

**(1991) 01 AHC CK 0133**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 20054 of 1987

Suresh Singh

APPELLANT

Vs

Administrative Committee, Pradeshik Co-Operative Dairy  
Federation Limited

RESPONDENT

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**Date of Decision :** 24-01-1991

**Acts Referred:**

Uttar Pradesh Cooperative Dairy Federation and Milk Union Centralised Service Rules,  
1984 — Rule 10, 15, 20, 20(2), 25  
Uttar Pradesh Co-operative Societies Act, 1965 — Section 8(2)

**Citation :** (1991) 1 AWC 322 : (1991) 2 UPLBEC 869

**Hon'ble Judges :** S.K. Mookerji, J

**Bench :** Single Bench

**Advocate :** Umesh Narain Sharma, for the Appellant; G.D. Misra, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S.K. Mookerji, J.—I have heard learned Counsel for the Petitioner and also the Respondent.

2. The Petitioner was selected as a Management Trainee on 30-7-1985. Thereafter, after the completion of the training, he was appointed as an Executive Trainee on 11-1-1987. From the position of Executive Trainee the Petitioner was to undergo certain training and after appraisal of his performance and on the basis of interview, Administrative Committee was entitled to select the Petitioner finally as Manager Grade III. At this stage, it is relevant to point out that out of 100 marks 65 marks were allotted for appraisal of performance of the Petitioner and 35 marks were allotted for interview. Thus, the total marks were 100. It appears that the Petitioner secured 43.78 marks out of 65 marks in respect of appraisal of his performance and 5 marks in the interview out of 35. Thus, the Petitioner obtained total marks of 48.78 out of 100 marks. The Petitioner was, therefore, terminated from his engagement on 15-10-1987 by the

Chairman, Administrative Committee, a copy whereof is Annexure "6" to the writ petition. A short point argued by the learned Counsel for the Petitioner is that the allocation of 35 marks for interview out of 100 marks is wholly arbitrary and cannot be allowed to stand and if this allocation of 35 marks for interview is quashed, then the Petitioner shall be entitled to atleast another opportunity. To resolve this controversy, it is necessary to refer to the counter-affidavit filed by Mirtunjai Singh, Executive Administration Allahabad Sahkari Milk Board, Allahabad. It will be necessary to record certain facts from the counter-affidavit; that the U.P. Provincial Cooperative Federation is a Cooperative Society, registered u/s 8(2)(a)(b) of the U.P. Cooperative Societies Act. The Society was registered on 23-4-1962 and it has its own byelaws for conduct and business. The U.P. Cooperative Dairy Federation and Milk Union Centralised Service Rule, 1984 have been framed. It is also pointed out that under Rule 25 in case no Regulation under Rule 9 has been framed, then the matter shall be governed by such orders and directions as may be issued by the Authority with the approval of the Registrar. The Committee constituted under Rule 10 of the Centralised Service Rules, 1984 provides that the Committee shall exercise over all control and supervision of the Services. It is also pointed out that according to Rule 15 of the Centralised Service Rules, 1984 the appointing authority of and the authority exercising disciplinary control over the members of the Service and management trainees and the executive shall be such as may be laid down in the Regulations; provided that till enforcement of such Regulation Chairman of the Committee shall be the appointing authority and shall be exercising disciplinary control over them. Rule 20 of the said Rules is relevant for the present case, which relates to the procedures for trainees and their placement. Rule 20 of the Rules runs as under:

Rule 20: (1) the scale of pay for different categories of posts included in the (pay and allowances) Service shall be such as may be prescribed by the Authority from time to time with the prior approval of the Registrar. However, the present scales of pay shall be as follows:

Posts Scale of Pay (i) General Manager 2400-100-2800 (ii) Manager, Grade I 1840-60-1900-75-2200-EB-100 2400. (iii) Manager, Grade II 1540-60-1900-EB-75-2200. (iv) Manager, Grade III 1250-50-1300-60-1600-EB-60 1900-75-2050. (v) Manager, Grade IV 850-40-1050-EB-50-1300-60 1420-EB-60-1720.

(2)(a) : Considering the requirement of Manager, Grade III, and subject to the decision of the committee, persons may be recruited as Management Trainees or by any other name and, thereafter, they shall be placed on one years training, during which they shall be paid a consolidate salary of Rs. 1350/- p.m. on successful completion of the training and subject to such screening as may be laid down by the Committee they shall be called" Executives and paid a consolidated salary of Rs. 1,750/ p.m. and shall further be placed on one year"s training;

Provided that the Management Trainees already recruited by the Federation are Apprentice of category 1 and II already recruited by the Federation through Nations Dairy Development Board and working as such on the date of enforcement of these Rules, shall be deemed to have been recruited under these rules and shall be paid, consolidated salary of Rs. 1,350/- per month from the date of enforcement of these Rules. The period of training already undergone by them shall be computed towards period of training provided under these Rules:

Provided further that, person possessing post graduate diploma in rural management from the Institute of Rural Management Ahand (Gujarat), may be recruited as Executives directly and placed on one year's training.

