

(2000) 08 PAT CK 0105
In the Patna High Court
Case No : C.W.J.C. No. 2130 of 1999

Awadh Kishore and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 166

Citation : (2001) 1 PLJR 91

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Shyama Prasad Mukherji, Gayanand Roy, in C.W.J.C. Nos. 2130 and 3232 of 1999, Ram Balak Mahto, Shivendra Kishore, Ajay, in C.W.J.C. No. 2641 of 1999, Bishnu Kant Dubey, Sunil Kumar Dubey, in C.W.J.C. No. 5989 of 1999, Ambar Nath Banerji, in C.W.J.C. No. 2546 of 1999, Rajendra Prasad, Pramod Kumar and Ritesh Kumar, in C.W.J.C. No. 2807 of 1999, for the Appellant; S.K. Ghosh, V.N. Sinha, Arun Kumar Tiwary, Maya Nand Jha, Sanjay Kumar, Lal Babu Singh for State, Ganesh Prasad Singh and Ajay Kumar Thakur, in C.W.J.C. No. 2546 of 1999, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The dispute in this batch of six writ petitions relates to appointment on the post of Medical Laboratory Technician in the Health Department of the Government of Bihar. The Petitioners seek quashing of the panel of selected candidates and the appointments, and a direction to prepare fresh panel in accordance with law.

2. The material facts are as follows. On 24.5.97 an advertisement was published inviting applications for appointment to the post of Medical Laboratory Technician from the candidates who had passed the I.Sc. or 10 Plus 2 examination and received Medical Laboratory Technicians (MLT) Training from any of the Institutes recognised by the Government of Bihar. Writ petitions being CWJC Nos. 5427/97, 8034/97 and 8051/97 were filed in this Court seeking direction to permit the candidates who had received the requisite training from the Institutes recognised

by other State Governments to apply for the post. By judgment and order dated 19.1.98 the writ petitions were allowed. As a matter of fact the State Government agreed to recognise the MLT training certificates granted by Institutions recognised by the Government of India and/or other State Government provided they are equivalent to MLT certificate granted by the Institutes situate in the State of Bihar and recognised by the State Government. The Department was accordingly directed to issue corrigendum permitting the candidates who had obtained such vocational certificates, and to take steps for appointment to the post in the light of the directions made in the judgment. In the meantime, during pendency of the writ petitions, it appears, the Department had taken steps in the recruitment process. An interview programme was published, though after the judgment, on 23.1.98 fixing 3.2.98 to 7.2.98 as dates for interview. However, soon thereafter in the light of the judgment, on 7.2.98 a corrigendum was published allowing fresh opportunity to the candidates, who could not apply pursuant to the earlier advertisement but were covered by the judgment, to apply for the post by 20.2.98. Fresh interview programme for the candidates who were permitted to apply by the advertisement dated 7.2.98, was published on 12.5.98 fixing 25.5.98 to 6.6.98 as the dates for interview. It is relevant to mention here that the dates were fixed and the candidates were called for "interview" on the basis of first alphabets of their names in both the interview programmes, schedules. Thus as per the first interview programme published on 23.1.98 the candidates having names beginning alphabets ? to ? were to appear for interview on the first date, the candidates having names beginning with letters ? to ? were to appear on the second date and so on. Similarly, as per the second interview programme, candidates having names beginning with letter ? were to be interviewed on 25.5.98. Those having names beginning from letter to were to appear on 26.5.98, those having names beginning with letters ? to ? were to appear on 27.5.98 and so on. A Selection Committee haH been constituted in the meantime on 24.12.97. After the process of interview was over, on 16.1.99 the Selection Committee decided to consider only those candidates for appointment who had secured 25% marks i.e. 10 out of 40 for which interview had been held. In the same meeting held on 16.1.99, a panel of selected candidates numbering 181 was finalised. On 8.3.99 by Memo No. 68, 157 candidates were issued appointment letters. On 18.3.99 by Memo No. 81, the rest 24 candidates were appointed. From the record it appears that on 26.3.99 one more candidate, by name Kamlesh Kumar was appointed by Memo No. 95. It is not clear as to how, 181 selected candidates having already issued appointment letters on 8.3.99 and 18.3.99 Kamlesh Kumar was issued appointment letter. However it is not necessary to go into this aspect of the case.

