

(2001) 01 AHC CK 0106
In the Allahabad High Court

Case No : C.M.W.P. No's. 14213, 18524, 19072 and 17983 of 2000

Ram Surat and others

APPELLANT

Vs

U.P. Public Service Commission, Allahabad and others

RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 713 : (2001) 1 UPLBEC 347

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Ashok Bhushan, Anil Bhushan, Awadhesh Rai and S.K. Singh, for the Appellant; S.K. Singh, Ashok Khare, I.R. Singh and Rakesh Thapaliyal., for the Respondent

Final Decision : Dismissed

Judgement

O. P. Garg, J.—The U. P. Public Service Commission (hereinafter referred to as "the Commission") initiated the process to select candidates for appointment to 100 posts of Personal Assistants in U. P. Secretariat and 3 such posts in the Commission by publishing an advertisement dated 28.3.1999. The selection was to be made on the basis of a competitive examination in two subjects, namely. Hindi essay of 100 marks and Hindi steno-typing of 150 marks. There was no prescription for interviewing the candidates and the final selection was to be made on the basis of the total marks obtained in the aforesaid two subjects. The petitioners covered by the above mentioned four writ petitions are the persons whose names did not find place in the result of the successful candidates declared on 3.3.2000. The petitioners have assailed the selection process as being arbitrary and discriminatory. Shorn of all superfluities, the grounds taken by the petitioners to challenge the entire selection process may be categorised under the following three heads :

(i) that the selection is against the provisions made in the advertisement and. therefore, the entire process stands vitiated ;

(ii) the method of "scaling" of marks has been wrongly applied and in any case, it was wrongly applied only in respect of one paper, i.e., Hindi essay, while, if at all, it should have been made applicable in respect of both the subjects, i.e., Hindi essay and steno-typing, and

(iii) 34 women candidates have been selected by applying unwarranted reservation though it was not contemplated in the original advertisement.

2. In these writ petitions, under Article 226 of the Constitution of India, it is prayed that a direction in the nature of writ of mandamus be issued to the respondents firstly, not to give effect to the result in respect of the examination of the year 1999 held for the recruitment to the posts of Personal Assistants as published in the daily Hindi Newspaper "Amar Ujala" dated 4.3.2000, and secondly, to declare the result of the Personal Assistants Examination, 1999 on the basis of original marks secured by the candidates including the petitioners, without applying "scaling" system.

3. The selected candidates also appeared to contest the petitions.

4. On behalf of the Commission-respondent No. 1, a counter-affidavit has been filed by Sri G. C. Upadhyay, Section Officer. On behalf of the selected candidates, a counter-affidavit, in the representative capacity, has been filed by one Ram Lal Maurya. The pleas taken in both the set of counter-affidavits are almost identical. It is stated that the selection has been made strictly in accordance with the procedure prescribed and that the application of scaling system is a part of the process of selection. It has further been averred that in view of the Government Order dated 26.2.1999, reservation in respect of women candidates was rightly applied. There is also assertion that the Commission was duly bound to implement the policy decision taken by the State Government for reservation in respect of women candidates. Rejoinder affidavit has also been filed.

5. Heard S/Sri Ashok Bhushan, Anil Bhushan, Awadhesh Rai and S. N. Singh learned counsel for the petitioners as well as Sri S. K. Singh for the Commission and Sri Ashok Khare, Senior Advocate assisted by S/Sri I. R. Singh and Rakesh Thapaliyal for the selected candidates.

6. Sri Ashok Bhushan, who took the lead for arguing the case and whose arguments were adopted by other learned counsel for the parties, urged that reservation for women candidates and scaling system should not have been applied by the Commission in the preparation of the final selection result as such a course was not contemplated in the advertisement and consequently, the whole processes of selection was vitiated. It was clarified on behalf of the petitioners that the selection by the Commission has not been held in accordance with the conditions as stipulated in the advertisement dated 28.3.1999 which clearly contemplated In condition 16 (Gha) that the merit list of the selected candidates will be prepared on the basis of the marks obtained by them in Hindi essay and steno-typing. According to Sri Ashok Bhushan, the Commission in its counter-affidavit has admitted that the system of scaling has been applied in Hindi essay

