

(1995) 02 DEL CK 0067
In the Delhi High Court
Case No : Civil Writ No. 1175 of 1992

Gajender Vohra

APPELLANT

Vs

The Chief Justice and Another

RESPONDENT

Date of Decision : 21-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 1 AD 1059 : (1995) 58 DLT 610

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; E.X. Joseph, Senior Advocate and S.T. Siddiqui, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—This writ petition under Article 226 of the Constitution of India was preferred initially on 11th March/1992, seeking directions against the respondents to declare the result of the selection test held on 16th September, 1990 for the posts of Superintendent/Court Master and to immediately appoint the person selected therein against the vacancies falling under 25% selection quota.

2. The background in which the petition came to be filed may be stated that on 15th September, 1972, the Delhi High Court Establishment (Appointment & Conditions of Service) Rules, 1972 (hereinafter referred to as "the Rules") came into force. The first test for selection to the post of Court Master/Superintendent under the Rules was held in 1972 and a panel of successful candidates was prepared. The second test for selection to the said post was held in 1974 and a panel of successful candidates was prepared. The third test for selection took place in 1983 for the post in question in which a panel of 29 successful candidates was prepared. The fourth test for selection was held on 26th October, 1985 in which a panel of 12 successful candidates was prepared. In the first three selections, appointments were given to all the candidates, who were

empanelled. In the fourth test, out of the 12 empanelled candidates, appointment was given only to the first three candidates. On 16th August, 1988, Rules were amended providing for filling up of 75% posts by promotion on the basis of seniority cum suitability and 25% by selection by merit on the basis of written test and interview. On 28th August, 1990, a notification (Annexure-P1) was issued for filling up of two posts of Superintendent/Court Master under selection quota. Examination in pursuance to the notification was held on 16th September, 1990 in which 36 candidates appeared. Result of the examination was not declared. Pending declaration of the result, in the month of October, 1990, 8 posts of Superintendent/Court Masters were filled up under the seniority quota and in November, 1991, 5 more posts were filled up under the seniority quota. The candidates, who had appeared in the written test, made representations to the respondents for declaration of the result and for filling up of the posts under the selection quota. Result was not declared which necessitated in the petitioner approaching the Court by filing the writ petition.

3. Notice in the petition was issued on 21st May, 1992 and on 21st July, 1992, an order was made restraining the filling up of the post of Superintendent/Court Master even under the promotion quota either on regular or on ad hoc basis. It was made clear that the restraint order will not debar the respondents from declaring the result of examination held in September, 1990 or for making appointments pursuant to the declaration of the result. On 7th August, 1992, result of the written examination was declared. When the matter came on 10th August, 1992 before the Court, it was noticed that though the result had been declared but selection had not been made. The following order was passed by the Court:--

"It is indeed unfortunate that of all the organisations it is this Court which has not filed a reply despite another opportunity having been granted to it on the last date of hearing. At the time of arguments we were first informed that a result has been declared of the examination which was held in September, 1990. We, however, find that this statement is only partially correct. On 7th August, 1992, a document appears to have been issued under the signature of the Registrar of this Court giving ten roll numbers of candidates who have qualified in the written test and it is further stated therein that "The date(s) of interview will be intimated to the successful candidates later on". The declaration of the result pursuant to the examination held in September, 1990 should have ordinarily meant the selection of the candidates within the quota but by this document of 7th August, 1992 no final selection has yet been made. It is quite obvious that this document has been issued on the last working date prior to today keeping in mind the hearing of the writ petition today, while making no attempt to file any reply to the writ petition. By observing that the dates for interview will be intimated later on also does not indicate as to when the process of selection, commenced two years ago, will be completed.

The respondents should inform this Court on the next date of hearing as to when

the interviews are expected to be held. The interim orders restraining any appointment to the post of Superintendent/Court Master would continue till the next date of hearing and if any appointment of Superintendent/ Court Master on ad hoc basis has already been made and its term comes to an end on or before the next date of hearing, that ad hoc appointment shall not continue. Adjourned to 27th August, 1992.

We are informed by Mr. S.C. Rawal, Dy. Registrar, who is present in Court, that there are 13 persons who are working as ad hoc Superintendent/Court Masters. We make it clear that unless appointments as a result of the examination in question held in September, 1990 are made on or before 31st August, 1992, the ad hoc appointment of the said 13 incumbents shall not continue beyond that date."

