

Vikram Singh and others v. Subordinate Service Selection Board,  
Haryana and another (Ujagar Singh, J.)

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(21) Before we conclude we must observe that this judgment will be confined only to pension and gratuity.

(22) In view of the foregoing discussion, the petitions are allowed, with no order as to costs.

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R.N.R.

FULL BENCH

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

VIKRAM SINGH AND OTHERS,—*Petitioners.*

*versus*

SUBORDINATE SERVICE SELECTION BOARD, HARYANA AND  
ANOTHER,—*Respondents.*

*Amended Civil Writ Petition No. 4861 of 1986.*

June 3, 1988.

*Constitution of India, 1950—Articles 14 and 16—Haryana Excise and Taxation Inspectorate (State Service Class III) Rules, 1969—Selection of Excise Inspectors—Allocation of marks for viva-voce test at 12.2 per cent fixed by the Supreme Court for higher services—Whether applies to selection of Excise Inspectors—Higher weightage for viva-voce test—Whether permissible.*

*Held*, that it is clear that in *Joginder Singh vs. State of Haryana and others* 1986(3) S.L.R. 644 (F.B.) the allocation of marks at 28.5 per cent of the aggregate was challenged on the ground that they were excessive and the prayer was to strike down the same as it was against the principles enunciated under Articles 14 and 16 of the Constitution of India, 1950. The prayer was clearly turned down. In view of this judgment of the Full Bench reference to this Bench in this case was not necessary. But it seems that this particular fact of challenge and the specific answer were not brought to the notice of the Court at the time of reference. Since in *Joginder Singh's* case Haryana Excise and Taxation Inspectorate (State Service Class III) Rules were upheld and it was definitely held that the percentage of marks for viva-voce test fixed at 28.5 per cent does not offend Articles 14 and 16 of the Constitution. The Rules which are involved in the instant case are the very Rules involved in the *Joginder Singh's* case and the same have been upheld.

(Paras 28, 30 and 32).

The case was referred to Larger Bench by Division Bench consisting of Hon'ble Mr. Justice Sukhdev Singh Kang and Hon'ble Mr. Justice M. M. Punchhi,—vide order dated 1st September, 1987 in view of the facts that the matter is of great importance and this point has been agitated in a large number of writ petitions which are pending in this Court.

The mandate of the Constitution that the State shall not deny to any person equality before law or equal protection of law, as enshrined in Article 14 of the Constitution of India and that of equality of opportunity for all citizens in matters relating to employment or appointment to any public office as provided in Article 16 thereof, are the principal questions referred to this Bench.

Amended Petition Under Articles 226/227 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable Writ, order or Direction be issued:—

- (a) summoning the complete record of the case;
- (b) directing the respondents to declare the result of the competition held for the post of Excise Inspector by the Subordinate Services Selection Board, Haryana.
- (c) declaring Regulation 4 of Appendix 'D' of the Rules to be ultravires the Constitution of India;
- (d) quashing the decision of respondent-board as contained in Annexure P-3 to re-interview all the applicants for the post of Excise Inspector;
- (e) any other relief which this Hon'ble Court may deem fit and proper in the peculiar circumstances of this case;
- (f) filing of certified copies of annexures be dispensed with;
- (g) issuance of advance notices of motion on the respondents be dispensed with;
- (h) costs of this petition be also awarded in favour of the petitioners.

Rajiv Atma Ram and Rakesh Khanna, Advocates, for the Petitioners.

S. C. Mohunta A.G. Haryana N. S. Pawar, Senior DAG Haryana with him, for the Respondents.

#### JUDGMENT

Ujagar Singh, J.

(1) The mandate of the Constitution that the State shall not deny to any person equality before law or equal protection of law,

