

(2015) 05 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeal Nos. 6549, 6550, 6551, 6552, 6553, 6554, 6555, 6556-6561 of 2014, 4327, 4328, 4329, 4330, 4331 and 4332 of 2015 (Arising out of SLP (C) Nos. 29275, 29267, 34936, 35196, 34882 of 2014 and SLP (C) No. 2623 of 2015) and Writ Petition (Civil) No.

HC Pradeep Kumar Rai and Others

APPELLANT

Vs

Dinesh Kumar Pandey and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Uttar Pradesh Police Regulations, 1976 — Regulation 445, 445(B)(4)

Citation : AIR 2015 SC 2342 : (2015) 4 ALJ 478 : (2015) 4 AWC 3780 : (2015) 2 LLN 553 : (2015) 5 MLJ 98 : (2015) 6 SCALE 238 : (2015) 6 SCJ 603 : (2015) 3 SCT 83 : (2015) 3 UC 1662

Hon'ble Judges : Ranjan Gogoi, J; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Nagendra Rai, Senior Advocate, Gaurav Bhatia, AAG, Kavin Gulati, Pragya Baghel, Rohit Sthalekar, Avi Tandon, Jayant Mehta, Prashant Shukla, Prashant Chaudhary, Shakil Ahmed Syed, Parvez Dabas, Uzmi Jameel Husain, Mir Imtiyaz, Smarhar Singh, Shantanu Sagar

Final Decision : Allowed

Judgement

Pinaki Chandra Ghose, J.—Leave granted in the special leave petitions. I.A. No. 52 of 2015 is allowed.

2. This batch of appeals raises a common controversy relating to the promotion of Constables and Head Constables to the rank of Sub-Inspectors in the State of Uttar Pradesh. The process of promotion started way back in 1999 and has since embroiled in litigation. Basically, the candidates appearing for promotion from the rank of Constable or Head Constable to the rank of Sub-Inspector have challenged the selection and promotion process at various stages of the promotion process.

3. The facts necessary for disposal of this case are that the Government of Uttar

Pradesh took a decision on 23.01.1999 for recruitment of departmental candidates to the posts of Sub-inspectors in the State, both by direct recruitment and by promotion of Constables and head Constables. In continuation of the order dated 23.01.1999, another Government Order was issued on 3.02.1999, according to which all the vacancies of Sub-inspectors till 31.12.1999 were to be filled up. On 27.02.1999, the Government of Uttar Pradesh issued another Order which superseded the earlier Order dated 23.01.1999. The 27.02.1999 order provided a complete pattern of the examination and process of selection and promotion. As per the new pattern the promotion process was to be conducted in three steps: (1) The preliminary written examination and infantry test/physical test; (2) Main written Examination; and (3) Interview. Candidates who qualified the preliminary examination and IT/PT were eligible to appear in the main written examination.

4. As per the existing rules in 1999, 50% of total vacancies were to be filled up by promotion of persons serving as Constables and Head Constables and the remaining 50% vacancies were to be filled up by direct recruitment. It appears that at the time the selection process began, there were 2956 vacancies of the rank of Sub-inspectors in the State. So initially the number of vacancies for promotees quota were 1478. However, It appears that vide order dated 10.01.2000, another 86 posts were added to the promotees quota to be filled up by the departmental examination in pursuance of the direction made by State Backward Classes Commission, to maintain the ratio of promotees and direct recruits at the rate of 50%. Thus, the number of vacancies for promotees quota became 1564. It is to be noted that pursuant to the Division Bench judgment of the High Court of Allahabad in Special Appeal No. 1372 of 1999: State of Uttar Pradesh v. Ranbir Singh, the Government of Uttar Pradesh created another class of promotees which consisted of 385 Head Constables who were to be promoted directly by virtue of the length of their service without undergoing the selection process. The creation of this class is not contended before us and that controversy is settled by prior litigation. Thus, eventually it appears that total vacancies for people who were to be promoted after the selection process was 1176.

