

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

**CWP No. 722 of 2004 along with connected matters.
(See-overleaf)**

Judgment reserved on: 21.12.2005.

Date of Decision: January 12, 2006.

Ravinder Baloria ...Petitioner(s).

Versus.

State of H.P. & Ors. ...Respondent(s).

Coram:

The Hon'ble Mr. Justice V.K.Gupta, Chief Justice.

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting? yes

For the Petitioners: (see- overleaf)

For the Respondents: (see- overleaf)

Deepak Gupta, J.

This bunch of petitions is directed against the selections made by the respondents-State for admission to Junior Basic Training (for short: JBT) Course.

The respondent No.1 Himachal Pradesh Board of School Education, issued an advertisement on 20th January 2004 inviting applications for entrance test to the JBT course. On the basis of this entrance test, 1800 successful candidates were to be granted admission in various institutions all over the State.

In this advertisement, the seats were distributed district-wise. The advertisement also prescribed reservations for various categories. The essential educational qualification for appearing in the test was 10 + 2 or equivalent. As per the general rules/guidelines, merit was to be prepared district-wise/ category-wise by the board and the candidates were to be interviewed by the Selection Committee(s) at the Sub Divisional Headquarters. The general rule/guideline No.5 of the advertisement provides that JBT training does not guarantee government job(s) after completion of the training.

Condition No.17 of General Rules/Guidelines for JBT Entrance Test reads as under:-

"17.QUESTION PAPER: There shall be one question paper having questions of multiple-choice type, carrying 75 questions of one mark each to be attempted within 30 minutes. The subjects along with the distribution of marks shall be as under:

Subjects	Marks.
i) Hindi	20
ii) English	20
iii) Numerical Ability	20
iv) General Awareness	15
Personal interview:	15

Special marks to the candidate 10
belonging to rural areas.

Grand Total:	<u><u>100"</u></u>
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The admission test (written examination) was conducted on 18.4.2004 in which all the petitioners appeared. The petitioners passed in the admission test and were called for interviews. It is their common contention that the interview was only a sham which lasted only for one or two minutes. The result of the entrance examination comprising of the written test and the Interview, was declared on 16.10.2004 through publication of roll numbers of selected candidates in the news papers. Immediately thereafter the present petitions were filed by the unsuccessful candidates challenging the result. The first petition was filed on 18.10.2004 and on 19.10.2004 an ad - interim order was passed restraining the respondents from giving effect to the result impugned in the petition or taking any consequential action based upon such a result.

In these petitions, initially two points were canvassed before us:

- (i) The petitioners challenged the award of 10 marks for candidates belonging to rural areas. It was contended that the same is violative of Article 14 of the Constitution and awarding 10 marks to candidates belonging to rural areas is against Article 14 of the Constitution and, therefore, such action of the State is void and illegal;

(ii) The second contention was with regard to the award of 15 marks for personal interview and it was contended that the same is legally and constitutionally invalid.

We had heard the writ petitions in detail and thereafter this Court had passed a detailed order on 7th January, 2005 with regard to the aforesaid two contentions.

As far as the first question regarding allotting marks for candidates belonging to rural area, this Court held as follows:

"In view of the law laid down by the Supreme Court in various judgments cited above which has been explained and crystallized in the judgment in **Kailash Chand's** case (supra), there can be no manner of doubt that the award of 10 marks to candidates belonging to rural areas is illegal and ultra vires the provisions of Articles 14 and 15 of the Constitution and suffers from the vice of arbitrariness."

With regard to the contention regarding allotment of marks for the interview, after considering various judgments of the Supreme Court, this Court held as follows:

"Taking into consideration the entire law cited before us, it is no doubt true that the Supreme Court has held that viva voce

test can be held to assess the suitability of the candidates. However, the question is whether such a test is necessary for admission to a course like the JBT course. A written test is being held to assess the capability of the candidate. The candidates are only to be granted admission to JBT course. No employment is being given. In the last 10 - 15 years, the trend has been, that so far as, admission to educational institutions is concerned, no marks or very few marks are allotted for interviews. For admission to course like MBBS/BDS, Law, M.A. etc., no viva voce test or interviews are held. There is hardly any justification for keeping 15% marks for interview for admission to the JBT course especially when the interviews were conducted by separate Interview Boards all over the State. Every Interview Board could have evolved its own criteria and judged the candidates in a different manner. The petitioners have not been treated equally and, prima facie, award of 15 marks for interview in the present case appears to be unjust and illegal and violative of Article 14 of the Constitution of India."

