
(1990) 11 SC CK 0076

In the Supreme Court Of India

Case No : C.A. No. 5329, 5330, 5332, of 1990 with W.P. (Civil) No's. 719 and 824 of 1990

Mohinder Sain Garg Ors.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 32

Citation : (1990) 4 JT 704 : (1990) 2 SCALE 1014 : (1991) 1 SCC 662 : (1990) 3 SCR 108 Supp : (1991) 1 UPLBEC 710

Hon'ble Judges : N. M. Kasliwal, J;M. Fathima Beevi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.M. Kasliwal, J.—Special Leave granted.

2. The above two writ petitions and four civil appeals are disposed of by one single order as identical questions of law are involved in these cases. In order to appreciate the controversy in these cases we shall refer to the paper book of civil appeal arising out of SLP (Civil) No. 14292 of 1989. All the appellants as well as the two petitioners in the writ petitions would be referred herein as the petitioners.

3. An advertisement was published in the Tribune (English) On August 3, 1988 by the office of the Excise and Taxation Commissioner, Punjab - Chairman Selection Committee, Patiala for appointment to 47 posts of Excise and Taxation Inspectors. In the advertisement it was provided that there will be three written papers of English, Punjabi and General Knowledge of B.A. standard. Those who get 33 per cent marks in each paper and 40 per cent marks in aggregate will be called for interview. Total marks for the written test were kept at 300 and for interview 100. Written examination was held in January, 1989 in which all the petitioners appeared and were also called for interview but they did not qualify in merit for appointment. It may be further mentioned that by the time the

selection process had commenced, the number of posts were increased to 54. Out of the above petitioners, Charanjit Singh falls in the category of Backward Class. Out of the above 54 posts, 28 posts were for Taxation Inspectors and 26 for Excise Inspectors. After the interview out of 28 posts of Taxation Inspectors, 15 were filled by candidates of general category, 7 by scheduled castes, 1 backward class, 4 ex-servicemen and 1 sportsman. Out of 26 posts of Excise Inspectors, 14 were filled out of general category, 6 Scheduled Castes, 1 backward class, 3 ex-servicemen, 1 sportsman and 1 dependent of freedom fighter. The Selection Committee called more than 1200 candidates for interview for appointments to the above posts.

4. On a direction given by this Court the respondents produced the original result sheets of Excise/Taxation Inspectors' Examination, 1989 according to which the petitioners secured the following marks:

5. Though the petitioners had alleged allegations of mala fide against the Selection Committee but this ground was not substantiated and the petitioners did not press the ground of mala fide before us. The four petitioners who have come before this Court by grant of special leave had filed writ petitions in the Punjab and Haryana High Court but the same were dismissed following full Bench Judgments of that Court in Raghunath Das Prahlad Das Vs. Om Oil and Oilseeds Exchange Ltd. and Another, and Jaimal Singh Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar and Another,

6. Learned counsel for the petitioners raised two grounds before us. The first ground of attack was that though the Selection Committee had to select 54 candidates but it called more than 1200 candidates for interview. This action of the Selection Committee gave the power of arbitrariness for selection of the candidates. It was contended that it would be impossible to carry out a satisfactory viva voce test if such a large number of candidates were called for interview. The interview was not only casual but also superficial and sloppy and the assessment made at such interviews can never reflect the true measure of the personality of the candidate. Reliance in support of the above contention was placed on Ashok Kumar Yadav and Others Vs. State of Haryana and Others,

7. The second ground urged before us was that keeping 25 per cent marks for interview gave arbitrary powers to the Selection Committee. The selection of the candidates on the basis of such high percentage of marks for interview was contrary to the provisions of Article 14 of the Constitution. The respondents filed a counter affidavit before this Court in which took an objection by way of preliminary submissions that the petitioners had not impleaded all the respondents in the High Court as well as before this Hon'ble Court and as such the writ petitions and appeals were not maintainable. In the counter affidavit filed in the case of Mohinder Sain Garg it was also averred that all the vacancies except one stood filled up; appointment letters had been issued and the selected candidates had joined the posts and as such the appointments already made may not be quashed. That the above mentioned full Bench cases of the Punjab

and Haryana High Court have held that fixation of 28.5 per cent marks for viva voce test were not arbitrary and the High Court was justified in dismissing the writ petitions. It was submitted before us that in Ashok Kumar Yadav's case this Hon'ble Court was dealing with the appointment made by the Public Service Commission and as such was setting up norms which should guide all State Public Service Commissions in discharging their functions. In the present case the selections have been made by the Departmental Selection Committee which was chaired by the Commissioner, Excise and Taxation and as such the observations made in Ashok Kumar Yadav's case have no relevance in the present case. It was also submitted that all the candidates who had qualified and cleared the written examination having secured 33 per cent marks in each paper and 40 per cent in the aggregate had to be called for interview, irrespective of the number which was more than 1200 in the present case. It was also submitted in the reply that a decision was taken by the State of Punjab, Office of the Excise and Taxation Commissioner vide memo No. 4571-ET (V)-70/2247 dated 26.5.1970 for appointment of Inspectors in the department by direct recruitment. According to this decision the minimum educational qualification was kept as graduate and it was also provided that the candidates may be appointed on the post after taking a test which should comprise of 400 marks in the papers, namely, English-100, General Knowledge-100, Punjabi-100 and Interview-100. It had also been decided as back as in 1970 that the candidate should obtain minimum of 33 per cent marks in each paper and only those candidates would be called for interview who had obtained 40 per cent marks in aggregate. All appointments starting from 1970 upto the present one had been made on the above basis alone. The awarding of marks in viva voce has been left to the wisdom of the appointment committee as various things are judged during the viva voce test such, as, candidate's initiative, alertness, resourcefulness, capacity for clear and logical presentation, effectiveness in decision, effectiveness in meeting, dealing with others, adaptability and judgment, ability to make decision, ability to lead and intellectual and moral integrity etc. The Members of the Selection Board were experts in their respective fields and the Hon'ble High Court after considering all the points and hearing both the parties rightly dismissed the petitions in limine. It was denied that the Selection Committee had awarded excessive marks to some candidates to bring them high up in the merit list. The marks were awarded on the basis of interviews conducted by the Selection Committee and the response given by the candidates at the time of interview was the sole criteria of awarding marks.

