

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision : July 14, 2008**

+ **WP(C) No.3473/2007**

SHRI RANBIR SINGH ... Petitioner.

! Mr. M.S. Dahiya, Advocate
Versus

\$ GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY, KASHMIRE GATE ... Respondent

^ Ms. G.D. Goel and Mr. Sanjiv Goel,
Advocates.
Mr. Sushil Kumar, Joint Registrar and
Mr. A.K. Khatri, Assistant Registrar in
person.

**CORAM :
HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N. Aggarwal, J.

1 The petitioner Shri Ranbir Singh has filed this writ petition under Articles 226/227 of the Constitution of India seeking a writ of Mandamus against the respondent directing it to appoint him on the post of Lab Assistant Grade-I.

The brief facts of the case are as follows:

2 The respondent i.e., Guru Gobind Singh Indraprastha University is a university created under Indraprastha Vishwavidyalaya

Act, 1998. The respondent had issued an advertisement in the month of June, 2006 and invited applications for non-teaching posts viz., Technical Assistant; Lab Assistant Grade-I; Exam. Asstt./UDC; Jr.DEO; Junior Assistant/LDC and Lab Assistant Grade-II. The applications for these posts were also called for from the employment exchange. Here, in this writ petition this court is concerned with the filling up of 10 vacant posts for the post of Lab Assistant Grade-I in the pay scale of Rs.4000-6000 by the institution of the respondent. The respondent had received 407 applications for the post of Lab Assistant Grade-I pursuant to advertisement issued in June, 2006, out of which 283 candidates were found eligible. Besides that the respondent had also received 200 applications from the employment exchange. Since large number of applications were received by the respondent for filling up the vacant posts of Lab Assistant Grade-I, the respondent decided to hold a written screening test of objective nature comprising of 40 questions each of 5 marks (total marks-200) for one hour duration on the following topics:

- i) Maths - 50 marks
- ii) Science - 50 marks
- iii) General Knowledge/Social Science - 50 marks
- iv) Computer awareness - 50 marks

3 The petitioner was also one of the 483 candidates who were found eligible to take written screening test for the post of Lab Assistant Grade-I. The written screening test for the post of Lab Assistant Grade-I

was held by the respondent on 19th November, 2006. The result of the written screening test was displayed by the respondent on its notice board and was also put on its website in January, 2007. Besides placing the combined result of the written screening test on the website and the notice board, the respondent had also displayed the result of written screening test on the notice board and also on its website category wise i.e., for general category, OBC category and SC/ST category separately. The petitioner was one of the candidates who had qualified the written screening test held by the respondent for short listing of candidates for the post of Lab Assistant Grade-I. In fact, he had topped the list of successful candidates who had qualified the written screening test for shortlisting of candidates to be called for *viva voce* examination to be held by the duly constituted DPC. The respondent decided to call 38 candidates in total including general, OBC and SC/ST category candidates from amongst those who had qualified the written screening test on the basis of merit in the said test for filling up of 10 vacant posts of Lab Assistant Grade-I in its institution. The respondents sent call letters for interview to all the 38 candidates strictly in order of their merit in the written screening test and they were asked to appear for interview before the duly constituted DPC on 15th February, 2007. The Selection Committee (DPC) constituted by the respondent comprised of the following:

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|--|-----------------------------|
| 1. Prof. Subhash Wadhva
Principal, IGIT | VC's Nominee-Chairperson |
| 2. Dr.(Mrs.) Suchitra Kumar
Dy. Registrar, GGSIP University | Registrar's Nominee-Member |
| 3. Shri T.K. Jain,
Dte. Of Hr. Edu., Govt. of NCT of Delhi | DHE's Nominee-Member |
| 4. Shri Sushil Kumar Vern
Dy. Registrar, GGSIPU University | SC/ST Representative-Member |
| 5. Prof. P.C. Sharma
Dean, USBT, GGSIP University | Expert Member |
| 6. Prof. B.V. R. Reddy
Professor, USIT, GGSIP University | Expert Member |

4 Out of the 38 candidates who were called for interview, only 35 including the petitioner appeared before the Selection Committee on 15th February, 2007. The Selection Committee after interviewing all the 35 candidates recommended the following selected candidates for their appointment to the post of Lab Assistant Grade-I vide its minutes dated 15th February, 2007 itself:

