
(2014) 08 MAD CK 0046
In the Madras High Court
Case No : W.P. No. 20290 of 2012

J. Kovaisamy

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 315

Citation : (2015) 1 MLJ 515 : (2015) WritLR 238

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : R. Thanjan, Advocates for the Appellant; R. Ravichandran, Additional Government Pleader and P. Paramasiva Doss, Advocates for the Respondent

Judgement

D. Hari Paranthaman, J.—Heard both sides. The grievance of the petitioner is that he is aged 44 years. He registered his name in the Employment Exchange long back for more than two decades and still he is not able to get employment.

1.1. When this writ petition was taken up for hearing on 11.07.2014, the learned counsel for the second respondent submitted that the petitioner crossed the upper age limit prescribed and therefore, this Court directed the second respondent to produce the relevant regulations relating to the age limit for recruitment to the post of Technicians, particularly, for those who have undergone Apprenticeship Training and posted it on 23.07.2014.

1.2. On 23.07.2014, this Court suo-motu impleaded the fourth respondent and ordered notice to the fourth respondent with a direction to furnish the details as to whether they sponsored the name of the petitioner for any employment from 1988 to 2012.

1.3. On the next date of hearing, i.e., on 31.07.2014, among other things, it is submitted by the District Employment Officer, Chennai, in person, that the name of the petitioner was sponsored to the Metropolitan Transport Corporation for the post of Junior Assistant.

1.4. Further, on 14.08.2014 this Court directed the second respondent to furnish details pertaining to 7 questions raised by this Court and directed to produce the rules relating to appointment to the post of Junior Assistant and posted this petition on 20.08.2014.

1.5. On 20.08.2014, a direction was issued to the second respondent to issue suitable instruction to the highest authority in the Personnel Department to appear before this Court with necessary file and instruction on 27.08.2014 to give proper assistance to this Court in respect of appointment to the vacancies for the post of Junior Assistant and adjourned this case today.

1.6. Today, I heard the concerned officials and the respective counsels at length.

2. Now, law is well settled that appointment to public employment shall be made not only through Employment Exchanges, but also through advertisement in newspapers, announcing in radio and television etc., calling for applications from all the eligible candidates through open market. Hence, the sponsorship through Employment Exchange lost relevance after the law declared by the Honourable Supreme Court in the above terms in the judgment in State of Orissa and Another Vs. Mamata Mohanty, .

Unfilled vacancies in the Respondent Corporation:

3. In this case, the Metropolitan Transport Corporation, Chennai has Branches/ Depots with places that falls within the jurisdiction of Chennai Municipal Corporation limit, in Tiruvallur District and in Kancheepuram District.

4. In the year 2012, 200 vacancies in the post of Junior Assistant arose in the Depots that are situated within the Chennai Municipal Corporation limit. Hence, the Transport Corporation addressed the Employment Exchange, Chennai to sponsor the list of candidates. Accordingly, 981 names were sponsored. When call letters were sent to those persons, only 423 candidates participated in the interview. Out of 423 candidates, only 42 candidates alone were selected and appointed. Therefore, there remains the unfilled vacancies.

5. (i). Thereafter, the Metropolitan Transport Corporation addressed letters to employment exchanges, as follows, to fill up the vacancies of 290 posts of Junior Assistants.

(ii). The Metropolitan Transport Corporation addressed a letter to the Employment Exchange, Chennai to sponsor names to fill 150 vacancies in the post of Junior Assistant.

(iii). Likewise, the Metropolitan Transport Corporation sent a letter to the Kancheepuram Employment Exchange to sponsor the names to fill 70 vacancies in the post of Junior Assistant.

(iv). Another letter was sent by the Metropolitan Transport Corporation to Tiruvallur Employment office to fill 70 vacancies of Junior Assistant.

6. Accordingly, Chennai Employment Exchange sponsored the names of 742 candidates; Kancheepuram Employment Exchange sponsored the names of 345 candidates and Tiruvallur Employment Exchange sponsored the names of 351 candidates respectively. When call letters were sent by the Metropolitan Transport Corporation, 168 candidates participated in Madras region, 171 candidates participated in Kancheepuram region and 144 candidates participated in Tiruvallur region. Ultimately, 8 candidates were selected for the Depots, which are situated within the limits of Chennai Municipal Corporation, 21 candidates were selected for the Depots that are situated within the jurisdiction of Kancheepuram District and 14 candidates were selected for the Depots that are situated within the jurisdiction of Tiruvallur. In total, 43 candidates were selected, while there were 290 vacancies.