8. In order to decide the controversy raised before us, it would be necessary to examine the case of this Court cited at the bar.

9. In *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, a Bench of three Judges considered the question of admission to certain medical colleges in the State of Tamil Nadu where 75 marks were kept for interview out of a total marks of 275. It was observed as under:

Earmarking 75 marks out of 275 marks for interview as interview marks prima facie appears to be excessive. It is not denied that the interview lasted hardly for three minutes for each candidate. In the course of three minutes interview it is hardly possible to assess the capability of a candidate. In most cases the first impression need not necessarily be the best impression. But under the existing conditions in this country we are unable to accede to the contention of the petitioners that the system of interview, as in vogue in this country is so defective as to make it useless. It is, true that various researches conducted in other countries particularly in U.S.A. show that there is possibility of serious errors creeping in interviews made on haphazard basis. C.W.Valentine on "Psychology and its Bearing on Education" refers to the marks given to the same set of persons interviewed by two different competent Boards and this is what is stated in his book: "The members of each board awarded a mark to each candidate and then he was discussed and an average marks agreed on.

When the orders of merit for the two boards were compared it was found that the man placed first by Board A was put 13th by Board B when the man placed 1st by Board B was 11th with Board A". It was further observed:

While we do feel that the marks allotted for interview are on the high side and it may be appropriate for the Government to re-examine the question, we are unable to uphold the contention the it was not within the power of the Government to provide such high marks for interview or that there was any arbitrary exercise of power.

10. The Court did not accept the contention that the interview marks were manipulated either by the Government or by the selection committees.

11. In *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, the dispute was made to the selection of candidates admitted to the Government Medical College, Jammu for academic year 1979-80. It was held by a Bench of three Judges:

That the contention that interview system is not a reliable test to judge the suitability of a candidate as many uncertain factors were likely to affect the result of the interview, reflects a legitimate point of view but it is a point of view only and cannot be taken as the last word on the subject.

It was further held:

that reserving 50 marks for interview out 150 (100 for written examination and 50 for interview) does seem excessive especially when the time spent was not more than 4 minutes on each candidate. As regards A. Peeriakaruppan's case it was observed "when we say this we are not unmindful of the observations in Peeriakaruppan's case quoted above, which were made in a somewhat similar but not altogether identical situation. The finding was recorded that there was no reliable material before the Court to prove that there had been discrimination or manipulation of the interview marks. That being so, and considering the possible

hardship, if the selections were now set aside, to the students in whose case the validity of the selection cannot otherwise be questioned and who have nearly completed two terms, it would not be proper to annul the entire selection. However, it is hoped that for future years the State Government would reduce the percentage of marks allowed for interview to a reasonable proportion of the total marks for the selection test.

12. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, a Constitution Bench of Five Judges considered the writ petitions under Article 32 of the Constitution" challenging the validity of the admissions made to the Regional Engineering College, Srinagar for the academic year 1979-80. In the above case out of a total of 150 marks, 50 marks were kept for interview. The Court considered the question of the validity of viva voce examination as a permissible test for selection of candidates for admissions to a college. After quoting passage from the Book on Public Administration in Theory and Practice by M.P. Sharma and the passage from the book on Public Personnel Administration by 01 Glenn Stahl the Court observed as under:

But, despite all this criticism, the oral interview method continues to be very much in vogue as a supplementary test for assessing the suitability of candidates wherever test of personal traits is considered essential. Its relevance as a test for determining suitability based on personal characteristics has been recognised in a number of decisions of this Court which are binding upon us. Reliance was placed on *R. Chitralakshmi and Another Vs. State of Mysore and Others*, , *A. Peeriakuruppan v. State of Tamil Nadu (supra)* and *Ms. Nishi Maghu and others v. State of J & K and others case (supra)*.

It was further observed in the above case:

the oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. We would, however, like to point out that in the matter of admission to college or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be restored to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification.

13. As regards reserving 50 marks for interview out of a total of 150 it was held that allocating 33.33% of the total marks for oral interview is plainly arbitrary and unreasonable. It was further observed in this regard as under:

It is significant to note that even for selection of candidates for the I.A.S., the I.F.S. and the I.P.S., where the personality of the candidate and his personal

characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for oral interview are 250 as against 1800 marks for the written examination, constituting 12.2% of the total marks taken into consideration for the purpose of making the selection. We must, therefore, regard the allocation of as high a percentage as 33.33% of the total marks for the oral interview as inflecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained.