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as enshrined in Article 14 of the Constitution of India and that of equality of opportunity for all citizens in matters relating to employment or appointment to any public office as provided in Article 16 thereof, are the principal questions referred to this Bench qua the present case. The idea of formal equality before law in many aspects of human-life is said to be only sham and the Courts have been endeavouring to make people equal who are really unequal. We have instances that every individual has his own different circumstances from almost all others. Taking a practical view, we can imagine that an individual born and brought up in particular circumstances is unable to claim equality with another individual in different circumstances. Some individuals get education just for getting it. Family circumstances cannot permit him to devote time for going to libraries, joining gatherings of good society and be one with those who have higher status or live in a better sphere of life. Except during school/college hours, he may be required by his family to devote and utilize the whole time in carrying on his family profession, such as agriculture, petty job and labour etc. We can well imagine that he will have no chance to acquire general knowledge, talent and many other such aspects. It is said that equality does not imply that individuals are identical or equal in intelligence, but under the Constitution, all human-beings are entitled to be treated as if they are equal in every respect. Every citizen has a right to certain kinds of equal treatment. This mandate does not require that every individual has a right to have equal share of economic or political power. The differences in social or economic positions of individuals can be removed after minimum basis of civilisation is attained by the country as a whole. All the same the enforcement of this mandate by the administrative officials some times involves some sort of deliberateness or intentional discrimination and where this deliberateness or intentional discrimination comes in, the jurisdiction of the Court is attracted.

(2) The appointment to a public office requires some guidelines and for that purpose, various service rules have been framed wherein qualifications and other tests have been prescribed. In most of the cases, a candidate for being selected is required to cover a written test and *viva-voce* and minimum marks for qualifying are also prescribed. The consensus of opinion has been that written test and some minimum marks required to go through the same is a must. The consciousness of the individuals about their claim to equality before law and equality of opportunity for public services has given

rise to various disputes coming to various Courts. There have been various decisions on the aspect and always news points can arise to reopen the dictum of the earlier judgments.

(3) In this case, an advertisement was published on 7th August, 1985, inviting applications for 11 posts of Excise Inspectors for Excise and Taxation Department, Haryana. Out of 11 posts, 4 were reserved for scheduled castes; 1 for backward classes and 2 for Ex-servicemen of Haryana. Scale of the post was Rs. 600-2-30-850/900-40-1,100. The only relevant part of the advertisement in this case is that there was to be a written examination in some subjects carrying 100 marks each and the paper in Hindi was to carry 50 marks. The minimum qualifying marks were fixed to be 33 per cent in each paper and 40 per cent in the aggregate. The rules relating to this service are the Haryana Excise and Taxation Inspectorate (State Service Class III) Rules, 1969 published,—*vide* Haryana Government Notification No. G.S.R. 180/Const/Art 309/69 dated 22nd October, 1969. Rule 4 to APPENDIX 'D' of these Rules prescribes the subjects of examination as under:

(1) English	..	100 marks
(2) Hindi (in Devnagri Script)	..	50 marks
(3) General Knowledge	..	100 marks
(4) Viva Voce	..	100 marks

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Note:—

The standard of examination in English will be that of B.A. of the Panjab University. The standard of examination in HINDI will be that of Higher Secondary of the Panjab University.

Viva voce marks are thus about 28.5 per cent.

(4) Various applications were received and written test was held on 23rd/24th November, 1985. The result of written test was declared on 15th January, 1986. The petitioners were declared successful in the written test. The successful candidates, including the petitioners, were interviewed on 12th March, 1986. The result was not declared. This writ petition was filed in this Court, seeking a direction to the respondents to declare result of competition held for the post of Excise Inspectors by them.

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(5) In the written statement, a plea was taken that 283 candidates were interviewed by the Board, but result of only 48 candidates was prepared. On a direction given by a Division Bench of this Court, Col. Bhim Singh, the then Chairman of the Board was summoned. He filed an affidavit showing that the Board had adopted the guidelines stipulated by the Supreme Court in *Ashok Kumar Yadav and others v. State of Haryana and others* (1), for the purpose of present selection and in terms of this decision, the Board had kept 12½ per cent of the written marks for the purpose of viva voce. It was further stated by Col. Bhim Singh that the written test marks were not made available to the individual Members of the Board including the Chairman, at the time of interview. According to him, the Board called 290 candidates and actually interviewed 280 candidates who appeared before it. Ultimately, the Board recommended for appointment 6 out of 19 candidates in the General Category; 5 candidates out of 15 from amongst the Scheduled Caste candidates; one candidate out of 3 for the Backward Classes and 3 out of 11 candidates for Ex-Servicemen's category. Thus, the result of only 48 candidates was declared.