4. The case was taken up by Division Bench on 31st August, 1992 and a statement was made on behalf of the respondents that appointment orders of the candidates, who had taken examination in 1990 will be issued on that date. Obviously, interviews were held prior to the said date. Interim order which had been passed by the Court earlier was thus modified by passing the following order;--

"It is stated by Counsel for the respondents that the appointment orders of the candidates who had taken the examination in 1990 will be issued today. In these appointment orders are issued today, the interim order passed by this Court earlier in this writ petition shall stand automatically vacated.

To come up for hearing on 28th September, 1992."

5. That since the petitioner had not been selected in the interview and no panel for successful candidates had been prepared as a result of the interview, the petitioner sought amendment to the writ petition by filing an application, which was allowed on 28th September, 1992. In the amended writ petition, which alone is now to be decided, the petitioner has sought issuance of direction seeking the quashing of notification dated 28th August, 1990 to the extent to which it prescribes for interview more than 12.5% marks and the condition that only those candidates who secure 50% marks in the interview shall be considered qualified. Simultaneously, a writ of mandamus has been sought for declaration of the select list of the candidates, in the order of merit, prepared on the basis of the aggregate of marks obtained by them in the written test and interview held in pursuance of the Notification dated 28th August, 1990 and to appoint at least five persons, out of the select list against five admitted vacancies under the selection quota notwithstanding the fact that the selection process was started for filling up two vacancies which were available at the relevant time of issuing of the notification dated 28th August, 1980. After the respondents filed their counter, rule was issued on 12th March, 1993.

6. The contention of the petitioner is that 25% of the vacant posts of Court Master/Superintendent are to be filled up by selection on merit on the basis of

written test and interview from out of the feeding categories mentioned in 2nd Schedule against items 9, 10, 11, 13, 14 and 16 of Clause (3) as per amended Rules. The Rules nowhere prescribe the mode and manner of selection though it prescribes minimum qualification for the post. The main challenge is to the last part of the notification dated 28th August, 1990, which provides that only those candidates who secure in addition to 50% marks in each of the written papers 50% marks in interview shall be considered qualified for being appointed.

7. The relevant stand which the parties have taken in their respective pleadings is not being noticed at this stage and will be noticed while considering respective submissions made at the bar.

8. The petitioner's contention is that allocation of 50% marks in interview, out of total marks of 250, assigned for selection is illegal, arbitrary and unconstitutional. The second submission is that the condition of obtaining minimum 50% marks in interview itself is illegal, arbitrary and ultra virus of the Rules and amounts to adding a qualification, which is not otherwise prescribed in the Rules. The third submission made is that since the Rules provide the for mode of appointment under the selection quota as selection on merits on the basis of written test and interview, Therefore, the final result is to be determined on the basis of the aggregate marks of both written test and interview and not by providing separate qualifying marks each for written test and interview. The fourth submission is that at the end of selection process consisting of written test and viva voce, as per the merit of the candidates determined on the basis of the aggregate of marks in the written test and viva voce, a panel ought to have been prepared and in the absence of any provision in the Rules, as regards the validity period of the panel appoint- merits against the existing vacancies be ordered. It was also submitted that the condition in the impugned notification of obtaining 50% marks for interview for becoming qualified for selection is a qualification prescribed by an administrative instruction and is not a condition in the Rules. Thus the administrative instruction is ultra virus of the Rules and deserves to be struck down.

9. The submission on behalf of the respondent is that the detailed procedure regarding written test and interview to judge the merits of candidates has been laid down by administrative decision which has been valid for quite some time past. Competence of the Chief Justice to lay down administrative instructions is not under challenge. Even the procedure laid down for written test is not under challenge, Therefore, the challenge to the procedure laid down for the interview is meaningless. Since the Rules require that selection will be made by merit on the basis of written test and interview, the administrative order issued in regard to the procedure laying down that in interview only those candidates who secure 50% marks shall be considered as qualified, are not contrary to Rules. In order to determine merit, administrative instructions have been issued, which are rational and relevant for the posts in question. 25% marks for interview are very reasonable. Interview is one of the recognised mode of selection and to judge

suitability of a candidate for the post in question. The petitioner having himself appeared in written test and interview and having remained unsuccessful cannot be permitted to challenge the same. Learned Counsel for the parties have also placed reliance upon number of decisions in support of their submissions.

