
(2010) 02 AHC CK 0156
In the Allahabad High Court

Rajnish Kumar and Others

APPELLANT

Vs

Chatrapati Sahu Ji Maharaj Medical University U.P. and
Others

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 02 AHC CK 0156

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shishir Kumar, J.—Heard the learned Counsel for the petitioners and Sri D.K. Upadhyaya, Chief Standing Counsel on behalf of the respondent-State.

2. The petitioners have approached this Court for the following reliefs:

i) issue a writ, order or direction in the nature of Mandamus directing the Opposite Parties to hold the selection as per advertisement dated 01.11.2008 and U.P. Procedure for direct recruitment for Group C post (outside the purview of U.P. Public Service Commission) Rules, 2002.

ii) to issue a writ in the nature of Mandamus directing the opposite parties to allow the petitioners to participate in the selection process as per advertisement dated 01.11.2008 and U.P. Procedure for direct recruitment for Group C Post (Outside the purview of U.P. Public Service Commission) Rules 2002.

iii) to issue such other order or direction which is deemed fit and proper under the circumstances of the case this Hon"ble Court may also be issued in favour of the petitioner in the ends of justice and

iv) to allow the writ petition with costs.

3. One of the contentions raised by the petitioner in the present writ petition is that the advertisement made by the respondent dated 31.10.2008 is against the

U.P. Procedure of Direct Recruitment of Group C Posts (Outside the Purview of U.P. Public Service Commission Rules) 2002. The contention is that from the perusal of the advertisement the consideration of the candidates to be appointed in various posts is only according to the educational qualification and interview. There is no mention to this effect in the advertisement that any written examination will be held. Learned Counsel for the petitioner has placed reliance upon a judgment of the Constitution Bench judgment of the Apex Court in the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, Placing reliance upon the aforesaid judgment, learned Counsel for the petitioner submits that selection only on the basis of interview without holding any written test on the basis of criteria of educational qualification is not permissible and is violative of Article 14 of the Constitution of India.

4. Learned Counsel for the petitioner further submits that only on the basis of educational qualification interview will be held by the Selection Committee as constituted as mentioned in the advertisement and the merit of the candidate will be judged. It is not permissible as contented by the learned Counsel for the petitioner that the suitability is to be judged on the basis of the written examination and the interview marks cannot be beyond a particular limit. Therefore, in view of the aforesaid fact no selection can be held.

5. On the other hand, Sri D.K. Upadhyaya, learned Chief Standing Counsel has submitted that the selection is being made on the basis of the rules and the advertisement has also been issued accordingly. He has placed reliance upon Rule 5 which prescribes the procedure for direct recruitment. Taking support of the aforesaid rule Mr. Upadhyaya wanted to submit that only on the basis of academic qualification the mark shall be awarded to each candidate like having judging of the educational qualification like Intermediate, Bachelor's Degree and Post Graduate and marks will be awarded as prescribed and then an interview will be taken up. and the final selection on that basis will be done.

6. As regards the essential qualification of these posts for which the knowledge of typing is necessary, a typing test will be taken and only those candidates who have obtained the minimum speed prescribed for typewriting or shorthand as the case may be, shall be considered for selection. Further submission has been made that in the interview, it will carry 50% marks regarding General Knowledge, Personality Assessment and Power of expression. Sri Upadhyaya wanted to justify the advertisement on the ground that it is strictly in accordance with rules and the State is not doing anything beyond the purview of the criteria laid down.

7. Further submission has been made by Sri Upadhyaya that as petitioner No. 1 is only eligible for three posts namely Store Keeper, Lab. Assistant and Junior Clerk/OPD Clerk,/Record Keeper. It has been contended that for the post of Lab. Assistant the suitable candidates are not available, therefore, the post will be advertised subsequently. Further submission of Mr. Upadhyaya is that the rule itself is not under challenge, therefore, no relief can be granted to the petitioner.;

8. I have considered the submissions and perused the rules. This controversy has been considered in the Ajai Hasia's case (Supra) in paragraphs 18 and 19 which are quoted below that such type of selection without holding a written examination is not permissible because the suitability and merit of a candidate cannot be judged only on the plain simpliciter interview and on the basis of marks obtained in the educational qualification or out of quality marks fixed in the educational qualification. From the perusal of the advertisement dated 31.10.2008, it does not appear that any written examination will be held for the posts of these posts for which the respondents are going to hold interview.