(6) This petition was admitted,—*vide* order dated 16th January, 1987. It was directed to be listed for final hearing before a learned Single Judge in the month of April, 1987. Ultimately, the learned Single Judge came to the conclusion that the matter was of great public importance and not confined to the instant service alone, specially having regard to the view expressed in *Ashok Kumar Yadav's* case (*supra*) and the learned Single Judge required this case to be decided by a larger Bench. It was also observed by the learned Single Judge that in *Joginder Singh v. State of Haryana and others* (2), a Full Bench of this Court was not called upon to examine the *vires* of the rules and it was taken as if the rule was good and the application of the rule of *Ashok Kumar Yadav's* case (*supra*) did not apply to the service. The learned Single Judge further expressed that the manner and the way in which this question has been raised before him, there was no alternative left except to refer the case to a larger Bench. This case was put up before a Division Bench which desired the matter to be determined by a still larger Bench. This is how the matter has come before this Bench.

(7) It was be mentioned here that in the written statement filed by Shri R. P. Sukhija, Secretary, Subordinate Service Selection

(1) 1985 (4) SCC 417.

(2) 1986(3) SLR 644.

Board, Haryana, it was urged that the marks for viva voce, as mentioned above, have been upheld by a Full Bench decision of this Court in *Varinder Singh v. State of Haryana* (3). It is also urged therein that out of 283 candidates interviewed, result of only 48 candidates was prepared and the marks obtained by other candidates in viva voce were not available in any proceedings of the Office of the Board. The affidavit of Col. Bhim Singh, the then Chairman of the Board was against the rules applicable to the service. It is nowhere mentioned in the record that the previous Board took the decision that marks of viva voce would be awarded to the candidates in view of *Ashok Kumar Yadav's* case (supra). It was also indicated that the Board has now decided to reinterview all the successful candidates.

(8) The learned counsel for the petitioners has urged that percentage of viva voce marks was arbitrary and unreasonable and therefore, is hit by Articles 14 and 16 of the Constitution of India. In view of the Supreme Court judgment in *Ashok Kumar Yadav's* case (supra), the percentage of viva voce marks should not exceed 12.2 per cent and therefore, the selection made by the previous Board headed by Col. Bhim Singh should be accepted and the result be declared accordingly and a direction be issued to appoint the petitioners to the posts advertised.

(9) Learned counsel for the respondents has vehemently argued that the decision of the present Board to reinterview all the successful candidates in the written test be upheld.

(10) The following decisions have been cited in support of their respective arguments:—

*A. Periakaruppan v. State of Tamil Nadu*, AIR 1971 SC 2303; *Ajay Hasia v. Khalid Mujid*, AIR 1981 SC 467; *Lila Dhar v. State*, AIR 1981 SC 1777; *P. K. Ramchandra v. Union of India*, 1983(3) SLR 495; *Javid Rasool Bhat and others v. State of J & K*, 1984 (1) SLR 543; *Dr. L. Krishna v. State of Karnataka*, 1985 (3) SLR 483; *Raj Kumar Singh v. I. G. Police*, 1985 (3) SLR 707; *Ashok Kumar Yadav v. State of Haryana*, 1985 (4) SCC 417; *Des Raj v. State of Punjab and others*, 1986 (2) SLR 39; *Joginder Singh's case* (supra) and *Sukhdev Singh Nirwan v. State of Punjab*, CWP 4777 of 1985, decided on February 21, 1986.

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(3) C.W.P. 554/1986 decided on July 17, 1986.

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(11) In *A. Periakaruppan's* case (supra), selection of candidates for admission to Ist Year of MBBS Course was in question and all applicants in the general pool securing 110 or more marks calculated on the basis of the formula, referred to therein, were called for interview by the Selection Committee which was authorised to give maximum of 75 marks at the interview. The basis to award these marks were the following tests:

- (1) Sports or National Cadet Corps activities;
- (2) Extra Curricular special services;
- (3) General Physical condition and endurance;
- (4) General ability, and
- (5) Aptitude.