On behalf of the State it had been urged that a number of posts of JBT teachers were lying vacant and it was in the public interest that JBT course be started and completed at the earliest and therefore it was urged that no stay orders should be granted. It was also urged that the candidates who have been

selected were not parties in the petitions and therefore the petitions should not be heard in their absence. This Court after considering the entire law held that the selection process is illegal and directed that the respondents will not give effect to the result declared on 16.10.2004 and the following directions were passed:

"Since in our view the selection process is illegal, we direct that the respondents shall not give effect to the result declared on 16.10.2004.

On behalf of the State, it has been urged that a large number of posts of JBT teachers are lying vacant and it is in the public interest that the JBT course should be started and completed at the earliest. We do take note of this submission made on behalf of the State Government and wish to observe and direct that it shall be upto the State Government to grant admission in the JBT course for the ensuing session but such admission can be granted only on the basis of the merit as obtained in the written test examination and while granting such admission, the marks obtained in the interview / viva voce shall be excluded. In other words, the basis of admission shall be the merit in the written examination alone. However, such admission shall abide by the result of this writ petition.

It is contended on behalf of the respondents that the selected candidates have not been made parties and, therefore, the present petitions cannot be decided in their absence.

The petitioners are not in a position to know the names of the selected candidates because only the roll numbers of the candidates have been published in the News papers of 16.10.2004 and immediately thereafter the petitions were filed. The result giving the names and addresses of the candidates has never been published. Even otherwise, there were 1600 candidates who have been selected and candidates like the petitioners who belong to the weaker sections of society cannot be forced to make such a large number of candidates as parties in the present writ petitions. However, we do feel that before we finally decide these petitions, the parties likely to be affected should be heard in this matter.

Therefore, we direct that a public notice be issued with regard to the pendency of the writ petitions in two News papers, that is, The Daily Tribune (English), Chandigarh Edition and Amar Ujjala (Hindi), Chandigarh Edition. In this notice it should be clearly mentioned that a large number of writ petitions challenging the selection process for admission to JBT course in Himachal Pradesh especially the result declared on 16.10.2004 have been filed in this Court and have been admitted for hearing. All persons likely to be affected by the decision in the writ petitions can appear in Court in person or through their counsel and argue the matter on the date fixed for hearing. They can also file their replies within four weeks of the publication of the notice(s). The respondent No.2 Board shall bear the cost of these notices. The respondent No.2 shall also issue

letters along with copies of the notices to all the candidates selected by it Under Postal Certificate."

The State of Himachal Pradesh filed a SLP in the Apex Court challenging the order passed by this Court on 7th January, 2005. This Special Leave Petition was dismissed on 2.5.2005. Thereafter, a supplementary affidavit was filed on behalf of the respondent No.1-State by Sh.P.C.Dogra, Deputy Secretary (Education). In this affidavit it was stated that in the light of the order of this Court dated 7.1.2005 the State Government had decided to scrap the provision for grant of 10 marks for candidates belonging to rural areas. With regard to the marks granted for interviews the relevant averments made in the said affidavit reads as follows:

"3.That in respect of the observations made and findings given by this Hon'ble Court regarding allocation of 15 marks in the personal interview, it is respectfully submitted that at present there are more than two thousand vacancies of JBT teachers and the State has a capacity of training nearly 1800 persons in the Course. Therefore, the trained JBTs are granted and assured employment/recruitment after their training is over, though the same may be made in phased manner subject to the availability of funds. To put it differently, it is submitted that no interview of the trained teachers will be

held before their appointments and the present interview before their selection for training is a preliminary step or a prelude to the appointment, as no further interview for the purpose of appointment after training and appointment is to be held. In view of the above submissions, it is essential and appropriate to adjudge the aptitude and suitability of each candidate for the job at this stage alone, when they are selected for JBT course. It is further submitted that if permitted by this Hon'ble Court, the State Government will conduct/hold fresh interviews at the Sub-Divisional Level. However, instead of the Sub Divisional Officer, the Government has decided to constitute a committee comprising of Deputy Commissioner as its Chairman, Deputy Director Education (Primary) of the District and Principal, District Institutes of Education and Training as its member to hold the interviews.