3. The first case out of the present batch of cases viz CWJC No. 2130/99 had been filed in the meantime on 25.2.99 along with application for stay viz I.A. No. 2856/99. On 18.3.99 this Court directed that no further appointment should be made to the post until further orders of the Court. Similar order was passed in

CWJC Nos. 2546/99 and 2641/99 on 23.3.99 and in CWJC Nos. 3232/99 on 9.4.99. On 11.5.99 further interim order was passed in CWJC No. 2130/99 to the effect that even if the appointees have joined the post and are functioning, their continuance shall not confer any additional right on them and will be subject to the result of these cases. It is relevant to mention here that the impugned appointments have been described (in the appointment letters) as temporary liable to be terminated without notice at any time.

4. It is also relevant to mention that soon after the impugned appointments were made, on application filed by the Petitioners vide IA No. 6680/99 in CWJC No. 2130/99, IA No. 6742/99 in CWJC No. 2546/99 and IA No. 6738/99 in CWJC No. 2041/99 some of the appointees were allowed to be added as Respondents. In this manner 20 candidates each have been impleaded as Respondents 5 to 24 in CWJC Nos. 2130/99 and 2546/99. In CYJC No. 2641/99 10 persons have been added all of whom however happen to be common to the added Respondents in CWJC No. 2546/99. Thus 40 appointees out of 181 (or 182) figure as Respondents in these cases. Some of them have filed counter affidavit in CWJC No. 2546/99.

5. Counter affidavits have been filed by the Department in four out of six petitions in hand viz CWJC Nos. 2130/99, 2546/99, 2641/99 & 3232/99. In CWJC No. 2130/99 the Department has filed supplementary counter affidavit as well.

6. The selection/appointments have been challenged primarily on the ground that they have been made on the basis of only oral interview. It is said that as per the past practice appointments should have been made on the basis of academic qualification, besides interview. It is contended that neither the State Government had taken any policy decision nor it was the term of the advertisement that the selection will be made only on the basis of interview. In any view, it is submitted, where recruitment is not made on the basis of written examination due weightage ought to be given to the academic performance of the candidates in order to avoid or at least minimise the chances of arbitrariness in the selection/recruitment process. The impugned selection/recruitment therefore is not in accordance with law.

7. The case of the Department is that in the advertisement issued on 24.5.97 itself it had been mentioned that selection will be made on the basis of interview. The selection made by the Selection Committee was finally approved by the Government and therefore it should be held that the Government had approved its decision to select the candidates securing at least 25% marks at the interview i.e. 10 out of 40 marks, fixed for the interview. It is submitted that where the recruitment is not governed by rules the Selection Committee is competent to fix the mode and criteria of selection. It is said that 25% was fixed as the qualifying marks as the post of Medical Laboratory Technician is a technical post and it was considered necessary fiat the person should have sound knowledge of the subject.

