

Before : I. S. Tiwana and M. R. Agnihotri, JJ..

BALBIR SINGH AND OTHERS,—Petitioners..

versus

PUNJAB PUBLIC SERVICE COMMISSION,—Respondent..

Civil Writ Petition No. 2784 of 1989

June 1, 1989.

*Constitution of India, 1950—Arts. 14, 226, 227 and 315—Candidates for the posts of headmasters/headmistresses divided into four groups by Public Service Commission for written examination—Different question papers to different group—Such process for shortlisting—Whether discriminatory.*

*Held*, that we are of the considered opinion that all that Article 14 of the Constitution of India, 1950 guarantees is similarity of treatment which in a given situation may not be identical treatment. Equality specified in this Article cannot have the exactitude of a Computer. If the stand of the petitioners is to be taken as legally correct, then to our mind, every selection or appointment made as a result of a *viva-voce* test is bound to be rendered bad as the experience shows that no two candidates are put the same or identical questions during the course of interview. We are, therefore, satisfied that examining the candidates for the posts in four different batches was no act of arbitrariness on the part of the Commission nor was any discrimination involved.

( Para 3).

*Held*, that every exercise of discretion, to our mind, is not an act of discrimination. It may become such an act only when the person against whom the discretion is exercised faces certain appreciable disadvantages which he would not have faced otherwise.

( Para 3).

*Writ petition under Articles 226 and 227 of the Constitution of India praying that:—*

- A. *a writ of mandamus or any other writ order or direction which this Hon'ble Court may deem fit in the circumstances of the case may kindly be passed quashing the screening test held by the respondent on 21st January, 1989 and 22nd January, 1989 for the recruitment to the post of Headmasters and Head-mistresses PES (Gazetted Class II) School cadre.*
- B. *the record of the case may be called for.*
- C. *that the filing of certified copies of the Annexures may be exempted.*

D. *the service of advance notices of motion on the respondent be dispensed with.*

E. *To award costs.*

*It is further prayed that the respondent may be restrained from declaring the result of the above screening test or to make any recruitment on the basis of that examination during the pendency of this writ petition in this Hon'ble Court.*

Harbhajan Singh, Advocate, for petitioners.

H. S. Riar, Sr. D.A.G. Punjab, for the Respondent.

### JUDGMENT

I. S. Tiwana, J.

(1) In view of the identity of facts and the similarity of contentions raised in these three Civil Writ Petitions Nos. 2784, 5269 and 5387 of 1989, the learned counsel are agreed that the decision of any one of these would govern the fate of the remaining two. Therefore, for purpose of this judgment we have chosen to advert to the facts stated in the very first petition.

(2) In order to fill up 200 posts of Headmasters/Headmistresses, the Punjab Public Service Commission,—*vide* its publication dated August 27, 1988 (Annexure P.1) invited applications from qualified teachers. One of the significant conditions of this advertisement was to the following effect:—

“PRESCRIBED EQS (essential qualifications) are minimum and mere possession of the same does not entitle candidates to be called for interview where the number of applications received in response to an advertisement is large and its will not be convenient or possible for the Commission to interview all those candidates, the commission may restrict the number of candidates for interview to a reasonable limit on the basis of qualification and experience higher than the minimum prescribed or by holding a screening test.” (Emphasis supplied).

Concededly 5160 candidates applied for these posts. The Commission, in order to short list the number of candidates, held a screening test. For purposes of the test the Commission divided the candidates into four groups of similar strength on the basis of alphabetical

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order and held the test on two days, i.e., 21st and 22nd January, 1989, in two sessions each, i.e., 10 A.M. to 1 P.M. and 2 P.M. to 5 P.M. This methodology adopted by the Commission for screening the candidates is assailed by the petitioners as wholly arbitrary and violative of Article 14 of the Constitution. The submission is that dividing the number of candidates into four batches or groups for purposes of examination was *per se* discriminatory as these examinees were made to answer different question papers. According to the petitioners, the candidates who appeared in the first batch suffered the maximum because "it was not known to them as to what type of paper will be given to them for answering whereas the persons to (who) appeared later on in other batches will naturally improve their position by knowing the contents and type of questions from the earlier papers". Though it was also alleged in the petition that some of the questions were outside the syllabus prescribed, yet at the time of arguments not a word was uttered by the learned counsel in support of this assertion. Thus the short question that falls for consideration in these petitions is as to whether the method of screening the applicants for purposes of shortlisting the number of candidates to be interviewed is violative of Article 14 of the Constitution? The stand of the Commission as disclosed in the very opening part of the written statement is as follows:—