Recruitment to Public Employment shall be made through Open Market:

7. It is stated that the selection was solely based on interview by the Selection Committee of 3 members and no weightage is given to academic qualification. I am of the view that selection based exclusively on interview, without any weightage to academic qualification is, on the fact of it, bad and illegal. Further, I am of the view that the Metropolitan Transport Corporation should make recruitment through open market as held by the Supreme Court in *State of Orissa v. Mamata Mohanty* (supra) and they cannot confine their selection by calling names from employment exchange alone. Paragraphs 35 and 36 of the said judgment are extracted hereunder in this regard:

"Appointment/Employment Without Advertisement:

35. At one time this Court had been of the view that calling the names from employment exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from employment exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in radio and television as merely calling the names from the employment exchange does not meet the requirement of the said article of the Constitution. (Vide: *Delhi Development Horticulture Employees' Union v. Delhi Admn.*, *State of Haryana v. Piara Singh*, *Excise Supdt. v. K.B.N. Visweshwara Rao*, *Arun Tewari. v. Zila Mansavi Shikshak Sangh*, *Binod Kumar Gupta v. Ram Ashray Mahoto*, *National Fertilizers Ltd. v. Somvir Singh*, *Telecom District Manager v. Keshab Deb*, *State of Bihar v. Upendra Narayan Singh* and *State of M.P. v. Mohd. Ibrahim*).

36. Therefore, it is a settled legal proposition that no person can be appointed

even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the notice board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

8. In fact, the Supreme Court, in similar case in State of Bihar Vs. Chandreshwar Pathak, , has relied on its earlier judgment in State of Orissa v. Mamata Mohanty (supra).

9. It is an irony that lakhs of people are unemployed in this country. But still, vacancies are not filled up for so many years.

Service Rules of the Corporation at a glimpse:

10(i). There is common service rules for all the Transport Corporations. The service rules of the respondent Corporation are produced before me and it is called as "the Pallavan Transport Corporation Service Rules" (hereinafter referred to as the "Service Rules"). The name of the Corporation is now changed to Metropolitan Transport Corporation.

10(ii). As per the said Service Rules, there are three departments in all the Transport Corporations including the respondent Corporation. Those departments are (1) Technical Department; (2) Traffic Department; and (3) Administration Department. The Technical Department is called as Branch-I, Traffic Department is called Branch-II and Administration Department is called as Branch-III, as found in Rule 57 of the Service Rules.

10(iii). In each Department, there are three categories of employees. The first category is the employees belonging to Managerial Cadre. The second category is the employees belonging to Supervisory Group. The third category is the workmen belonging to Working Group/Miscellaneous Groups.

10(iv). The post of Junior Assistant comes under working Group/Miscellaneous Groups in the Administration Department, that is, known as Branch - III, as per the Service Rules.

10(v). At this juncture, the relevant passage from Rule 57 of the Service Rules is extracted as hereunder:

"57. Departments, Groups and Grades/levels under Longevity Pay Scheme.

a. The service in the Corporation shall be in any one of the three departments, namely:

1. Branch-I Technical Department.

2. Branch-II Traffic Department.

3. Branch-III Administration Department.

b. The Technical Department, Traffic Department and Administration Department shall each consist of:

1. Managerial Cadre.

2. Supervisory Group.

3. Working Group/Miscellaneous Groups.

c. The categories, the grades in each Managerial cadre or Supervisory Group and the levels in each Working Group/Miscellaneous Groups and the scales of Pay attached to different levels/groups in each category of post shall be as specified in the Appendix-I to those Rules.

Provided that a person appointed by direct recruitment to any post in any cadre/group under the Technical Department must possess a minimum weight of 45 Kgs. and a minimum height of 152 Cms.

