

57 of the Act as observed above. If these provisions are not followed, the action would not be saved in view of section 156 of the Code of Criminal Procedure. The powers of the Executive Police as envisaged by Section 156 of the Code of Criminal Procedure to investigate offences (committed under the Act, 1985) is thus ousted, curtailed and controlled by the provisions of Act, 1985. The question referred is answered in the affirmative as above. Since on merits the appeals are to be disposed of, separately they are ordered to be listed before the Single Bench.

P.C.G.

*Before V. Ramaswami, C.J. and G. R. Majithia, J.*

GURPAL SINGH,— *Appellant.*

*versus*

RAJ KUMAR SINGLA AND OTHERS,—*Respondents.*

*Letter Patent Appeal No. 87 of 1986.*

January 12, 1989.

*Constitution of India, 1950—Art. 226—Selection—Composition of Interview Committee—Unauthorised expert person associated as an expert—Effect on selection, stated—Selection of candidates by two separate committees—Whether permissible—Allocation of 28.5 per cent marks for viva voce test for selection of Labour Inspectors Grade (II)—Whether excessive—Rule of 12.2 per cent in Ashok Kumar Yadav's case—Whether applicable to selection of Labour Inspectors Grade II.*

*Held*, that *viva voce* test is merely a subject of test. Mr. G. is an out-sider and participated in the selection committee. We do not know to what extent the opinion given by him weighed with the selection committee, to what extent it affected in their decision in assessing individual merits and demerits of a candidate. Mr. S. is a rank-stranger. No rule has been brought to our notice which permits the Board to associate an out-sider with the process of selection. His participation in the process of selection makes the selection invalid. (Para 8).

*Held*, that in the absence of any restriction under statutory rules for establishing two committees, no fault can be found that the interview held by the two committees, one by the Chairman and a member and the other by the two members is bad at law. (Para 7)

Gurpal Singh v. Raj Kumar Singla and others (G. R. Majithia, J.)

---

*Held*, that it is for the persons challenging selection to prove that the marks allocated for *viva-voce* test are excessive. In the absence of any material to prove excessiveness, we do not think it justified to lay down as question of law that in every interview where for *viva voce* test more than 12.2 per cent marks of the total marks are prescribed, the test stands vitiated. On the basis of conjectures, it is not only difficult, but would also be improper to strike down the marks allocated for *viva voce* test by holding that they are excessive. (Paras 5, 6).

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Gokal Chand Mital, whereby the writ petition of the petitioner be allowed.*

*It is, therefore, respectfully prayed that the Letters Patent Appeal be accepted and the judgment of the Hon'ble Single Bench be set aside.*

S. S. Nijjar, Advocate, for the appellants.

None, for the respondents.

#### ORDER

G. R. Majithia, J.

(1) By a common judgment the learned Single Judge disposed of Civil Writ Petition Nos. 4416, 4327 and 4059 of 1985. In Civil Writ Petition No. 4416 of 1985 the selection of Gurpal Singh and Kashmira Singh as Labour Inspectors Grade-II who were arrayed as respondents No. 4 and 5 in the petition, was quashed. They have challenged this order by two separate appeals; Letters Patent Appeal No. 87 of 1986 and 233 of 1986. Now in this appeal, the challenge is as under :—

(2) The brief facts are that the State of Punjab sent a requisition to the Subordinate Services Selection Board, Punjab to fill up four posts of Labour Inspectors Grade II. The Subordinate Services Selection Board in pursuance thereto advertised four posts of Labour Inspectors Grade-II (Technical). Out of the four posts advertised, two were to be filled from General Category, one from amongst Scheduled Castes and one from amongst the Ex-Service-men. The minimum educational qualification prescribed was Graduate from a recognised University with at least second division. The appellant alleged that he fulfilled all the qualifications and

---

applied for the post. He qualified in the written test and thereafter was called for interview. The interview was held on August 14, 1985 and August 16, 1985 by a committee consisting of Shri H. S. Sidhu, Chairman of the Board and Shri S. S. Kakkar, a member. One Shri G. S. Saroya, Deputy Chief Inspector (Factories) was also associated with the committee as an expert. The selection is rendered invalid since Shri G. S. Saroya, who was an outsider, was associated in the process of selection. *Viva-voce* marks are 50 per cent of the written test marks and are far excessive and are in violation of the decision rendered by the Supreme Court in *Ashok Kumar Yadav and others versus The State of Haryana and others* (1), where it was held that *viva-voce* marks should not be 12.2 per cent of written marks.