10. Rule 7 of the Rules says that except for appointment on officiating, temporary or ad hoc post, the mode of and qualifications for appointment to the post specified in Schedule-II to the rules shall be as stated therein. Posts of Superintendent and Court Masters are at Serial Nos. 4 and 5 in Schedule-II. 75% posts are required to be filled up by promotion on the basis of seniority-cum-suitability and 25% posts by selection on merit on the basis of written test and interview. Schedule-II of the Rules lay down the minimum qualification for appointment to the post along with the mode of appointment by promotion as well by selection. Notification (Annexure-PI) dated 28th August, 1990 was issued inviting applications from candidates possessing requisite qualifications. The notification also contain the relevant rule. It reads:

It is here by circulated for the information of the officials of this Court that the Examination for two posts of Superintendent/Court Master will be held on Sunday, the 9th September, 1990.

The qualifications and eligibility for appearing in the aforesaid Examination are given in the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972. The relevant provisions thereof as amended till date are reproduced below:--

Rule 7:

"Except for appointment on officiating temporary/or ad hoc basis; the mode and qualification for appointment to the post specified in Schedule II to these rules shall be as stated therein."

Items 4 and 5 of Schedule II

Sr. No. Category of post Minimum qualifications prescribed for appoint-to the post. Mode of appoint intment.

1. 2. 3. 4.

4. Superintendent (Promotion/ Selection post) (a) 5 years service if any of the posts of categories 9, 10, 11,13,14&16 of Class III mentioned in Schedule-I. (a) 75% of the vacant posts by promotion on the basis of seniority-cum-suitability from joint seniority list of categories 9, 10, 11, 13, 14&16 of class III mentioned in Sch.I.

(b) 5 years service in any of the posts of categories 9, 10, 11, 13, 14&16 of Class III mentioned in Sch.-I. (b) 25% of the vacant posts by selection on merit from categories 8 (B).9,10, 11, 13, 14&16 of

5 years service in the post of category 8(B) provided the incumbent has also

rendered at least 5 years service in any of the categories 9, 10,11, 13, 14&16 of Class III mentioned in Schedule-I. Class III mentioned in Sch.I on the basis of written test and interview.

5. Court Master Promotion/ Selection post) (a)For members of the Establishment of this Court-5 years service in any of the categories 9,10,11,13,14&16 of Class-III mentioned in Sch.1 (a)75% of the vacant posts by promotion on the basis seniority-cum-suitability from joint seniority list of categories 9, 10, 11, 13, 14&16 of Class-III mentioned in Sch.I.

Post) (b)(i) For members of Establishment of this Court:-5 years service in any of the posts of categories 9, 10, 11, 13, 14&16 of Class-III mentioned in Sch.-I. (b)i) 25% of the vacant posts by selection on merit from categories specified in column 3(b) (i) & (ii) on the basis of written test and interview

5years service in the post of category 8(b) provided the incumbent has also rendered at least 5 years service in any of the posts of categories 9, 10, 11, 13, 14, &16 of Class III mentioned in Sch.I.

(b) (ii) XXXXXXXX (b)(iii)XXXX

b) (iii) XXXXXXXX

The candidates who fulfill the requisite qualifications and desire to take the test may submit their applications giving full particulars of their service and educational qualifications on or before 4.9.90. The following syllabus for the post of Superintendent/Court Master has been approved:--

Written Paper 100 Marks

Time three hours.

(i) High Court Rules and Orders Volume v.

(ii) Delhi High Court (Original Side) Rules, 1967.

Written Paper II 100 Marks

(i) Indian Limitation Act, 1963 (Sections only)

(ii) Court Fees Act, 1870 (Sections only)

(iii) Civil Procedure Code:--Part-VII (Appeals) and Part-VIII (Reference, Review and Revision); Order 5, 22, 32, 41 and 44.

(iv) Criminal Procedure Code: Sections 28 to 31, 373 to 405.

Interview 50 Marks

In the interview a practical oral test will be given in (i) reading, hand-written English, Hindi and Urdu documents and (ii) familiarity with records of the High Court & Lower Courts & Law Reports & Law Books.