18. The second ground of challenge questioned the validity of viva voce examination as a permissible test for selection of candidates for admissions to a college. The contention of the petitioners under this ground of challenge was that viva voce examination does not afford a proper criterion for assessment of the suitability of the candidates for admission and it is a highly subjective and impressionistic test where the result is likely to be influenced by many uncertain imponderable factors such as predilections and prejudices of the interviewer, his attitudes and approaches, his preconceived notions and idiosyncrasies and it is also capable of abuse because it leaves scope for discrimination, manipulation and nepotism which can remain undetected under the cover of an interview and moreover it is not possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for a few minutes and, therefore, selections made on the basis of oral interview must be regarded as arbitrary and hence violative of Article 14. Now this criticism cannot be said to be wholly unfounded and it reflects a point of view which has certainly some validity. We may quote the following passage from the book on Public Administration In Theory And Practice by M.P. Sharma which voices a far and balanced criticism of the oral interview method:

The oral test or the interview has been much criticised on the ground of its subjectivity and uncertainty. different interviewers have their own notions of good personality. For some, it consists more in attractive physical appearance and dress rather than anything else, and with them the breezy and shiny type of candidate scores highly while the rough uncut diamonds may go unappreciated. The atmosphere of the interview is artificial and prevents some candidates from appearing at their best. its duration is short, the few questions of the hit-or-miss type, which are put, may fail to reveal the real worth of the candidate. It has been said that God takes a whole lifetime to judge a man's worth while interviewers have to do it in a quarter of an hour. Even at its best, the common sort of interview reveals but the superficial aspects of the candidate's personality like appearance, speaking power, and general address. Deeper traits of leadership, tact, forcefulness, etc. go largely undetected. The interview is often in the nature of desultory conversation. Marking differs greatly from examiner to examiner. An analysis of the interview results show that the marks awarded to candidates who competed more than once for the same service vary surprisingly. All this shows that there is a great element of chance in the interview test. This

becomes a serious matter when the marks assigned to oral test constitute a high proportion of the total marks in the competition.

Ol Glenn Stahl points out in his book on Public Personnel Administration that there are three disadvantages from which the oral test method suffers, namely, "(1) the difficulty of developing valid and reliable oral test; (2) the difficulty of securing a re-viewable record on an oral test; and (3) public suspicion of the oral test as a channel for the exertion of political influence" and we may add, other corrupt, nepotistic or extraneous considerations. The learned Author then proceeds to add in a highly perceptive and critical passage:

The oral examination has failed in the past in direct proportion to the extent of its misuse. It is a delicate instrument and, in inexperienced hands, a dangerous one. The first condition of its successful use is the full recognition of its limitations. One of the most prolific source of error in the oral test has been the failure on the part of examiners to understand the nature of evidence and to discriminate between that which was relevant, material and reliable and that which was not. It also must be remembered that the best oral interview provides opportunity for analysis of only a very small part of a person's total behaviour. Generalizations from a single interview regarding an individual's total personality pattern have been proved repeatedly to be wrong.