5. The preliminary test was held on 05.09.1999 and the result was announced on 05.11.1999 and those who qualified the preliminary test were permitted to appear in IT/PT which was held in December 1999. The result of IT/PT test was declared on 11.02.2000, which was challenged before the High Court of Allahabad in Writ Petition No. 9694/2000: Triloki Nath Pandey and Ors. v. State of Uttar Pradesh, and the entire process was stayed till the conclusion of litigation. Thus, at the end of that round of litigation the State of Uttar Pradesh was directed to go ahead with the selection procedure. Government Notification for the main written examination was issued on 9.12.2004 and the main written examination was conducted on 25.12.2005. Result of the main written test was declared on 24.01.2006 and pursuant thereto, 9671 candidates were called for interview. The interviews were held at four centres between 15.05.2006 to

20.07.2006. The results of the interviews were made available on 11.11.2006.

6. It was after the declaration of the result of interview that the present round of litigation began, whereby the unsuccessful candidates challenged the interview process on several grounds. Initially the writ petition was filed before the Allahabad High Court, Lucknow Bench, which allowed the petition and directed the State to conduct fresh interview for the 1176 vacancies of the rank of Sub-Inspectors. The Division Bench of the Allahabad High Court allowed the appeal filed by the State Government, thus, reversing the judgment of the learned Single Judge. The Division Bench directed the State to appoint the candidates who were selected after the interview already held, for the rank of Sub-Inspectors.

7. The learned Single Judge decision weighed on the following points:

(i) There was substantial departure from the Police Regulations as amended upto 1977 in the entire process of selection and promotion.

(ii) The number of candidates called for interview was much higher than the required four times the number of vacancies available. The four time the vacancies rule is found in paragraph 445 of Uttar Pradesh Police Regulations, 1976.

The sealed cover procedure was not followed for the candidates against whom any disciplinary or criminal proceedings are pending. The names of such persons were also displayed on the tentative list of selected candidates.

(iii) The members of the Interview committee who conducted the interviews did not give separate marks individually but a single collective marking for each candidate was done by the committee.

The names of the persons who are already dead or are under training in some other Wing of Police Department like PAC, were also included in the tentative list of selected candidates after the interview.

8. The Division Bench found that the learned Single Judge had made findings on three basic points. The Division Bench upturned those three findings and reversed the judgment on following grounds:

(i) The Division Bench found that the rule of number of candidates being called for interview be not more than four times the number of vacancies was found in 1977 UP Police Regulations and same was superseded by the Government Order of 27.02.1999. The 27.02.1999 order provided that all candidates securing 50% marks in main written exam shall be called for the interview.

(ii) It further held that once the candidates had participated in the process of selection without raising objections; they could not be allowed to challenge the process at a later stage.

(iii) With respect to sealed cover procedure, the Division Bench noted that this

procedure was a requirement under the order dated 23.01.1999 but not under order dated 27.02.1999. Since the latter specifically superseded the former order, the sealed cover procedure was not requirement as such.

(iv) The Division Bench, with respect to composite marking in the interview, found that it is for the examining body to decide as to how marking should be done. Separate marking or consolidated marking are two methods of assessment and it is for the examining body to decide, not the Court, which method is preferable.

(v) Division Bench further refused to accept the argument that the later government order of 27.02.1999 was not to govern the selection for vacancies which were announced by order dated 23.01.1999 and 03.02.1999. It found that this was a mischievous argument and very clearly the procedure set out under order dated 27.02.1999 was followed throughout the selection process.

9. We have heard the learned Counsels appearing for the parties. We find that the Division Bench of the High Court was very lucid and correct in its findings and conclusion reached thereupon. Nevertheless, we will discuss all the points raised before us and give our findings.

10. Regulation 445 of the said Regulations of UP Government (as amended upto 31.08.1977) provides for qualifications and procedure for promotion from rank of Constable and Head Constables to Sub Inspectors. The procedure therein consists of Notice, pre-examination (essay type written exam), examination of character roll, main written examination and finally interview. The Regulation provides that the number of candidates called for interview, on the basis of the merit of the main written examination, shall be four times the number of vacancies. In the interview, 40% marks are to be allocated to the service record. It has been submitted and clarified to us that these Regulations are actually a compilation of Government Orders issued from time to time. Therefore, we find that the Regulations are not a superior law as compared to the Government Orders and it may be amiss to suggest that Regulations would prevail over the Government Orders by virtue of being called Regulations. Having said that, we go on to examine the Government Orders issued by the UP Government in 1999.