paper and the marks of the candidates have been scaled. According to Sri Ashok Bhushan, selection by the Commission has not been held on the terms and conditions as stipulated in the advertisement. It was pointed out that the selection made is in violation of the advertisement will be arbitrary and bad on the principles as laid down by the Apex Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . It was further urged that reservation in favour of the women candidates was also not contemplated by the advertisement and since there was no compulsion for effecting such a reservation, the Commission has wrongly earmarked 34 posts for women candidates. Emphatic reliance was also placed on the decision of the Bombay High Court (Nagpur Bench) in *Jayant Jairam Rohi v. Maharashtra Public Service Commission 1986 (2) SIM 159*, in which the advertisement prescribed qualifications for appointment to the post of Civil Judge. It was laid down that those candidates who have ordinarily practiced in the High Court or subordinate court for not less than three years, prescribed in the advertisement, shall be eligible for making an application. Subsequently, Public Service Commission called for interview only such persons who had put in five years of practice. It was in this context that the Bombay High Court held that the Commission contravened the statutory rules and travelled beyond the statutory provisions. On behalf of the Commission, it was argued in that case that the candidates who have practiced for a period of five years or more would be more meritorious and suitable than a candidate who has practiced less than five years. The Court took the view that the assumption of the Commission in this regard was entirely without any basis. It is not a secret that some competent advocates who have practiced for a period of three years are far better suited than an advocate who has merely put in practice for five years. It was held that it was not permissible to the Commission to totally eliminate all the candidates who have practiced three years to five years at the Bar. The Court further held that the criteria employed by the Commission had no relevance, whatever, with the merit of the candidates and by adopting this new method to determine as to which candidate should be called for interview, the Commission has contravened the statutory rules. It was found that the selection procedure was against the rules and the condition as stipulated in the advertisement but refused to grant relief to the petitioners lamenting on the hardship suffered by them because if the relief was granted that would have led to greater complications and more serious hardship to those who had already been selected and appointed. There can be no quarrel about the observations made and the law laid down in the aforesaid two decisions. The observations, however, cannot be taken to be of universal application and they have to be viewed and applied in the context of set of facts in hand.

7. The advertisement simply provided that the selection shall be held, or say, the result shall be declared on the basis of the marks obtained by the candidates in two subjects, namely. Hindi essay and steno-typing, obviously, the advertisement was silent as to in what manner and by what method the evaluation of the

answer books is to take place. As a matter of fact, such a provision could not have been made in the advertisement as the evaluation of the answer books is made according to rules and the policy decision taken by the Commission.

8. Sri S. K. Singh, appearing on behalf of the Commission pointed out that application of scaling system is a part of the process of selection which is applied in all the examinations and in all the papers. It was urged that the Commission has not adopted any novel procedure in the case of the instant procedure and as a matter of fact, the system of scaling has been borrowed from the Union Public Service Commission which has been applying the said system in the Civil Services Examinations as well as other examinations conducted by it. During the course of arguments, the guidelines with regard to scaling of the marks were produced. As one can easily understand, the scaling of the marks means the moderation of the marks. The system intends to remove the disparity in evaluation. A thousand of candidates appear in a particular examination and answer books are evaluated by score of examiners who are prone to have different standards in evaluating the answer books. In the instant case, the Hindi essay paper was examined by as many as 23 examiners. It is common knowledge that some of the examiners are tough, some are easy going and the result of this human tendency or projection is that some candidates secure high marks in easy papers and as a result of easy marking and those, who are comparatively less fortunate, may get low marks on account of tough marking in a tough paper. Therefore, in order to bring about the objectivity and to eliminate the element of subjectivity, moderation is arrived at in the marks obtained in general by the candidates. A mean is adopted from the score marks after giving allowance to the standard deviation. The object to apply the scaling system, therefore, is to modulate the marks given by different examiners in different papers. The scaling system has traditionally been applied in written examination and the result is prepared by adopting the scaling system. This system is intended to achieve the merit. The result undisputedly is to be prepared on the basis of the performance of the candidates in the examination and evaluation by some competent examiners. The method of moderation has come to be approved by the Apex Court in its decision dated 17.7.1986 in C.M.P. No. 1074/86 in S.C.A. No. 4547/85, Surjeet Kumar Das v. Chairman Union Public Service Commission. It was observed that the system of moderation of marks adopted and followed by the Union Public Service Commission in evaluating the performance of the candidates appearing for the Civil Services Examination cannot be said to be vitiated by the arbitrariness or illegality of any kind.

9. In my quest to reach the truth and to ascertain as to whether any of the petitioners has been prejudiced on account of the application of the scaling system, I have waded through the mark sheets of the selected candidates as well as unsuccessful candidates, particularly, the petitioners. The comparative position of some of the petitioners by way of illustration emerges as under :

Sl. No.

Name of the petitioner

Original marks

Marks scaling

Total marks after adding marks in steno-typing

Writ Petition No.14213 of 2000

1.

Ram Surat

40

45

173

2.

Pradccp Kumar Agarwal

23

37

181

3.

Shatrughan Singh

48

56

190

4.

Shailendra Kumar Singh

52

63

206

5.