(b) The Executive on successful completion of the training and subject to such screening as may be laid down by the committee, shall be appointed as Manager Grade III.

3. Thus, the Rule 20(2)(b) of the Rules states that the Executive after successful completion of the training and subject to such screening as may be laid down by the Committee shall be appointed as Manager Grade III. It is further necessary to point out that the Administrative Committee vide its Resolution dated 19-1-1986 has laid down the procedures for screening of the executives trainees for the appointment as Manager Grade III. This Resolution was further adopted vide Resolution dated 17-5-1986 until further Resolution. According to the Resolution dated 19-1-1986 an Executive can be appointed as Manager Grade III only when he obtains minimum of 60 marks out of 100. The Executive Trainees, who obtains between 50-60 marks, may be given one more chance for Screening Test and thus, the Executive Trainee, who obtains below 50 per cent marks, is declared unsuccessful. It is also not out of place to point out that the post for which the Petitioner was recruited is Manager Grade III and for being Manager Grade III one has to complete two trainings: namely; (i) Management Trainee and (ii) Executive Trainee in following manners:

(1) A management trainee after the screening test if secures 60 marks out of 100 then he is placed for executive trainee.

(2) The Executive Trainee is required to get 60 marks out of 100 in the screening test only then he is entitled to be appointed as Manager Grade III.

4. At the cost of repetition, it is necessary to point out that the Petitioner was appointed as Management Trainee on 30-7-1985 and on 11-1-1989 as Executive Trainee. It is also very important to note that there is no written test for Executive Trainee, in the Screening Test, there is only performance appraisal for 65 marks and interview for 35 marks. In the meeting of the Screening Committee, which was held on 12-1-1987, the Petitioner obtained 43.78 marks in the performance appraisal and 5 marks in the interview, that is to say the Petitioner obtained 48.78 marks out of 100 marks and, therefore, he was declared unsuccessful, and consequently his services were terminated, which is the subject matter of the writ petition.

5. From the above facts, it is clear that the Petitioner's services were terminated because he got the total marks of 48.78 out of 100 marks, which includes both performance appraisal and interview marks. He was not given second opportunity for the screening test because his marks were not in between 50 or 60 out of 100 marks. Learned Counsel for the Petitioner urged that the allotment of 35 marks out of 100 marks for interview is wholly arbitrary and that it is a good ground for setting aside the impugned order of termination. For this purpose, learned Counsel for the Petitioner has relied upon a Division Bench decision of Lucknow Bench of Allahabad High Court in Civil Misc. Writ Petition No. 2386 of 1987 *Jai Prakash Srivastava v. Administrative Committee*, connected with eight more writ petitions. The above judgment has been delivered by Hon. Mr. Justice U.C. Srivastava, as he then was, and Hon'ble Mr. Justice S.H.A. Raza dated 29-11-1989. In this case, the Division Bench came to the conclusion that prescribing of 40 per cent marks for interview cannot be justified and the same was required to be reduced. It was also held that 40 per cent marks was wholly arbitrary. Learned Counsel for the Petitioner has also relied upon a decision of Supreme Court *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, . The relevant portion is extracted here:

The allocation of as high a percentage or marks as 33.3% in case of exservice officers and 22% in case of other candidates, for the viva voce test for selection to Haryana Civil (Executive Branch) and Allied Services is unreasonable and renders the selection process arbitrary. The spread of marks in the written examination, the viva voce test tended to become a determining factor in the selection process.

6. A recent decision of Hon'ble the Supreme Court on the point is *Mohinder Sain Garg v. State of Punjab* IT 1990 (4) SCC 704. Relevant observations from para 34 of the above judgment is extracted below;

...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 case at 25% of the total marks was 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.

7. In the present case, total marks is 100 and out of which 65 has been allotted for performance appraisal and 35 marks for interview. The allocation of 35 marks for interview out of 100 marks is wholly arbitrary and excessive and cannot be allowed to stand. In fact, the same was required to be reduced. It is also not clear why a category has been created for a candidate, who receives in between 50 and 60 marks out of 100 marks, should only be entitled for second chance for screening test whereas others have been excluded. However, without making airy

observation on this aspect of the matter, I am of the opinion that the impugned order dated 15-10-1987 cannot be allowed to stand on record in view of the fact that the mark allotted for interview was 35 out of 100 marks, which is wholly arbitrary and excessive.

8. In the result, the order dated 15-10-1987 (Annexure 6 to the writ petition) is quashed and the writ petition is allowed. The Respondent is directed to give another opportunity to the Petitioner and consider his case for absorption as Manager Grade III in accordance with law by reducing the marks for viva-voce in the light of observations made in this judgment. There shall be no order as to costs.