Provided also that all appointment by direct recruitment to the categories of post in the under mentioned Groups shall, in the first instance, be made as Daily Wage Earner, at such all - inclusive daily rate of wages and for such period, as may be specified by the Managing Director from time to time."

10(vi). The appointing authorities for the several categories of the employees are provided in Rule 58 of the Service Rules. In this case, we are concerned with the Working Group/Miscellaneous Groups in the Administration Department. As per the said Rule, the Manager (Personnel)/Chief Personnel Officer, with the prior approval of the Managing Director, wherever necessary, is the appointing authority in the case of appointment to the post of Working Group/Miscellaneous Groups in all the Departments, namely, Technical, Traffic and Administration Departments. Rule 58(3) is relevant in this regard and the entire Rule 58 of the Service Rules is extracted hereunder:

"58. Appointing Authority:

The appointing authority for the several categories and grades shall be as indicated below:

10(vii)(1). Rule 59(a) states that appointment to any of the posts in any category shall be made by following three methods, namely, (i) by direct recruitment; (ii) by promotion; or (iii) by transfer.

10(vii)(2). Rule 59(b) provides that the method of recruitment to each category of post in Col. 2 of Appendix-II shall be as shown in the corresponding entry in Col.(3) thereof in the said Appendix.

10(vii)(3). Part A of the Appendix-II, that is referable to Rule 59(b), deals with the method of recruitment for the posts in the managerial cadre in each Department, namely, Technical, Traffic and Administration Departments. Likewise, Appendix-II provides for method of recruitment for the posts in the Supervisory Group under Part B in each Department, namely, Technical, Traffic and Administration Department. Part C of the Appendix-II provides for method of recruitment for the posts in the Working Group/Miscellaneous Groups in all the Departments, namely, Technical, Traffic and Administration Departments.

10(vii)(4). We are concerned with the method of recruitment for Working Group/Miscellaneous Groups in Administration Department that comes under Part C of the Appendix-II. Part C of the Appendix-II relating to Working Group/Miscellaneous Groups in the Administration Department contains 17 posts, namely, 1. Junior Assistant; 2. Junior Typist; 3. Junior Steno-Typist; 4. Junior Cash Keeper; 5. Junior Office Attender; 6. Junior Nursing Orderly; 7. Junior Clerk (SSLC); 8. Junior Telephone Operator; 9. Junior Pharmacist; 10. Junior Librarian; 11. Sweeper/Water Carrier/Gardener; 12. Sanitary Worker; 13. Junior Ticket Porter/Loadingman; 14. Sanitary Inspector; 15. Sanitary Guard; 16. Security Sergeant; and 17. Junior Staff Nurse. We are concerned with the post of Junior Assistant. The method of recruitment to the post of Junior Assistant, as provided in Part C of the Appendix-II relating to Working Group/Miscellaneous Groups in the Administration Department, is as follows:

Appendix II

(Method of recruitment under rule 59(b))

....

Branch III Administration Department

....

Part C: Working Group/Miscellaneous Group

10(vii)(5). It is stated that though the post of Junior Assistant could be filled by way of transfer, normally the recruitment takes place by way of direct recruitment. It is also seen that almost all the posts in Part C of Appendix-II relating to Working Group/Miscellaneous Groups in all the Departments, namely, Technical, Traffic and Administration Departments, are filled only by way of direct recruitment.

10(vii)(6). Rule 59(c) indicates the qualifications prescribed for direct recruitment to each category of posts in Col.(3) of Appendix-III.

10(vii)(7). The qualification for the post of Junior Assistant, as prescribed in Appendix III, is extracted hereunder:

Appendix III

(Qualifications for Direct Recruitment Under Rule 59(C))

....

Branch III Administration

....

Part C: Working Group/Miscellaneous Group

10(vii)(8). Most relevant rule in this regard is Rule 16 that deals with the Selection Committee. It is admitted that the direct recruitment to all the posts are done by the Selection Committee exclusively by way of interview. It is neither based on the written test and interview nor based on weightage to the academic qualification prescribed under the Rules and the interview. But, it is stated that appointment to all the posts, whether, Managerial Cadre, Supervisory Group or Working Group/Miscellaneous Groups in all the Departments, namely, Technical, Traffic and Administration Departments, that are being filled up by way of direct recruitment, are made exclusively based on interview by the Selection Committee, as per Rule 16. Thus, it is relevant to extract the Rule 16 of the Service Rules in this regard as hereunder:

"16. Selection Committee:

Selection Committee consisting of not less than three members shall be constituted for appointments both by direct recruitment any by promotion:

By the Board in respect of posts included in the Managerial Cadre.