(3) The Board in its reply admitted that Shri G. S. Saroya was not deputed by the Labour Commissioner for assisting the Board in making selection for the post of Labour Inspectors Grade II. Since he represented the Labour Commissioner in the selection of Laboratory Assistants, he was also associated by the Board in the process of selection of candidates for the post of Labour Inspectors Grade II. The role of the department's representative is only to give expert/technical opinion desired by the Board at the time of interview. The Board gives full weightage to his opinion but he does not participate in the final selection. The final selection is by the Board. The Board conducts a written test which is an objective type test consisting of 60 marks and those candidates who qualify in the test are called for interview. The interview consisted of 100 marks out of which 60 marks were allotted for educational qualifications etc. and 40 marks allotted for *viva voce* which were awarded on the basis of mental alertness and performance shown at the time of interview and aptitude of the candidate. The Chairman or any other member acting as such in his absence gives 20 marks. The other members of the Board give 20 marks each and average of the marks given by the members present at the time of interview are considered as given by all the members to which the marks given by the Chairman are added. The merit is determined on the basis of total marks thus obtained on account of qualification/experience etc. The Board interviewed 760 candidates and it formed two separate selection committees—one consisting of Chairman and a member and the other consisting of two members of the Board and the two committees interviewed the

---

(1) (1985) 4 S.C. 417.

Gurpal Singh v. Raj Kumar Singla and others (G. R. Majithia, J.)

---

candidates. The fixation of the educational qualification was justified by the Board.

(4) The learned Single Judge categorised the grounds of attack of the writ-petitioner as under :—

- (i) that the appellant was graduate with third class whereas the qualification required is graduates with second class.
- (ii) The *viva voce* marks are 50 per cent of the written marks and are far and excessive and are in violation of the decision of the Supreme Court in *Ashok Kumar Yadav and others v. State of Haryana and others*, (1985) 4 S.C.C. 417, wherein it is held that *viva voce* marks should not be more than 12.2 per cent of the written marks ;
- (iii) Shri G. S. Saroya, Deputy Chief Inspector of Factories was present in the interview, to advise the Subordinate Services Selection Board (for short 'the Board), although he had not been appointed by the Government to be present with the Selection Committee as an expert.
- (iv) From the written statement filed on behalf of the Board, it is clear that 60 marks were provided for objective test and 100 marks for interview. Out of the 100 marks, 60 marks were allotted for educational qualifications, experience etc. whereas 40 marks were allotted for *viva voce* which were awarded on the basis of mental alertness and performance shown at the time of interview and aptitude of the candidate for the post. Out of 40 *viva voce* marks, 20 marks were allotted to the Chairman of the Board or any other member acting as such in his absence and the remaining 20 marks were to be awarded by the other members. Each member was allocated 20 marks and then average was taken and then finally the marks given by the members were added to the marks given by the Chairman and merit was determined ; that interview was conducted by two committees of the Board, one consisting of two members and the other consisting of Chairman and a Member. It is urged that since Chairman sat only in one Committee, then how *viva voce* marks are to be evaluated or could be

---

evaluated have not been explained in the written statement, and

(v) That 760 candidates were interviewed in three days in 138 categories of service.

(5) Point No. 1 was found against the writ petitioner. Point No. 2 was found in favour of the writ-petitioner on the strength of the judgment rendered in *Ashok Kumar Yadav's case* (supra). Point No. 3 was found in favour of the writ-petitioner on the basis of the concession made by the Advocate General, who appeared for the State. Point No. 4 was also found in favour of the petitioner. Point No. 5 was left undecided since it was held that the writ petition deserves to be allowed on points Nos. 2, 3 and 4 respectively. The learned Single Judge found that earmarking of 40 marks for *viva voce* test is excessive as it comes to 25 per cent of the total marks. The *viva voce* marks should not exceed 12.2 per cent of the total marks. There is no basis for these observations except the judgment rendered in *Ashok Kumar Yadav's case* (supra). *Ashok Kumar Yadav's case* was considered by Full Bench of this Court in a judgment reported as *Joginder Singh v. The State of Haryana and others* (2), where this Court held as under :—

“We have heard the learned counsel for the parties and find that in the instant case the petitioner have not supplied any material nor have furnished any data in support of this plea. 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 accommodate those candidates in whom the Board members were interested. On this aspect, we have already held that *Ashok Kumar Yadav's case* 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 for *viva voce* test was excessive. Open competitive examination has

---

come to be accepted almost universally as the gateway to public service. As to how should the competitive examination be devised, Bhagwati J. (now the learned Chief Justice) in *Ashok Kumar Yadav's case* (supra) has analysed the matter thus :—

“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.”

