

Before : A. L. Bahri & V. K. Bali, J.

NARINDER PRAKASH LATH, AND OTHERS,—Petitioner.

versus

THE CHAIRMAN & MANAGING DIRECTOR, PUNJAB AND
SIND BANK,—Respondents.

Civil Writ Petition No. 12305 of 1991.

January 23, 1992.

Constitution of India, 1950—Art. 226—Promotion—Selection to Junior Management Grade Scale-I posts from amongst clerks—Bank fixing 35 marks for in-service experience, 25 marks for academic qualifications and 15 marks for interview—Fixation of 15 marks for interview of total 75 marks is not arbitrary—Principle of Ashok Kumar Yadav's case is inapplicable for promotion—In absence of allegations of mala fides calling of candidates more than 3 times the number of vacancies is not irregular—Selection upheld.

Held, that the ratio of *Ashok Kumar Yadav v. State of Haryana*, 1985(3) S.L.R. 200. cannot be applied in the case of recruitment by promotion. When posts in the higher grade are to be filled by promotion, different considerations weigh. Person already in service had gained experience and in some cases such persons may have improved their educational qualifications. The experience of service and acquiring of academic qualifications are the relevant considerations for purposes of promotion which have been fixed by the Bank. Still the Bank rightly thought fit to interview the candidates and allocated 15 marks for the same. Fixation of 15 marks for interview in the case of selection by promotion cannot be considered arbitrary; moreso, when no written test is provided.

(Para 4)

Held, that calling 350 candidates for interview for 60 posts of general category, in the absence of averments of *mala fides* against the bank in the matter of selection cannot make the selection of candidates bad and hence such selection cannot be quashed on this ground. Petition is liable to be dismissed.

(Paras 6 & 7)

CIVIL WRIT PETITION under Articles 226/227 of the Constitution of India praying that :—

- (i) That the records of the case may kindly be called for;
- (ii) That a perusal of record and hearing upon the counsel for the parties this Hon'ble Court may be pleased to grant the following reliefs :—
 - (a) Issue a writ in the nature of *certiorari* quashing the selections made by the respondents to fill up the

vacancies in the Junior Management Grade Scale—I on the basis of arbitrary and illegal criterion adopted, which is against the policy settled for the purpose by the bank, and the selection itself being in law because of the unfettered discretion in the shape of marks for interview given to the Management to select the persons of their choice by giving them high marks, and lower marks to those who might be having otherwise high marks on account of length of service and qualifications etc.

- (iii) *That any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may be issued;*
- (iv) *That any other relief to which the petitioners may be found entitled in the facts and circumstances of the case may be granted;*
- (v) *That the requirement of filing the certified copies of annexures may kindly be dispensed with;*
- (vi) *That the requirement of serving advance notices on the respondents herein may kindly be dispensed with;*
- (vii) *That the costs of this writ petition may kindly be awarded in favour of the petitioners and against the respondents herewith;*
- (viii) *It is further prayed that during the pendency of the petition is this Hon'ble Court, the promotion orders in pursuance of the impugned selection may be ordered to be not issued or any other interim order which this Hon'ble Court may deem fit and proper may be issued.*

S. D. Bansal, Advocate, for the Petitioner.

S. S. Nijjar, Sr. Advocate with G. S. Bajwa, Advocate, for the Respondents.

ORDER

A. L. Bahri, J.

(1) Narinder Prakash Lath and nine others claim in this writ petition filed under Articles 226 and 227 of the Constitution, quashing of the selection made by the respondents to the different posts of Junior Management Grade Scale-I, being arbitrary and that the petitioners be appointed against those posts.

(2) The petitioners are working as Clerks in the Punjab and Sind Bank in different branches. About 300 posts became available of Junior Management Grade Scale I. 120 posts were to be filled by promotion from the persons already working in the Bank and the remaining 180 posts were to be filled directly. Out of

120 posts to be filled by promotion, 60 were under the general category and the remaining 60 under the reserved category. The petitioners are concerned *qua* general category of 60 posts. The Bank formulated a scheme instructions fixing maximum marks for the experience, qualifications and interview, respectively, 35 marks were allocated for experience in service, 25 for academic qualifications and 15 for interview; total being 75. At the time of the filing of the writ petition the selection process had not completed. The criteria aforesaid was challenged.

(3) During arguments learned counsel for the petitioners has challenged the selection primarily on two grounds; firstly, that for interview as many as 360 persons were called which was more than 3 times the number of vacancies to be filled in the general category, secondly, the fixation of 15 marks for interview was arbitrary as out of total 75 marks it was more than 12 per cent. This writ petition has been contested by the Bank, *inter alia*, maintaining that due process was adopted in the matter of selection of the candidates and no rule or regulation or statute was infringed by following the scheme and calling 360 persons for interview and further making selection on the basis of 15 marks earmarked for interview. In the replication filed by the petitioner, selection list finalised by the Bank of candidates was also filed to indicate that if marks for interview had been reduced to 12 per cent of the total marks, the result was likely to be affected and the petitioners, particularly petitioner No. 1, would have been in the merit list of first 60 to be appointed.