By the Managing Director, in respect of posts included in the Supervisory Groups.

By the Managing Director, or under his authority by the Manager (Personnel)/ Chief Personnel Officer in respect of the posts included in the Working Groups and/or miscellaneous Groups....."

This Rule 16 can be read with Rule 58, which is also extracted above.

11. It is an admitted fact that the large contingent of about 75-80% of employees of the Transport Corporation belong to Working Group/Miscellaneous Groups in Technical/Traffic/Administration Departments and particularly, in Traffic Department, a large number of Drivers and Conductors and other posts are recruited by the Transport Corporations by way of interview alone. Likewise, all the posts that are mentioned in Part C of Appendix-II relating to Technical and Administration Department are also filled through direct recruitment only by way of interview. Since the selection is solely based on interview, innumerable writ petitions are filed often questioning the appointment alleging that appointments are made based on various extraneous considerations.

12. So far, the appointment by way of direct recruitment are only confined to employment exchange. Though a large number of candidates are sponsored even at the ratio of even 1:20, for the reasons best known to the Transport Corporations, all the vacancies are not filled up. Even in this case, it is pointed out that while initially, in the year 2012 a list of candidates was called for from

the employment exchange to fill up 200 vacancies in the post of Junior Assistant and the employment exchange sponsored 981 names and among them, 423 participated in the interview, only 42 candidates alone were recruited. Second time also, for filling 290 vacancies in the post of Junior Assistant, sponsorship was called for from the employment exchanges of Chennai, Kancheepuram and Tiruvallur, and large number of persons, viz., 742, 345 and 351 candidates were sponsored by the said employment exchanges respectively, but only 43 candidates were recruited.

13. When lakhs of graduates are languishing without employment in this country, the posts are lying vacant in the Transport Corporations. The Transport Corporations have not advertised about the vacancies through open market besides calling for names from employment exchange. The recruitment made in Transport Corporations have created suspicion in the minds of the general public, particularly, since those direct recruitment are made solely based on interview.

14. I have already held, following the judgment of the Apex Court in *State of Orissa v. Mamata Mohanty* (supra), that direct recruitment shall be made from open market, besides calling for a list of names from the employment exchange.

15. But that is not sufficient. The Selection procedure should also be a fair and transparent one. I am of the view that the selection based solely on interview is arbitrary and violative of Articles 14 and 16 of the Constitution. It is submitted that the interviews are only a farce, since the recruitment is for large numbers, particularly, in the case of Drivers, Conductors, Technical staff and Junior Assistant, etc., such interview lasts for a minute or two.

16. The main criticism against the selection procedure is that direct recruitment to the posts included in the Working Group/Miscellaneous Groups in all the Departments, namely, Technical, Traffic and Administration Departments, that belong to the last cadre in the Corporation based solely on interview is highly arbitrary and would not stand the scrutiny of law. The selection and appointment to those posts shall be made either based solely on the marks obtained in the qualification prescribed for those posts or solely based on the marks obtained in the written examination, that is exclusively conducted in commensurate with the qualification prescribed for such posts in the Service Rules. I am of the considered view that making selection based solely on interview is bad, arbitrary and illegal.

17. Of-course, the appointment to those posts shall be subject to the reservation policy that is being followed by the Corporation, as provided in the Service Rules. Since the same is not in dispute, I am not going into the same.