4. That in respect of the observations made by this Hon'ble Court that no criteria was followed/prescribed for the manner in which the interview marks were to be allocated, it is respectfully submitted that the respondent State has re-examined the matter and after careful consideration of the whole issue, has decided to allot 15 marks for personal interview on the following criteria:

- (i) 5 marks (maximum) Conversion to 5% of total marks obtained in 10+2 examination.
- (ii) 5 marks For extra -curricular activities (i.e.

- | | |
|---------------|--|
| | cultural sports,
debates & dramatics
etc.) |
| (iii) 2 marks | For knowledge &
customs of H.P. |
| (iv) 3 marks | Shall be awarded by the
Committee at its own
discretion keeping in
view the overall
personality and mental
aptitude of the
candidates. |

5. That in view of the above submissions made by the Respondent State, it is respectfully prayed that the respondents may kindly be allowed to retain 15 marks for the viva-voce and to redraw the merit out of 90 marks instead of 75 marks as directed by this Hon'ble Court, after conducting fresh interviews on the basis of arrangement/decision taken by the Government supra, which would meet the requirement/observations made by this Hon'ble Court in this regard.

6. That in the light of foregoing submissions, it is respectfully submitted that there are about 2000 vacant/vacancies of JBT Teachers at present in the State and in case this prayer is allowed, the respondents will certainly be in a position to overcome difficulty of shortage of teachers which will give substantial relief to the students and will also promote the public interest immensely. It is, therefore, prayed that the above prayer may kindly be

allowed in terms of the submissions made above."

Only a supplementary affidavit was filed and no application was filed for modification of the earlier orders. The State for reasons best known to it did not disclose the fact that it had challenged the order of this Court dated 7.1.2005 before the Apex Court and the SLP filed by it had been dismissed. This Court vide order dated 27.7.2005 rejected the plea of the State Government that it should be permitted to grant admission to JBT Course on the basis of revised selection criteria. The relevant portion of the order dated 27.7.2005 reads as follows:

"First and foremost there is no application by the respondents either for review, or for recall, or for modification of the order dated 7th January, 2005 passed by this court. The respondents want us to grant to them the aforesaid prayers only because these are contained in the supplementary affidavit filed by the Deputy Secretary (Education). The minimum that was expected of the respondents was to have filed a proper and formal application either for review or for recall or modification of our order dated 7.1.2005. Rather than doing that, in a casual and slipshod manner they have just filed a supplementary affidavit.

Secondly, but very very unfortunately, in the supplementary affidavit filed by the respondents, there is no mention at all of the fact that the order

passed by this court on 7th January, 2005 was challenged by the respondents in the Supreme Court in a batch of Special Leave Petitions and their Lordships of the Supreme Court vide order dated 2nd May, 2005 have dismissed all the S.L.Ps. The following order has been passed by their Lordships on 2nd May, 2005 dismissing the entire batch of SLPs and we quote:-

"We do not see any reason to interfere with the interim order passed by the High Court. The High Court is requested to dispose of the writ petitions as expeditiously as is convenient.

Special Leave Petitions are dismissed."

The fact that the order passed by this court on 7th January, 2005 was challenged before the Apex Court and the Apex Court has upheld that order is a material fact, but for reasons unknown and totally unexplained, respondents very conveniently omitted to mention this material fact in the aforesaid supplementary affidavit filed on their behalf, even though the supplementary affidavit was filed a full month after the passing of the aforesaid order by the Supreme Court. We have learnt about the aforesaid order of the Supreme Court only because its copy was sent to the Registry of this court by the Registry of the Supreme Court. But for this, we surely would have been taken for a ride at the hands of the respondents. We, therefore, hold respondents guilty of concealing the aforesaid material fact from

us. The respondents have not come to this court with clean hands.

