IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

233744

CIVIL APPEAL NO. 3497 OF 1988

Bihar Public Service Commission ... Appellant

versus

Pandey Venktesh Prasad Sinha & Anr. ... Respondents

ORDER

The first respondent was a candidate at the 30th Combined Competitive Examination held by the appellant to recruit personnel for gazetted posts under the second respondent, State of Bihar. He secured an aggregate of 565 marks in the written and viva voce tests. Some other candidates also secured the same marks. To resolve the tie, the first respondent gave preference to candidates who had secured more marks at the viva voce test. Upon this basis the first respondent was not selected and he filed a writ petition in the High Court.. The High Court allowed the writ petition.

While this Court granted special leave to the appellant to appeal, it declined stay. The question that is pressed is not about the first respondent's

selection but about the observations of the High Court that, in case of such a tie, preference should be given to the higher marks secured at the written test and not at the viva voce test. The High Court said this (in paragraphs 8 and 9 of the judgment of L.M. Sharma, J., with which S.N. Jha, J. agreed):

> "8. It is not possible to lay down a rigid formula for resolving a tie for universal application to all kinds of appointments. Some appointments are made without holding any written examination at all; as for example, the direct appointment to a post of Additional District and Sessions Judge made by the High Court on the basis of interview. But, generally, appointments are made on the basis of a written examination followed by a viva voce test allocating higher marks to the written test and lower to the oral part. In my view, in all such cases, preference must be given to the candidate obtaining higher marks in the written examination. The observations made by the Supreme Court in Ashok Kumar Yadav's case (supra) although in the context of the proportion to be allotted to the written examination and viva voce test, are helpful in the present case also as they refer to their 'relative weight'. The view of Glenn Suahl in his book on Public Personal Administration referred to it in paragraph 25 of the Supreme Court judgment pointing out the disadvantages in viva voce tests is illuminating. The difficulty of developing a valid and reliable oral test and the difficulty of securing a reviewable record thereof cannot be ignored. Judicial notice must be taken of the fact that the public in general is suspicious of correct, nepotistic and extraneous considerations weighing at such tests. It is true that viva voce tests also have their own disadvantages; but do they outweigh the

factors in favour of the written examination? I do not think so, and my view is reinforced by the circumstance that in all such selective processes in which the choice is made on the basis of both written examination and viva voce test, the marks reserved at the interview are invariably lower than those for the written part.

9. Coming to the combined examination which is under consideration before us, it will be observed that -

(a) the marks fixed for written examination are more than eight times of those for the interview;

(b) while Rule 16(a) contemplates fixation of qualifying marks for the written examination by the Commission, clause © directs in imperative terms that no qualifying marks for viva voce test shall be fixed; thus a candidate securing even zero at the interview may be selected;

(c) by the decision in annexure 14 while reducing the marks fixed for viva voce test from 200 to 100, it was observed that for the reasons mentioned therein the oral test could not be treated to be very dependable,

which all unmistakably lead to the conclusion that the result in the written examination has to be preferred to that in the oral test, whenever two candidates secure the same aggregate marks. The recommendation of the Commission having not been made on this basis must be modified."

Having considered the matter, we are of the view that what is stated in these paragraphs is eminently reasonable and deserves acceptance. We do not think that in the circumstances, the judgment should be set aside on the ground that the High Court should not have interfered with what was basically a policy decision and we note that there are no observations in the judgment which reflect adversely upon the appellant.

The appeal is dismissed, with no order as to costs.

.....J.
[S.P. Bharucha]

.....J.
[V.N. Khare]

New Delhi,
January 15, 1998.