Dinesh Chandra Pandey

53

48

190

The above figures indicate that by and large, the petitioners have not been losers due to the application of the scaling system. Out of the above seven candidates, who have been taken for random survey, six of them were put to an advantageous position as their original marks got a boost after scaling. The successful candidates of the general category have in total secured 210 or more marks. The candidates belonging to other Backward Class and who have been successful have secured 204 or more marks while the candidates belonging to Scheduled Caste category have secured 200 or more marks to find their names in the select list. None of the petitioners have been successful in securing the minimum target-marks and, therefore, they were declared unsuccessful in the examination. The application of the scaling system has not turned their table.

10. Sri Ashok Bhushan was very much critical of the fact that the Commission though, has accepted the scaling system in the paper of Hindi essay only and it has deliberately and in an arbitrary manner failed to apply the same standard in the case of steno-typing paper. The reasons for not doing so are not too far to seek. There is a striking distinction in the two sets of subjects, namely. Hindi essay and Hindi steno-typing papers. The evaluation of Hindi essay paper is more or less subjective in nature depending upon variegated circumstances and imponderables flowing from the nature and human tendency of the examiner concerned, while in the case of evaluation of steno-typing paper, such an eventuality would not arise as its evaluation can be, in view of the technical nature of the paper, is supposed to be objective and almost mathematical. As a matter of fact, application of scaling system in the case of steno-typing paper would be almost impracticable. Therefore, the Commission has taken precaution in the matter by prescribing the mistakes which are to be counted in evaluating steno-typing paper. An exemption in mistake committed by a candidate in steno-typing test up to five per cent as per rules has been allowed. The Commission is further vested with the discretionary power to allow examination up to 6 per cent in mistakes if the circumstances so warrant. Thus, examination of mistakes up to 8 per cent may be granted and this fact would be determinative in drawing an eligibility mark in shorthand and typing test for appointment. There is thus an inbuilt assurance of uniformity in the system of evaluation of steno-typing paper. It was for this reason that the scaling system was not applied in the shorthand typing paper.

11. Sri Ashok Bhushan relied on the decision of the Apex Court in Raj Kumar and others v. Shaktiraj and others (1997) 9 SCC 52, in which it was observed that

where the procedure of selection and the exercise of power to exclude the posts from the purview of the State Service Selection Board (S.S.S.B.) suffered from glaring illegalities, the candidates appearing for selection and remaining unsuccessful are not barred from questioning the selection and the principle of acquiescence/estoppel is not applicable. This case was on an entirely different footing. The recruitment of Patwaris in that case was made under the rules of 1955 ignoring the amendment notified in the year 1970. Reliance on this decision is misplaced.

12. Sri Ashok Khare, senior advocate appearing on behalf of the selected candidates pointed out that even if the criterion adopted by the Commission might be defective, it would be inappropriate for this Court to reallocate the marks as the criteria has been uniformly applied and no prejudice has been caused to any one of the petitioners. In support of his contention. Sri Khare placed reliance on the decision of the Apex Court in *Haryana Public Service Commission v. Amarjeet Singh and others* 1999 SCC (L&S) 1451, in which it was observed that when uniform process had been adopted in respect of all and selection had been made, it was highly inappropriate for the High Court to have examined the matter in further detail and to have allocated the marks with a view to issue a direction to the Commission to select the aggrieved candidates. After having scrutinised the scaling system which resulted in moderation of the marks of the candidates who appeared in the examination as well as the result sheets, I find that the petitioners failed to secure the minimum target marks and could not be selected even if the scaling system was not applied. It is normal human instinct that when a candidate fails in the recruitment examination, he is generally prone to make some wild allegations with a view to explain his failure with the thought that not he but the examiners are to blame. One can easily understand the anguish of the petitioners at their failure but this Court has no power to select them. It is in the public interest that the result of the public examinations when published should have some finality attached to them.

13. Now it is the time to consider and examine the other ground taken on behalf of the petitioners to challenge the result of the selection. It is stated that 34 women candidates have been illegally extended the benefit of reservation while in the advertisement, there was no such stipulation. This submission has been stated simply to be rejected, the reason being that the State Government had issued order No. 18/I/99/Ka-2 of 1999 dated 26.2.1999 a copy of which is Annexure-C.A. 1 to the counter-affidavit of the Commission, issued by the Chief Secretary to all concerned. The Government Order provided that 20% of the posts, which fall within the purview of the Commission, shall be reserved for women candidates. The aforesaid Government Order came into force with immediate effect though it excepted the advertisements issued on or before the said date and process of selection for which had started prior to 26.2.1999. In the instant case, the advertisement was published in March 1999, i.e., much after the issuance of the Government Order dated 26.2.1999. The Commission was duly bound to implement the orders of the State Government with regard to

the policy of reservation. Accordingly, horizontal reservation for women candidates was rightly applied in the preparation of the final result. As against 173 posts, which were advertised and for which final selection was made, 34 posts were rightly reserved for woman candidates. The result declared by the Commission cannot, for any reason, be faulted on account of reservation made pursuant to the Government Order dated 26.2.1999.