UR CATEGORY (Select Pannel)

<i>S.No.</i>	<i>Name of the Candidates</i>	<i>Roll No.</i>
1.	Shri Sunil Kumar	1332
2.	Shri Ajit Pratap	1348
3.	Shri Madhur Gupta	1336
4.	Shri Vikas Gupta	1346
5.	Ms. Amita Rawat	1351
6.	Shri Kamalkant Agarwal	1260
7.	Shri Ravi Verma	1047

UR CATEGORY (Waiting Pannel)

<i>S.No.</i>	<i>Name of the Candidates</i>	<i>Roll No.</i>
1.	Ms. Nidhi Mago	1131
2.	Shri Anish Bhatia	1359
3.	Shri Satish Chandra Madhwal	1031
4.	Ms. Rinkle Lalwani	1293

SC CATEGORY (Select Pannel)

<i>S.No.</i>	<i>Name of the Candidates</i>	<i>Roll No.</i>
1.	Shri Ashok Kumar	1350

SC CATEGORY (Waiting Pannel)

<i>S.No.</i>	<i>Name of the Candidates</i>	<i>Roll No.</i>
1.	Shri Suneel Kumar	1225

OBC CATEGORY

<i>S.No.</i>	<i>Name of the Candidates</i>	<i>Roll No.</i>
1.	Shri Chetan Anand	1337
2.	Ms. Chitra Singh	1412

OBC CATEGORY (Waiting Pannel)

<i>S.No.</i>	<i>Name of the Candidates</i>	<i>Roll No.</i>
1.	Shri Amit Saini	1206

5 The name of the petitioner did not find mention in the final select list. He, therefore, made a representation against his non selection by the respondent on 12th March, 2007, which was rejected by the respondent vide its letter No. F.1(4)(57)/2006/Estt./1840 dated 31st March, 2007. Aggrieved by the rejection of his representation against his non-selection to the post of Lab Assistant Grade-I, the petitioner has filed this writ petition wherein following prayer have been made:

- “a. issue a writ of Mandamus directing the respondent to appoint the petitioner on the post of Lab Assistant Grade-I; and
- b. pass any further order/orders which may deem fit and proper in the circumstances of the facts stated in the case.”

6 The respondent in response to notice of this writ petition has filed its counter affidavit and has taken a categorical stand that the written screening test was held by it only for the purpose of short listing the candidates to be called for interview to fill up the 10 vacant posts of Lab Assistant Grade-I. The respondent has also taken a stand that the decision to hold written screening test was taken because it had received a large number of applications for the said post. As per the case of the respondent, the marks scored by the candidates in the written screening test were not taken into account by the Selection Committee while selecting the candidates finally for appointment to the post of Lab Assistant Grade-I. As per the respondent, the petitioner has no right to be appointed because he could not qualify the *viva voce* examination held

on 15th February, 2007. The respondent has further averred in its counter affidavit that the due procedure was followed by the respondent in selecting the candidates for their appointment to the post of Lab Assistant Grade-I and it is stated that the selection was made on the basis of an assessment made by the Selection Committee based upon the performance of the candidates at the time of interview, after approval of the competent authority. The respondent has also pleaded that all the 10 selected candidates have already joined the service of the respondent pursuant to appointment letters issued to them. As per the respondent, the petitioner has no locus to invoke the writ jurisdiction of this court as his legal right has not been infringed. The respondent has prayed for the dismissal of this writ petition.

7 The petitioner has filed rejoinder to the counter affidavit of the respondent. The petitioner has not denied that all the 10 candidates selected by the respondent for the post of Lab Assistant Grade-I have joined the service of the respondent. The petitioner has denied in his rejoinder that the written test was meant only for screening purposes. According to the petitioner, the written test was conducted for finding out the merit of the competing candidates. The petitioner has alleged that since he had scored overall rank No.1 in the written examination, his non selection in the final select list establishes his point that the selection made by the respondent was based on manipulation and nepotism. According to the petitioner, the criteria adopted by the Selection

Committee for selection was consideration of the following:-

- 1) Educational qualification of the candidate
- 2) Experience possessed by the candidate
- 3) Performance in the written test by the candidates and
- 4) The suitability of the candidates for the posts.

