

Before I. S. Tiwana, J.

UTTAM SINGH,—Petitioner.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 2364 of 1985.

January 13, 1986.

*Constitution of India, 1950—Articles 14 and 19—Punjab Civil Service (Executive Branch), Class I Rules, 1976—Rules 2(c) 9(1)(5) & (6)—Rules envisaging yearly selection of candidates for recruitment to the service—Such yearly selection not made—Selection sought to be made subsequently for vacancies occurring in earlier years—Government circular also providing for separate nomination of vacancies concerning each year—Selected candidate not a Naib Tehsildar or Tehsildar and, therefore, not eligible in the year for which one vacancy sought to be filled—Such candidate eligible when selection actually made—Selection and appointment of such candidate—Whether violative of Articles 14 and 16—Selection as aforesaid—Whether can be said to be a direct appointment under Rule 2(c)—Holding of interview for selection not envisaged by the rules—Selection made thereby—Whether stands vitiated—Prescription of 40 per cent marks for interview—Whether arbitrary and liable to be struck down.*

*Held*, that the selected candidate not being a Tehsildar or Naib-Tehsildar in the year in which the vacancy occurred was not eligible to be considered and appointed against that vacancy although the selection and appointment was held in a subsequent year during which the said candidate was eligible. As such the appointment of the selected candidate was not in accordance with Rules 9(1), (5) & (6) of Punjab Civil Service (Executive Branch) Class I, Rules, 1976 and liable to be struck down as violative of Articles 14 and 16 of the Constitution of India, 1950. (Para 5).

*Held*, that rule 2(c) of the Rules defines direct appointment. It lays down that it means an appointment made otherwise than by promotion or by transfer of an official already in the service of the Government of India or a State Government. Persons in the service of the State Government are appointed to the service that is the Punjab Civil Service (Executive Branch) by way of promotion based on selection. It is only as a result of competitive examination that the names of the direct appointees are entered in the register maintained under the rules. As such the appointment made under rule 9 cannot be said to be a direct appointment.

(Para 4).

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*Held*, that the holding of the interview for the selection of future administrators and persons who have to man senior executive jobs appears to be well justified although the rules do not provide for an interview. It is to be borne in mind that in the case of promotion to the service from amongst Tehsildars and Naib-Tehsildars in the light of their service record recruitment is necessarily to be made from persons of matured personality and as such the interview test may be the only way subject to basic and essential academic and professional requirements being satisfied. Moreover, the mere suspicion that some element of arbitrariness might have entered the assessment in the viva voce test cannot take the place of proof and the selection made as a result thereof cannot be struck down on that ground. It is further to be borne in mind that in the very nature of things it would not be within the province or even the competence of the Court to judge the efficacy of the two tests i.e. the written test and the viva voce test. Of course, the marks for the viva voce must be minimal so as to avoid charge of arbitrariness but not necessarily always. There may be posts and appointment where the only proper method of selection may be by a viva voce test. It is for the expert bodies who are to determine the test which is best suited. As such the holding of interview and prescription of 40 per cent marks therefor for selection to the service is not arbitrary and, therefore, not liable to be struck down.

(Para 6).

*Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to :—*

- (i) send for the records of the case and after a perusal of the same ;
- (ii) issue an appropriate Writ, order or direction quashing the selection of Respondent No. 3 for appointment to Punjab Civil Services (Executive Branch) from Register A-1 (Tehsildars and Naib-Tehsildars).
- (iii) the respondents No. 1 and 2 may be directed to select and appoint the petitioner being the only eligible person ;
- (iv) by issuing a Writ of Prohibition, the Respondent No. 1 be restrained from giving appointment to Respondent No. 3 to the post of Punjab Civil Services (Executive Branch) till the decision of this Writ Petition ;
- (v) requirement of Rule 20(2) of the Writ Jurisdiction Rules may kindly be dispensed with ;
- (vi) this court may also issue any other suitable writ, direction or order which it may deem fit in the circumstances of this case ;
- (vii) the costs of this petition may also be awarded to the petitioner.