8. Before going into the larger question as to whether recruitment can be made only on the basis of oral interview, I would first like to settle certain disputes relating of factual matrix of the case. Though it is claimed by the Respondents in the counter affidavit that in the advertisement published on 24.5.97 the mode of selection had been mentioned as interview alone, there is nothing in the advertisement to buttress the Respondents' case. Clause 1 of the advertisement contains the invitation to the candidates to apply for the post, and also mentions the number of categorywise vacancies. Clause 2 mentions the pay scale and allowances, and Clause 3 the qualification, Clause 4 mentions the age limits. Clause 5 states that the appointment will be made as per the reservation roster, Clause 6 lays down that it is compulsory to enclose attested copies of educational/training certificates etc. and the photographs, Clause 7 lays down that the candidates belonging to reserved categories are required to enclose caste certificate granted by the concerned authorities, Clause 8 lays down that the candidates who are already employed in the government/semi-government institutions are required to submit their application through proper channel, Clause 9 provides that only handwritten applications will be entertained and the applications which are incomplete will not be taken into consideration, Clause 10 lays down that the candidate must be registered with an Employment Exchange in the State, Clause 11 mentions of time limit for submission of the application, Clause 12 mentions that the application should be addressed to the Director in Chief, Health Services, Bihar, Patna. Thereafter the advertisement lays down the proforma of the application. The proforma consists of 11 columns. The first column refers to the name of the post, the second refers to advertisement number, the third refers to the name of the Applicant, the fourth refers to the name of the father/husband, fifth refers to the permanent address, the sixth refers to the postal address, the seventh refers to the date of birth, the eighth refers to the educational qualification with full particulars of the examination viz marks secured, division, percentage of marks and remarks, the ninth refers to the caste certificate with respect to the candidates of reserved categories, in column 10 the candidate is required to mention the name of the concerned Employment Exchange and its registration number, in column 11 he is required to put his signature with date.

9. Counsel for the State referred to the note appended to the advertisement. By the said "note" the candidates were asked to present themselves in the office of Director in Chief, Health Services along with their original certificates/marksheet and the receipt showing submission of the application by registered post, on 20.6.97 for "interview". The submission of the counsel was that the "Note" clearly indicated that the selection/recruitment was to be made on the basis of interview. The submission is totally misconceived and unfounded. From bare reading of the "note" it is evident that appearance of the candidates on 20.6.97 was for the purpose of verification of the certificates marksheet etc., and though it was described as "interview", it cannot be understood in the sense of viva voce test. Candidates are often called for verification of their certificates the process of

verification may also be loosely described as interview. The term interview literally means "face to face" or "mutual sight" or "meeting". Appearance of the candidate before the authority brings him face to face with the authority. It may be for the purpose of some verification it may also be for the purpose of test. In the context in which the candidates were asked to appear before the Director-in-Chief on 20.6.97 it cannot be said that their appearance was for the purpose of viva voce test.

10. As a matter of fact, as indicated above, and rightly emphasised by the counsel for the Petitioners, the candidates were required to disclose their academic results including the marks, division, percentage etc. If all candidates possessing the minimum qualification as indicated in Clause 3 of the advertisement (supra) were to be treated on par and their merit was to be tested only on the basis of interview i.e. viva voce test, there was no necessity of requiring them to also disclose their marks etc. In agreement with the counsel for the Petitioners I am inclined to think that the requirement to disclose the marksheet etc. was intended to provide necessary information on the basis of which the academic performance of the candidates could be taken into account for the purpose of selection. It should be kept in mind that appointment to the post in question had admittedly been made in the past on the basis of academic results as well as viva voce test.

11. Another aspect of the case which belies the Respondents' stand is that if appearance of the candidates on 20.6.97 as per "note" was for the purpose of viva voce test the candidates would have been asked to appear before the Selection Committee and not before the Director in Chief alone. From the relevant file of the Department it appears that Selection Committee was only "reconstituted" on 24.12.97, that is to say; Selection Committee had been constituted earlier also.

12. Counsel for the Respondents sought to rely on the notes of the Health Commissioner dated 13.6.97 and minutes of the Minister thereon dated 14.6.97 enclosed as Annexure "A" to the counter affidavit in CWJC No. 2130/99. I have since looked into the file of the Department bearing File No. 22/Pra. 12-03/97, which was produced on the close of the hearing, particularly the note of the Additional Secretary Shri R.K. Shrivastava dated 9.6.97 on the basis of which the Health Commissioner put up his note dated 13.6.97. The Additional Secretary had indicated in clear terms that recruitment should be made on the basis of written test through Public Service Commission. In his note, vide para 5, the Health Commissioner referred to the advertisement and stated that from the advertisement it appeared that the recruitment was proposed to be made on the basis of interview, but the advertisement did not specify the inter se standard and marks with respect to experience, qualification and interview. In his opinion, where number of candidates is large, the recruitments are ordinarily made on the basis of written test and in the present case also, according to him, instead of making recruitment on the basis of interview it would be more appropriate to do