8 According to the petitioner, he is the most meritorious candidate as per the criteria mentioned above for the selection amongst all the 10 candidates who were finally selected. The petitioner has stated that he holds a motor mechanic certificate from Industrial Training Institute, Sonapat, wherein he scored 457 marks out of a total 650 marks i.e., 73% in the year 1991, which was followed by apprenticeship of one year as Motor Mechanic with Haryana Roadways. The petitioner is stated to has worked as motor mechanic with Birla Corporation Ltd. from 07th February, 1989 to 02nd February, 2006. He has relied upon a letter dated 08th August, 2007 purported to be written by Sh. J.M. Kalra, In-charge, Automobile Section IGIT, Kashmiri Gate, Delhi and relying upon the same he has tried to make out a case that the respondent urgently require a motor mechanic having practical experience and according to him he being the most suitable person fit for the said post should have been selected by the respondent while making selection to the post of Lab Assistant Grade-I.

9 This court has heard Mr. M.S. Dahiya, learned counsel appearing on behalf of the petitioner and also Mr. G.D. Goel who

appeared on behalf of the respondent. This court has also gone through the original selection record pertaining to selection of Lab Assistant Grade-I by the respondent.

10 The plank of arguments of Mr. Dahiya, appearing on behalf of the petitioner was that since the petitioner had scored highest marks in the written screening test, the Selection Committee could not have ignored him while recommending the candidates for their appointment vide its minutes dated 15th February, 2007. The argument of Mr. Dahiya was that due weightage should have been given by the respondent to the marks scored by the candidates in the written screening test. According to him the final seniority list should have been drawn after taking into consideration the total marks obtained by a candidate in the written examination and the interview. Mr. Dahiya had further argued that the selection made by the Selection Committee is vitiated by *mala fides*, favoritism and nepotism and has violated the fundamental right of the petitioner for a fair and reasonable consideration by the respondent for his appointment.

11 Per contra Mr. Goel, learned counsel appearing on behalf of the respondent had referred to the original record of the selection and vehemently argued that since large number of applications were received by the respondent for the post of Lab Assistant Grade-I, it was decided to hold a written screening test for short listing the candidates to be called for interview for filling up 10 vacant posts of Lab Assistant Grade-I.

Mr. Goel had further argued that not only in the case of Lab Assistant Grade-I, but in case of Technical Assistant as well the decision was taken by the respondent for holding a written screening test because in that category also large number of applications were received to fill up a limited number of vacancies. According to Mr. Goel, all those candidates who were short listed in the written screening test for being considered for selection by the Selection Committee were treated at par and the selection was made on the basis of performance of the candidates before the Selection Committee. Mr. Goel had submitted that need for holding the written screening test arose because of large number of applications received by the respondent so that the candidates could be short listed for their interview by the Selection Committee approximately in the ratio of 1:3. The learned counsel appearing on behalf of the respondent had also argued that the petitioner is even otherwise estopped from challenging the selection process after he has participated in the said selection process and has failed. Mr. Goel has prayed for the dismissal of this writ petition.

12 The only short question that arises for consideration in this writ petition is whether the respondent was justified in not giving any weightage to the marks scored by the candidates in the written screening test while considering their performance at the time of interview. The question also arises whether the written test was held by the respondent only for screening and short listing the candidates or whether the written

test was held by it for assessing and evaluating the related merit of the candidates who took the said test. A perusal of the minutes of the Selection Committee dated 15th February, 2007 at page-26 of the paper book shows that the Selection Committee has taken into account the educational qualifications, experience possessed by the candidates and their respective performance in the written test as well as suitability adjudged at the time of interviews while recommending the candidates for appointment. Admittedly, no specific marks were allocated by the respondent for the purpose of interview. The selection seems to have been based on the basis of performance of the candidates at the time of interview treating all the 35 candidates who appeared for interview at par. A scanning to the record of the respondent relating to selection of 10 candidates for appointment to the post of Lab Assistant Grade-I shows that the respondent had called 38 candidates who were short listed strictly in the order of merit and once they were called for interview, they all were treated at par.

