

(1986) 10 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 3659 of 1986

Baldev Setia and others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 26-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1986) 10 P&H CK 0018

Hon'ble Judges : M.R. Agnihotri, J;D.S. Tewatia, J

Bench : Division Bench

Advocate : J.L. Gupta and Sh. Rajiv Atma Ram, for the Appellant; B.S. Malik, Addl A.G. Haryana, Sh. Kuldip Singh and Sh. Ajai Lamba for Respondent Nos. 2 and 3., for the Respondent

Final Decision : Dismissed

Judgement

M.R. Agnihotri, J.—In these six Civil Writ Petition Nos. 3659, 3138 and 5799 of 1986 and 660, 705 and 5141 of 1987, filed under Articles 226 and 227 of the Constitution of India, prayer for the issuance of a writ of mandamus has been made by a number of Engineering Graduates for commanding the Haryana Public Service Commission to recommend their names to the State of Haryana for appointment against the forty-four posts lying vacant in the Haryana Service of Engineers Class-I, P.W.D (Irrigation Branch), required to be filled in by direct recruitment on the basis of open competition by the Haryana Public Service Commission in accordance with the Haryana Service of Engineers Class-I, P.W.D. Irrigation Branch, Rules, 1964. Since common questions of fact and law are involved in all these writ petitions, all of them are being decided by one and the same judgment, for which facts have been taken from C.W.P. No. 3659 of 1986 (Baldev Setia and Ors. v. State of Haryana, etc.).

2. Recruitment to the Haryana Service of Engineers Class-I, P. W. D. Irrigation Branch, is governed by the statutory Rules framed in 1964 in the joint Punjab, as amended by the State of Haryana from time to time under Article 309 of the

Constitution of India. According to these Rules, recruitment to Class-I Service is by two sources, that is, by promotion from Class-II, Service is also by direct appointment; provision for transfer of a Class I officer already serving in the Government of India or the State Government has also been made in the Rules. After 1974, according to Rule 5(2) of the aforesaid Service Rules, recruitment to the Service has been regulated so as to provide that number of Class I posts filled by promotion from Class Ist Service shall not exceed 50 per cent of the total number of posts constituting the cadre strength of Class I Service. According to Rule 7, the posts falling in the quota of direct appointments have to be filled up on the basis of selection by the Public Service Commission after holding a competitive examination as prescribed by the State Government. Sub-rule (2) of Rule 7 reads as under:-

The selection of candidates, including those belonging to the Scheduled Castes, Scheduled Tribes or Backward Classes, shall be made by the Commission, after holding a competitive examination, the syllabus for which shall be such as may be prescribed by Government from time to time. The Commission shall recommend the required number of candidates after arranging their names in the order of merit and indicating which out of them belong to Scheduled Castes, Scheduled Tribes or Backward Classes: provided that a candidate shall not be considered qualified for appointment unless he obtains not less than forty percent marks in each subject and not less than 50 per cent marks in the aggregate and no candidate who does not obtain the qualifying marks shall be called for interview by the Commission.

3. In order to fill up the vacancies falling in the quota for direct appointment, in the year 1979, a requisition was sent by the State Government to the Haryana Public Service Commission, on the receipt whereof the Commission advertised twenty-two posts of the Haryana Service of Engineers Class-I. On the basis of the selection made by the Commission, names of eight candidates were recommended by it to the State Government for appointment. In the year 1983, the State Government again sent a requisition to the Commissions for advertising twenty-three posts for making recruitment to the Haryana Service of Engineers Class-I. The Commission accordingly advertised the vacancies. Again in 1985, an advertisement was issued wherein a number of posts in the Public Health Branch as well as in the Buildings & Roads Branch were also added to the vacancies in the P.W.D. (Irrigation Branch), for which a combined competition was to be held by the Haryana Public Service Commission. The advertisement, Annexure P-6, reads as under:-

HARYANA PUBLIC SERVICE COMMISSION, CHANDIGARH, HARYANA SERVICE OF ENGINEERS EXAMINATIONS, 1985 (COMPETITIVE) Instructions and Information for Candidates- 1. A combined competitive examination for recruitment to the post of Assistant Executive Engineer (C) in the P.W.D. will be held by the Haryana Public Service Commission in August/ September, 1985, in accordance with the rules contained in H. S. E. Class I Rules of Haryana P.W.D Irrigation, B&R, Public

Health Branches as amended from time to time: X X X X X X.