A. K. Chopra, Advocate, *for the Petitioner.*

S. S. Bajwa, Advocate, *for Respondent Nos. 1 and 2.*

Kuldip Singh, Senior Advocate with G. C. Gupta, Advocate, *for respondent No. 3.*

#### JUDGMENT

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(1) The petitioner impugns the selection and later appointment of respondent No. 3 to the Punjab Civil Service (Executive Branch) as envisaged by the rules known as Punjab Civil Service (Executive Branch) Class I Rules, 1976 (for short, the Rules). He pleaded the following facts.

(2) *Vide* its circular dated November 29, 1984 (Annexure P. 3) to all the Deputy Commissioners in the State, the State Government proposed to fill in six vacancies in the Punjab Civil Service (Executive Branch) from amongst the Tehsildars/Naib-Tahsildars against the quota of vacancies for the years 1978, 1980 and 1982, i.e., two vacancies which occurred and were earmarked for the year 1978 and similarly one and three vacancies earmarked for the other two years, i.e., 1980 and 1982 respectively. The Government desired the Deputy Commissioners to send through proper channel the nomination rolls of Tehsildars/Naib-Tehsildars who fulfilled the conditions prescribed in Rule 9(5) of the Rules. One of the material guidelines laid down in the circular of the Government (Annexure P.3) was that "separate nomination may please be sent in respect of vacancies concerning each year". As a result of this communication various Deputy Commissioners in the State recommended the names of various persons (Tehsildars/Naib-Tehsildars) including the petitioner and respondent No. 3 for their selection and appointment to the Service. After considering the service record of these recommendees the State Government directed four candidates including the petitioner and respondent No. 3,—*vide* its letter dated April 9, 1985 (Annexure P. 4) to appear for interview in the office of the Punjab Public Service Commission for their selection/recruitment against the quota of vacancies for the year 1978. As a result of this interview the Commission (respondent No. 2) recommended the name of respondent No. 3 for appointment to the service. He has since been appointed to the Service.

(3) The contention of the petitioner now is that though he himself having been appointed as a Naib-Tehsildar with effect from March 12, 1976,—*vide* order Annexure P. 1 was eligible to be so considered and appointed to the service, yet respondent No. 3 who had been appointed as a Naib Tehsildar for the first time,—*vide* order dated September 22, 1979 (Annexure P. 2) was not so eligible to be considered for selection or appointment to the vacancy earmarked for the year 1978. Besides this it is also maintained on his behalf that the Rules do not envisage any interview by the Commission or any other authority and this process of selection was derogatory to the Rules. It is further maintained by him that fixation of a high percentage of marks (40 out of 100) for interview alone by itself vitiated the selection by the Commission being unreasonable and arbitrary. As against this the stand of the Government is that though it is a fact that in the year 1978 respondent No. 3 was neither a Tehsildar nor a Naib-Tehsildar, yet at the time of the making of the recommendation by the Commission, he fully satisfied the requirement of Rule 9 and was thus eligible to be recommended by the Commission for appointment to the Service. It is also highlighted on its behalf that the Rules “do not lay down that a candidate recommended for a vacancy existing for a particular year should have been working as Naib Tehsildar/Tehsildar prior to the year for which a quota vacancy has to be filled in P.C.S. (E.B).” Respondent No. 2, the Commission, while refuting the stand of the petitioner with regard to the holding of the interview and the fixation of 40 per cent marks for the same as untenable being not violative of any rule, has highlighted that:—

“According to rule 15(3), it is the Commission which is to determine the merit of each candidate and recommend such of the candidates as are considered suitable for appointment to the service. For the purpose of determining the merit and suitability, it is the Commission to decide on the method of determining the merit of the candidates. The Commission was, therefore, fully empowered to hold interview in order to judge the suitability of the candidates for appointment to the State’s highest administrative posts. Service record, educational qualifications and experience cannot be made the sole criteria for selection and the interview of the candidates was considered the most appropriate method of determining the

overall result of the candidates for which 40 marks were allotted as per past practice, for the last more than 20 years. ... .. It is further stated that the intention behind holding the interview was to judge the candidate's aptitude, his mental alertness and the exploration of his depths and knowledge, his outlook towards various problems and also his overall personality in order to assess whether he could be able to discharge the duties of the post that are expected of him.