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. In the first case on the point which came before this Court, namely, *R. Chitralekha v. State of Mysore* this Court pointed out -

In the field of education there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationalist stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extra-curricular activities, personality test, psychiatric tests etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one.... The scheme of selection, however, perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter.

and on this view refused to hold the oral interview test as irrelevant or arbitrary. It was also pointed out by this Court in *A. Peeriakaruppan v. State of Tamil Nadu* SCC 44, para 13) "In most cases, the first impression need not necessarily be the best impression. But under the existing conditions, we are unable to accede to the contentions of the petitioners that the system of interview as in vogue in

this country is so defective as to make it useless." It is therefore not possible to accept the contentions of the petitioners that the oral interview test is so defective that selecting candidates for admission on the basis of oral interview in addition to written test must be regarded as arbitrary. The oral interview test undoubtedly not a very satisfactory test for assessing 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 any 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 resorted 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.

19. So far as the third ground of challenge is concerned, we do not think it can be dismissed as unsubstantial. The argument of the petitioners under this head of challenge was that even if oral interview may be regarded in principle as a valid test for selection for candidates for admission to a college, it was in the present case arbitrary and unreasonable since the marks allocated for the oral interview were very much on the higher side as compared with the marks allocated for the written test. The marks allocated for the oral interview were 50 as against 100 allocated for the written test, so that the marks allocated for the oral interview came to 33 1/3 per cent of the total number of marks taken into account for the purpose of making the selection. This, contended the petitioners, was beyond all reasonable proportion and rendered the selection of the candidates arbitrary and violative of the equality clause of the Constitution. Now there can be no doubt that, having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism as are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the court as free from the vice of arbitrariness. It may be pointed out that even in *Perriakuruppan* case, where 75 marks out of a total of 275 marks were allocated for the oral interview, this Court observed that the marks allocated for interview were on the high side. This Court also observed in *Nish Magu* case : "Reserving 50 marks for interview out of a total 150.... does seem excessive, especially when the time spent was not more than 4 minutes on each candidate". There can be no doubt that allocating 33 1/3 per cent of the total marks for oral interview is plainly arbitrary and unreasonable. It is significant to note that even for selection of candidates for the Indian Administrative Service, the Indian Foreign Service and the Indian Police Service, 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 only 12.2 per cent 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 $33\frac{1}{3}$ of the total marks for the oral interview as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained. But we do not think we would be justified in the exercise of our 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 is true there is an allegation of mala fides against Committee which interviewed the candidates and we may concede that if this allegation were established, we might have been inclined to interfere with the sections 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 is true, and this is a rather disturbing feature of the present cases, that a large number of successful candidates succeeded in obtaining admission to the college by virtue of very high marks obtained by them at the viva voce examination tilted the balance in their favour, though the marks secured by them at the qualifying examination were much less than those obtained by the petitioners and even in the written test, they had fared much worse than the petitioners. It is clear from the chart submitted to us on behalf of the petitioners that the marks awarded at the interview are by and large in inverse proportion to the marks obtained by the candidates at the qualifying examination and are also, in a large number of cases, not commensurate with the marks obtained in the written test. The chart does create a strong suspicion in our mind that the marks awarded at the viva voce examination might have been manipulated with a view of favouring the candidates who ultimately came to be selected, but suspicion cannot take the place of proof and we cannot hold the plea of mala fides to be established. We need much more cogent material before we can hold the Committee deliberately manipulated the marks at the viva voce examination with a view to favouring certain candidates as against the petitioners. We cannot, however, fail to mention that this is a matter which requires to be looked into very carefully and not only the State Government, but also the Central Government which is equally responsible for the proper running of the College, must take care to see that proper persons are appointed on the interviewing committee and there is no executive interference with their decision-making process. 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 per cent of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.

9. In view of the aforesaid facts and circumstances of the case, I am of considered opinion that the respondent cannot be permitted to hold the selection on the basis of the advertisement dated 31.10.2008 for these posts. As it has been submitted by Mr. Upadhya that Rule is not under challenge, therefore, learned Counsel for the petitioner is granted one week's time to file an amendment application to challenge the rule. In the mean time, affidavits may be exchanged.

10. List this case on 12.3.2010. It is made clear that the respondents will not hold any selection till 12.3.2010 from tomorrow onwards. If any interview has been taken up till today i.e. 26.02.2010, result of the same will not be declared.