Though in the advertisement it was specifically provided that for the Public Health Branch, the number of posts was 15 and for the Buildings & Roads Branch, the posts were 8, but there was no such indication made in the case of Irrigation Branch. All that was provided against category (iii), that is, relating to Haryana Service of Engineers Class I (Junior Scale), was that the posts in the P. W. D Irrigation Branch were also likely to be filled from suitable candidates from this very advertisement after the receipt of demand from the Government.

4. In response to the advertisement, though a number of persons had applied, yet only 500 persons, including the Petitioners, were called for the written test. Out of the aforesaid candidates who took the written test, only 66 persons, including the Petitioners, qualified the same and 63 persons out of them were called for interview. These interviews were held from 23rd to 27th of June, 1986. However, the Haryana Public Service Commission did not recommend the name of any persons having been selected as suitable for appointment to Class I Service of Engineers in the Haryana P. W. D Irrigation Branch, though for the Public Health and Buildings & Roads Branches of the P. W. D., the names of suitable persons were recommended by the Commission on 8th September, 1986. This has resulted in the situation that whereas no suitable candidate has been recommended to the Haryana Service of Engineers Class I for the vacancies falling in the quota for direct appointments, promote officers belonging to Class 11 Service of Engineers are being allowed to continue to hold these posts, of Class I Service meant for direct recruits, on ad hoc basis for a considerably long period. Aggrieved by this act of the Haryana Public Service Commission in not recommending the names of the Petitioners for appointment to the Haryana Service of Engineers Class 1. in the P.W.D., Irrigation Branch, by the State of Haryana, the Petitioners approached this Court by way of the present writ petition under Articles 226 and 227 of the Constitution of India.

5. In reply to the writ petition, the Haryana Public Service Commission has filed their written statement in which though the factual position has been admitted, yet the maintainability of the writ petition by the Petitioners and their right to appointment to the Service have been contested. According to the Commission, it had inherent jurisdiction to regulate its internal functioning and also to devise mode and method for the effective discharge of its constitutional functions under Article 320 According to it, it had evolved a criteria for selecting the most suitable candidates which did not violate or come into conflict with the statutory Service Rules framed under Article 309 of the Constitution. According to the Commission, the Service Rules provided for 50 per cent marks in the aggregate for eligibility of a candidate for viva voce examination. Since the recruitment was Class I Service, evidently the cut off line for final selection had to be higher than 50 per cent in the aggregate including the viva voce examination. This decision of the Commission to fix the cut off line at more than 50 per cent marks was perfectly in order to select the best talent out of the eligible candidates.

According to the Commission, their decision was wholly in accordance with law and there was no violation of any constitutional or statutory provision. Becoming aware of the decision of the Haryana Public Service Commission and the process of selection adopted by it, the Petitioners sought permission to amend their writ petition which was accordingly allowed on 22nd July, 1987. After the receipt of the reply filed by the Commission to the amended writ petition, a replication was also allowed to be filed by the Petitioners on 1st October, 1987.