It may be worthwhile to mention here that total of 40 marks for interview were not in the hands of just any one member or the Chairman but vested in the Commission as a whole, which consists of Chairman and three/four other members."

No written statement has been filed on behalf of respondent No. 3.

(4) In order to appreciate the stand of the petitioner, a bird's eye view of the Rules is but necessary and is as follows.

Clause (c) of Rule 2 defines "direct ————— appointment" ————— to ————— mean ————— "an appointment made otherwise than by promotion or by transfer of an official already in the service of the Government of India or of a State Government". Rule 4 says that all appointments to the service shall be made by the Government in consultation with the Commission. Rules 7, 8 and 9 deal with the mode and manner of appointment to the Service, and read as follows :—

"7. Appointment to the Service shall be made in manner herein provided from amongst accepted candidates whose names have been duly entered in accordance with these rules in the Registers of accepted candidates to be maintained under these rules.

8. The following Registers of accepted candidates shall be maintained by the Chief Secretary to Government, Punjab, namely :—

(1) Register A-1 in which shall be entered the names of Tehsildars and Naib Tehsildars accepted as candidates ;

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- (2) Register A-II in which shall be entered the names of temporary members of Class II and members of Class III Service serving in connection with the affairs of the State of Punjab and holding ministerial appointments accepted as candidates ;
  - (3) Register A-III in which shall be entered the names of persons accepted as candidates from amongst Excise and Taxation Officers, Block Development and Panchayat Officers and District Development and Panchayat Officers serving in connection with the affairs of the State of Punjab ;
  - (4) Register B in which shall be entered the names of persons accepted as candidates as a result of competitive examination ; and
  - (5) Register C in which shall be entered the names of persons accepted as candidates from amongst officers or officials serving in connection with the affairs of the State of Punjab who are not covered by any of the categories of officers or officials herein before mentioned in this rule.
9. (1) Each Deputy Commissioner shall, at such time in a year as the Financial Commissioner, Revenue, may, by general or special order require, recommend to the Commissioner of the Division, the name of one Tehsildar or Naib Tehsildar posted in his District, whom he considers most suitable for appointment to the Service.
- (2) The Commissioner of a Division shall, forward the names recommended by the Deputy Commissioners under sub-rule (1) to the Financial Commissioner Revenue and may recommend to him the names of one or more persons from amongst the Tehsildars or Naib Tehsildars posted in the Districts under his charge, considered suitable by him for appointment to the Service.
- (3) The Financial Commissioner, Revenue shall consider the names of persons recommended by the Deputy Commissioners and the Commissioners and prepare a list, from

amongst such persons, of candidates considered suitable by him for appointment to the service and may include the names of any other Tehsildars and Naib Tehsildars considered suitable by him in such list;

Provided that the list prepared by the Financial Commissioner, Revenue, shall not contain names exceeding twice the number of candidates to be brought on Register A-I.

- (4) The list prepared under sub-rule (3) shall be submitted by the Financial Commissioner, Revenue to the Chief Minister through the Revenue Minister, each of whom may add any name to the list from amongst Tehsildars and Naib Tehsildars considered suitable by them for appointment to the Service and the list so prepared shall be treated as the final list.
- (5) The name of a person shall not be included in the final list unless he—
  - (a) is a confirmed hand and has completed ten years continuous service under the Government;
  - (b) was under the age of 45 years on the first day of November immediately preceding the date of submission of names by the nominating authorities; and
  - (c) is a graduate of a recognised University.
- (6) Each year at such time as the Government may require, the Financial Commissioner, Revenue shall submit to the Government the nomination rolls in Form I of persons borne on the final list prepared under sub-rule (4).
- (7) The nomination rolls submitted under sub-rule (6) along with the service record of the candidates shall be forwarded to the Commission which shall consider the merits of each candidate and recommend the names of the persons considered suitable for appointment to the service duly arranged in the order of merit.

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- (8) The names of persons recommended by the Commission under sub-rule (7), shall be entered in Register A-1 in the order in which they are recommended by the Commission."