It was observed as under:

“While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention that it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power. It was urged on behalf of the petitioners that the interview marks were allotted on collateral considerations. We are told that the selection committees were tools in the hands of the Government and the Government manipulated the marks in such a way so as to facilitate the selection of those students in whom the members of the party in power were interested. These allegations were denied by the respondents. While elaborating their arguments on their plea of *mala fides* the learned counsel for the petitioners invited our attention to the marks lists which according to them clearly showed that the marks given at the interview are—by the large—in inverse proportion to the marks obtained by the candidates at the University examination. We are also told that the marks lists on their face show that the interview marks were manipulated. It was said that marks were so given as to

see that certain candidates got at least the minimum required for selection. While there is some basis for these criticisms there is not sufficient material before us from which we could conclude that there was any manipulation in preparing the gradation list. It is true that numerous students whose performance in the University examination was none too satisfactory nor their past records creditable had secured very high marks at the interview. It is also true that a large number of students who had secured very high marks in the University examination and whose performance in the earlier classes was very good had secured very low marks at the interview. This circumstance is undoubtedly disturbing but the courts cannot uphold the plea of *mala fides* on the basis of mere probabilities. We cannot believe that any responsible Government would stop to manipulating marks. The selection committees consisted of eminent persons. Most of them are medical practitioners occupying responsible positions in life. It would be a bad day for this country if such persons take to manipulation of marks. Hence we cannot accept the contention that the interview marks were manipulated either by the Government or by the selection committees."

Reference was also made to *R. Chitrlekha v. State of Mysore* (4), wherein it was observed as under:

"In the field of education, there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extra-curricular activities, personality test, psychiatric tests etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one. If there can be manipulation or dishonesty in allotting marks at interviews, there can equally be manipulation in the matter of awarding marks in the written examination. In the ultimate analysis, whatever method

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(4) A.I.R. 1964 S.C. 1823.



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is adopted its success depends on the moral standards of the members constituting the selection committee and their sense of objectivity and devotion to duty. This criticism is more a reflection on the examiners than on the system itself. The scheme of selection, however perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter."

(12) In *Liladhar's* case (supra), selection of posts of Munsifs was made under Rajasthan Judicial Service Rules and thereunder 25 per cent marks were allotted to viva voce. It was observed therein as under:

"So open competitive examination has come to be accepted almost universally as the gateway to public services. "The ideal in recruitment is to do away with unfairness." United Nations Handbook on Civil Service Laws and Practice : "Competitive examinations were the answer to the twin problems represented by democracy and the requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency—By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved". Public Personnel Administration by O. Glenn Stahl. "Open Competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull"; everyone stands on his own feet. The system is not only highly democratic, it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence." Introduction to the study of Public Administration by Leonard White."

(13) A part of Report of The Kothari Committee on Recruitment Policy and Selection Methods was also reproduced as under:

“A system of recruitment almost totally dependent on assessment of a person’s academic knowledge and skills, as distinct from ability to deal with pressing problems of economic and social development, with people, and with novel situations cannot serve the needs of today, much less of tomorrow—We venture to suggest that our recruitment procedures should be such that we can select candidates who cannot only assimilate knowledge and sift material to understand the ramifications of a situation or a problem but have the potential to develop an original or innovative approach to the solution of problems.”

It was further observed as under:

“It is now well recognised that while a written examination assesses a candidate’s knowledge and intellectual ability, an interview test is valuable to assess a candidate’s overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate’s initiative, alertness, resourcefulness, dependableness, co-operativeness, 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 may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the interview Board. O. Glenn Stahl in his Public Personnel Administration points out:

“Any form of written test possesses certain administrative advantages over the oral and performance types. The written form is much easier and cheaper to administer. It can be given to a large number of individuals at the same time, thus conserving the time of the examiners. As a general rule it is easier to evaluate objectively, and the technical proficiency demanded in rating is usually, although not always, less. The oral test has

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long served as a basic selection tool in private employment but has been more slowly accepted in the public field. The conservation arises out of three considerations: (1) the difficulty of developing valid and reliable oral tests; (2) the difficulty of securing a reviewable record of an oral test; and (3) public suspicion of the oral as a channel for the exertion of political influence through the destruction of anonymity. Despite these acknowledged disadvantages, however, orals have been used increasingly in public personnel testing and have been one important instruments wherever tests of personal attributes are considered essential. As we have noted no satisfactory written tests have yet been devised for measuring such personal characteristics as initiative, ingenuity and ability to elicit co-operation, many of which are of prime importance. When properly employed, the oral test today deserves a place in the battery used by the technical examiner. The general principle is that resort should never be had to an oral or the relevant facts to be tested can be measured at some other point in the examining process. The reason is that the reliability of the oral, even under the best of conditions, tends to be lower than that of the well designed written test. The oral test should be confined, then, to the evaluation of relevant traits which cannot be measured in any other way." (p. 92) In the United Nations Hand Book on Civil Service Laws and practice it is said :

“— the written papers permit an assessment of culture and intellectual competence. The interview permits an assessment of qualities of character which written papers ignore; it attempts to assess the man himself and not his intellectual abilities.”