18. It is well-accepted that the expert body in the matter of recruitment to public employment is the Public Service Commission, particularly, the same was established under Article 315 of the Constitution, under Chapter II of Part XIV of the Constitution. The Apex Court and this Court have also recognized that expert body in the matter of recruitment is the Public Service Commission. It is well

known that the recruitment to the post of Junior Assistant in various subordinate service in Tamil Nadu including the Judicial Ministerial Service is solely based on written test and no interview is conducted. It is popularly called non-interview posts and various posts such as Junior Assistant, Typists, Steno-Typists, Village Administrative Officer, Bill Collector, etc., belonging to Group IV Services are classified as non-interview posts and recruitment to those posts including various posts in the Judicial Ministerial Service in the Tamil Nadu Government are made by the Tamil Nadu Public Service Commission by written examination alone. Thus, lot of confidence is created in the minds of public in the recruitment made to those posts. Certainly no such confidence is there in the appointment to various posts in the Transport Corporations, since the appointments were made by direct recruitment exclusively based on interview in a secret manner. These interviews are also not recorded. At this juncture, it is relevant to extract the following passage in paragraph 19 of the judgment of the Apex Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , as hereunder:

"19..... We may point out that, in our opinion, if the marks allocated for the oral interview do not exceed 15% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness. We think that it would also be desirable if the interview of the candidates is tape-recorded, for in that event there will be contemporaneous evidence to show what were the questions asked to the candidates by the interviewing committee and what were the answers given and that will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee."

19. In my view, interview is totally unnecessary in the case of direct recruitment, particularly, to the posts included in the Working Group/Miscellaneous Groups in all the departments in the Transport Corporations. Interview may be necessary for direct recruitment/promotion to the posts in the Supervisory Group and in the managerial cadre in all the Departments. In fact, employees belonging to Managerial cadre and Supervisory group could be compared to the Government servants belonging to Group I & II. While all the posts included in Group I services are based on written examination and interview, some of the posts in Group II and all the posts in Group IV are filled solely based on written examination. That is, while all the Group I posts and some of the Group II posts are interview posts, some of the Group II posts and all the posts in Group IV service come under non-interview posts. Therefore, even in the case of direct recruitment to the supervisory Group and Managerial Cadre, the appointment solely based on interview is per se illegal. It should be based on written test and interview or based on giving weightage to the academic qualification prescribed for the post and interview, as decided in various cases by the Apex Court.

20. At this juncture, it is relevant to note that all the cases, that came for

consideration before the Apex Court as to how much marks shall be earmarked for interview, belong only to higher echelons of service and those cases do not belong to recruitment to the lower posted such as Conductors, Drivers, Junior Assistants, etc., When the question of giving weightage to interview in recruitment to the higher echelons came for consideration, the Apex Court has held that there should be minimum marks for interview and the same shall be between 12% and 25% of the total marks, if the written examination is held. But, the Apex Court held that if the recruitment is based on weightage of marks for academic qualification, the department could fix some what at higher level than 25% marks for interview. But we are not concerned, in this case, with the recruitment to the posts belong to Supervisory Group or managerial cadre and in those cases, the respondent Corporation shall follow the procedure of either selecting through written test and interview or weightage for academic qualification, etc., and interview.

21. But in my view, in the present scenario, it is very difficult to give weightage to the academic qualification, since there are different streams of studies prevailing in the society and equalization of all the streams cannot be made. For instance, in this case, since the degree is made as a minimum qualification for the post of Junior Assistant, a person in science stream could obtain more marks than arts or commerce. Therefore, in order to have a fair procedure, it is better to conduct a written examination. In fact, the same was considered by the Apex Court in *Ajay Hasia v. Khalid Mujib Sehravardi* (supra), which is relating to admission to engineering college. It is relevant to extract the following passage in paragraph 17 of the said judgment and that principle could be applied here for a fair selection:

"17. The entrance test also facilitates the assessment of the comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination, when the qualifying examination is held by two or more different authorities, because lack of uniformity is bound to creep into the assessment of candidates by different authorities with different modes of examination....."

22. Therefore, I am of the view that the selection based exclusively on interview is bad and illegal and the selection shall be based either on written examination and interview or awarding weightage to academic qualification with interview to the posts in the managerial cadre and supervisory groups and in the case of posts in Group C, namely, Working Group/ Miscellaneous Groups in the Transport Corporations, the selection shall be based exclusively on written examination or based on awarding weightage to academic qualification and no interview is necessary for recruitment to such posts.

