

(2003) 01 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2255 of 1999

Neeraj Kant and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-01-2003

Acts Referred:

Rajasthan Legal (State and Subordinate) Services Rules, 1981 — Rule 23

Citation : (2003) 2 RLW 929 : (2003) 2 WLC 421 : (2003) 1 WLN 433

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : M. Mridul and Somita Jain, for the Appellant; J.P. Joshi, I.S. Pareekh and S.D. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—Heard learned counsel for the parties.

Brief facts of the case are that the Rajasthan Public Service Commission Advertised 19 posts of Legal Assistant. It is stated in the advertisement that number of vacancies can be increased or decreased and for that, no further advertisement will be issued. Ultimately, the number of vacancies was increased to 61. As per the procedure, the written tests were held on 5th and 6th December 1998. The petitioner No. 1 Neeraj Kant and petitioner No. 2 Balvinder Singh secured 81 and 82 marks respectively in the written tests. The petitioners were called for interview for personality test by Viva-voce examinations on 29.4.1999. In the interview both the petitioners secured 6 marks, whereas minimum marks required for declaring to have passed the selection test were 7. According to petitioners, though the petitioners secured much higher marks in written tests than the marks secured by candidates who were selected in written tests but were declared unselected only on the ground of securing merely one mark less than the minimum marks fixed in interview for personality test by Viva-voce examinations. The requirement of minimum marks in Viva-voce is provided in Rule 23 of the Rajasthan Legal (State and Subordinate) Services Rules, 1981.

The petitioners have challenged the Rule 23 of the Rules of 1981, therefore, it will be relevant to quote here, which is as under:-

"23. Viva-voce :- Candidate who obtained such minimum qualifying marks in the written examinations as may be fixed by the Commission in their discretion shall be summoned by them for an interview for a personality test which shall carry "+20" marks. The Commission may in its discretion award grace marks up to one in each paper and up to three in, the aggregate. The Commission may fix minimum qualifying marks in the written examinations for the Scheduled Castes and the Scheduled Tribes candidates lower than what is prescribed for other candidates. The minimum qualifying marks in Viva-Voce shall be 35% for candidates other than those belonging to the Scheduled Castes and the scheduled Tribes and for the Scheduled Castes and the Scheduled Tribes it shall be 25%. The marks so awarded shall be added to the marks obtained in the written test by each candidate.

The Scheduled Castes and the Scheduled Tribes candidates shall be paid both ways actual Railway fare of the lowest class by passenger train beyond 80 km in accordance with the orders of the Government to appear at the Viva-Voce. Other candidates shall appear in the Viva-Voce test at their own experience."

2. According to the learned counsel for the petitioners, provision like Rule 23, of the Rules of 1981 is not there concerning any Subordinate Services government services in Rajasthan, except in Rajasthan Police Subordinate Service Rules 1989. It is also submitted by the learned counsel for petitioners, that in State Services, namely, Rajasthan Administrative Service Rules, 1954, Rajasthan Police Service and Rajasthan Forest Service Rules, such a provision is there. It is also submitted that, the personality test may be appropriate for giving appointment on certain post where the appointee is required to discharge the duties of administrative nature and have to deal with the public where personality, address and physique may have important role to play which may help appointee in discharging the duties of the post whereas the post of Legal Assistant is of such nature where personality test is irrelevant. Legal Assistants are posted in various departments of Government of Rajasthan for looking after the legal work in the particular department and tender advice to the departments in respect of the legal matters coming to it. The work is more or less one in which no direct contact with the public is there and it is entirely table work. Legal Assistant cannot appear in the court of law and their emoluments are more or less equivalent to those of Upper Division Clerks and the personality etc. has no role to play in the duties required to be discharged by Legal Assistants. It is also submitted that prescription of requirement of minimum marks in Viva-voce test makes Viva-voce a determining factor in the selection process. In any case marks obtained in Viva-voce alone cannot be made decisive factor for selection of the candidate.