14. The Court however did not think it proper in the exercise of its discretion in setting aside the selections made for the academic year 1979-80 after the lapse of a period of about 18 months, since to do so would be to cause immense hardship to those students in whose case the validity of the selection cannot otherwise be questioned and who have nearly completed three semesters and, moreover, even if the petitioners are ultimately found to be deserving of selection on the application of the proper test, it would not be possible to restore them to the position as if they were admitted for the academic year 1979-80, which has run out long since. It was held:

that it is true there is an allegation of mala fides against the Committee which interviewed the candidates and we may concede that if this allegation were established, we might have been inclined to interfere with the selections even after the lapse of a period of 18 months, because the writ petitions were filed as early as October-November 1979 and merely because the Court could not take up the hearing of the writ petitions for such a long time should be no ground for denying relief to the petitioners, if they are otherwise so entitled. But we do not think that on the material placed before us we can sustain the allegation of mala fides against the committee.

It was further held:

We may also caution the authorities that though, in the present case, for reasons which we have already given we are not interfering with the selection for the academic year 1979-80, the selections made for the subsequent academic years would run the risk of invalidation if such a high percentage of marks is allocated for the oral interview. We are of the view that, under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.

15. In *Lila Dhar Vs. State of Rajasthan and Others*, a Bench of three Judges considered the question of selection to Rajasthan Judicial Service by written examination as well as oral viva voce test. The competitive examination contained two papers in law carrying 100 marks each and two papers, one in Hindi and the other in English, each carrying 50 marks and a viva voce examination carrying 100 marks. Thus in the above case 25% of the total marks were kept for the viva voce examination. By a writ petition under Art. 32 the Selection to Rajasthan Judicial Service was sought to be quashed on several

grounds out of which one was the high percentage of viva voce marks being clearly in violation of the dictum laid down by the Constitution Bench in Ajay Hasia's case (supra). A. Peeriakaruppan and Ajay Hasia's cases were distinguished on the ground that they were cases for admission to colleges. It was pointed out that the provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public service. As regards the words "or even in the matter of public employment" used in Ajay Hasia's case, it was observed as under:

The observations of the Court were made primarily, in connection with the problem of admission to colleges, where naturally, academic performance must be given prime importance. The words "or even in the matter of public employment" occurring in the first extracted passage and the reference to the marks allocated for the interview test in the Indian Administrative Service examination were not intended to lay down any wide, general rule that the same principle that applied in the matter of admission to colleges also applied in the matter of recruitment to public services. The observation relating to public employment was per incuriam since the matter did not fall for the consideration of the Court in that case. Nor do we think that the Court intended any wide construction of their observation. As already observed by us the weight to be given to the interview-test should depend on the requirement of the service to which recruitment is made, the source-material available for recruitment, the composition of the Interview Board and several like factors.

16. It may be further mentioned that in this case their Lordships further considered that both the High Court and the Public Service Commission being independent bodies, outside executive control, occupying special positions and enjoying special status under the Constitution and the Rajasthan Judicial Service Rules under consideration in that case had been made by the Governor of Rajasthan in consultation with the High Court of Rajasthan and the Rajasthan Public Service Commission. The Court in the above case also took into consideration that the interview test in that case was conducted by a body consisting of a Judge of the High Court, the Chairman and a Member of the Public Service Commission and a special invitee expert. Court observed:

that there can surely be no legitimate grievance or hint of arbitrariness against this body. Yet another factor worthy of consideration is that the candidates expected to offer themselves for selection are not raw graduates freshly out of college but are persons who have already received a certain amount of professional training. The source material is such that some weightage must be given to the interview test and can it possibly be said that twenty five per cent of the total marks is an exaggerated weightage. We may add here that it has been made clear by the Chairman, Rajasthan Public Service Commission on whose behalf a counter affidavit has been filed before us that the marks obtained by the candidates at the written examination were not made available to the members of the Interview Board either before or at the time of the interview. We are

unhesitatingly of the view that the selection cannot be struck down on the ground that more than due weightage was given to the interview test.

17. In *Koshal Kumar Gupta and Others Vs. State of Jammu & Kashmir and Others*, a Bench of three Judges considered the question of legality and correctness of admissions to Bachelor Degree course for 1982-83 in Regional Engineering College at Srinagar. The challenge was to the manner, the method and the number of marks assigned to viva voce test. The allegations were that reservation of 85 marks for written examination and 15 marks for viva voce test had the pernicious tendency of affecting merit disclosed by the marks obtained at written examination. After placing reliance on *Ajay Hasia's case* (supra) it was held:

that there was nothing illegal in-keeping 15 marks out of 100 marks for viva voce test.

18. In *Ashok Kumar Yadav and Ors. v. State of Haryana and Ors. etc. etc.* 1985 Supp. SCR 657 a Bench of four Judges again considered the question of percentage of marks kept for viva voce examination. In this case Rule 9 Clause (1) of the Punjab Civil Service (Executive Branch) Rules, 1930 prescribed a competitive examination for recruitment to posts in Haryana Civil Service (Executives) and other allied services. Regulation 1 in Appendix 1 lays down that the competitive examination shall include compulsory and optional subjects and that every candidate shall take all the compulsory subjects and not more than three of the optional subjects, provided that ex-servicemen shall not be required to appear in the optional subjects. As per Regulation 5, the compulsory subjects carried in the aggregate 400 marks and there was also viva voce examination which was compulsory and which carried 200 marks and each optional subject carried 100 marks. The result was that the written examination carried an aggregate of 700 marks for candidates in general and for ex-servicemen it carried an aggregate of 400 marks while in case of both, the viva voce examination carried 200 marks. Regulation 3 provided that no candidate shall be eligible to appear in the viva voce test unless he obtained 45% marks in the aggregate of all subjects including at least 33% marks in each of the language papers in Hindi and Hindi essay.