23. Now let us examine various judgments of the Apex Court on this aspect.

24. In the following judgments selection was made based on written test and

interview/viva voce and in all those cases selection was for higher echelons of service:

I. Lila Dhar Vs. State of Rajasthan and Others, :

(i). This case relates to recruitment to the post of Munsifs under the Rajasthan Judicial Service Rules. The recruitment rules were made by the Governor of Rajasthan in consultation with the Rajasthan Public Service Commission and High Court of Rajasthan. The selection is based on written test and viva voce. 300 marks were allotted to written test and 100 marks were allotted for viva voce. That is, 25 % of the total marks was allotted to viva voce.

(ii). The issue that came for consideration before the Apex Court is as to whether such fixation of 25% for interview was on higher side and contrary to the law laid down by the Apex Court.

(iii). Heavy reliance was placed on the judgments in Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, and Ajay Hasia v. Khalid Mujib Sehravardi (supra).

(iv). The Apex Court held that those cases could not be applied in the matter of public employment as those cases relate to admission of students to colleges.

(v). It was noticed by the Apex Court in Lila Dhar v. State of Rajasthan (supra) that Ajay Hasia v. Khalid Mujib Sehravardi (supra) relates to admission of students to colleges. Taking note of the fact that 12.2% marks were allotted for viva voce for the selection to the Indian Administrative Service, shortly, I.A.S., the Apex Court in Ajay Hasia v. Khalid Mujib Sehravardi (supra) held that allocating 33 1/3 % marks for interview vitiates the selection procedure of students to admission to college and earmarked 15% of the total marks for interview. This was considered in Lila Dhar v. State of Rajasthan (supra) and the Apex Court held that the principle laid down in Ajay Hasia v. Khalid Mujib Sehravardi (supra) could not be applied to selection in public employment.

(vi). The Apex Court held in Lila Dhar v. State of Rajasthan (supra) that recruitment to the post of Munsifs are made from the persons of matured personality, as the recruitment is from practicing lawyers. The allocation of 25 % of marks was fixed by the expert body, namely, Rajasthan Public Service Commission in consultation with the High Court and hence, such fixation of 25% marks for viva voce was legal and to that extent distinguished Ajay Hasia v. Khalid Mujib Sehravardi (supra) case.

(vii). As already stated, the recruitment in Lila Dhar v. State of Rajasthan (supra) is to the post of District Munsif and not for the posts of Junior Assistant, Typists, Steno-Typists, etc.

II. Ashok Kumar Yadav and Others Vs. State of Haryana and Others, :

This case relates to the recruitment by the Haryana Public Service Commission to the Haryana Civil Service (Executive) and Allied Services. The recruitment was

made for executive posts based on written test and viva voce test. In that case, *Lila Dhar v. State of Rajasthan* (supra) was also considered. The Apex Court held that the Punjab Civil Service (Executive Branch) Rules, 1930 that provides for 33.3% of marks in the case of ex-service officers for interview and 22.2% of marks in case of other candidates is bad. The Apex Court held that in the case of other candidates, it should be 12.2% of marks for the selection to the post of Haryana Civil Service (Executive) and Allied Services, since for the selection of candidates in the Indian Administrative Service and other Allied Services, the marks allocated for the viva voce test constitute only 12.2% of the total marks, and in the case of ex-servicemen, it should be 25% of marks, as those persons are of matured personality due to their past service in the defence. As stated above, the selection in that case is based on written test and interview and it was for the post of Executives.

III. Mohinder Sain Garg Ors. Vs. State of Punjab and Others, :

This case relates to appointment to the posts of Excise and Taxation Inspectors. The recruitment was based on written test and interview. 25% of marks were allocated for interview. Following *Ashok Kumar Yadav v. State of Haryana* (supra), the Apex Court held that allocation of 25% of marks for interview is excessive and held that the interview marks shall not be more than 15% of the total marks.

IV. Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, :

This case pertains to recruitment for the post of Assistant Engineer (Civil) and Assistant Engineer (Mechanical) for Public Works Department of the Karnataka Government. In that case, the recruitment was based on written test and interview. 100 marks were allocated for written test and 50 marks were allocated for interview. That is, 33% marks were allocated for interview. The Apex Court, following the judgments of *Ashok Kumar Yadav v. State of Haryana* (supra) and *Mohinder Sain Garg v. State of Punjab* (supra) held that the marks allocated for viva voce shall not exceed 15% of the total marks.