3. It is also submitted that, by adopting this mode of selection, the persons having inferior knowledge of law are selected and appointed against the persons

having better knowledge of law who secured not only higher marks but even highest marks in written examination. It is also stated that existing Rule 24 of the Rajasthan Administrative Service Rules, containing requirement of minimum marks in Viva-voce examination had been amended by the State government and requirement of minimum qualifying marks in interview has been done away which shows that even existing rules are being amended to remove requirement of minimum marks in viva-voce exams. Therefore, condition that the candidate must secure minimum 35% marks in the Viva-voce test is totally arbitrary being irrelevant for the post of Legal Assistant.

4. It is also submitted that, even if it is found that condition of Viva-voce test is reasonable, even then condition of keeping minimum marks for Viva-voce for the post of Legal Assistant is discriminatory as it gives decisive power to exclude most meritorious candidate who secured highest marks in the written tests and select a candidate who otherwise would not have been selected looking to his performance in the written tests conducted to judge his knowledge on the subject for which selection is to take place. According to the learned counsel for the petitioners, not only this is discriminatory but the discrimination is based upon the irrelevant consideration because the candidates having better knowledge on the subject are excluded on the basis of securing lesser mark in the Viva-voce which is conducted not to judge the knowledge of the person on the subject but to test the personality which has no relevance with the duties to be discharged by the selected candidates. It was also submitted that fixing the minimum marks for Viva-voce giving power to exclude meritorious candidate itself is sufficient for declaration it being unreasonable, arbitrary and illegal and ultra virus.

5. Learned counsel for the petitioner submitted that validity of rule providing minimum 33% qualifying marks in personality and Viva-voce examination in Rajasthan Forest Service Rules, 1962 was examined by this Court while deciding number of writ petitions common judgment, which is (Jogendra Singh v. State of Raj. and Anr. (1), and connected matters). This Court held that no minimum qualifying marks should be prescribed for personality and Viva- voce because effect of said provision is that a candidate who secured highest marks in written exam, can be knocked out by awarding them less than minimum qualifying marks in Viva-voce exam, and candidate who obtained much lower marks in written exam, can be raised to topmost position in merit-list by awarding high marks in Viva-voce exam, and thereby marks in Viva-voce exam, tend to become determining factor in selection process. Learned counsel for the petitioner further submitted that though the decision of this Court referred above stands reversed by the Hon"ble Supreme Court in view of the Supreme Court's decision rendered in the case of Mehmood Alam Tariq and Ors. v. State of Rajasthan and Ors. connected matters (2), but it was because that in those cases the posts under consideration were of such nature where, with the passage of time, selected officers were expected to man increasing responsible position.

6. Learned counsel for the petitioner vehemently submitted that Hon"ble Supreme Court in a case of Mohd. Alam Tariq and Ors. v. State of Raj. and Ors. though upheld the condition of prescribing 33% as minimum qualifying marks for viva voce but it was due to the nature of the post involved in the selection. The Hon"ble Apex Court observed as under:

"....Prescription of minimum qualifying marks for the written examination or the viva-voce or for both, is a well recognized aspect of recruitment procedures and that a prescription of a maximum of 11.9% of the total marks for the viva-voce examination, with a condition that the candidate must get at least, 33% out of these marks for selection to the three key- services would not violate any constitutional principle or limitation; but on the contrary would, indeed, be a salutary and desirable prescription, particularly having regard to the nature of the services to which recruitment is envisaged. It was submitted that personnel recruited to the higher echelons of Administrative, Police and Forest services with the prospect, with the passage of time, of having to assume higher responsibilities of ad-ministration in those three vital departments of Government, should be tried men with dynamism and special attainments of personality. It was pointed out that though the pay-scales of the Accounts Service and Insurance Service are the same as that of the Administrative Service; such a prescription is not attracted to the selection to these other services."

"....There is nothing unreasonable arbitrary in the stipulation that officers to be selected for higher services and who are, with the passage of time, expected to man increasingly responsible positions in the core services such as the administrative Services and the Police Services should be men endowed with personality traits conducive to the levels of performance expected in such services. There are features that, distinguish, for instance, Accounts Service from the Police Service- a distinction that drawn upon and is accentuated by the personal qualities of the officer. Academic excellence is one thing. Ability to deal with the public with tact and imagination is another. Both are necessary for an officer. The does that is demanded may vary according to the nature of the service. Administrative and Police Services constitute the cutting edge of the administrative machinery and the requirement of higher traits of personality is not an unreasonable expectation."