so on the basis of written test. However if recruitment was to be made on the basis of interview, before making selection it was necessary to fix the standards and marks for qualification, experience and interview. In para 9 while concluding his note, the Health Commissioner stated that decision on the issues may be taken later, for the present the candidates may be called for the scrutiny of their application for the purpose of short listing the numbers.(sic) this suggestion of the Health Commissioner with which the Minister agreed on 14.6.97. Neither any material was brought to my notice nor there is anything in the above mentioned file to show that at any stage thereafter, the State Government took any decision on the points indicated in the above said notes of the Health Commissioner or such decision had been taken earlier.

13. There is no doubt that where recruitment is not governed by statutory rule or, in the absence of statutory rule, by administrative circulars, it is open to the Government to take a decision consistent with Article 14 of the Constitution of India and lay down the norms, guidelines, methodology of the process of selection. I do not wish to go into the question as to whether such decision should be taken by the Council of Ministers or by the Minister Incharge which may depend on the Rules of Executive Business framed under Article 166 of the Constitution though I am inclined to think that being in the nature of policy decision it would to in the fitness of things if such decision is taken by the Council of Ministers. Be that as it may, in the present case no conscious decision to make selection only on the basis of interview was ever taken at any level. I have already mentioned above that in the past appointments to the post of Medical Laboratory Technicians had been made on the basis of academic performance, together with viva-voce test. The Additional Secretary and the Health Commissioner, it appears were of the view that the recruitment should be made on the basis of written test but if it was proposed to be made on the basis of interview, inter se weightage to be given to interview mark vis a vis academic result should be decided first. They never suggested that the recruitment should be made on the basis of interview alone. No Government order to the contrary on the point having been brought on the record of the case, or available in the Government file, I have no hesitation in holding that the decision of the Selection Committee to make selection on the basis of interview/viva voce test alone was without sanction of the Government.

14. On behalf of the Respondents it was submitted that in the absence of rules governing recruitment it is open to the Selection Committee to fix the norms and criteria. Reference was made to Ashok Kumar Yadav and Others Vs. State of Haryana and Others, . I am afraid reference to the judgment is somewhat misplaced. That decision has been rendered in the context of the Public Service Commission. The lesser selection bodies like the one in the present case consisting of the Director in Chief, two Deputy Directors and a Deputy Secretary of the Department cannot be treated at par with it. Reference was also made to Shri Janki Prasad Parimoo and Others Vs. State of Jammu and Kashmir and Others, . This decision was pressed into service to justify the fixing of cut off

marks (10 out of 40 i.e. 25%). Though observations made in para 19 of the judgment were made in the context of selection for promotion on merit. In the present case I do not find any fault in such decision of the Selection Committee.

Without going into the basis of fixing of 40 marks as total marks for interview, which suggests that remaining 60 marks were meant for academic results, so far as fixing qualifying marks of 25% is concerned, I am of the opinion that it was open to the Selection Committee to fix such a cut off marks in order to maintain the minimum standard in.

15. Now coming to the moot question as to whether the selection on the basis of viva-voce test alone was permissible, I called upon the counsel for the Respondents to cite a single case in which such selection has been upheld by the Supreme Court. Shri V.N. Sinha, Govt. Pleader No. 9, referred to Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, . The reference is again misplaced. That was a case of promotion to the post of Reader from amongst the Lecturers. As per the statutory rules selection was to be made by the Selection Committee by choosing the best amongst the Applicants in conformity with the minimum qualifications. There was no specific provision as to the procedure to be followed by the Committee. The Selection Committee decided to make selection by interviewing the candidates. This was resented by the concerned Respondents. The objection was found to be without any merit. It was in this context that the Court observed that where there is no specific provision regarding the procedure to be adopted by the Selection Committee, a procedure which is pragmatic, fair and functionally viable may be fashioned by the Selection Committee. It would thus appear that it was different case in which question for consideration was, where rules do not provide for selection on the basis of viva voce test, whether it was permissible to make selection on the basis of interview.