Rule 12 deals with the persons to be recruited from the open market through a competitive examination and reads as follows :—

"12. (1) A competitive examination, hereinafter called "the examination", the regulations of which are contained in the Appendix III to these rules, shall be held at any place in the State of Punjab as and when notified by the Government through the Commission for the purpose of selection by competition of as many candidates for the service as Government may determine.

(2) Notice of the date fixed for the examination shall be published in the Punjab Government Gazette."

Rule 18 lays down the quota and rotation for appointment of the accepted candidates to the Service and the relevant part of it is as follows :—

"18. The Government shall make appointments to the Service in pursuance of rule 7 from amongst the candidates entered on the various Registers in a slab of 100 vacancies as follows :—

- (i) the first vacancy and thereafter every alternative vacancy shall be filled from amongst candidates borne on Register 'B'.  
 (ii) the 2nd, 8th, 14th, 20th, 26th, 32nd, 38th, 44th, 50th, 56th, 62nd, 68th, 74th, 80th, 86th, 92nd, 96th and 100th vacancy shall be filled from amongst the candidates borne on Register A-I."

In the light of these Rules the submission of Mr. A. K. Chopra, learned counsel for the petitioner is that Rule 9 and more particularly clauses (1) and (6) thereof as reproduced above, envisage yearly selection of candidates for Register A-1 and Rule 18 lays down the quota and rotation of the vacancies to be filled in by the candidates from Register A-1. The argument further is that had the



State Government prepared such a list of the candidates for being placed in Register A-1 in the year 1978 for filling in the vacancies meant for such candidates in that year, respondent No. 3 would not have been available for any such consideration and appointment as he had not been appointed as a Naib Tehsildar till September 22, 1979. According to the learned counsel, this respondent might have been available for consideration and recruitment for the subsequent vacancies meant for Tehsildars/Naib Tehsildars in the years 1980 and 1982 but he did not deserve any consideration for appointment against the quote vacancy earmarked for 1978. In support of his stand the learned counsel places firm reliance on a judgment of the Supreme Court in *Y. V. Rangaiah and others v. J. Sreenivasa Rao and others*, (1). That was a case wherein it was laid down that the eligibility of a candidate for purposes of promotion has to be seen at the time when the vacancy for such a candidate occurred. That too was a case where appointment to the Andhra Pradesh Registration and Subordinate service was to be made from a list of the approved candidates to be prepared every year in the month of September. For the vacancies that existed from September 1, 1976 to August 31, 1977 certain number of persons junior to the petitioners were appointed from the list prepared in May, 1976 in the light of the amended Rule 5 of those Rules and while upholding the setting aside of these appointment the Supreme Court observed as follows :—

“Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no question of challenging the new rules. But the

(1) A.I.R. 1983 S.C. 852.

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question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

To overcome this impregnable wall of judicial precedent, what is submitted by Mr. Kuldip Singh, Senior Advocate for respondent No. 3, was that it was not a case of promotion at all and was rather a case of direct recruitment to the service. I, however, see no merit in this stand of the respondent, neither this is the case of the State. Clause (c) of Rule 2 which has been reproduced above, defines 'direct appointment'. It lays down that it means an appointment made otherwise than by promotion or by transfer of an official already in the service of the Government of India or a State Government. Persons in the service of the State Government like the petitioner and respondent No. 3 are appointed to the Service, i.e., Punjab Civil Service (Executive Branch) by way of promotion based on selection. It is only through Register 'B' that persons are recruited by way of direct appointment. As per clause (4) of Rule 8 reproduced above, their names are entered in Register 'B' as a result of a competitive examination.