7. Advancing argument further, learned counsel for the petitioners submitted that the legal assistant who need not to discharge any administrative functions nor they are required to come in contact with public directly and their work is more or less equivalent to work of U.D.C. only at the time of initial appointment, will acquire experience on the said post for further promotion, therefore, the viva-voce examination which is conducted for judging the personality and physique cannot be criteria, on the basis of which a person having knowledge in the subject can be excluded to accommodate a person having less merit in the subject.

8. Learned counsel for the respondents submitted that the writ petition of the petitioner's deserves to be dismissed only on the ground that the petitioners have not impleaded selected candidates in the writ petition. According to the learned counsel for the respondents, in the arguments which were advanced by the learned counsel for the petitioner's have already been considered by the Hon Apex Court in Mehmood Alalm Tariq's case and once it had been held by the Hon'ble Apex Court that even if it gives a determining power to the selectors to select the candidates on the basis of the marks secured in the interview, it cannot be held that the power is arbitrary or unconstitutional, nothing survives for determination by this Court after the said decision of the Apex Court.

9. I considered the rival submissions. It appears that the thrust of the argument of the learned counsel for the petitioner is more towards the challenge to the determining and decisive power given to the interview board, by which a meritorious candidate can be excluded only on the ground of securing less marks than the minimum prescribed marks for interview. The same arguments were also advanced before this court in the case; Jogendra Singh v. State of Raj. and Anr. (3), and five connected writ petitions, wherein, the petitioners of those writ petitions challenged the prescription of minimum marks of 33% for interview by framing rule in Raj. Forest Service Rules 1962. It will be relevant to mention here that this Court while deciding above a bunch of writ petitions considered various earlier judgments, which were relied upon by the counsels in support of their rival contentions. Judgments which were considered were Ajay Hasia v. Khalid Mujib (4), Ashok Kumar Yadav v. State of Haryana and Ors. (5) and Liladhar v. State of Rajasthan (6), Dr. Keshav Ram Pal v. U.P. Higher Education Service Commission, Allahbad and Ors. (7) and Manjula Devi T.N. v. State of Karnataka and Ors. (8). It will worthwhile to quote here the relevant portion from the above judgment (Jogendra Singh v. State of Raj. and Anr.): -

"In cases where candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has to be given to performance in the written examination and the importance to be attached to the interview test in such a case would be minimal. In case of Services to which requirement is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, sound selection must combine academic ability with personality promise and therefore, some weight has to be given to the viva voce test. In cases where written test and viva voce examination are both provided, oral interview test should be resorted to as an additional or supplementary test and it cannot be made the determining factor for the selection process."

And thereafter, allowed the writ petition by holding as under :-

"The effect of the said provision in the proviso to sub the Rule (1) of Rule 25 is that candidate who has secured the highest marks in the written examination, can be easily knocked out of the race by awarding him less than minimum

qualifying marks in the personality and viva voce examination and a candidate who has obtained much lower marks in the written examination, can be raised to the top most position in the merit list by an inordinately high marking in the personality and viva voce examination and thereby the marks in the personality and viva voce examination tend to become the determining factor in the selection process."

and ultimately, this Court declared :- .

" For the reasons aforesaid, proviso to Sub-rule (1) of Rule 25 of the State Service Rules in so far as it prescribes 33% as minimum marks for qualifying at the personality and viva voce examination suffers from the vice of arbitrariness and violative of provisions of Articles 14 and 16 of the Constitution."

10. All the above grounds were considered in detail by the Hon"ble Apex Court in the *Mehmood Alam Tariq and Others Vs. State of Rajasthan and Others*, In this case, Hon"ble Apex Court considered not only above arguments but also considered other arguments like; only in a very few service on the rules there is provision of requirement of securing the minimum marks in the interview whereas it is not for other services (Para 3), even where there is same pay scale for a post, such requirement is not there (para 4), education of high percentage of marks for viva voce opens the door wide for arbitrariness (para 5), chances of favoritism (4), a suspicion of abuse of such power due to falling of the standards of conduct in public life; in addition to the arguments; it will be determining factor in the selection process (para 5 and other paras). Not only the Judgments delivered in earlier *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, and AIR 1988 SC 162 were considered by Hon"ble Apex Court but some work done by the authors on the subject were also considered by the Supreme Court. Some useful portion is required to be quoted again, as even after passage, of so many years, are relevant today also, from "The Civil Servants, An inquiry into Bandritain"s Ruling Class; peter Kellner And Loard Crowther- Hunt at page No, 103 which says :-

"One of the main attractions of working for the Civil Services is the job security. Once they let you in you have to do something spectacularly improper to get kicked out."