6. Mr. Jawahar Lal Gupta, learned Senior Advocate, appearing on behalf of the Petitioners has, in the first instance, in order to challenge the impugned act of the Haryana Public Service Commission in adopting their own criteria for selection and in not recommending for appointment the names of the candidates found eligible according to the Service Rules framed by the State Government, contended that once the statutory rules have been made under Article 309 of the Constitution, for making recruitment to a certain Service, through different sources, it was no longer open to the State Government to deviate from the quota belonging to one source of recruitment and to make appointments exclusively from the other source. According to the learned Counsel, any appointment made in disregard of the quota provided in the statutory Service Rules was in violation of Article 16 of the Constitution of India. Strong reliance has been placed by the learned Counsel on the law enunciated in the cases reported as *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, *Gurmail Singh v. The State of Punjab* 1971 (1) S.L.R. 128, *Nanjundaswamy N. and Anr. v. State of Karnataka* 1980 (1) S.L.R. 836, and *Amarjit Singh and Ors. v. State of Haryana* 1984 (3) S.L.R. 414.

7. With respect to the learned Counsel, the argument is misconceived. The question of violation of quota would arise only if either there is refusal on the part of the Haryana Public Service Commission to hold a selection for direct recruitment on the basis of combined competition, etc. or on the part of the State Government in filling the posts by direct appointment out of the eligible and qualified persons available for the same. In the present case, firstly, no requisition whatsoever was placed by the State Government with the Haryana Public Service Commission for making a selection to the posts of Haryana Service of Engineers Class I and the Commission of its own, anticipating the receipt of such a requisition in due course, issued an advertisement for holding a combined competition for the P.W.D., Building & Roads and Public Health Branches, as also for the Irrigation Branch. Secondly, even on the basis of the competition held, no list whatsoever of the selected candidates has been forwarded to the State Government, making any recommendations for appointment to the Haryana Service of Engineers Class I, in the P.W.D Irrigation Branch. In such a situation, it cannot be attributed at all to the State of Haryana that it had the intention of violating or by-passing the statutory Rules. If as a result of the whole process, promote officers belonging to Class II Service are being allowed to continue to hold on ad hoc basis the posts falling in the quota of direct recruits, it is only a fortuitous circumstance which is neither going to confer any right of promotion or

seniority on them, nor can it be helped.

8. Supplementing his submissions, Mr. Gupta has further contended that when the posts belonging to the quota of direct appointments are available and are lying vacant to be filled up out of the direct recruits, the State Government is duty bound to fill those posts by obtaining the list of qualified candidates from the Haryana Public Service Commission and to make the appointments on the basis thereof. The learned Counsel has invoked to his aid the judgment of the Supreme Court in *Neelima Shangta v. State of Haryana* 1986 (3) S.L.R. 389, in order to fortify his contention.

9. Again, with respect to the learned Counsel, *Neelima Shangla's* case (supra) is not an authority for the proposition that if the Commission has not recommended any candidate suitable for appointment to a certain post, the State Government can obtain, by demand or by authority from the Commission a list of qualified or eligible candidates, no matter whether they come up to the expectations according to the criteria laid down by the Public Service Commission for suitability or not. The Supreme Court in *Neelima Shangla's* case (supra) has only laid down that unless there are cogent and convincing reasons, the State Government cannot refuse to make appointments out of the list of qualified, eligible or suitable candidates recommended by the Public Service Commission, if the vacancies are available against which such appointments can be made. In a situation like the present one, where the Public Service Commission has not found any candidate suitable for being recommended to the State Government for appointment to the Haryana Service of Engineers Class I, the mere fact that the posts are lying vacant does not empower the State Government to insist upon the Public Service Commission to send the list of non-suitable but found eligible candidates for appointment. Thus, the second contention of the learned Counsel for the Petitioners is also without force and is repelled.

10. Mr. Gupta then proceeded to contend that if the statutory Rules have fixed a certain criteria for selection of the candidates by providing certain pass percentage in a written test or viva voce, the Public Service Commission is bound by the criteria fixed by the statutory Rules and cannot evolve its own criteria by increasing the pass percentage for qualifying the competition. According to the learned Counsel, prescription of different criteria by the Public Service Commission, rendering the candidates who have qualified according to the criteria laid down by the statutory Rules, as ineligible, would be wholly without jurisdiction, arbitrary and violative of Articles 309 and 320 of the Constitution of India. The crux of the argument of the learned Counsel for the Petitioners is that the Public Service Commission is only an advisory body which is supposed to function according to the guidelines provided in Article 320 of the Constitution and while discharging these duties, the Commission is not competent to violate the rules framed under Article 309 of the Constitution. In support of his aforesaid, submission, the learned Counsel has placed reliance on the judgments in *P.K. Ramachandra Iyer etc. v. Union of India* 1984 (1) S.L.J. 474, and *Umesh*

