

CWP-27834-2023

2024:PHHC:047514-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27834-2023
Date of Decision: April 05, 2024

Mohit and another Petitioners

Versus

State of Haryana and others Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Sunil Kumar Nehra, Advocate for the petitioners (through VC).

Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

Mr. Gaurav Chopra, Senior Advocate with
Mr. Ashish Bansal, Advocate for respondent No. 2.

Ms. Harpriya Khaneka, Advocate for respondent No. 3.

LISA GILL, J.

1. Prayer in this writ petition is for quashing The Punjab Civil Service (Judicial Branch) Haryana Amendment Rules, 2023 dated 07.11.2023 (Annexure P4) to the extent of 200 marks out of total of 1100 marks kept for interview being violative of judgment titled **Ashok Kumar Yadav and others versus State of Haryana and others 1987 AIR 454** passed by Hon'ble the Supreme Court. Recruitment process, it is prayed, should be carried only after reduction of marks of interview.

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2. It was submitted that petitioners are Law Graduates, eligible for selection to the posts in question. Grievance raised by petitioners is that marks reserved for interview/viva voce for selection to the cadre of Punjab Civil Service (Judicial Branch) is excessive. It was further submitted that recruitment to the post of Civil Judges (Junior Division) in Haryana is governed by Punjab Civil Service (Judicial Branch), Rules, 1951 as applicable to the State of Haryana (for short – ‘the Rules’). Copy of said Rules is attached as Annexure P3 with the writ petition. Amendment was carried out in the said Rules by way of Punjab Civil Service (Judicial Branch) Haryana Amendment Rules, 2023. Petitioners claim to be aggrieved as even after judgment passed by Hon’ble the Supreme Court in case of **Ashok Kumar Yadav** (supra) marks for interview have not been reduced to or brought at par with 12.12% of total marks as has been held in the said judgment. Out of total marks of 1100, 200 marks have been kept for viva voce which are excessive being over the threshold of 12.12%. Same should be reduced and recruitment process should be carried out only after reduction in marks for viva voce. It was, thus, prayed that this writ petition be allowed. It was further prayed that no recruitment process should be carried out during the pendency of writ petition.

3. Learned counsel for respondents No. 2 and 3 have opposed the writ petition while submitting that marks, as reserved for viva voce, are absolutely in order. Reference has been made by learned counsel for respondent No. 2 to Division Bench judgment of this High Court in **Sarika versus State of Haryana and others 2020(2) SCT 34**. It was further submitted that petitioner No. 2, in any case, is over age in view of Rule 2 of the Rules as applicable to Haryana.

Learned counsel for petitioners responded to this objection by submitting that in

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Advertisement No. 1 of 2021 issued by Haryana Public Service Commission on 13.01.2021, stipulated/prescribed upper age is 42 as is in the case of Advertisement No. 1 of 2024 issued on 07.11.2023. Learned counsel for respondents claim the same to be mere relaxation afforded in terms of applicable Rules. It was, thus, prayed that this writ petition be dismissed.

4. We heard learned counsel for parties and have carefully considered the matter.

5. As per Part C of the Rules (unamended), examination is to be conducted in three stages:-

- (i) Preliminary examination
- (ii) Main examination
- (iii) Viva voce

6. Clause 7 of the Rules provides that main examination shall consist of six papers (five written and one viva voce) with their description as under:-

Paper-1 Civil Law-I	Code of Civil Procedure, Punjab Courts Act, Indian Contract Act, Indian Partnership Act, Sale of Goods Act, Specific Relief Act and Indian Evidence Act.	200 Marks
Paper-II Civil Law-II	Hindu Law, Mohammadan Law and Customary Law, Law of Registration and Limitation.	200 Marks
Paper-III- Criminal Law	Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act	200 Marks
Paper-IV English	The English paper shall be of 200 marks and shall consist of the following: - 1. English Essays (1000-1100 words) 2. Precis 3. Words and Phrases (make sentences of the given words and phrases) 4. Comprehension 5. Corrections	100 Marks 25 Marks 25 Marks 25 Marks 25 Marks
Paper-V Language	Hindi (in Devnagri Script)	100 Marks