Hon"ble Supreme Court, touching the history of evolution of Civil Services observed "(it"s) study (is) in contrast is definitely as it is disquieting."

And quoted the author, saying as under :-

"Prices rose, but there was a frantic buying. Ministers made the most of their financial discovery. As it soon became too difficult to invent new offices, the old ones were doubled or trebled that is, divided up among serveral holders, who exercise their functions in rotation, or who did what the seventeenth and

eighteenth centuries were too fond of doing, employed a humble subordinate to carry them out...."

"Offices were sought, then, with a frenzied energy, and they were created with cynicism Desmarets, one of Louis XIV's Comptroller Generals, had proposed to the King the establishment of some quite futile offices, and letter asked who would ever consent to buy such situation? "Your Majesty" replied Desmarets, "Is forgetting one of the most spindled of the prerogatives of the Kings of France- that when the King creates a job, God immediately creates an idiot to buy it."

(Theory and Practice of Modern Government Herman Finer-751)

11. After taking note of the history of the government employment; job security to the employees, one of the consequence of the such job security by which the employer is deprived of his right to remove the employee on his own whims; the favoritism and corruption in giving appointments and many other aspects, Hon"ble Apex Court held that much desired transformation from the patronage to open competition is 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 relation to higher post, however, as to 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. Hon"ble Apex Court held that "The "interview" is now an accepted aid to the selection and is designed to give the selectors some evidence of the personality and character of the candidates." Not only this but the Apex Court considered the problems which may come, if more weight is given to the interview in the matter of selection particularly, where the selection is based solely on interview and gives a decisive power to the selectors. The argument noted was - "The arguments in the case on the illegality of the prescription of minimum qualifying marks in the viva-voce turned more on the undesirability of such a condition in the background of the increasing public suspicion of abuse of such situations by the repositories of the power. The standards of conduct in public life, over the years, have, unfortunately, not helped to lessen these suspicions. Tests of this kind owing to the repeated onslaughts on the sensibilities of the public in the past, tent themselves too readily to the speculation that on such occasions considerations other than those that are relevant prevailed." Ultimately held :-

"On a careful consideration of the matter, we are persuaded to the view that the prescription of minimum qualifying marks of the 60 (33%) out of the maximum marks of 180 set apart for the viva-voce examination does not, by Itself, incurred any constitutional infirmity. The principles laid down in the cases of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, Lila Dhar (AIR 1981 SC 1777), Ashok Kumar Yadav and Others Vs. State of Haryana and Others, do not militate against or render impermissible such a prescription."

The Supreme Court ultimately set aside the Judgment of the division bench of this Court by which the division bench of this Court struck down the Rule fixing minimum qualifying marks for and viva-voce examination and restored the position of providing requirements of minimum marks in interview for selection.

12. Subsequently, in the case of AH India State Bank Officers Federation v. Union of India (9), the Supreme Court again considered above referred cases as well as some other cases and applied the same test to Judge the legality of the action of the respondents in framing promotional policy relating to the promotion from the post of Senior Management Grade Scale V to Top Executive Grade Steel of VI. The Supreme Court, again applying the same principle as laid down in the aforesaid decisions, held that interview marks represent only 25 percent of the aggregate, i.e. 200 marks and requirement of 60 percent of above 50 marks to become eligible is not the case of giving exaggerated weight to the interview in the process of selection.

13. In the light of above principles as laid down by the Supreme Court it is clear that prescription of minimum marks for interview is permissible even if it may become a determining factor. Here in present case, total marks are 170 (150 for written test and 20 marks for interview). The candidate is required to secure 7 marks out of 20 kept for interview which is only 4.1% of the aggregate marks, which also cannot be said to giving extra weight to the marks for interview.