**It was also observed that:**

“There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the

selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for Courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research unit of the Union Public Service Commission. There cannot be any magic formulae 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.

Their Lordships distinguished *Periakaruppan's* case, as also *Ajay Hasia's* case as the two cases related to admission to a college. Ultimately, it was held that the weight to be given to be interview test should depend upon the requirement of the service to which recruitment is made; source and material available for recruitment; the composition of the interview board and several like factors. Ordinarily recruitment to public services is regulated by rules made under the proviso to Art. 309 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be rewriting the Rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motive.

(14) In *P. K. Ramachandra's* case (supra), 100 marks were prescribed for viva-voce as against 600 marks allocated for written test. It was prescribed that minimum 40 marks for viva-voce were required for qualifying the test. It was held that once an additional qualification of obtaining minimum marks at the viva-voce test is adhered to, a candidate who may figure high-up in the merit list was likely to be rejected on the ground that he has not obtained minimum qualifying marks at the viva-voce test. By way of illustration, it was observed that a candidate who had obtained 400 marks at the written test and obtained 38 marks at the viva-voce test, gets 438 in aggregate and thus, was likely, to come within the zone of selection, but would be eliminated on the ground that he has not obtained minimum qualifying marks at the viva-voce test. This additional

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minimum of 40 per cent marks at the viva-voce was held to be inadmissible and contrary to the rules and therefore list prepared was held to be unsustainable. Ultimately, it was held that even though it was proved that a sort of illegal error had been committed in drawing up the merit list, but at that late stage it would be unwise to reject the entire selection, disturbing those who are held selected and may have put in service of not less than 5 years. The respondents were directed in such a situation to draw merit list in respect of remaining 21 unfilled vacancies from amongst those who were called for viva-voce test and were not selected, because some of them did not obtain such minimum qualifying marks at the viva-voce test. This case, therefore, is of no help for deciding the present controversy. However, the decision in this case gives a clear indication that the selection committee or the board could not fix minimum qualification at viva-voce test. Fixing of 100 marks for viva-voce test at against 600 marks for written test was not challenged.

(15) In *Javid Rasool Bhat's* case (supra), a case of admission to medical colleges, the challenge was to the fixing of marks for interview of the candidates. Observations in *Ajay Hasia's* case (supra) regarding desirability of holding viva-voce test were referred to. It was reiterated on the basis of 'Public Administration in Theory and Practice' by M. P. Jain and 'Public Personnel Administration' by Glenn Stahl that:

"But, despite all this criticism, the oral interview method continues to be very much in vogue as a supplementary test for assessing the suitability of candidates where ever test of personal traits is considered essential."

The same is the decision in a number of cases and the following observations in *Chitra Lekha's* case (supra) were made : In that case, percentage of 33.1/3 of the total marks for the viva voce test was considered to have not rendered the admission to be arbitrary, and the selection was not set aside as 18 months had elapsed and no *mala fides* had been established. Percentage of 33 of the total marks for oral interview was preferred. However, the intention was to enable the Government to devise selection procedure which could be above reproach. The observations in the said cases regarding percentage of marks in viva voce test were held never to have been intended to lay down any hard and fast rules. Finally, the Court observed as follows:

"We have considered the various points raised by the petitioners at some length. We have said so much and we have quoted from the previous judgments of this Court in extenso not because we find any substance in any of the contentions, but because these contentions are being repeatedly raised in many such cases and we desire to discourage the raising of unnecessary hope in the minds of the youngmen and women seeking the aid of courts for admission into professional colleges, ready as they are to clutch at any straw."

The dictum in this case clearly shows that as a matter of fact, each individual case fixing percentage of viva-voce test is to be considered and decided if it leads to the selection wherein some arbitrariness or unreasonableness is involved and in those cases the Court may strike down the selection.