11. Government Order dated 23.01.1999 is worded as "His Excellency the Governor hereby orders to adopt the following procedures for selection of departmental candidates as Sub Inspectors, Civil Police of UP Police." The said Order provides for preliminary examination (objective type), main written examination and the personality test (or the interview). It provided that the panelists conducting personality test must give marks to each candidate separately and the head of the Recruitment Board must aggregate the marks given by all panelist and thereafter the final result would be declared. The Order also provided for character roll and service record shall also be assessed. The Order was addressed to the Secretary, Police/P.A.C. Recruitment Board, Headquarters, Director General of U.P. Police and directed the Secretary to make

arrangements in terms of the procedure set out in the said Order.

12. Then comes the Government Letter dated 03.02.1999, addressed to the Secretary, Police/P.A.C. Recruitment Board, Headquarters, Director General of U.P. Police. This Order directed the Secretary of Recruitment Board to begin the Selection procedure for the 1478 seats of the rank of Sub-Inspectors in Civil Police. We have already mentioned that the number of seats was later reduced to 1176 (for reasons already discussed) and there is no controversy on that.

13. Then comes the Government Order dated 27.02.1999, again addressed to the Secretary, Police/P.A.C. Recruitment Board, Headquarters, Director General of U.P. Police. This order very categorically provided that the Order dated 23.01.1999 is superseded by this Order and it set out a new procedure for selection of the departmental candidates. The procedure provided by this order included a Preliminary Written Examination (objective type), Physical Test and Infantry Test for those who qualify the preliminary examination, main written examination and then the interview. It provided that all those who secured 40% marks separately in each subject and 50% aggregate in the main written examination would be called for the interview. Further the Order provided that for the purpose of interview/Personality Test and assessment of character roll/service record, a selection panel shall be constituted as per the requirement and its members shall be determined keeping in mind the reservation policy of the Government. It may be noted that the Order did not say that the interview panel was to be constituted or was to function as per the Regulation 445 discussed above. The order also did not mention that the members of selection panel were to give separate marks for each candidate.

14. Now analysing all these government orders and Regulations, we find that the procedure for selection of departmental candidates for the promotion to the rank of Sub-inspectors was changed and was amended by every Government Order. Learned Counsel appearing for the Appellants cited the case of State of Rajasthan and Others Vs. Basant Agrotech (India) Ltd., (2014) 1 AD 127 : AIR 2014 SC 487 : (2014) 302 ELT 3 : (2013) 15 JT 388 : (2013) 15 SCALE 1 : (2014) 1 SCJ 476 , contending the scope of delegated legislation vis-?-vis parent legislation. However, in the present case, as already mentioned, the Regulations cannot be said to prevail over the Government orders. Thus, the above cited judgment is not relevant for our purpose, because Regulations are merely compilation of previous G. Os. Herein, the argument of implied repeal has been forwarded. It is contended by the learned Counsel for the State that the prior Government Order was impliedly repealed every time the new procedure was laid down. To examine this argument, it will be expedient to set out the relevant clauses from Regulation 445 and the Government Order dated 27.02.1999. Regulation 445(B)(4) reads as follows: "About 4 time candidates to the number of vacancies, in the marker cadet should be called for interview according to the merit from the aforesaid list." The "aforesaid list" mentioned in Regulation 445(B)(4) refers to the merit list of the main written examination. Clause 8 in the

Government Order dated 27.02.1999 reads: "The candidates securing 40% marks separately in each subject and an aggregate 50% in all subjects of main written examination shall be called for interview." On a plain reading of the above two provisions the conflict is apparent. Both these provisions provide different requirement for being called for the interview. It was argued that Clause 8 of Government order did not provide the qualification but only eligibility for a candidate to come in the list of interview. However, this contention cannot hold good since the word used in Clause 8 is "shall". The rule makes it mandatory to call all those who secure 40% marks separately in each subject and 50% marks aggregate in the written examination to be called for the interview. If both the above quoted rules were to exist, it would create a contradictory situation. Therefore, we find that Regulation 445 cannot be said to prevail over or co-exist with the Government Order dated 27.02.1999, in respect of the number of candidates to be called for interview.