Therefore, in view of the above decisions of the Supreme Court, challenge to the Rule 23 of the Rules of 1981, only on the ground that it gives decisive power to the selectors to knockout the candidates who secured more marks or who secured highest marks in the written examination and on the ground of its undesirability, are concerned, neither survive nor can be re-agitated.

14. Still, the question which has been raised by the learned counsel for the petitioner's survives is, that, whether the nature of service for which selection took place, are of such nature which involves administrative function or the appointee will be required to deal with public and personality of a candidate will have any effect is discharge of duties? The learned counsel for the petitioner pointed out the distinction between the facts of the cases that had already decided by the Supreme Court and the present one. According to the learned counsel for the petitioners, the decisions of the Supreme Court, referred above also made it clear that requirement of interview and fixing of minimum marks for interview depend upon the nature of the duties required to be discharged. The decisions of the Supreme Court, nowhere lay down, prescription of minimum marks in the personality test by Viva-Voce as principle of universal application irrespective of the nature of the job for which selection is to take place. Rather the decisions suggest, that in case where the selected candidates, while working on the post will not have to deal with the public or will not have to discharge administrative functions then the requirement of personality test by interview will become irrelevant.

15. Argument of the learned counsel for the petitioner is quite attractive and deserves consideration because of the reason that the Supreme Court in above referred cases considered the matter of the appointment of higher posts or matters relating to the promotional posts and the Supreme Court held that requirement of the interview and prescription of minimum marks in the process of selection depends upon the nature of the post for which selection is to take place. In this petition, the post for which selections are under challenge is post of Legal Assistant. According to the learned counsel for the petitioners, this is the lowest post in the cadre and initially, the appointees will have to do the work in the office, the appointees are not supposed to discharge any administrative function nor they have to take any decision. The appointees will not even have much dealing with the public; they are to give opinion of files, for which academic qualifications are important, which admittedly petitioners possessed as the petitioners secured sufficiently good marks in their written test. Before any work of responsibility will be given to the petitioner, they will acquire sufficient experience by working in the office, therefore, requirement of personality test at this stage of initial appointment is not of any use nor can it be said to be a reasonable requirement for selection. It was also argued, that the Supreme Court also held that selections should be broad-based so that best talented person can be selected, it is clear from the Rules of 1981 that the post of Legal Assistant is required to be filled up 100% by direct recruitment. Once a person is appointed as the Legal Assistant, he may be further promoted to the post of Head Legal Assistant, which is the post in the category of State Service, thereafter to the post of Assistant Legal Draftman/Assistant Legal Remembrance and thereafter, on the post of Deputy Legal Remembrance and ultimately to the post of Joint Legal Remembrance. All these posts are to be filled up 100% by promotion on acquiring sufficient experience as provided under the rules.

16. In the light of the law laid down by Hon''ble Apex Court and after careful consideration of the arguments of the learned counsel for the petitioners, it is clear that personality test by Viva-Voce is well-known recognised, permissible method for selection of the candidates for appointment. It is different that, how much weight can be given to the personality test in present process of selection for the post of Legal Assistant? It comes from the facts and the reasons given in the judgments delivered by the Hon''ble Supreme Court that, posts involved in those cases had some element of dealing with public. It is also true that one of the reasons for upholding the validity of prescription of minimum marks for personality test was the nature of the duties involved. After careful reading of all the reasons given in the various judgments of the Supreme Court, I am of the view that importance of personality test was accepted as a new concept in addition to the selection process despite the fact that there is chances of abuse of this process. The Supreme Court upheld the prescription of requirement of personality test as well as the fixing of the minimum marks in interview and held that, selection is an informed professional exercise which is best left to agencies independent of the services to which recruitment is made. So far as the