(4) The principle of arbitrariness in the matter of recruitment was discussed by the Supreme Court in *Ashok Kumar Yadav v. State of Haryana* (1). That was a case of recruitment of candidates for appointment in Haryana Civil Services (Executive). The process of recruitment contemplated a written test to be followed by interview. It was in that context, the Supreme Court observed that the merit of the candidates in the written test could not arbitrarily be ignored by fixing excessively high marks for the interview. Keeping in view the same it was held that out of the total marks of the written test, marks for the *Viva Voce* should not be more than 12 per cent. It was also observed that at the time of calling the candidates for interview normally candidates, 2/3 of the number of vacancies, should be called. After hearing counsel for the parties we are of the firm view that the ratio of the decision aforesaid

cannot be applied in the case of recruitment by promotion. When posts in the higher grade are to be filled by promotion, different considerations weigh. Persons already in service had gained experience and in some cases such persons may have improved their educational qualifications. The experience of service and acquiring of academic qualifications are the relevant considerations for purposes of promotion which have been fixed by the Bank. Still the Bank rightly thought fit to interview the candidates and allocated 15 marks for the same. Fixation of 15 marks for interview in the case of selection by promotion cannot be considered arbitrary; more so, when no written test is provided. Learned counsel for the petitioner while referring to the merit list of selected candidates produced along with the rejoinder, wanted to argue if proportionate marks are reduced for interview, some of the petitioners might gain access to the merit list. We are afraid that this contention cannot be accepted and on that ground alone the selection made cannot be quashed. Some observations in *Ashok Yadav's* case (supra) in this context may be noticed from para 19 of the judgment. After referring to the arguments and the decision of the High Court with respect to the award of the marks in *Viva Voce* test it was observed as under :—

“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 selection 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 indubitably 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.”

In view of what has been stated above, it is not considered appropriate to discuss in detail the argument of learned counsel for the petitioners as to whether the petitioners could be in the select list if interview marks had been 10 only instead of 15. It may further be observed at this stage that the learned counsel for the Bank, from the record of selection, has pointed out the marks awarded to the petitioners in the interview. Petitioner No. 1 secured seven marks,

petitioners No. 2 to 4, 7 and 9, secured 12, petitioners Nos. 5 and 6 secured 10 each, and petitioner No. 10 secured 11 marks. This data has been given with the object of satisfying the Court that the Selection Board did not arbitrarily award marks for interview excessively on the lower side to the petitioners or the like to purposely keep them out of selection. Likewise, reference was made to the selection list—Annexure P.4 that the persons selected also secured 7 to 13 marks and keeping in view their marks for experience and educational qualifications, they were in the merit list. We are fully satisfied in the manner of selection made in this case and it was not at all in an arbitrary manner.

(5) Learned counsel for the petitioners has argued that 360 candidates were called for interview for 60 posts of general category which was not proper. In *Ashok Yadav's* case (supra) this question was also for consideration. The persons who had secured 45 per cent marks in the written test, were eligible for being called for *Viva Voce* test. Reference was made to Kothari Commission's report on the subject of recruitment policy and selection methods for the Civil Services Examination and the following passage was quoted therefrom :—

“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.”

The Supreme Court observed :

“We are, therefore, of the view that where there is a composite test consisting of a written examination followed by a *viva voce* test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest, thrice the number of vacancies to be filled.”

(6) Although Haryana Public Service Commission had called for interview of candidates numbering over 1,300 who satisfied the minimum eligibility requirement by securing minimum of 45 per cent marks in the written examination, the Supreme Court observed that it was not right. However, the Commission could not be said to be actuated by any *mala fide* or/motive as such a practice was being followed by earlier but on that ground alone the selection was not required to be quashed. In the present case no averments of

mala fides have been raised against the Bank in the matter of selection made or established and thus the selection of candidates shown in Annexure P-4 cannot be quashed on this ground.

(7) For the reasons recorded above, finding no merit in the writ petition, the same is dismissed. However, there will be no order as to costs.

R.N.R.

Before : S. S. Sodhi and J. B. Garg, JJ.

HINDU COLLEGE, AMRITSAR,—*Petitioner.*

versus

N. D. MALHOTRA & ANOTHER,—*Respondents.*

Civil Writ Petition No. 20 of 1991

July 30, 1992

Constitution of India 1950—Article 226—Gratuity—Denial thereof by privately Managed Government Aided Colleges to employees on plea that no aid was extended to them—Mandamus sought for grant of such aid from the State for payment of gratuity—No case arises for issuance of such direction.

(Para 7)

Held, that no case thus arises for the issuance of any direction of the kind sought by the appellants namely that aid should be provided by the State Government to privately managed Government Aided schools to meet their liability towards gratuity payable to their employees. This is a policy matter for the State Government to decide.

Appeal Under Clause X of the Letters Patent Appeal against the judgment of Hon'ble Mr. Justice Ashok Bhan, dated 8th November, 1990 in C.W.P. No. 10460 of 1988.

H. L. Sibal, Sr. Advocate, R. K. Chhibbar, Sr. Advocate with Anand Chhibbar, Advocate, for the appellants.

H. S. Riar, Addl. A.G. for the State, Romesh Kumar, Advocate, for No. 1, for the Respondents.

JUDGMENT

S. S. Sodhi, J.

(1) Denial of gratuity to their retiring teachers by privately managed Government Aided Colleges on the plea that no aid had