19. In a written examination held by the Haryana Public Service Commission for recruitment to 61 posts in Haryana Civil Service (Executive) and other allied services, over 1300 candidates obtained more than 45% marks and thus qualified for being called for the viva voce examination. The Haryana Public Service Commission invited all the candidates for the viva voce examination and the interviews lasted for almost half a year. The number of vacancies also rose during the time taken up in the written examination and the viva voce test and ultimately 119 posts became available for being filled and on the basis of total marks obtained in the written examination as well as viva voce test, 119 candidates were selected and recommended by the Haryana Public Service Commission to the State Government. The candidates who obtained very high

marks at the written examination but obtained poor marks in the viva voce test and as such could not come within first 119 candidates and were consequently not selected filed several writ petitions in the High Court of Punjab and Haryana challenging the validity of the selection of 119 candidates and seeking a writ for quashing and setting aside the same. The State of Haryana, Haryana Public Service Commission, 3 members of the Haryana Public Service Commission and 5 selected candidates were made respondents in the writ petitions. Several grounds for challenging the selection were taken but in the present case we are concerned with the ground that the allocation of 200 marks for the viva voce test out of a total of 900 marks for the generality of students and a total of 600 marks for ex-servicemen was arbitrary and excessive and it had the effect of distorting the entire process of selection and accordingly it was unconstitutional as involving denial of equal opportunity in public employment and also the ground that the number of candidates called for interview were almost 20 times the number of vacancies and this not only imposed an intolerable burden on the Haryana Public Service Commission but also widened the scope for arbitrariness in selection by making it possible for the Haryana Public Service Commission to boost up or deflate the total marks which might be obtained by a candidate. The High Court set aside the selections and directed the Haryana Public Service Commission and the State of Haryana to forthwith declare the result of candidates of all categories on the basis of written examination alone, scrupulously excluding all considerations of the viva voce test. The selected candidates, State of Haryana and three members of the Haryana Public Service Commission came in appeal to this Court. This Court held as under (see Headnote 4(i)):

The Haryana Public Service Commission was not right in calling for interview all the 1300 and odd candidates who secure 45% or more marks in the written examination. It is clear on a plain natural construction of Regulation 3 that what it prescribed is merely a minimum qualification for eligibility to appear the viva voce test. Every candidates to be eligible for appearing at the viva voce test must obtain at least 45% marks in, the aggregate in the written examination. But obtaining of minimum, 45% marks does not by itself entitle a candidate to insist that he should be called for the viva voce test. There is no obligation on the Haryana Public Service commission to call for the viva voce test all candidates who satisfy the minimum eligibility requirement. Where' there is a composite test consisting of a written examination followed by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination should not exceed twice or at the highest, thrice the number of vacancies to be filled.

In the instant case, the Haryana Public Service Commission could not be said to be actuated by any mala fide or oblique motive in calling for interview all the 1300 candidates because it was common ground between the parties that this was the practice which was being consistently followed by the Haryana Public Service Commission over the years and what was done in this was nothing

exceptional. Therefore the selections made by the Haryana Public Service Commission could not be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview, though it is not right course to follow and not more than twice or at the highest thrice, the number of candidates should have been called for interview.

See Head Note 5(i)

While a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by a viva voce test, much depending on the Constitution of the interview board. There can therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination. See Head Note 5 (ii)

There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter of determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in *Liladhar's case* "exaggerated weight has been given with proven or obvious oblique motives.

See Head Note 6

So far as candidates in general category are concerned, it would be prudent and safe to follow the percentage adopted by the Union Public Service Commission in case of selection to the Indian Administrative Service and other allied services. The percentage of marks allocated for the viva voce test by the Union Public Service Commission in case of Indian Administrative Service and other allied services is 12.2, and that has been found to be fair and just, as striking a proper balance between the written examination and the viva voce test. This Court would therefore direct that hereafter in case of selections to be made to the Haryana Civil Service (Executive Branch) and other allied services, where the competitive examination consists of a written examination followed by a viva

voce test, the marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. The Court would suggest that this percentage should also be adopted by the Public Service Commissions in other States, because it is desirable that there should be uniformity in the selection process through out the country and the practice followed by the Union Public Service Commission should be taken as a guide for the State Public Service Commissions to adopt and follow. In case of ex-service officers, having regard to the fact that they would ordinarily be middle aged persons with personalities fully developed, the percentage of marks allocated for the viva voce test may be 25. Whatever selections are made by the Haryana Public Service Commission in the future shall be on the basis that the marks allocated for the viva voce test shall not exceed 12.2% in case of candidates belonging to the general category and 25% in case of ex-service officers.