13 Though the petitioner has made allegations of *mala fide*, favoritism and nepotism against the respondent in the matter of selection of candidates for the post of Lab Assistant Grade-I, but his said allegations are not backed by any material much less sufficient material.

14 In "**Purushottam Kumar Jha Vs. State of Jharkhand & Ors.**" **reported as (2006) 9 SCC, 458**, it was held by the Hon'ble Supreme Court as under:

“23. It is well settled that whenever allegations as to *mala fides* have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was *mala fide* and malicious is not enough. In the absence of material particulars, the Court is not expected to make 'fishing' inquiry into the matter. It is equally well established and needs no authority that the burden of proving *mala fides* is on the person making the allegations and such burden is 'very heavy'. Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be 'made than made out' and hence it is necessary for the Courts to examine it with extreme care, caution and circumspection. It has been rightly described as 'the last refuge of a losing litigant'”

15 In view of the above judgment of the Hon'ble Supreme Court on the point of *mala fide*, the allegation of favoritism and nepotism made by the petitioner against the respondent does not merit any consideration as the said allegation is vague and not supported by any material much less cogent material.

16 The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favoritism. Selection based on merit, tested impartially and objectively is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be expected almost universally as the gateway to public services.

17 The Hon'ble Supreme Court had the occasion to consider the importance of oral interviews in its judgment in “**K.H. Siraj v. High Court of Kerala**”, (2006) 6 SCC 395, wherein it was held as under:

“54. In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidate's academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership, etc. which are also essential for a judicial officer.”

18 In view of the judgment of the Hon'ble Supreme Court in ***K.H. Siraj v. High Court of Kerala*** (Supra), this court does not find any thing wrong in the procedure adopted by the respondent to select the candidates for the post of Lab Assistant Grade-I on the basis of their performance at the time of interview. In order to satisfy itself, this court has also seen the record of the respondent relating to selection of candidates for the post of Technical Assistant because in that case also the respondent had received large number of applications and had conducted written screening test as it was conducted in the case of Lab Assistant Grade-I. On seeing the record relating to selection of candidates for the post of Technical Assistant, this court has found that the respondent has adopted the similar procedure of adjudging the performance of the candidates on the basis of *viva voce* / interview. This shows complete transparency in the office of the respondent in the selection process adopted by them.

19 Admittedly, the petitioner had participated in the selection process and had appeared for *viva voce* / interview before the Selection Committee on 15th February, 2007 and in the opinion of this court the

petitioner has no *locus standi* to challenge the selection process in which he has participated and has failed. Reference in this regard is made to a Division Bench Judgment of this court in “**R.P. Bhasin & Ors. v. D.K. Tyagi & Ors.**” reported as **88(2000) DLT 643**.

20 Thus, looking from any angle this court does not find any merit in the challenge to the selection process made by the petitioner in this writ petition. It may be noted that the petitioner has not prayed for quashing the entire selection process or upsetting the appointment of the candidates who have also joined the institute of the respondent on the post of Lab Assistant Grade-I. The 10 candidates who were selected and have joined the respondent are not even parties in the present petition. In case the challenge made by the petitioner in this writ petition is accepted, then it would result in upsetting the appointment of duly selected candidates without affording an opportunity of hearing to them. This is not permissible in law. Therefore, the Mandamus as prayed for by the petitioner for his appointment cannot be issued.

21 Before parting with this judgment, this court would like to note that any procedure for selection of candidates adopted by the respondent should not only be transparent but it should look to be transparent to all those who are concerned with the said process. In case the respondent would have clarified in its instructions that no weightage was to be given to the marks scored by the candidates in the written screening test, probably the controversy raised in the present writ

petition would not have arisen. The respondent, is therefore, directed to amend their recruitment rules suitably so as to make the selection process more transparent by providing the exact criteria that they seek to adopt at the time of selection.

21 In view of the above, I do not find any merit in this writ petition which fails and is hereby dismissed, but in the circumstances of the case, the parties are left to bear their own costs.

July 14, 2008
'nks'

S.N.AGGARWAL
[JUDGE]