Paper-VI Viva-Voce	To judge the personal qualities of the candidates The viva-voce test shall relate to the matters of general interest and is intended to test the candidates alertness, intelligence and general outlook. It shall be conducted in English.	200 Marks
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Note	(i) Only bare copies of legislative enactment shall be supplied (ii) Each written paper shall be of three hours duration (iii) The standard of the language paper shall be that of Matriculation Examination of the Board of School Education, Haryana. Language paper (V) shall comprise the following - (a) Translation of an English passage into Hindi : 20 Marks (b) Explanation of Hindi passage in prose and poetry in the same language : 30 Marks (c) Composition (essay, idioms and correction etc) : 50 Marks
	Total : 100 Marks

7. As per the amendment carried out in November, 2023, same scheme and allocation of marks has been maintained with another topic of Haryana Urban (Control of Rent and Eviction) Act, 1973 being added. Issue sought to be raked up is no longer res integra. In the case of **Sarika** (supra), same issue was thrown up for consideration. It was the contention of petitioners therein that allocation of marks for viva voce (i.e. 200) is impermissible. It was also the case of petitioners therein that selection process has been carried out by the High Court Committee by usurping the power of Haryana Public Service Commission. One of questions which arose for consideration in the case of **Sarika** (supra) was culled out as under:-

“ Even otherwise, the vital question which arises for determination in the present case is whether the prescription of 200 marks for the viva-voce test is ultra vires the constitution or violative of the directions of the Hon’ble Supreme Court.”

8. After detailed discussion and with reference to judgments of Hon’ble the Supreme Court subsequent to case of **Ashok Kumar Yadav** (supra), no infirmity was found in the prescription of said marks (200) for viva voce. It is

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specifically held therein that question whether marks prescribed for viva voce test or interview are excessive has been considered by Hon'ble the Supreme Court in several cases decided after **Ashok Kumar Yadav's** case (supra) and that no strait jacket formula has been judicially evolved for determining whether the prescription of particular percentage of marks for viva voce introduces an element of arbitrariness in the process of selection or gives unbridled powers to recruiting authority to select less meritorious candidates. Hon'ble the Supreme Court in **Mehmood Alam Tariq and others versus State of Rajasthan and others (1988) 3 SCC 241** while relying upon its earlier judgment in **Lila Dhar v. State of Rajasthan and others (1981) 4 SCC 159** distinguished the case of **Ashok Kumar Yadav** (supra) and held prescription of 33% marks for interview for recruitment to Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination Rules), 1962 and other Rules to be permissible and not violative of Article 14 and 16 of Constitution of India. Hon'ble the Supreme Court in the case of **Jaswinder Singh versus State of Jammu and Kashmir 2003 (2) SCC 132** concluded that prescription of 20% of the marks for viva voce for appointment to post of Sub Inspectors of Police – Executive/Armed Police was in order. Similarly, in the case of **Manish Kumar Sahi versus State of Bihar and others 2010 (12) SCC 576**, prescription of 200 marks for viva voce as against 850 marks for written examination for recruitment to the post of Civil Judge (Junior Division) in the State of Bihar, was not found to be violative of doctrine of equality embodied in Article 14 and 16 of Constitution of India.

9. Argument raised by learned counsel for petitioners that Division Bench of this Court in **Sarika's** case (supra) needs to be revisited and matter

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referred to a Larger Bench is devoid of any merit, in view of discussion as above.

In view of conclusion arrived at as above, we do not find it necessary to go into the controversy regarding petitioner No. 2 being over age, the same being totally academic in the given factual matrix.

10. Keeping in view the facts and circumstances as above, this writ petition is dismissed with no order as to costs.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 05, 2024
Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No