Candidates who secure 50 per cent marks in each of the written papers shall be called for interview and only those who secure 50 per cent marks in interview shall be considered qualified.

Sd/-

(LOKESHWAR PRASAD)

REGISTRAR

Endt No.____/Estt. Dated:- 8.8.90"

11. The notification would show that in order to judge the merit, candidates are first required to appear in the two written papers of 100 Marks each. Candidates securing 50% marks in each of the written papers are considered to be qualified for being called for interview for which 50 marks are provided and only those candidates securing 50% marks in interview are to be considered as qualified. The challenge, as noticed above, is three fold: Firstly, that 50 marks out of 250 for interview are too high. The second being that rules nowhere provide for a minimum 50% marks in each paper as a qualification for being called for interview and the additional requirement of obtaining 50% marks in interview, if a candidate otherwise qualifies in written test, is contrary to the spirit of the Rules, in case Rule is literally interpreted, it is likely to work injustice and there may be instances when even less meritorious candidates being selected. There are chances of less meritorious candidates getting a march over a meritorious candidates. For example, a person securing even 98% marks in written test in case per chance gets 49% marks in interview will not be able to get appointment though a candidate securing 51% marks in written test and getting 51% marks in interview would get appointed.

12. As regards the first ground of challenge, the same in view the decision in Lila Dhar Vs. State of Rajasthan and Others, is not capable of being accepted. In Lila Dhar's case, it was held that the weight to be given to the interview test should depend upon the requirement of service to which recruitment is made, the source material available for recruitment the composition of interview board and several like factors. In that case 25% marks allotted to viva voce were held to be reasonable for selection to the post of Munsif.

13. In the instant case, keeping in view the nature of the posts and qualifications prescribed for candidates and the fact that interviews were to be conducted by High Court Judges, it cannot be said that allocation of 20% marks for interview out of total marks assigned for selection is in any manner arbitrary. In the interview a practicable oral test was to be given in reading hand written English, Hindi and Urdu documents, as also to ascertain the familiarity of a candidate with records of High Court and lower Courts and Law Courts and Law Reports.

14. Allocation of 50 marks out of a total of 250 marks cannot be said to be very high when selection is to be made of meritorious candidates to be judged on the basis of written test and interview.

15. The point on which emphasis has been laid and which requires consideration is that when a candidate has obtained the qualifying 50% marks in each of the written papers and has been found suitable for being called for interview, the further requirement of obtaining 50% marks in interview is or is not valid. It is not in dispute that there is nothing in the rules, which requires a candidate to secure 50% marks in each of the written paper and 50% marks in interview for being selected. This condition is to be found only in the impugned notification, which makes the obtaining of 50% marks in interview as a condition precedent. In other words, it is the notification which has prescribed qualification. While prescribing the manner of conducting written test and holding interview can such a condition be laid down, which otherwise is not to be found in the Rules. An illustration as was given on behalf of the petitioner, may again be retreated, that a candidate appearing in written test may be in a position to obtain in each of the papers 98% marks. In other words, he may be getting 196 marks out of 200 in the written test and when called for interview, in case he gets only 24 marks out of 50, he will not be given appointment, though a candidate getting only 100 marks out of 200 marks in written test and 25 marks out of 50 in interview may be in a position to get appointment. Thus a candidate securing 220 marks out of 250 will not be considered fit for being appointed though a candidate obtaining 125 marks will be in a position to get appointed. Thus a less meritorious candidate is likely to get a march over a meritorious candidate. The condition imposed by administrative instruction in the notification thus is contrary to the spirit of the Rules. It cannot be said that what the Rules intended was that less meritorious candidates may also be selected. In order to put the administrative instructions in action in consonance with the Rules, the same have to be construed harmoniously which can be done in the manner that candidates obtaining 50% marks in each of the written papers shall be called for interview and after interviewing a select list is prepared of the candidates in order of merit without excluding any candidate at the second stage of interview. It will avoid any hardship or confusion. No doubt, by administrative orders the manner and mode of conducting written test and interview may be provided for but by Administrative Instructions a provision cannot be made which may add to or lay down a qualification contrary to the spirit of the Rules. Since the sole intention of the Rules is to make selection on merits on the basis of combined written test and interview, merit has to be adjudged on the basis of written test and interview. In other words, both in written test and in interview and not in one only. In case 50% marks are considered as reasonable for testing merit of a candidate and the syllabus for the written papers includes High Court Rules and Orders Volume V, Delhi High Court (Original Side) Rules, 1967, Indian Limitation Act, Court Fees Act, 1870, CPC and Criminal Procedure Code, as subjects. The candidates securing 50% marks in each of the papers if called for interview and a select list is prepared in order of merit by adding up of the marks obtained in interview and making only those candidates securing 50% marks in aggregate fit for appointment, the candidates thus selected will be considered to be meritorious candidates on the basis of written test and interview. This is the only