Chandra Shukla Vs. Union of India (UOI) and Others,

11. Mr. Kuldeep Singh, learned Senior Advocate appearing on behalf of the Haryana Public Service Commission, has vehemently to refute the contention of the Petitioner by submitting that it was always open to the Public Service Commission or for that matter any other selecting authority, to adopt a criteria of prescribing higher qualifications by way of minimum standard of performance to be achieved by the qualifying candidates. According to the learned Counsel, this is not only permissible but essential in the nature of things to ensure better efficiency and better merit amongst the selected candidates. Merely because higher qualifications than the minimum laid down in the statutory Rules have been insisted upon does not amount to any alteration or amendment of the statutory Rules. Rather, it would be in conformity with the laudable object of selection of persons with better merit, as has been held by a Division Bench of this Court in *Sant Lal and Ors. v. The State of Haryana and Ors.* 1978 (1) S.L.R. 133. Mr. Kuldeep Singh has distinguished both the judgments cited by the learned Counsel for the Petitioners by drawing our attention to the rules which were being considered by their Lordships of the Supreme Court in those cases. In *P.K. Ramachandra Iyer's case* (supra), their Lordships were examining the language of Rules 13 and 14 of the Indian Council of Agriculture Research Rules,

1977, which are reproduced in para 43 of the judgment, as under:-

13. Candidates who obtain such minimum marks in the written examination as may be fixed by the Board in their discretion shall be summoned by viva voce.

14. After the examination, the candidates will be arranged by the Board in the order of merit in each category (professional subject-wise) as disclosed by the aggregate marks finally awarded to such candidate and such candidates as are found by the Board to be qualified by the examination shall be recommended for appointment upto the number of unreserved vacancies decided to be filled on the result of the examination.

Since the selecting authority in that case had prescribed a minimum qualifying marks to be obtained by the candidate at the viva voce test, their Lordships held that "The additional qualification which ASRB (selecting authority) prescribed to itself, namely, that the candidate must have a further qualification of obtaining minimum marks in the viva voce test does not find place in Rules 13 and 14, it amounts virtually to a modification of the Rules.....the ASRB in prescribing minimum 40 marks for being qualified for viva voce test contravened Rule 14, inasmuch as there was no such power in the ASRB to prescribe this additional qualification, and this prescription of an impermissible additional qualification has a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidate at written test plus viva voce test." Similarly, in *Umesh Chandra Shukla's case* (supra), the Rules before their Lordships of the Supreme Court were 17 and 18 of the Delhi Judicial Service Rules, 1970, which read as under:-

17. The Selection Committee shall call for viva voce test only such candidates, who qualified at the written test as provided in the appendix.

18. The Selection Committee shall prepare a list of candidates in order of merit. Such list will be forwarded to the Administrator for filing the vacancies then existing or any vacancy that may occur within a period of one of year of the preparation of the list.

It was in this context that their Lordships held in para 14 of the judgment that, "The High Court had no power to eliminate the names of candidates who had secured less than 600 marks in the aggregate after the viva voce test, reference has to be made to Rules 17 and 18 of the Rules which provide that the Selection Committee shall call for viva voce test only such candidates who are qualified at the written test as provided in the Appendix and that the Selection Committee shall prepare the list of candidates in order of merit after the viva voce test. There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates

in the final list..... We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in this Appendix."

