

(1996) 07 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 2483 of 1986

Vilas Laxman Raut

APPELLANT

Vs

Mazgaon Dock Ltd. and Others

RESPONDENT

Date of Decision : 09-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 07 BOM CK 0050

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Judgement

A.P. Shah, J.—This petition under Article 226 of the Constitution takes exception to the appointment of respondent Nos. 2 to 7 to the post of Assistant Administrative Officer and further seeks direction against respondent No. 1 Mazgaon Dock Limited to appoint the petitioner to the post of Assistant Administrative Officer with effect from same day on which respondent Nos. 2 to 7 were appointed and to fix his inter se seniority accordingly. Briefly, the facts are that the petitioner joined the services with respondent No. 1 on 29th November, 1978 in the category of "B" grade clerk. In or about the year 1983 respondent No. 1 issued a public notice in a newspaper calling for applications for selection to the post of Assistant Administrative Officer. Although the said selection was on open selection, the petitioner as also respondent No. 7 and several other employees of respondent No. 1 applied for consideration. After having considered all available candidates, a short-list was prepared of 6 candidates which included the petitioner and respondent No. 7. This list had 2 outside candidates and 4 internal candidates. Ultimately, one Hirlakar and one Menon were appointed to the two vacant posts under consideration at that time. Again in the year 1986 six further vacancies arose in the post of Assistant Administrative Officer. It appears that respondent No. 1 took an administrative decision to invite applications in the first instance only from those qualified and working with respondent No. 1 and accordingly applications were invited under circular dated 5th July, 1986 from eligible employment of respondent No. 1. It was stated in the said circular that

the applicant should be a graduate of any recognised university and preferably holding a diploma in management/ administration of the Bombay University or equipment. It was also stated that the applicant should have at least 3 years experience in the respondent No. 1 company. Pursuant to the said circular, petitioner and 42 other employees applied for the post and appeared for written examination. Respondent No. 7 did not apply for consideration and did not sit nor the requisite written tests nor appeared for the preliminary interview. Out of 43 applicants who appeared for the written examination, only 33 were called for the preliminary interview. Ultimately, a short list of 24 employees was prepared for the purpose of final interview. This included the petitioner as also respondent No. 7, although she had not appeared for written test or preliminary interview. Finally by circular dated 8th September, 1986 respondent No. 1 notified the names of respondent Nos. 2 to 7 as selected candidates. Aggrieved by the refusal of respondent No. 1 to appoint the petitioner, the present petition has been filed.

2. The basic grievance of the petitioner is that although he was the most qualified candidate and secured 2nd highest marks, he has been excluded from the selection process by deliberately giving low marks under the heading "Overall". He has challenged the selection process principally on four grounds : (1) that the allocation of 45% marks for oral interview (viva voce 30% marks and overall performance 15%) was highly excessive and contrary to the law laid down by the Supreme Court and was therefore illegal; (ii) that in any event, the allocation of 15% marks under the heading "Overall Performance" was totally arbitrary and illegal; (iii) that the selection of respondent No. 7 without appearing for the written test and viva voce was contrary to the regulations; and (iv) that respondent No. 2 is not and has never been an employee of respondent No. 1 and as such was not eligible for appointment.

3. On behalf of respondent No. 1 Shrinivas Bidwai, Manager (Personnel Officers) had filed counter affidavit. It is stated in the affidavit that the post of Assistant Administrative Officer being of executive cadre, is a selection post. It is further stated that the selection was based on the written test, preliminary interview and final interview and the basic qualification. The prescribed marks for selection to the post were as follows :

It is stated that in the viva voce. i.e., preliminary interview, the petitioner was not found suitable but still he was called for the final interview. i.e., overall assessment. The petitioner got only 6 out of 15 marks in the "Overall Assessment" i.e., less than the minimum of 55% of marks and therefore could not be selected. It is denied that the petitioner was deliberately excluded from the selection process. It is contended that granting of 30 marks for viva voce and 15 marks for overall assessment was reasonable and justified as the members of selection committee gave marks appropriately. It is also contended that the overall assessment is an important aspect from the point of view of suitability of candidate. As regards the selection of respondent No. 7 it is contended that she

was allowed to appear at the final interview as she had passed the written test held earlier in 1984 and she was already in the waiting list at serial No. 2 and as she was found suitable even at the final interview, her name was included in the selection list. Lastly, as regards the selection of respondent No. 2, it is contended that respondent No. 2 was an employee of Nava Yard which is a division of respondent No. 1 and as such he was eligible for appointment.