apprehension of abuse of power is concerned, the Hon"ble Apex Court observed that the affairs of the government cannot be conducted on the principles of distrust and if the selectors had acted malafidely or with oblique motive, there are administrative law remedies to secure relief against such abuse of powers. These observations of the Hon"ble Apex Court in the judgment of Mohd. Alab Tariq give complete answer to the apprehension of the petitioners that by adopting the method of viva- voce test, requiring minimum marks in the viva-voce test, will permit the selectors to exclude the meritorious candidates and select the candidate of lesser merit. The distribution of marks for written test and for interview may depend upon the duties which are to be discharged by the appointees, but it cannot be concluded that requirement of interview and fixing a minimum marks for interview are undesirable requirement. A careful reading of the judgment of the Supreme Court also reveals that, the nature of post was only one of the grounds which was taken into consideration by the Supreme Court for upholding the validity of the requirement of the prescription of the minimum marks, and not the only ground to uphold validity which is clear from the observations of the Supreme Court : If any minimum marks, either in written test or in viva-voce test are fixed to determine the suitability of a candidate, the same has to be respected, and it was further observed that :- even if a candidate had obtained higher aggregate marks in written and viva-voce test but if he had failed to secure the minimum marks in the viva-voce test, his name could not be included in the list...". The Hon"ble Apex Court nowhere laid down it as rule of universal application that the prescription of the minimum marks for interview is permissible only for those posts where the employees are required to deal with the public or are required to discharge some administrative function or are required to do the work of more responsibility. In fact, in all the judgments. Hon"ble Apex Court recognised the prescription of the minimum marks for interview. While examining, whether the minimum marks fixed for interview are reasonable or not, the nature of the post and the duties attached to the post were considered by the Supreme Court and it has been held that looking to the nature and the duties of the post, the marks fixed in those cases, cannot be said to be excessive. Therefore, there appears to be no force in the contention of the learned counsel for the petitioners, that prescription of minimum marks is permissible only for the above said post and cannot be applied to the posts under consideration in this writ petition. In addition to above, submission of the learned counsel for the petitioners"appears to be based on narrow interpretation to the phrase "dealing with public". "Dealing with the public" by a person holding the public post, understood in common parlance with reference to dealing with general public only and not understood for the government employee's dealings with the other government employee's in their official capacity, for official work. However, close scrutiny will show that what is in common parlance is not the only way of "dealing with public" of a government servant. A government employee is required to attend the office where he is to deal with not only his colleagues but also with his juniors, his officers, sometimes may be up to the highest officer in his own office. There comes very many occasions when the government

employee is required to deal with employees of different government departments. A government servant working in office can discharge his duties efficiently only when he can deal with number of other persons working in the office or coming to the office may for official work. Therefore, normally a government employee, when works in the government office, it is to be presumed that he is to deal with public may it be general public or official persons. A Legal Assistant cannot be supposed to work in isolation and it can be said that he need not to deal with public (general public or officials persons). An argument may be advanced that the same principle can be applied in the matter of appointment to the every post of the government service, may it be of clerical nature, whereas, according to the learned counsel for the petitioner, in fact not only there is no requirement of personality test for appointment to the large number of posts in government service but where work of more responsibility is involved and wherever there was similar provision of personality test in the rules, the rules have been amended to remove the requirement of interview. According to the learned counsel for the petitioner, this suggests that the State Government also felt that there is no need of requirement of personal interview for initial selection for the various post. Yes, same principle can be applied in the case of the appointment to many posts but still posts are filled without subjecting the candidate to pass the personality test. It is also true that requirement of personality test is not there in many rules. But when it has been held by the Hon"ble Supreme Court in the judgments referred above that prescription of minimum marks in viva-voce test, if are fixed to determine the suitability of a candidate, the same has to be respected then fixing this minimum marks for the post which have not been referred to in the judgments or the posts where the person holding the post need not to come in contact with public at large or need to discharge the public administrative functions, if applied, then how it can be said to be a condition unreasonable. Putting a condition of higher standard, how it can be said to be a condition unreasonable. Putting a condition of higher standard, how it can be said to be a condition violative to any provision of any law or is violative to touch stone of reasonableness.

17. Once it has been held that wherever requirement of passing personality test is there, it is to be respected then absence of a requirement of personality test in other rules cannot be a ground to challenge the requirement of personality test. In other, words, better process of selection cannot be challenged on the ground that same standards of selections are not made applicable to the selection for other post. At the cost of repetition, it can be said that personality test has its own importance. Hon"ble Apex Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, considered the matter of those services where recruitment is made from younger candidates and held :-

"In the case of such services, where sound selection must combine at the academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview tests. Their cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to

service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the have interview is proposed to be entrusted and a host of other factors. It is a matter for the determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission."