16. Reliance was then placed on Anzar Ahmed Vs. State of Bihar and others, . That was a case of recruitment for the post of Unani Medical Officer. The selection had been made on the basis of academic performance as well as viva voce test allocating 50% marks to each. The selection was held by the High Court to be vitiated on the ground of excess weightage to the viva voce test, and accordingly quashed. The Supreme Court held that the question of weightage to be given to the viva voce test as against the written examination would depend on the nature of selection/recruitment for the post/service and no hard and fast rule can be laid down. The Supreme Court noted that selection had been made as per the past practice i.e. allocation of 50% marks each for academic results and viva voce test, and holding that selection was not vitiated by allocation of 50% marks for the viva voce, set aside the judgment of this Court. At the end of judgment, the Court observed that on the basis of the letter of the State Government dated 20.9.90 "the Commission could have made the selection wholly on the basis of marks obtained at the interview". Heavy reliance was placed on the above observation. It is well settled that a judgment is an

authority on the point it decides. The point for consideration related to the extent of marks/weightage to be attached to the viva voce test. The said observation cannot be read as laying down law that selection can be made on the basis of interview alone.

17. Counsel for the State also relied on A.P. State Financial Corporation Vs. C.M. Ashok Raju and others, . Pointed reference was made to para 7 of the judgment in which it has been observed:

In the selections/promotions where only viva voce test is provided, no limit can be imposed in prescribing the marks for the interview.

The words of significance in the above observations are "Where only viva voce test is provided". Where the statutory rule or the Government order lays down the mode of selection on the basis of viva voce test alone the question would be different though it may still be open to challenge depending on the nature of recruitment and the service/post. As the Supreme Court has said, there cannot be any hard and fast rule relating to the method, manner or criteria of selection. The selection on the basis of written examination together with viva voce test may also be struck down if allocation of marks for the viva voce test is found to be excessive considering the nature and requirement of the service/post etc. It is not necessary to go into larger questions in the present case which stands on a different footing inasmuch as no decision was ever taken to make selection on the basis of viva voce test alone.

18. At this stage, in order to appreciate the manner in which selection has been made in the present case it is relevant to state that very large number of candidates appear to have been "interviewed" on particular dates raising a serious doubt about the efficacy and usefulness of the process. To bring home the point it would be useful to mention the figures of the candidates who are said to have turned up on different dates vide para 2 of the supplementary counter affidavit in CWJC No. 2130/99, as under:

(TABLE MISSING) The above chart/statement speaks for itself. It is beyond my comprehension as to how candidates as large as 91 or 84 (as a matter of fact 162 on 6.6.98) in number could be interviewed on single day, despite professed claim of the Respondents that the interview took place on some days even after 5 P.M. It may be stated that from the statement furnished by the Respondents (in para 2 of the Supplementary counter affidavit) it appears that number of candidates who were supposed to appear was much higher but many of them apparently did not turn up. The figures shown above are those of the candidates who actually turned up and were "interviewed". It may be recalled that the candidates were called for "interview" not by the numbers but by the first alphabets of their names, which explains why on 4.2.98 only 13 candidates (out of 20) appeared, while on 3.2.98, 91 (out of 116) appeared, and on 5.2.98, 98 (out of 133) appeared and so on. The arbitrariness is writ large. If the object of calling the candidates for "interview" was to test their merit it was ridiculous to

call only 20 candidates on 4.2.98, but 116 candidates on 3.2.98, 133 candidates on 5.2.98 and so on. Even if it is accepted that the interview continued till past 5 P.M. i.e. for 7-8 hours without any break (it would be an impossible situation), it would appear that on an average, when number of candidates was as high as 91 or 98 or 84, hardly 4 minutes" time could have been spent on each candidate, considering the time which is taken between one candidate leaving the venue of interview and other candidate coming in his place. It is the case of the Respondents themselves that the qualifying marks of 25% was fixed as the post was technical and it was necessary that they should have "sound knowledge of the subject as the duty entrusted to the Medical Laboratory Technicians concerned human body and lives of people". The academic result apparently and admittedly not having been taken into consideration and all candidates who possessed the minimum qualification having been treated at par, in my opinion, 4 minutes time can hardly be said to be sufficient to test the soundness of the knowledge of the candidates in technical subjects. The process of interview, if I may say so, was a complete farce.