4. Before dealing with the rival contentions of the parties it is necessary to state the factual position that emerges on scrutiny of the record. We have already noted that the circular provided that the applicant should be a graduate from a recognised university and preferably holding a diploma in management/administration of the Bombay University or equivalent. None of the respondent Nos. 2 to 7 have any such diploma in management/administration. On the other hand, the petitioner has a diploma from the Jamnalal Bajaj Institute which is affiliated to the University of Bombay in the subject of administration/management. Secondly, it is seen from the mark-sheet that the mark given by the selection committee that in the first four heads the petitioner is the 2nd highest amongst all the applicants. It is only because he was given six marks out of fifteen under the head overall, he has been executed from the selection as according to the respondent No. 1 the candidate was required to secure at least 55% mark in "Overall". On this factual background I now proceed to examine the contentions raised by the petitioner. The first question which falls for my consideration is whether allocation of 45% of marks for personal interview was legal and proper.

5. It is now well established that both written examination and oral interview are essential features of a proper selection. While a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, co-operativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the interview Board. In *Lila Dhar v. State of Rajasthan* AIR 1981 SC 1779 and in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, , the Supreme Court recognised the useful function of viva voce in assessing the personal characteristics and traits and held that it is an important tool along with written examination. In *Ashok Kumar Yadav's* case the Supreme Court observed.

"The competitive examination may be based exclusively on written examination or it may be exclusively on interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be

appropriate in a given case ... It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments where the only proper method of selection may be by a viva voce test. (p. 696) of (Supp) SCR : (at p. 473 of AIR)".

However, it was pointed out by the Supreme Court that the marks allotted to oral interview cannot be abnormally high so as to make a determining factor in the selection process. Even if a candidate has secured higher mark in the written examination, he could be easily knocked out of the race by awarding him less mark in viva voce test and correspondingly a candidate who obtained less mark in the written examination could be raised to the top most position by an inordinately high marking in the viva voce test. It was observed that the allocation of excessive marks for personal interview opens the door wide for arbitrariness. It was held that the allocation of 33.3% marks for viva voce test for ex-service officers and 22.2% for other candidates was excessive and that the same should not exceed 25% for ex-service officers and 12.2% for other candidates.

6. Applying the decision of Ashok Yadav's case the Supreme Court in the case of Mohinder Sain Garg v. State of Punjab 1991 1 CLR 254, held that in the matter of selection for two posts of Excise and Taxation Inspectors on the basis of written test and viva voce test where candidates are fresh from college/school the allocation of marks for viva voce test should not exceed 15 per cent. This was again reiterated in Munindra Kumar v. Rajiv Govil, 1991 2 CLR 356 . It was held that allocation of marks for interview and group discussion should not exceed 10% and 5% respectively. Again in the case of Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, , the Supreme Court held that allocation of 50 marks for interview out of 150 marks was illegal. In the case selection was made for the post of Assistant Engineer (Civil) and (Mech.) for the Public Works Department and the said selection was made on the basis of the marks obtained in the qualifying examination and the marks secured in the interview. 100 marks were allocated for qualifying examination and 50 marks for interview. Replying on the decision in Mohinder Sain Garg's case and Ashok Kumar Yadav's case, the Supreme Court held that allocation of 50 marks for interview was high only 15 percent of total marks be allocated for interview.