18. Supreme Court, in the case of all All India State Bank Officers" Federation and Others Vs. Union of India (UOI) and Others, also considered the judgments delivered in case of State of U. P. v. Rafiquddin (10) and Mehmood Alam Tariq v. State of Rajasthan (11), wherein prescription of 35% & 33% qualifying minimum marks for viva voce were upheld and applying the same principle held that 25% of the aggregate marks for viva voce test cannot be treated as giving exaggerated weight to the viva voce test.

19. I do not find any force in the submissions of the learned counsel for the petitioner that the post of the Legal Assistant is of not of such nature where any weight can be given to the personality test. Work of Legal Assistant cannot said to be, work of merely of clerical nature nor it can be equated with the work of any U.D.C. even when there may be some similarities in the service conditions for the post of Legal Assistant and U.D.C. Giving advise on the point of law even by Legal Assistant carries its weight and has different value than the putting note by any U.D.C. or any clerical staff or the employee of equivalent rank. Very many occasions comes for the government servants even at the initial stage of their appointment when they are assigned some additional work, which may be of importance, which, they are required to do. Effect of the personality over his actual working can be judged only by his personality test by Viva-Voce. Now a days, when there is a tough competition for each and every post and the large number of candidates are coming forward for the post of even of lowest cadre then the administration is required to fix the criteria for selection, which improves the function of the institution itself.

20. In the present case, aggregate marks are 170 out of which 150 marks are kept for written examination and 20 marks for interview. Out of these 20 marks, one is to secure 7 marks to become eligible for selection. Therefore, it comes only 4.1% of marks of total 170 aggregate marks. In the light of the decision of the Hon"ble Supreme Court referred above and looking to the nature of the post for which selection have taken place, it cannot be said that exaggeration had been given to the viva voce test.

21. So far as the apprehension of abuse of power is concerned, the Hon"ble Apex Court observed that the affairs of the government cannot be conducted on the principles of distrust and if the selectors had acted malafidely or with oblique motive, there are administrative law remedies to secure relief against such abuse

of powers. These observations of the Hon"ble Apex Court in the judgment of Mohd. Alab Tariq give complete answer to the apprehension of the petitioners that by adopting the method of viva- voce test, requiring minimum marks in the viva-voce test, will permit the selectors to exclude the meritorious candidates and select the candidate of lesser merit. It is not the case of the petitioners that the selectors abused process of selection.

22. Learned counsel for the petitioners further submitted that, in the Rule 23, no criteria or guidelines have been given for conducting the interview where as, Rule 24 of the RAS Rules provides that in interviewing candidates, marks will also be awarded in respect of character, personality, address and physique. In such a case candidate can understand that what he has to face in interview. But in, the cases of interview for the post in dispute the candidates are not aware about the subject over which they will have to face the interview. Above submissions of the learned counsel for the petitioners is also devoid of any force. First of all, because of the reason that the petitioners themselves have appeared before the Interview Board without raising any objection and took the chance of failure and success and when failed in getting success, now want to challenge the process of selection, which is not permissible. Secondly, the petitioners have not disclosed how the interviews of the petitioners were taken. Rather it appears that the petitioners have no objects so far as their own interview is concerned as they have not even alleged that they had to face questions which were not relevant or caused any prejudice to them. When, on facts, the petitioners could not make out any case of abuse of power by the interview board or that the petitioners in fact faced such questions which no candidate expected, how the petitioners can challenge the selections and award of marks in interview. So far as personality test is concerned, how it is to be judged, cannot be prescribed by insertion of a few words only in the Rules, which is clear from the example given by the petitioners themselves. The petitioners tried to submit that since there is mention in Rule 24 of the RAS Rules, that the marks will also be awarded in respect of character, personality, address and physique and which is not described in the Rule 23 which is under challenge; therefore, in case under RAS Rules, the candidate can know, what test he is to face. This argument also has no force as the subjects, character, personality, address and physique of each individual is sufficiently wide and therefore, to judge the candidate on any of the above matters, one will have to rely upon the ability of the persons who are to take interview of the candidates.

23. In view of the about discussions, I do not find any force in the writ petition, hence the writ petition of petitioners is dismissed. No order as to the cost.