(5) A feeble argument was then raised by Mr. Kuldip Singh in the light of the various clauses of Rule 9 reproduced above to contend that choice of names of Tehsildars or Naib Tehsildars to be later placed in Register A-1 as a result of the recommendations of the Punjab Public Service Commission is not restricted to the Deputy Commissioners of the various Districts only but even the Commissioners of the different Divisions or the Financial Commissioner, Revenue Minister and the Chief Minister can keep on adding names of such Tehsildars/Naib Tehsildars of their choice and this is indicative of the fact that the appointment of these candidates to the Service is by way of direct recruitment and not promotion. I find this submission equally meritless. The entitlement of the various authorities, i.e., the Commissioners, Financial Commissioner, Revenue Minister and the Chief Minister to add the names to the list submitted by the Deputy Commissioners and to be later considered by the Punjab Public Service Commission does not mean that these authorities can recommend the names for such a consideration of any person or a person other than a Tehsildar or a Naib Tehsildar. These authorities have to restrict their choice

to the category of Tehsildars/Naib Tehsildars. This addition of names by these authorities did not make the recruitment of respondent No. 3 by way of direct appointment. He has been promoted to the Service by way of selection from the category of persons whose names were borne on Register 'B'. In the light of the binding precedent in *Y. V. Rangaiah's* case (supra) I have no hesitation in holding that respondent No. 3 being not a Tehsildar/Naib Tehsildar in the year 1978 was not eligible to be considered and appointed against a vacancy in the Service earmarked for the year 1978. His consideration along with the petitioner for such an appointment was clearly violative of Articles 14 and 16 of the Constitution.

(6) So far as the other aspect of the matter raised on behalf of the petitioner that the holding of the interview or the fixation of 40 per cent marks for the same has in any way vitiated the selection, does not commend to me. As per the averments made by the Secretary of the Commission, this method of selection of the names for being placed in Register 'B' has been in vogue for the last twenty years and is thus not only a hardend practice but has virtually assumed the status of a rule. The holding of the interview for the selection of future administrators and persons who have to man senior executive jobs appears to be well justified in the light of the averments made on behalf of the Commission which have already been reproduced above. To contend that fixation of 40 per cent marks for the interview leads to any arbitrariness, his learned counsel placed reliance on certain observations made by a Division Bench of this Court in *Shri Subhash Chander sharma and others v. State of Haryana and others*, (2). Besides the fact that this judgment has since been overruled by the Supreme Court in *(The State of Haryana and another v. Subhash Chander Sharma and others)* (3), I find that it was a case where the relevant rules envisaged a composite test for recruitment to the Service, i.e., viva voce and written test. What was highlighted by the Bench in this judgment was that the proportion of viva voce marks to the written test should not be so high that the argument of an intransic-arbitrariness of an oral test *vis-a-vis* a written test should sound plausible or be acceptable. Further that was a case of direct recruitment to the Service as a result of a competitive examination and interview by the Public Service Commission, Haryana. This

(2) 1984(1) S.L.R. 165.

(3) C.A. 10161/83 decided on 10th May, 1985.

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is not the situation here. The case in hand is a case of promotion to the Service from amongst Tehsildars/Naib Tehsildars in the light of their service record. While setting aside the judgment of the High Court, the Supreme Court in the above noted case has observed that mere suspicion that some element of arbitrariness might have entered the assessment in the viva voce test cannot take place of proof and the selection made as a result thereof cannot be struck down on that ground. While judging the efficacy of the two tests, i.e., the written test and the viva voce test, their Lordships approved the following earlier observations of Chinnappa Reddy, J. in *Liladhar vs. State of Rajasthan*, (4) :—

“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’.”

They further observed :—

“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 and not 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. .... While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate’s initiative, alertness, resourcefulness, dependableness, corporativeness, 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 can be evaluated perhaps with some degree of error, by a viva voce test, much depending on the constitution of the interview Board."

In the light of these weighty observations it is patent that in the case of services to which a recruitment has necessarily to be made from persons of matured personality, interview test may be the only way subject to basic and essential academic and professional requirements being satisfied. Such is the case in hand. I thus find no merit in the above noted submission of the learned counsel for the petitioner.

(7) In the absence of any other argument having been raised, I allow this petition and set aside the selection and later appointment of respondent No. 3 to any of the vacancies earmarked for the year 1978. For clarity's sake it is mentioned here that this, however, would be disentitle respondent No. 3 for consideration for any of the subsequent vacancies for which he may be eligible. I pass no order as to costs.

H. S. B.