14. I am conscious of the fact that the selection process is not sacrosanct. It can be cancelled, scrapped or annulled if there is concrete and reliable evidence of large scale bungling, malpractice, corruption, favouritism and nepotism or the like or if there is a violation of fundamental procedural requirements. It is true that fabrication would obviously either be not known or no one could come forward to bear the brunt. Nevertheless, there should be wealth of material to take the extreme and drastic step of scrapping the whole recruitment process, particularly when it has reached the final stage. The cancellation or scrapping of the recruitment has very serious repercussions and impact not only on the candidates who have undergone the rigours of the test but on the general public and the examining body. In the instant case, there is no allegation on behalf of the petitioners that the Commission has been guilty of any corrupt practice, nepotism or favouritism. The only grievance of the petitioners is that the procedure adopted was not in consonance with the stipulations made in the advertisement.

15. Sri Ashok Bhushan founded his submissions on the observations made by the Apex Court in Ramanna Daya Ram Shetty's case (*supra*) that it must, therefore, be taken to be the law that where the Government is dealing with the public—whether by way of giving jobs or entering into contracts or issuing quotas or licence or granting other forms of largesses, the Government cannot act arbitrarily at its sweet will and, like a private individual to deal with any person it pleases but its action must be in conformity with the standards or norms which is not arbitrary, irrational or irrelevant. Sequel to this submission is the controversy about the extent of power of the Court to interfere with the administrative actions of the examining bodies. While non-arbitrariness being a necessary concomitant of the rule of law. It is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power (See *Km. Srilekha Vidyarthi v. State of U. P* (1991) SCC 212). The power of Judicial review is an integral part of our constitutional system. The Supreme Court has taken the view that if there is one feature of our Constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of Judicial review and it is unquestionably, part of the basic structure of the Constitution *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, : *H.C. Suman and another Vs. Rehabilitation Ministry Employees Co-operative House Building Society Ltd. New Delhi and others*, : *U.P. State Road Transport Corporation and*

another Vs. Mohd. Ismail and others, ; Subhas Sharma v. Union of India (1991) 1 SCJ 521, by Hon"ble Rangnath Misra (ex-Chief Justice of India). In the recent pronouncement, the Apex Court in Dadu alias Tulidas v. State of Maharashtra. (2000) 9 SCC 437, has held that judicial review "is the heart and soul of the constitutional scheme".

16. It is well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. Over the years, the Supreme Court as well as High Courts have shown a great deal of vitality in controlling administrative discretion of the executive authorities.

17. The parameters of the judicial review are now firm and well-embedded. In Km. Srilekha Vidhyarthi's case (supra), the Apex Court crystallised the whole position in the following words :

"It has been emphasised time and again that arbitrariness is anathema to State action in every sphere and wherever the vice percolates, the Courts would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India".

The things as have emerged, the petitioners have acquired the fundamental right that they shall not be subjected to arbitrary, unfair, unreasonable and irrational action of the Government or its instrumentalities, meaning thereby, a citizen has a right that his matters be considered in a manner which is non-arbitrary. The State action which defeats any constitutional mandate and is directly in violation of the guarantees enshrined in Article 14 of the Constitution is per se, arbitrary.

18. The matter may be viewed from yet another angle. The Apex Court, time and again, has cautioned the High Courts to approach the cases like the present one with circumspection. In Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and others, . It was held that in deciding matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and Court should interfere with them only when it thinks that it must do so in the interest of Justice. Earlier in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , the Hon"ble Supreme Court reminded that as has been repeatedly pointed out, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make pedantic and purely idealistic approach to the problems of this nature isolated from the actual realities and grassroot problems involved in the

working of the system and unmindful of the consequences, which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. The above guiding principles of law laid down by the Apex Court in a series of cases with regard to educational matters are also equally applicable in cases where examinations are conducted by the Public Service Commission--a constitutional authority.

19. Here in the instant case, the interest of Justice does not demand in the absence of any material, whatsoever, that interference of the Court is called for in the matter. As said above, there has been an in-built objective criteria for applying the "scaling system" which, as said above, is an integral part of the process of selection adopted by the Commission. There is absolutely no ground to annul or scrap the selection which has taken place. The wholly tenuous and feeble grounds taken by the petitioners to assail the selection process as well as declaration of result are not well merited.

20. In the result, all the four writ petitions fail and are, therefore, dismissed without any order as to costs.