7. Bearing in mind the law laid down by the Supreme Court, it is clearly impermissible to allocate 45% of the marks for oral interview. The distinction drawn by the respondent No. 1 in the preliminary interview. i.e., viva voce and the final interview under the head "Overall" is really meaningless. In effect respondent No. 1 has allocated 45 marks for oral interview which, in my opinion, is excessive particularly when the written test is also prescribed. Moreover, there are no guidelines laid down as to what is to be considered under the heading

Overall and what is the criteria for allocating the marks to the candidates. Mr. Rele, learned counsel for the petitioner was unable to throw any light on the procedure adopted by the selection committee in awarding the marks under the head Overall. We have also seen that the petitioner secured 2nd highest mark in the first four heads including viva voce but at the last interview he was given minimal marks rendering him disqualified for selection. It is interesting to note that as may as 3 successful candidates have been given same marks under the head Overall. Surprisingly, respondent No. 7 who has not even appeared for the written examination and the viva voce also given high marks under the heading Overall. In my opinion, therefore, the selection process was clearly arbitrary.

8. Mr. Rele strenuously contended that in the recent judgment in the case of Anzar Ahmed Vs. State of Bihar and others, the Supreme Court has upheld the allocation of 50% marks for interview. In my opinion, the decision in that case is clearly inapplicable. In fact in the very opening paragraph of the judgment, the Supreme Court has clarified that the question before the Supreme Court was whether the law laid down regarding fixation of marks in interview for selection would apply to case where there is no written test and the selection is made on the basis of academic performance and interview. It was held by the Supreme Court that in a selection where no written test is held and the selection is based on interview only, the allocation of 50% marks for academic performance and 50% marks for oral interview was valid. This judgment is not applicable where selection is also based upon written test and therefore of no assistance to Mr. Rele. Mr. Rele then invited my attention to the judgment of the Supreme Court in Indian Airlines Corporation v. Captain K.C. Shukla & Ors. 1992 2 CLR 947. In that case 50% marks were given on annual confidential reports (ACR) and 50% on the interview. It was held the selection process was not arbitrary. This case has again no application because there was no written test. Mr. Rele then brought to my notice the Judgment of the Supreme Court in Mehmood Alam Tariq v. State of Rajasthan 1988 2 CLR S.C. 165. The judgment does not support Mr. Rele in any manner since there the Supreme Court was considering the question whether laying down minimum qualifying marks for viva voce test was legal. It was held that the fixation of 15% marks as minimum qualified mark for viva voce test was legal and valid. But the issue raised in the case in hand is totally different. The basic grievance of the petitioner is that by providing very high marks for oral interview the selection committee has arbitrarily excluded the petitioner. In my opinion, in the facts and circumstances of the case, allocation of 45 marks for oral interview, particularly, the allocation of 15% marks under the head Overall was totally arbitrary. I have, therefore, no hesitation in accepting the contention of the petitioner that the selection process adopted by respondent No. 1 was arbitrary.

9. In view of my findings that the selection process was arbitrary, it is not necessary to deal with the other grounds raised by the petitioner. It is, however, necessary to record that I am not prima facie satisfied with the explanation of respondent No. 1 as far as appointment of respondent No. 7 is concerned. As

already indicated, she had not applied for consideration nor she appeared for the written test or the preliminary oral interview. There is absolutely no material to show that any waiting list was maintained by respondent No. 1. Admittedly, no such waiting list was published at any time. In these circumstances, the grievance of the petitioner against the appointment of respondent No. 7 appears to be prima facie justified though I do not wish to express any final opinion on this aspect of the matter. Now the question that arises is what relief can be granted to the petitioner. The selection has taken place in September, 1986. Nearly, 10 years have elapsed since then. It is therefore, not possible to interfere with the appointments of respondent Nos. 2 to 7. (In my opinion, ends of justice will be served if the petitioner is appointed to the post of Assistant Administrative Officer from the same date on which respondent Nos. 2 to 7 were appointed. Accordingly, respondent No. 1 is directed to appoint the petitioner to the post of Assistant Administrative Officer with effect from the same date on which respondent Nos. 2 to 7 were appointed and to fix his inter se seniority accordingly within four weeks from today. Rule is made absolute accordingly. No order as to costs.

10. Mr. Cama states that during the pendency of the petition some of the respondents are promoted and same benefit should be extended to the petitioner. Mr. Rele agrees to grant the same benefit to the petitioner provided the promotions are granted on non-selection basis. Needless to mention that if there is a vacancy in the selection post, the petitioner will be considered alongwith other candidates.