20. The Court thereafter considered the effect of allocation of such a high percentage of marks for viva voce test and observed as under: (see pages 699-700)

But the question which then arises for consideration is as to what is the effect of allocation of such a high percentage of marks for the viva voce test, both in case of ex-service officers and in case of other candidates, on the selections made by the Haryana Public Service Commission. Though we have taken the view that the percentage of marks allocated for the viva voce test in both the cases is excessive, we do not think we would be justified in the exercise of our discretion in setting aside the selections made by the Haryana Public Service Commission after the lapse of almost two years. The candidates selected by the Haryana Public Service Commission have already been appointed to various posts and have been working on these posts since the last about two years. Moreover the Punjab Civil Service (Executive Branch) Rules 1930 under which 33.3% marks in case of ex-service officers and 22.2% marks in case of other candidates, have been in force for almost 50 years and everyone has acted on the basis of these rules. If selections made in accordance with the prescription contained in these rules are now to be set aside, it will upset a large number of appointments already made on the basis of such selections and the integrity and efficiency of the entire administrative machinery would be seriously jeopardised. We do not, therefore, propose to set aside the selections made by the Haryana Public Service Commission though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test.

Court ultimately gave the following directions:

We accordingly allow the appeals, set aside the judgment of the Punjab and Haryana High Court and reject the challenge to the validity of the selections made by the Haryana Public Service Commission to the Haryana Civil Services (Executive Branch) and other allied services. But in view of the fact that an unduly large number of candidates were called for interview and the marks allocated in the viva voce test were excessively high, it is possible that some of

the candidates who might have otherwise come in the select list were left out of it, perhaps unjustifiably. We would therefore direct that all the candidates who secured a minimum of 45% marks in the written examination but who could not find entry in the select list, should be given one more opportunity of appearing in the competitive examination which would now have to be held in accordance with the principles laid down in this Judgment and this opportunity should be given to them, even though they may have passed the maximum age prescribed by the rules for recruitment to the Haryana Civil Services (Executive Branch) and other allied services. We would direct that in the circumstances of the case the fair order of costs would be that each party should bear and pay his own costs throughout.

21. In *State of U.P. Vs. Rafiquddin and Others*, a Bench of two Judges considered the question relating to determination of seniority of members appointed as Munsifs in the Uttar Pradesh Nyayik Seva as a result of competitive examinations of 1970, 1972 and 1973 held under the Uttar Pradesh Civil Service (Judicial Branch) Rules, 1951. While determining the above question, it was held as under:

The Commission had power to fix norm and in the instant case it had fixed 35% minimum marks for viva voce test. The viva voce test is a well recognised method of judging the suitability of a candidate for appointment to public services and this method had almost universally been followed for making selection for appointment to public services. Where selection is viva voce test, the final result is determined on the basis of the aggregate marks. If any minimum marks either in the written test or in viva voce test are fixed to determine the suitability of a candidate the same has to be respected. Clause (ii) of the proviso to Rule 19 clearly confers power on the Commission to fix minimum marks for viva voce test for judging the suitability of a candidate for the service. We do not find any constitutional legal infirmity in the provision.

22. While determining the above question a reference was made to *Liladhar v. State of Rajasthan and Ashok Kumar and Ors. etc. v. State of Haryana and Ors. etc.*. In the said context it was observed as under:

In *A.K. Yadav v. State of Haryana*, a Constitution Bench of this Court approved the view expressed in *Liladhar* case. The Court observed there cannot be any hard and fast rule regarding the weight to be given as against the written examination. It must vary from service to service; according to the requirement of the service; the minimum qualification, prescribed age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. The court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it. In *Liladhar* Case, 25% of marks fixed for viva voce test was upheld. In *A.K. Yadav* case, selection made by the Haryana Public Service Commission for appointment to the post of Haryana Civil Service (Executive and other allied services) was under challenge. The Court held that allocation of 33.3% for viva voce was high as it opened door

for arbitrariness and in order to diminish it if not eliminate the same the percentage needs to be reduced. The Constitution Bench made observation that marks for viva voce test should not exceed 12.2%. In spite of these observations the Constitution Bench did not interfere or strike down the selection instead it directed the Commission to give one more opportunity to the aggrieved candidates to appear at the competitive examination. In the instant case there has been no allegation of mala fides or arbitrariness against the Commission which held the viva voce test. In the circumstances we do not consider it necessary to set aside selection or issue any direction to the Public Service Commission or to the State Government as rules relating to viva voce test and, therefore, it is not necessary to issue any direction in the matter.

23. In *Mehmood Alam Tariq and Others Vs. State of Rajasthan and Others*, the question involved was regarding the validity of certain provisions of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1962, The Rajasthan Administrative Service Rules, 1954, The Rajasthan Forest Service Rules, 1962 which contained a provision special to the said three services and not applicable to other services, that candidates, other than those belonging to Scheduled Castes and Scheduled Tribes should secure a minimum of 33% marks in the viva voce test. The rules further stipulated that the candidates for these services must also secure 50% marks in the written examination, but that was not in the area of controversy. While dealing with the above questions a reference was made to cases *Ajay Hasia*, *Liladhar* and *A.K. Yadav* (*supra*). It was observed as under:

The much desired transformation from patronage to open competition is a later development, to which, now, all civilised governments profess commitment. However, though there is agreement in principle that there should be a search for the best talent particularly in relating to higher posts, however, as to the methods of assessment of efficiency, promise and aptitude, ideas and policies widely vary, though it has now come to be accepted that selection is an informed professional exercise which is best left to agencies independent of the services to which recruitment is made. The 'interview' is now an accepted aid to selection and is designed to give the selectors some evidence of the personality and character of the candidates. Macaulay had earlier clearly declared that a young man who in competition with his fellowmen of the same age had shown superiority in studies might well be regarded as having shown character also since he could not have prepared himself for the success attained without showing character in eschewing sensual pleasures. But the interview came to be recognised as an essential part of the process of selection on the belief that some qualities necessary and useful to public servants which cannot be found out in a written test would be revealed in a viva voce examination. In justification of the value and utility of the viva voce, the committee on Class I examinations in Britain said:

... It is sometimes urged that a candidate, otherwise well qualified, may be

prevented by nervousness from doing himself justice viva voce. We are not sure that such lack of nervous control is not in itself a serious defect, nor that the presence of mind and nervous equipoise which enables a candidate to marshal all of his resources in such constitutions is not a valuable quality. Further, there are undoubtedly some candidates who can never do themselves justice in written examination, just as there are other who under the excitement of written competition do better than on ordinary occasions.., We consider that the viva voce can be made a test of candidate's alertness, intelligence and intellectual outlook, and as such is better than any other....