(16) In *Dr. L. Krishna's case* (supra) for selection of Lecturers/Museum Curators and Resident Pathologist was involved. 100 marks for written test and 50 marks for interview were reserved. The Court found it difficult to hold that reservation of 50 marks, 1/3 of the total marks, for interview cannot on any principle be characterised as excessive, arbitrary and irrational to infringe Article 14 of the Constitution. The interview was also held to be the only real test for making selections and marks awarded at interview will, therefore, be very decisive in making the selections. The Court expressed the opinion that object of Rule 6 of the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973 was to assess the suitability of the candidate for the post and the same comprehends a variety of factors, such as calibre, intellectual and social traits of personality and the same must always be kept in view.

(17) In *Raj Kumar Singh's case* (supra), the learned Single Judge dealt with a case wherein the post of Labour Inspector Grade II was involved. The Government had issued instructions with regard to viva voce marks. The stand taken by the Board was that the total marks of 160 consisted of 60 marks for the written test; 60 marks were for previous qualification and accounts etc., 40 marks for viva voce. The percentage of viva voce came to 25 per cent of the total marks. This percentage was declared to be invalid in terms of *Ashok Kumar Yadav's case* (supra).

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(18) In *Des Raj's* case (supra), a Division Bench of this Court dealt with a matter covered by the Punjab Civil Service (Executive Branch) Class I Rules, 1976 wherein 40 per cent marks for viva voce did not vitiate the selection. *Ashok Kumar Yadav's* case (supra) was referred to and it was held that percentage marks to be allotted to the viva voce test would depend upon the circumstances of a given selection. A passage from *Ashok Kumar Yadav's* case was referred to. The Division Bench specifically held that the allotment of 40 marks to viva voce test could neither be said to be arbitrary, nor was excessive so as to clothe the Commission with an arbitrary power to select the candidates who may be at the bottom otherwise. The facts of that case indicated that candidates were of mature understanding, having usually more than 15-years service to their credit and the candidates were to be selected from various registers, there being no written test.

(19) In *Ashok Kumar Yadav's* case (supra), the selection by the Haryana Service Commission under the Punjab Civil Service (Executive Branch) Rules, 1930 was involved and under the rules, 33.3 per cent marks for Ex-Service Officers and 22.2 per cent marks in case of other candidates were allocated for viva voce test and were in force for almost 50 years and every body had acted on the basis of those rules. Their Lordships of the Supreme Court observed, after referring to Glenn Stahl's book on 'Public personnel Administration' and observations in *Ajay Hasia's* case (supra), as under:

"The viva voce test does suffer from certain disadvantages such as difficulty of developing a valid and reliable oral test, the difficulty of securing a reviewable record of an oral test and public suspicion of the oral test as a channel for the exertion of political influence and also of other corrupt, nepotistic or extraneous considerations, but despite these acknowledged disadvantages, the viva voce test has been used increasingly in the public personnel testing and has become an instrument whenever test of personal attributes are considered essential."

A reference was made to observations of Chinnapa Reddy, J. (as he then was) in *Lila Dhar's* case (supra) with the object of any process:

"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 Chinnapa 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."

In that case, the marks allocated for viva voce test were 200 as against 700 allocated in the written examination, with the result that the marks allocated for the viva voce test came to 22.2 per cent of the total marks and 33.3 per cent in the case of Ex-Service Officers. A Division Bench of this Court held the percentage to be undoubtedly high and rendered the selection of the candidates arbitrary. The view of the Division Bench was challenged in this case. Ultimately, the Court directed that thereafter in case of selection to be made to the Haryana Civil Service (Executive Branch) and other Allied Services, where competitive examination consists of written examination, followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2 per cent of the total marks taken into account for the purpose of selection. It was suggested that this percentage should also be adopted by the Punjab Service Commission and other States.

(20) So far as the case of Ex-Service Officer is concerned the percentage of 25 per cent for viva voce test should be fixed. The Court impressed upon every State to take care to see that its Public



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Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation to gain confidence of the people and it would not allow themselves to be deflected by extraneous consideration from discharging their duties of making selections strictly on merits. In case of selection for judicial service of the State, it was considered to be necessary to exercise utmost care to see that competent and able persons possessing a high degree of reputation and integrity are selected.

