only 11 to 12 candidates are called for interview in a day of 5 1/2 hours. It is obvious that in the circumstances, it would be impossible to carry out a satisfactory viva voce test if such a large unmanageable 1 (1974) 3 SCC 220: 1973 SCC (L&S) 488:

> (1974) 1 SCR 165 2 (1985) 4 SCC 417 :1986 SCC (L&S) 88 number of over 1300 candidates are to be interviewed. The interviews would then tend to be casual, superficial and sloppy and the assessment made at such interviews would not correctly reflect the true measure of the personality of the candidate."

12.On behalf of the respondents, it was pointed out that there is no presumption that an advocate having seven and half years of experience will be more suitable for the post of Presiding Officer of the Labour Courts than an advocate having only five years of experience because it all depends on the personal merit of the candidate concerned. It is true that it has been found that sometimes the persons with lesser years of experience and practice have proved to be better advocates and they excel in profession. The success in profession is not necessarily linked with the years of practice. But that may be an exception. Normally, it is presumed that with longer experience an advocate becomes more mature. In any case, this fixing the limit at seven and half years instead of five years of the practice for purpose of calling the interview cannot be said to be irrational, arbitrary having no nexus with the object to select the best amongst the applicants.

13.The High Court has taken the view that raising the period from five years to seven and half years' practice for purpose of calling the candidates for interview amounted to changing the statutory criteria by an administrative decision. According to us, the High Court has not appreciated the true implication of the short-listing which does not amount to altering or changing of the criteria prescribed in the rule, but is only a part of the selection process. The High Court has placed reliance on the case of Praveenkumar Trivedi v. Public Service Commission, M.P3 where it has been pointed out that Commission cannot ignore a statutory requirement for filling up a particular post and cannot opt a criteria whereby candidates fulfilling the statutory requirements are eliminated from being even called for interview. As we have already pointed out that where the selection is to be made purely on the basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short-list such applicants on some rational and reasonable basis.

14.Accordingly these appeals are allowed and the judgment of the High Court is set aside. In the circumstances of the case, there shall be no order for costs.

3 1986 Lab IC 1990 (MP)