v/ay to work out the administrative instructions in consonance with the spirit of the Rules and not taking separately 50% minimum marks in each of the written test and separately 50% additional marks in interview, which will result in ignoring meritorious candidates.

16. Umesh Chandra Shukla Vs. Union of India (UOI) and Others, is the decision of the Supreme Court, which is quite helpful in support of the view which is being taken in the writ petition that in competitive examination of this nature where selection is to be made on merit on the basis of written test and interview, the aggregate marks obtained in the written papers and viva voce test should be the basis of selection. Holding otherwise would result in excluding meritorious candidates having obtained very high marks in written test but because of obtaining even one mark less than the qualifying mark in the interview or a less meritorious candidates, namely, candidates obtaining lesser marks in written test getting a march over the meritorious candidates. In Umesh Chandra Shukla's case (supra), a direction was issued for preparing a fresh list in order of merit on the basis of aggregate marks obtained by a candidates in written test and viva voce test. In the instant case also the procedure deserves to be the same which is the proper method by which selection ought to have been made and a selection list prepared in order of merit of those candidates obtaining 50% marks in aggregate both in written test and interview and not to exclude a candidate on the ground that though he had obtained 50% marks in each of the papers in written test but has not been in a position to obtain 50% marks in interview. Of course only those candidates to be called for interview who would obtain 50% marks in each of the written papers.

17. In Umesh Chandra's case (Supra) by way of administrative orders the High Court had issued instruction for including in the list of candidates which had been prepared and those candidates securing the required qualifying marks, by adding the names of certain candidates not initially securing qualifying marks by resorting to the devise of moderation, which was held by the Supreme Court to be illegal. It was held that administrative decision would indirectly amount to amendment of the Rules and such amendment of the Rules can only be made under Article 234 of the Constitution and not by administrative decision. It was also held that "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." On the same basis, in the instant case also the administrative order saying that a candidate having been found to be fit for being called for interview and laying a condition that unless he obtains a minimum of 50% in interview, he will not be considered fit for being appointed is contrary to the Rules.

18. As has been noticed above, on an earlier occasion, namely, in the year 1972, 1974 and 1983, as and when selections were made panel was prepared and keeping in view the vacancies, which had occurred by the date when selections were made or during the subsistence of panel all empanelled candidates were appointed. It is not disputed that in the instant case also by time the selections

were made, there were five vacancies available.

19. The question as to whether a panel should or should not be prepared was considered by a Division Bench of this Court in J.N. Verma v. Hon''ble the Chief Justice and Anr., in Civil Writ No. 2670 of 1987 decided on 19th May, 1992, holding that the very idea of making selection was to have a panel ready in order that the vacancies could be filled in expeditiously. In the very nature of things, it is not practical to hold written examination and interview every time a vacancy arises.

20. Keeping in view the past practice and the fact that vacancies were available when result was declared, it would be in the fitness of things that in the instant case also those vacancies, which were in existence on the date of selection the same ought to have been filled up out of the candidates possessing merit, in the light of the observations made, above and in view of the decision in Umesh Chandra Shukla's case (supra) namely candidates obtaining 50% marks out of aggregate marks in written test and interview.

21. In view of the above, there will be no need to deal with other points or contentions of the parties.

22. In the result and in the light of the ratio of Umesh Chandra Shukla's case (supra), the writ petition is allowed and it is directed that a list be prepared in order of merit on the basis of aggregate of the marks obtained by the candidates in the written examination and viva voce test and appointments be made accordingly for the vacancies which were available on the date when final selection was made. It is made clear that drawing up of fresh list in pursuance to these directions will not affect the appointments already made. No costs.