25. In the following judgments selection was made based on weightage to academic performance and interview/viva voce for higher echelons of service:

V. Anzar Ahmed Vs. State of Bihar and others, :

In this case, the selection was made to the post of Unani Medical Officer by the Bihar Public Service Commission. The selection was based on the marks given to viva voce and academic qualification. 100 marks were allocated to viva voce test and 100 marks were allocated for academic performance. Allocating 50% of total marks for viva voce was held to be bad by the High Court. The Apex Court held that the selection to the post of Unani Medical Officer made by the Public Service Commission could not be interfered with, since the selection was not based on written test and interview and that the restriction as to allocation of marks for

interview placed by the Apex Court in *Ashok Kumar Yadav v. State of Haryana* (supra) and *Lila Dhar v. State of Rajasthan* (supra) was held as not applicable to that case.

VI. *A.P. State Financial Corporation Vs. C.M. Ashok Raju and others*, :

A similar view was taken in this case by the Apex Court, wherein, the issue was relating to the promotion to the post of Manager and above in the appellant corporation. The High Court held that allocating 25% of marks for interview was bad basing on *Ashok Kumar Yadav v. State of Haryana* (supra). The Apex Court held promotion to the post of Manager and above was not based on written test and interview and therefore, the judgment of the Apex Court in *Ashok Kumar Yadav v. State of Haryana* (supra), could not be applied. The Apex Court held that the High Court was not justified in setting aside the allocation of 25% of marks for viva voce test, since promotion was not based on written test and interview, but on different criteria.

26. In these circumstances, I am of the view that selection to the Group C posts in any one of the three Departments in the Transport Corporations, like the respondent, wherein, direct recruitment takes place, the same shall be made based solely, either on the academic marks obtained in the educational qualification, when it is prescribed as 10th Standard (SSLC)/12th Standard (HSC) or by holding written test in commensurate with the qualification (10th Standard or 12th Standard) prescribed. In the case of the posts, for which, the prescribed educational qualification is less than 10th Standard (SSLC) like the post of Driver, etc., or the prescribed qualification is a degree, etc., wherein, it is difficult to assess the candidates on the basis of academic performance, since they are from different streams of examination conducted by the examining authorities, the selection shall be based solely on written test in commensurate with the qualification prescribed under the Rules.

27. In this case also, the selection was made exclusively based on interview is bad. However, I am not inclined to go into the selection already made, particularly, the selected persons are not made as parties and further, they are serving for sometime. In these circumstances, those appointments cannot be set aside. However, I am inclined to give one more opportunity to the petitioner to participate in the next selection process, as he was 44 years of age when he filed this writ petition and thereby he was well within the upper limit prescribed for his category for the post of Junior Assistant at that time. Accordingly, the respondents are directed to give opportunity to the petitioner to participate in the next selection process without reference to the present age of the petitioner.

28. In the result, this writ petition is disposed of directing the respondents,

- (1) to call for applications to fill up the posts by direct recruitment through open market besides calling for names from the employment exchange;
- (2) to give weightage to the academic marks obtained in the educational

qualification, when the educational qualification is prescribed under the Service Rules as 10th Standard (SSLC)/12th Standard (HSC) or to hold written test in commensurate with the qualification (10th Standard or 12th Standard) prescribed.

(3) When the prescribed educational qualification is less than 10th Standard (SSLC) or the prescribed qualification is a degree, etc., the selection shall be based solely on written test in commensurate with the qualification prescribed under the Rules.

However, there will be no order as to costs.

29. It is made clear that this order is applicable to all the Transport Corporations that are functioning in the state of Tamil Nadu. Before parting with this matter, I deem it fit to add the following few lines. As stated by me earlier, the expert body in the matter of recruitment to public office is the Public Service Commission. Hence, the respondents may recruit persons through the TNPSC, an expert body or all the Transport Corporations may form a Centralised Recruitment Agency to conduct the written test and to select candidates. It is left to the discretion of the Corporations.