As to the promise as well as the limitations of the viva voce, Herman Finer says:

If we really care about the efficiency of the civil service as an instrument of government, rather than as a heaven- sent opportunity to find careers for out brilliant students, these principles should be adopted. The interview should last at least half an hour on each of the two separate occasions. It should be also entirely devoted to a discussion ranging over the academic interests of the candidate as shown in his examination syllabus, and a short verbal report could be announced at the interivew. As now, the interview should be a supplementary test and not a decisive selective test. The interviewing board should include a business administrator and university administrator. The interview should come after and not before the written examination, and if this means some inconvenience to candidates and examiners, then they must remember that they are helping to select the government of a great State, and a little inconvenience is not to be weighed against such a public duty....

As regards A.K. Yadav's case it was observed as under:

Shri Rao's reference to and reliance upon the observations in Yadav's case is somewhat out of context. The context in which the observations were made was that the spread of marks for the viva voce was so enormous, compared with the spread of marks for the written examination, that the viva voce test, 'tended to become the determining factor'. The reference was to the possibility of a candidate undeservedly being allotted high marks at the interview. That is a very different thing from the question whether a candidate should acquire at least a certain minimum percentage of marks at the viva voce. The distinction in the two sets of situations is brought out in the words of an administrator Sir Ross Barker:

My experience, which has been chiefly confined to cases in which the number of candidates was not so large, is that the whole process is dangerous and infinitely hazardous. I think most selective committees on which I have served have been very doubtful about the results of what they had done. They have done their best on insufficient materials. The process is I think fairly successful in weeding out the worst candidates.

24. The Judgment of the High Court was set aside and the writ petitions challenging the validity of the impugned rules were dismissed.

25. The position which emerges from the consideration of the above cases is that *A. Peeriakruppan etc. v. State of Tamil Nadu and Ors.*, *Ms. Nishi Maghu and Others v. State of J&K and Others* and *Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others* were cases for admissions to colleges. In *Liladhar v. State of Rajasthan and Ors.* (supra) a Bench of three Judges then considered the question of selection to Rajasthan Judicial service by written examination as well as oral viva voce test. In that case 25 per cent marks were kept for the viva voce examination. One of the unsuccessful candidates filed a petition under Art. 32 before this Court. One of the grounds taken was that the high percentage of viva voce marks were clearly in violation of the dictum laid down by the Constitution Bench in *Ajay Hasia's* case. This Court in *Liladhar's* case distinguished the cases of *A. Peeriakaruppan* and *Ajay Hasia* on the ground that they were cases for admissions to colleges. It was pointed out that the provision for marks for interview test need not and cannot be the same for admission to colleges and entry into public services. As regards the words "Or even in the matter of public employment", used in *Ajay Hasia's* case it was observed in *Liladhar's* case that the observations of the Court were made, primarily, in connection with the problem of admission to colleges where, naturally, academic performance must be given prime importance. It was further held that the observations relating to public employment was per in curium since the matter did not fall for the consideration of the Court in that case. It was further held that the interview test in *Liladhar's* case was conducted by a body consisting of a Judge of the High Court, the Chairman and a Member of the Public Service Commission and a special invitee expert. Thus there could be no legitimate grievance or hint of arbitrariness against such body. Another factor worthy of consideration in that case was that the candidates expected to offer themselves for selection were not raw graduates freshly out of college but were persons who had already received a certain amount of professional training. The source material was such that some weightage was to be given to the interview test and in their Lordship's view 25 per cent of the total marks was not an exaggerated weightage. The Court thus dismissed the petition in *Liladhar's* case.

26. The important case in chronology is of *Ashok Kumar Yadav and Ors. etc. etc. v State of Haryana and Ors. etc. etc.* (supra) decided by a Bench of four Judges on which both the parties have placed reliance, for in this case their Lordships considered all the earlier cases including the case of *Liladhar*. In *Ashok Kumar Yadav's* case it was held that there cannot be any hard and flats rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, age group from which the selection is to be made, the body to which the task of holding the viva voce test in proposed to be entrusted and a host of other factOrs. It is essentially a matter determined by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. In *Liladhar's* case "exaggerated weight has been

given with proven or obvious oblique motives."