(21) In this case, it was observed that in view of the fact that an unduly large number of candidates were called for interview and the marks allocated in the viva voce test were excessively high, it was possible that some of the candidates who might have otherwise come in the select list were left out perhaps unjustifiably. A direction was given that all the candidates who secured a minimum of 45 per cent marks in the written examination, but who could not find entry in the select list should be given one more opportunity of appearing in the competitive examination now to be held in accordance with the principles laid down therein. All the same the selection being 2 years back, it was not considered to set aside the same.

(22) So far as the number of persons to be called for interview, it was directed that it should not exceed twice or at the highest, thrice the number of vacancies to be filled and that was also mentioned in the report of the Kothari Committee on the Recruitment Policy and Selection Methods for the Civil Services.

(23) After observing that when judged in the light of the observations in *Ashok Kumar Yadav's* case (supra), the allotment of 40 per cent to viva voce can neither be said to be arbitrary nor so excessive as to clothe with an arbitrary power to select candidates who may be at the bottom otherwise. In this case, the selection was based on the performance of the candidates in clerical jobs and in such a situation, there was not much scope for choice between various candidates for Public Service Commission of their service record.

(24) In *Joginder Singh's* case (supra) and also in *Virinder Singh's* case (as both the cases were decided by one judgment), a Full Bench of this Court had to decide a reference made on the basis that a recent judgment of the Division Bench in *Sukhdev Singh*

*Nirvan's* (supra) (CWP 4777/1985) wherein attacks were made on the ground that 30 per cent marks were allotted for interview, were turned down and a specific mention was made about fixation of 12.2 per cent for the general category and 25 per cent in the case of Ex-Service Officers for viva voce test to be a must as laid down in *Ashok Kumar Yadav's* case (supra).

(25) The first contention in this case was that in comparison to the marks allocated to written examination, the proportionate of the marks allocated to the viva voce test was quite high and that introduced irredeemable element of arbitrariness in the selection process so as to offend Articles 14 and 16 of the Constitution and reliance was placed on *Ashok Kumar Yadav's* case (supra). The Full Bench referred the observations made by Bhagwati, J. in *Ashok Kumar Yadav's* case (supra), referred to above. After reproducing the said observations, it was held by the Full Bench that the percentage of marks determined for viva voce were only for the examination held by the Commission on the basis of Punjab Civil Service (Executive Branch) Rules, 1930, otherwise the aforesaid observations would become meaningless.

(26) It was further observed that the weight to be given to the viva voce test as against the written examination must vary from service to service according to the requirements of the service, the minimum qualification prescribed; the age group from which the selection is to be made; the object to which the test of holding the viva voce is proposed to be entrusted and a host of other factors. The Full Bench specifically relied on *Ashok Kumar Yadav's* case (supra), but observed that it cannot be held that with regard to each and every service, including the posts of Taxation Inspectors in the State of Haryana, in both the written and viva voce examinations prescribed only 12.2 per cent marks had to be assigned for viva voce test. Particularly, referring to the rules on the basis of which the selection in the present case was to be made, the Full Bench held as under:

“As would be evident from the tenor of the petition, the whole case of the petitioners is based mainly on the plea that in *Ashok Kumar Yadav's* case (supra), a direction had been given by the Supreme Court to keep the percentage of viva voce marks at 12.2; but in spite of that direction a higher percentage at 28.5 has been kept, with a view to

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accommodate those candidates in whom the Board members were interested. On this aspect, we have already held that *Ashok Kumar Yadav's* case (supra) cannot be read to mean that the percentage of viva voce marks indicated therein is to apply to all the services in the State of Haryana. That being so, it was incumbent upon the petitioners to independently show that for the service in question providing of 28.5 per cent marks for viva voce test was excessive."

(27) It was also held that on the basis of conjectures, that is not only difficult, but would also be not proper to strike down the marks allocated for viva voce test by holding that they are excessive. Thus, the contention of the learned counsel was negated.

(28) It is thus clear that in *Joginder Singh's* case (supra), the allocation of marks at 28.5 per cent of the aggregate was challenged on the ground stated above and the prayer was to strike down the same, as it was against the principles enunciated under Articles 14 and 16 of the Constitution. The prayer was clearly turned down. In view of this judgment of the Full Bench, reference to this Bench in this case was not necessary, but it seems that this particular fact of challenge and the specific answer were not brought to the notice of the Court at the time of reference.