15. Furthermore, we find that there is no rule of law as to the ratio of number of vacancies to the number of candidates for being called for interview; although it may be a rule of prudence. This Court has found in *Mohinder Sain Garg Ors. Vs. State of Punjab and Others*, (1990) 4 JT 704 : (1990) 2 SCALE 1014 : (1991) 1 SCC 662 : (1990) 3 SCR 108 Supp , as also in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, AIR 1987 SC 454 : (1986) LabIC 1417 : (1985) 1 SCALE 1290 : (1985) 4 SCC 417 : (1985) 1 SCR 657 Supp , that although it may be improper for the Selection Committee to call such large number of candidates for interview, but selection cannot be vitiated merely on this ground if such an action is not tainted by mala fide or oblique motive. In *Mohinder Sain Garg (supra)*, this Court gave one more reason not to accept this argument which squarely applies to this case as well; this Court found that the Respondents stood no chance of being called for interview if candidates upto three times the number of posts were called for interview. In the case on hand, on this score, learned Counsel for the State of Uttar Pradesh has made a similar contention. Even the Appellants herein have not presented a case that had they been called for interview, being only four times the number of vacancies, they would have been short listed in that list. Thus, we find this argument as a misplaced one.

16. Moreover, we would concur with the Division Bench on one more point that the Appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the Appellants did not challenge it at that time. Thus, it appears that only when the Appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted. (See *Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Others*, (2010) 127 FLR 723 : (2010) 11 JT 629 : (2011) 1 SCC

150 : (2011) 1 SCC(L&S) 21 : (2010) 9 UJ 4650 , and K.H. Siraj Vs. High Court of Kerala and Others, AIR 2006 SC 2339 : (2006) 11 JT 424 : (2006) 6 SCALE 167 : (2006) 6 SCC 395 : (2006) SCC(L&S) 1345 : (2006) 3 SCR 790 Supp : (2007) 1 SLJ 164 : (2006) AIRSCW 3136 : (2006) 4 Supreme 448 .

17. Further, in our view, the Division Bench has correctly dealt with the issue of sealed cover procedure. The process of sealed cover procedure was devised to prevent any prejudice being caused to the persons against whom the disciplinary or criminal proceedings are pending. In the present case, it is nobody's case that such persons are prejudiced. Therefore, this contention does not hold any merit in the present case.

18. Now, so far as the question of awarding consolidated marks by all the panelists in the interview is concerned, we are in agreement with the finding of the learned Single Judge. The purpose of constituting multi member interview panel is to remove the arbitrariness and ensure objectivity. It is required by each member of the interview panel to apply his/her own mind in giving marks to the candidates. The best evidence of independent application of mind by each panelist is that they awarded separate marks. However, if only consolidated marks are awarded at the interview, it becomes questionable, though not conclusive, whether each panelist applied his/her own mind independently. Having said that, we note that this Court cautioned in *Lila Dhar Vs. State of Rajasthan and Others*, AIR 1981 SC 1777 : (1981) 43 FLR 347 : (1981) LabIC 1515 : (1981) 2 LLJ 297 : (1981) 3 SCALE 1235 : (1981) 4 SCC 159 : (1982) 1 SCR 320 : (1981) 2 SLJ 266 : (1981) 13 UJ 719 , that it is not for the Courts to re-determine the appropriate method of selection unless obvious oblique motives are proved in a particular case. Even in *Lila Dhar's* case (*supra*), the issue was regarding the marks awarded by the Selection Committee as one consolidated marks; the Court refused to interfere with the appointment process on this ground. Only because the panelists on the interview committee did not award separate marks, cannot be a ground to quash the entire process. Also, with respect to the legal argument that the Government Order dated 03.02.1999 provided that the marks must be separately awarded by interview panelists, we hold that the Government Order dated 3.02.1999 was in continuation of the Government Order dated 23.01.1999, which was superseded expressly by Government Order dated 27.02.1999. The Government Order dated 27.02.1999 did not provide any condition that the marks were to be separately awarded by each interview panelist. Thus, it cannot be argued that the Government did not follow the rules framed by itself.

19. Further, it is a settled law that in cases like the present one, where an Executive action of the State is challenged, Court must tread with caution and not overstep its limits. The interference by Court is warranted only when there are oblique motives or there is miscarriage of justice. In the present case, there is no oblique motive or any miscarriage of justice warranting interference by this Court. Hence, the appeals and the writ petition are dismissed.