"It is submitted by way of preliminary objection that against 120 vacancies of Headmasters and 80 for Headmistresses which had been advertised by the Answering Respondent as many as 5160 candidates had submitted their applications. Considering the large number of candidates, the Commission had decided to conduct a screening test for shortlisting the number of candidates to be called for interview. The Commission had also taken a deliberate decision to conduct the test in the premises of the Commission under their own supervision. This was done to ensure the conduct of examination in a most fair and impartial manner and to eliminate the use of unfair means and outside influence. Considering the large number of candidates and the administrative constraints it was decided to hold the test in four (4) batches. Every care was however taken to ensure uniformity of standard of the question papers so that no candidates could obtain undue advantage or suffer disadvantage against other candidates. The Commission is an expert body in the matter of conduct of examinations and selections for recruitment to

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civil services under Article 320(1) of the Constitution of India. In the opinion of the Commission the methodology adopted was best suited for the conduct of the screening test which was held in the most impartial and fair manner where merit and suitability was the sole criteria.

It is the experience of the Commission that some candidates who fail in the examination and do not measure upto the required standard of merit in any test try and obstruct the process of selection which otherwise would proceed most smoothly and which would ensure the selection of the most suitable and meritorious candidates. The present writ petition is a result of the same syndrome and is not maintainable against the answering respondent."

It is further explained :

"It is admitted that the screening test was conducted in 4 batches and each batch was given a separate paper. However, the allegation that this methodology had given any set of candidates undue advantage over the other or had put any candidates to any disadvantage is totally untrue and hence denied. The main purpose of holding the screening test was to test a candidate's overall mental acumen and his awareness of not only the problems relating to his own particular field of education but also his knowledge of topics of current and general interest and administrative ability in the educational institution. Though the papers set for different batches differed from one another, every care had been taken to maintain a uniform standard and patterns so that no candidate could have any advantage or suffer disadvantage against others. The methodology adopted fully kept in view the requirements of greatest objectivity, expeditious and speedy completion of results, equal and fair opportunity for all candidates and an atmosphere which was impartial and free from intimidation and undue influence."

It was also highlighted that the question papers were set keeping in view the syllabus prescribed.

(3) It is not disputed before us that the Commission is high constitutional body set up under Article 315 of the Constitution of India and is free to adopt its own methodology within the overall policy of recruitment to ensure objectivity, fair play, justice and

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equal opportunity to all candidates who aspire to join the State services. To consider the question of discrimination as agitated by the petitioners, one has to bear in mind the fundamental fact that there were more than five thousand applications for the posts advertised. As a matter of fact the Commission had visualised this contingency and had, therefore, notified in the advertisement itself that there may be a written test for shortlisting the candidates. The sole grouse of the petitioners, however, is that for purposes of screening, the Commission should not have made the candidates to answer different question papers and rather it should have held only one examination. The Commission has very well explained as to how and why it was done and we have nothing to doubt the *bona fides* of the Commission in this regard. As has been explained, the Commission took a conscious decision to conduct the test within its own premises and under its own supervision with a view to ensure the conduct of the examination in a most fair and impartial manner to eliminate the use of unfair means and outside influence. This, to our mind, was a laudable object to be achieved. We are further of the opinion that the Commission being a high constitutional body of experts, exercise of discretion by it cannot easily be doubted. Further every exercise of discretion, to our mind, is not an act of discrimination. It may become such an act only when the person against whom the discretion is exercised faces certain appreciable disadvantages which he would not have faced otherwise. No such situation arose in the case in hand. As has been highlighted by the Commission, the question papers were framed keeping fully in view the syllabus prescribed. We are also of the considered opinion that all that Article 14 of the Constitution guarantees is similarity of treatment which in a given situation may not be identical treatment. Equality specified in this Article cannot have the exactitude of a Computer. If the stand of the petitioners is to be taken as legally correct, then to our mind, every selection or appointment made as a result of a *viva voce* test is bound to be rendered bad as the experience shows that no two candidates are put the same or identical questions during the course of interview. We are, therefore, satisfied that examining the candidates for the above noted posts in four different batches was no act of arbitrariness on the part of the Commission nor was any discrimination involved.

(4) We thus see no merit in these petitions and the same are dismissed but with no order as to costs.

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P.C.G.

35066/HC