(29) *Ajay Hasia's* case (supra) was a case of admission to an Educational Institution and the question involved was as to whether viva voce examination as a permissible test can be regarded as arbitrary. It was held that allocation of more than 15 per cent of total marks would be arbitrary and unreasonable and therefore, liable to be struck down as constitutionally invalid. All the same interference was refused as 18 months had elapsed. It was also expressed to be desirable if the interview of candidates is tape recorded, for in that event there will be contemporaneous evidence to show what were the questions asked and what were the answers given and this will eliminate lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee.

(30) In *Sukhdev Singh Nirwan's* case (supra), the quota of 40 per cent marks was provided for direct recruits for the posts of

Inspector Audit. 35 per cent marks were for interview for selection of these recruits. The Division Bench held as under:

“In our view, in the circumstances of the case, this contention of the learned counsel has again no merit. The merit list in the case was prepared on the basis of the marks obtained by the candidates in the written examination and interview. The learned counsel could not point out any arbitrariness in the selection. Hence, merely on this ground that some higher percentage of marks was reserved for interview by itself would not be a ground to quash the selection in the present case.”

Having discussed above the various authorities cited by the learned counsel, it becomes clear that even in *Ashok Kumar Yadav's* case (supra), the scope of percentage of viva voce marks was fixed qua the selections made by the Public Service Commission. In the present case, the affidavit given by Col. Bhim Singh does not help the petitioners. According to the affidavit, allocation for viva voce marks was 12½ per cent of the written marks which percentage is definitely not taken from *Ashok Kumar Yadav's* case (supra), because there the percentage of marks was of the total marks including that of viva. Moreover, the stand taken in the affidavit is not supported by any order on the file, as mentioned in the written statement of Shri R. P. Sukhija, Secretary, Subordinate Services Selection Board. It is also averred that record of viva voce in respect of other candidates was not available. The rules which are involved in the instant case were the very rules involved in *Joginder Singh's* case (Supra). The same were upheld.

(31) Theoretically even in the written test also, arbitrariness and unreasonableness can be present, giving marks in papers in a particular subject and that marking cannot be said to be arithmetical, but written test has never been challenged and is an accepted mode of gradation of the candidates for the last so many years.

(32) We are of opinion that in *Joginder Singh's* case (supra), the present service rules were upheld and it was definitely held that the percentage of marks for viva voce test does not offend Articles 14 and 16 of the Constitution although at the time of making reference pointed attention was drawn by the learned counsel to particular portions of the judgment, holding as such. This writ petition is, therefore, dismissed. It is directed that the candidates who have qualified in the written test be called for viva voce test within a

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period of two months and the result of the successful candidates be declared within a month thereafter. The parties to bear their own costs.

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R.N.R.

Full Bench

Before V. Ramaswami, CJ, Ujagar Singh and G. R. Majithia, JJ.

RAMESH BIRCH AND OTHERS,—*Petitioners.*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 736 of 1987.*

May 25, 1988.

*Punjab Reorganisation Act, 1966—Section 87—East Punjab Urban Rent Restriction (Amendment) Act (Punjab Act II of 1985)—Indian Stamp (Punjab Amendment) Act, 1981—Scope of Section 87—Power of Centre Government to extend amendment Act to Union Territory of Chandigarh—Amendment act—Post appointed date—Extension of such Acts by notification—Validity of such extension.*

*Held*, that Section 87 of the Punjab Reorganisation Act, 1966 does not limit the power of the Central Government to extend only such enactments which were in force on November 1, 1966, which had not been repealed at the date of the notification. Any enactment, which is in force at the date of the notification could be extended with such restrictions or modifications to the Union Territory of Chandigarh. That the provisions of Section 87 enable the Central Government to extend any enactment which came into force after the appointed day and, in our opinion, the section clearly authorises the Central Government to extend all enactments which came into force after the appointed day and which were still in force at the date of the notification.

(Paras 9 and 11).

*Held*, further that Section 87 does not suffer from the vice of impermissible delegation of legislative power and is not unconstitutional.

(Para 16).