However, it is important to note that in Ashok Kumar Yadav's case Rule 9 Clause (I) of the Punjab Civil Services (Executive Branch) Rules, 1930 which prescribed a competitive examination for recruitment to posts in Haryana Civil Services (Executive) and other allied services came up for consideration. The Rule provided for a competitive examination which included a written examination as well as viva voce. For recruitment to 61 posts in Haryana Civil Services (Executive) and Other Allied Services, over 1300 candidates obtained more than 45 per cent marks and were thus qualified for being called for viva voce examination. Before the viva voce examination took place 119 posts became available for which more than 1300 candidates obtaining 45 per cent marks or more were called for viva voce. The Court in clear terms deprecated the calling for interview of 1300 and odd candidates and observed that by obtaining of minimum of 45 per cent marks did not by itself entitle a candidate to insist that he should be called for the viva voce test. There was no obligation on the Haryana Public Service Commission to call for the viva voce test all candidates who satisfied the minimum eligibility requirement. It was also held that where there was a composite test consisting of a written examination followed by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest thrice the number of vacancies to be filled. However, the Court did not set aside the selection on the above ground because the practice which was being consistently followed was applied in the above case also and what was done was nothing exceptional. We are also of the view in the facts of the present case that though it was not proper for the selection committee to have called as much as more than 1200 candidates for selection of 54 posts, but the selection cannot be vitiated merely on this ground as such action is not tainted by any mala fide or oblique motive. The respondents in the reply have also stated that they had called all the eligible candidates as the same practice was followed from the year 1970 and according to the rules all such candidates had qualified in the written examination for being called in the viva voce test.

27. In Ashok Kumar Yadav's case which related to public employment it was held in clear terms that for candidates in general category are concerned, it would be prudent and safe to follow the percentage adopted by the Union Public Service Commission in case of selection to the Indian Administrative Service and other allied services. The percentage of marks allocated for the viva voce test by the U.P.S.C. in the above services was 12.2% and that has been found to be fair and just as directing a proper balance between the written examination and the viva voce test. A clear direction was given in the following terms "this Court would therefore direct that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consist of written examination followed by viva voce test, the marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection." The Court further suggested that this

percentage should also be adopted by the Public Service Commissions in other States, because it was desirable that there should be uniformity in the selection process throughout the country and the practice followed by the U.P.S.C. should be taken as a guide for the State Public Service Commissions to adopt and follow. The Court also considered the effect of allocation of a high percentage of marks for viva voce test in Ashok Kumar Yadav's case. It was clearly held that the allocation of 200 marks for the viva voce test out of a total of 900 marks for the generality of candidates and a total of 600 marks for ex-servicemen was arbitrary and excessive and it had the effect of distorting the entire process of selection. The Court further took note of the fact that the above percentage of 33.3% marks in case of ex-service officers and 22.2% marks in cases of general candidates, had been allocated for the viva voce test in force for almost 50 years and everyone had acted on the basis of these rules. It was considered that if the prescription contained in the rules was to be set aside, it would upset a large number of appointments already made on the basis of such selections and the integrated and efficiency of the entire administrative machinery would be seriously jeopardised. The Court in the above circumstances did not set aside the selections already made on the basis of an unduly high percentage of marks allocated for the viva voce test. The Court further observed that an unduly large number of candidates were called for interview and the marks allocated in the viva voce test were excessively high, it was possible that some of the candidates who might have otherwise come in the select list were left and of it, perhaps unjustifiably, considered it proper to direct that all the candidates who secured a minimum of 45 per cent marks in the written examination but who could not find entry in the select list, should be given one more opportunity of appearing in the competitive examination which would now have to be held in accordance with the principles laid down in the judgment and this opportunity should be given to them, even though they may have passed the maximum age prescribed by the rules of recruitment. We may, in the same context, mention that the case of State of U.P. v. Rafiquddin and Ore. (supra) and Mehmood Alam Tariq and others v. State of Rajasthan and Others (supra) already cited above are not cases directly dealing with the controversy raised before us and are clearly distinguishable.

28. In our view Ashok Kumar Yadav's case clinches the issues raised before us and being a decision given by four Judges is also binding on us. That was a case relating to public employment and a direction was given to all the Public Service Commissions to follow the marks allocated for viva voce test as done by the U.P.S.C. which was 12.2% of the total marks. Ashok Kumar Yadav's case was decided in 1985 and we fail to understand as to why the State of Punjab did not follow the same for making selections in 1989 for the posts of Excise and Taxation Inspectors. It is no doubt correct that the selection of Taxation and Excise Inspectors is done by a Subordinate Selection body and not by Public Service Commission yet no valid reason had been given before us by learned counsel for the respondents as to why the principle enunciated in Ashok Kumar

Yadav's case should not be applied in these cases as well. Even if Ashok Kumar Yadav's case may not in terms apply in the cases before us to the extent of laying down 12.2% of the total marks for viva voce test which was made applicable for selections to be made by U.P.S.C., we deem it proper to lay down after taking in view the dictum of all the authorities decided so far that the percentage of viva voce test in the present cases at 25% of the total marks arbitrary and excessive. There could be no gain saying that viva voce test cannot be totally dispensed with, but taking note of the situation and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15 per cent of the total marks in the selection of candidates fresh from college/school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview.

29. We are also faced with the situation that selections for the above posts have already been made and the selected candidates have already joined the posts long back. They were also not impleaded as parties before the High Court as well as before us. In the above circumstance it would be doing injustice to such candidates, who have already been selected and have joined the posts, to quash their selections even if we hold that 25 per cent marks for viva voce test were excessively high.