12. However, in the present case, Rule 7(2) of the 1964 Service Rules, as quoted above, is wholly different in its language as well as in its import and spirit, than the rules in the aforesaid two cases before the Supreme Court. There is no such mandate in Rule 7(2) *ibid* which requires the Public Service Commission to forward the list of all the candidates who have qualified according to the pass percentage prescribed in the Rules. On the other hand, the Commission has to recommend the required number of candidates, after arranging their names in the order of merit, obviously as considered fit and suitable by it. The only proviso which imposes a rider on the authority of the Commission supports the Commission's stand that while recommending the names, the Commission must ensure that no person should be called for interview who did not obtain the qualifying marks in the written test and should not be recommended for appointment if he had not secured at least 50 per cent marks in the aggregate. There is no such fetter imposed on the power of the Commission to prescribe higher, pass percentage for deciding the suitability of the candidates. Thus the contention of the learned Counsel for the Petitioners is without any force and is rejected.

13. Finally, Mr. Gupta has contended that assuming for the sake of argument that the Commission was competent in law to prescribe its own criteria for selection of suitable candidates, which was different from one prescribed/ by the statutory Rules, at least the criteria prescribed by the Commission should have been a reasonable, logical and workable one, so as to further the cause of selection and not to frustrate and defeat its very purpose. According to the learned Counsel, if

the criteria adopted by the Public Service Commission has resulted in the non-selection and non-recommending of a single candidate for the post, such a criteria should be struck down being wholly arbitrary leading to incongruous anomalous and perverse results, inasmuch as if the criteria adopted by the Commission is to be adhered to, then even if a person has qualified the written test according to the pass percentage prescribed by the State Government, he cannot be selected even if he secures 100 per cent marks in the viva voce.

14. In fact, the argument is of desperation. Still, Mr. Kuldip Singh has refuted the same by invoking to his aid a recent Division Bench judgment of this Court in C.W.P. No. 1313 of 1986 (Ram Bhagat Singh v. The State of Haryana, etc. C.W.P. No. 1313 of 1985), dated 5th June, 1987. Incidentally, this also happens to be a case of selection by the Haryana Public Service Commission with regard to Haryana Civil Service, (Judicial Branch). Considering the law laid down by the Supreme Court in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, regarding the manner in which written test, interview, etc. are to be held, H.N. Seth, C.J., repelled a similar contention by holding as under:-

The purpose behind Rule 8, when it provides that no candidate shall be considered to have qualified unless he obtains at least 55 per cent marks in the aggregate of all papers, including viva voce test, clearly is to lay down a standard for judging the fitness or suitability of a candidate for appointment as Sub Judge. As it was, at the time when Rule 7 was framed, possible for a candidate securing merely 45 per cent marks in the aggregate in written papers to obtain 55 per cent marks in aggregate of all the papers including written and viva voce test, (marks allocated for viva voce test being 200), the Rule provided that persons securing less than 45 per cent marks in the written papers, i.e., persons who could not, even if they secured 100 per cent marks (200 marks) in the viva voce qualify for selection, are not to be called for interview. Its purpose merely was to avoid futile interviews. However, when as a result of guideline laid down by the Supreme Court in Ashok Kumar Yadav's case (supra), the Commission reduced the marks for interview/viva voce test from 200 to 120, its purpose was not to dilute the standard set up by Rule 8 for judging the suitability or fitness of a candidate for the job in the Service. It is true that as a result of reduction in the marks allocated for viva voce test from 200 to 120, calling of the candidates securing between 45 per cent and 49 per cent marks in the written papers, for interview or viva voce test, has become redundant, but then it, in our opinion, has absolutely no impact on the standard set up by Rule 8 for judging the fitness or suitability of a candidate for the job. Merely because some candidates who could not possibly qualify, have been interviewed, it does not mean either that any legal right of theirs has been affected or that any prejudice is caused to them. In the result, we find that the incongruity pointed out by the Petitioners is not such, which, in any way, affects the validity either of the provisions contained in Rule 8 or that of their non-selection.

15. No other contention has been urged by the learned Counsel for the parties.

16. In the result, all these six writ petitions are dismissed, without any order as to costs

Sd/- D.S Tawatia, C.J.

I agree.