It has already been noticed earlier that there cannot be any hard and fast rule regarding the precise weight to be given to the *viva voce* test as against the written examination. It 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 body to which the task of holding the *viva voce* test is proposed to be entrusted and a host of other factors. As earlier observed, the petitioners have not placed any material on the record to facilitate the recording of a

finding in their favour. On the basis of conjectures, it is not only difficult, but would also improper to strike down the marks allocated for *viva voce* test by holding that they are excessive. Consequently, the contention of the learned counsel is negatived.

(6) This judgment was again followed in *Vikram Singh and others v. The Subordinate Service Selection Board, Haryana through its Secretary, (U.T.) Chandigarh and another* (3), and it was held that allocation of 28.5 per cent marks for the *viva voce* was valid. In *Joginder Singh's case* (supra) it was specifically held that the weightage to be given to the *viva voce* test as against written test/examination must vary from service to service according to the requirement of the service, the minimum qualification prescribed the age group from which the selection is to be made, the body to which the task of holding the *viva voce* test is proposed to be entrusted and a host of other factors. It was further held that the writ-petitioners must individually show that for the service in question providing of 28.5 per cent marks for *viva voce* test was excessive. In the instant case no such material has been placed before us and we do not think it justified to lay down as question of law that in every interview where for *viva voce* test more than 12.2 per cent marks for the total marks are prescribed, the test stands vitiated.

(7) The answer to the point No. 4 given by the learned Single Judge cannot be sustained. There is no prohibition in the rules that the Board could not split up and form two committees for the purpose of interviewing the candidates. In the absence of any restriction under statutory rules for establishing two committees, no fault can be found that the interview held by the two committees, one by the Chairman and a member and the other by the two members is bad at law. The members of the committee are given 20 marks each and average of the marks given by the members present at the interview are considered as given by all the members to which the marks given by the Chairman are added. We do not find any infirmity with the course which was adopted by the Board. The selection committee consists of two members. Each member allots marks out of the 20 marks and the average of the marks given by the members present at the time of interview are considered as given by all the members to which the marks given by the Chairman are added. We do not find any infirmity

---

(3) (1988-2) P.L.R. 267.

State of Punjab and others *v.* Mehanga Ram and others  
(G. R. Majithia, J.)

---

in the course adopted by the Board. In fact none was pointed out by the learned Single Judge. Thus, we find that the learned Single Judge is not correct in his conclusions in finding points No. 2 and 4 in favour of the writ-petitioners. The judgment of learned Single Judge on these two points cannot be sustained for the reasons given earlier.

(8) The third point on which the learned Single Judge has up-set the selection is the participation of Mr. Saroya in the selection committee. On this point the writ-petitioners are on firm footing. The *viva voce* test is merely a subject of test. Mr. G. S. Saroya is outsider. We do not know to what extent the opinion given by him weight with the selection committee, to what extent it affected in their decision in assessing individual merits and demerits of a candidate. Mr. Saroya is a rankstranger. No rule has been brought to our notice which permits the Board to associate an outsider with the process of selection. His participation in the process of selection makes the selection invalid. We maintain the judgment of the learned Single Judge on the ground that the selection of Labour Inspectors Grade II stands vitiated since the selection committee associated a stranger namely Mr. G. S. Saroya in the process of selection. With these observations, both the appeals (L.P.A. Nos. 87 and 233/86) are dismissed. However, we leave the parties to bear their own costs.

---

R.N.R.

*Before V. Ramaswami, C.J. and G. R. Majithia, J.*

STATE OF PUNJAB AND OTHERS,—*Appellants.*

*versus*

MEHANGA RAM AND OTHERS,—*Respondents.*

*Letter Patent Appeal No. 740 of 1986.*

January 12, 1989.

*Constitution of India, 1950—Arts. 162 and 226—Work charged employees—Claim for regularisation—Administrators deciding in meeting to retain such employees with five years service working against government posts of regular nature by transferring them to*