30. The question which now calls for consideration is as to what direction can be given in these cases. Petitioners Charanjit Singh and Davinder Prithpal Singh belong to the category of backward classes. Charanjit Singh had secured 143.5 and Davinder Prithpal Singh had secured 129 marks in the written papers. A perusal of the original marks sheet made available to us at the time of hearing shows that Charanjit Singh had applied for being considered for both posts of Excise Inspector as well as Taxation Inspector. He was however disqualified for post of Excise Inspector due to non fulfilment of physical standard as stated in the advertisement. Davinder Prithpal Singh had applied for the post of Taxation Inspector only and both these petitioners could lay claim for the post of Taxation Inspector only. It may be noted that only one post was reserved in the category of backward classes for the post of Taxation Inspector. 95 candidates belonging to the backward classes had qualified in the written examination and as such called for interview. According to the respondents one post reserved in the category of backward classes had gone to Bhupinder Pal Singh who had secured 183 marks in the written papers and 50 marks in viva voce test, thus in all 233. It has been contended on behalf of these petitioners that Bhupinder Pal Singh having secured 233 marks was even entitled to have been selected in the general category itself as the last candidate selected in the general category had secured much less marks than 233 secured by Bhupinder Pal Singh. We see no force in the above contention. The respondents have selected Bhupinder Pal Singh against the seat reserved for backward class. That apart a large number of candidates belonging to backward class had secured very high marks in written papers in comparison to the two petitioners Charanjit Singh and Devinder

Prithpal Singh who had secured 143.4 and 129 marks in the written papers. The original marks sheet shows that atleast seven candidates of backward class had secured 170 to 176 marks in written papers but were not selected in merit. Thus even if we had quashed the entire selections and would have given a direction to hold the viva voce test afresh by reducing the percentage of marks, it would have been a futile exercise so far as these two petitioners are concerned, as they stood no chance of being selected even remotely. Even if for arguments sake Bhupinder Pal Singh was given a post out of general category and then fill one post of Taxation Inspector out of the 95 candidates belonging to the category of backward class, it was well high impossible for the above mentioned two petitioners to lay any claim for the said one post reserved for backward class. According to Ashok Kumar Yadav's case candidates should be called only three times the number of seats available for appointment. If that criteria was applied then the abovementioned two petitioners had even no chance of being called for interview for one post of Taxation Inspector in the category of backward class. Thus we find no force in the appeal filed by Devinder Prithpal Singh and we writ petition filed by Charanjit Singh.

31. Now, so far as the case of Mohinder Sain Garg, Chiranji Lal Sharma, Balwinder Singh and Rajesh Kumar Saili falling in the general category are concerned, they have secured 188.5, 170.5, 176.5 and 140 marks respectively. In the general category 897 candidates had appeared in interview and so far as Rajesh Kumar Saili is concerned, he secured 26 marks in interview and his position was 668th. He stood no chance of being called in interview if candidates upto three times the number of the posts were called for interview. Even if the percentage of marks in viva voce was reduced from 25 per cent to 15 per cent, he stood no chance of selection even remotely. Thus he is not entitled to any relief.

32. Mohinder Sain Garg having secured 182.5 marks in the written examination and having 11th position in the merit of marks secured in the written papers, stood fairly good chance of being selected in case the selections were made on the basis of 15 percent marks kept in die viva voce. So far as the case of Balwinder Singh having secured 176.5 and Chiranji Lal Sharma having secured 170.5 marks are concerned, they also had a probable chance of being selected in case the percentage of marks in the viva voce were reduced from 25 per cent to 15 per cent. Mr. Gujral made a submission before us that no other writ petition of any candidate in the general category is pending in the High Court or before this Court though a long time have elapsed to the selections. It has been prayed that these petitioners should be selected for appointment. It has also been pointed out before us that these petitioners have become overage now for being selected in fresh appointments to the posts of Taxation Excise Inspectors.

33. We have taken into consideration the entire facts and circumstances of these cases. We have already taken the view that the selections already made cannot be set aside. Many candidates in the general category having secured lesser

marks in the written examination in comparison to the above three petitioners namely Mohinder Sain Garg; Chiranji Lal Sharma and Balwinder Singh have been selected as Taxation Inspector/Excise Inspector. We do not consider proper in the interest of justice to cancel their appointments and to give a direction to hold fresh selection after reducing the percentage of marks in the viva voce test. No other candidate except the petitioners, having secured more marks in the written examination than some of those who have been selected in the general category are petitioners before us. In view of these circumstances we deem it proper to grant relief to these three petitioners. In Mohinder Sain Garg's case this Court on 12.12.89 had given a direction that one post shall be kept vacant, to be given to the petitioner in the event of his success. In Chiranji Lal's case this Court on 15.1.90 had given the direction that in the meantime if further appointments are made by the respondents, one post should be left vacant to be made available to the petitioner in the event of his success, in Balwinder Singh's case also a similar order was passed on 15.1.90.

34. As these appellants are succeeding in their appeals the respondents are now directed to appoint these appellants on the posts of Taxation Inspector/Excise Inspector, as the case may be, if they are otherwise found suitable for these posts. It is further made clear that in case anyone of these appellants had become over age during this period, this would not be considered as a disqualification for their appointment to the above post. The respondents shall take suitable steps and pass appropriate orders for appointing these three petitioners within one month of the communication of this order.

35. In the result the judgment of the High Court of Punjab and Haryana dated 29.11.89 is set aside and the appeals arising out of SLP Nos. 14292/89, 15594/89 and 15595/89 are allowed and writ petition Nos. 719 and 824 of 1990 and the appeal arising out of SLP No. 2913 of 1990 are dismissed.

36. In the facts and circumstances of the case the parties shall bear their own costs.