19. Counsel for the Respondents relied on Sardara Singh and others, etc. Vs. State of Punjab and others, and submitted that selection on the basis of three minutes" interview on an average was upheld by the Supreme Court. That was a case of recruitment for the post of Village Patwari. The qualification for appointment to the post was Matriculation or Higher Secondary pass, knowledge of Hindi and Punjabi up to middle standard and good knowledge of rural economic and culture. Having regard to the nature of duties of the post the Supreme Court held that the educational qualification being apparent from the record, there was no need for any interview in this regard as candidates normally hailing from the rural background had presumptively good knowledge of rural economy and culture and therefore there was no need for special emphasis to ascertain their knowledge of the rural economy or culture. Considering the nature of the post of Medical Laboratory Technicians and duties thereof I do not think, the decision can be of any help to the Respondents.

20. To sum up the discussions, the recruitment process seems to be vitiated on more than one ground; (a) there was no decision of the State Government to make selection on the basis of viva voce test alone, (b) The recruitment having been made earlier on the basis of both academic performance and viva voce test, if the Department wanted to deviate from the practice, it should have obtained Government order. The Government in that case should have taken a policy decision laying down the methodology/criteria of selection, (c) The advertisement dated 24.5.97 did not lay down that the recruitment shall be made on the basis of viva voce test alone. The object of "interview" within the meaning and scope of "note" to the advertisement was verification of the certificates, marksheet etc. and not evaluation of the merit of the candidates, (d) Calling indeterminate number of candidates, between 20 and 167 was without any basis and arbitrary, (e) The interview of very large number of candidates upto 91 on 3.2.98, 98 on 5.2.98 or even 162 on 6.6.98 was a complete farce. On

the basis of these findings I have no hesitation in holding that the impugned selection/recruitment was not in accordance with law.

21. Shri Ganesh Prasad Singh, learned Counsel for the private Respondents in CWJC No. 2546/99 submitted that a large number of posts have remained vacant on account of non-availability of suitable candidates, it would serve the purpose of the Petitioners if direction is issued to the Respondents to take steps for fresh selection/recruitment without interfering with the selection/appointment already made. I regret, in view of the gross defects in the selection process going to the root of the matter, making the entire recruitment arbitrary, it would not be proper to ignore the irregularities and uphold the selection merely because posts are available against which Petitioners can compete.

22. Coming to the question of relief, as I have indicated at the outset, 40 appointees out of 181 (or 182) already figure as Respondents. It is true that right to be heard individually has accrued to each of the appointees but having regard to the fact that the appointments have been made on temporary basis with the liability of the services being terminated any time and without notice, I do not think rest of the appointees who are not before this Court can make any grievance in law if their services are terminated along with the private Respondents treating them at par. As indicated above, by order dated 11.5.99 this Court had made it clear that even if the appointees have joined the posts and are functioning, their continuance will not confer any additional right on them. It would be a travesty of justice if appointment of the private Respondents are set aside merely because they have been impleaded as Respondents without disturbing the appointments of the rest. Even if the consequential order were confined to the private Respondents, this Court could direct the Government to pass similar order with respect to others after giving opportunity of hearing to them.

23. In the result, these writ petitions are allowed. The impugned selection/panel dated 16.1.99 and the impugned appointment orders dated 8.3.99, 18.3.99 and 26.3.99 are quashed. The concerned Respondents are directed to take fresh steps for appointment to the post of Medical Laboratory Technician in accordance with law. There will be no order as to costs.