Coming to the merits of the prayer of the respondents, notwithstanding the aforesaid two aspects, we find that this court in the judgment dated 7th January, 2005 had clearly taken a definite view that it was not legally permissible to hold interviews for admission to an elementary course like JBT and at the same time this court in public interest, even though by restraining the respondents from allocating any marks either for interview (15 marks) or for rural back ground (10 marks), had permitted the respondents to make selection for admission in the JBT course on the basis of the merit as had been obtained in the written examination. The aforesaid order of this court having been upheld by the Apex Court has assumed finality . We see no reason why we should take a different or contrary view at this stage and permit the respondents to persist with the conduct of the interview, based on 15 marks out of 90 marks for carrying out the selection. That would surely amount to setting at naught our order dated 7th January, 2005 which neither we are inclined to do nor we consider it permissible under law. We continue to be of the opinion that holding of the interview for admission to an elementary course like JBT where the prescribed academic qualification is 10+2 would bring in an element of arbitrariness, thus violating article 14 of the Constitution. The prayer of the respondents, therefore, as contained

in the supplementary affidavit (supra) is rejected."

The State has been urging time and again that there are a large number of vacant posts of JBT teachers and therefore there is urgent need to grant admission to candidates for the JBT course. This Court vide its order dated January 7, 2005 had permitted the State to grant admission to the candidates strictly on the basis of the marks obtained in the written test examination and while granting such admission the marks obtained in the interview/viva voce were to be excluded. It was also made clear that no benefit would be given to candidates on account of their belonging to rural areas. The State did not take advantage of this order and came up with a fresh proposal in its supplementary affidavit. The fresh proposal is a mere eye-wash. In fact by filing the supplementary affidavit the State has virtually admitted that the earlier interview process was not correct. It has also withdrawn the allotment of 10 marks to candidates belonging to rural areas.

If actually there was an urgent need of appointing JBT teachers and granting the candidates admission to JBT course then what stopped the State from taking immediate steps to appoint the candidates on the basis of a written test only. It is,

therefore, clear that the State is not so much worried about the urgency in making the appointments but its main interest is that there should be some marks left at the discretion of the minions of the State so that they can be distributed at their sweet-will. This shows the hollowness of the stand of the State that it wants to urgently fill up the posts.

Notices were issued as ordered by us on 7.1.2005. Thereafter, a number of selected candidates have filed applications to be impleaded as respondents and they have been impleaded as respondents No.4 to 866. We have heard the matter finally as directed by the Supreme Court. The arguments on behalf of the petitioners were led by Ms.Jyotsna Rewal Dua and she has urged that in the facts and circumstances of the present case no marks should be kept for interview/viva voce. She has relied upon a number of judgments in this behalf. We have also heard Sh.M.S.Chandel, learned Advocate General for the State and Mr.Rajiv Sharma, learned Senior Advocate who led arguments on behalf of the freshly added respondents (selected candidates). A number of cases were cited.

One of the first cases where the question regarding validity of interview/viva voce as a mode of assessing the merit of a candidate arose is **R.Chitralekhs vs. State of Mysore and others**, AIR 1964 Supreme Court 1823. This case related to admission to Medical & Engineering Colleges. The contention raised

was that the system of selection by interviews is illegal inasmuch as it enables the interviewers to act arbitrarily and to manipulate the results and, therefore, it contravenes Article 14 of the Constitution. The Apex Court noted that highly qualified educationists were appointed to the Selection Committees. Guidelines had been issued to the Selection Committees to allot marks in interview keeping in view the general knowledge, aptitude and personality, previous academic career including special distinction etc., N.C.C., A.C.C. etc. of the candidates. Taking into consideration all these factors the Court observed as follows:

"12.....It is, therefore, clear that the Government by its order not only laid down a clear policy and prescribed definite criteria in the matter of giving marks at the interview but also appointed competent men to make the selection on that basis. The order of the Government does not in any way contravene Art. 14 of the Constitution".

The Court further held as under:

"13....We cannot, therefore, hold without better and more scientific material placed before us that selection by interview in addition to the marks obtained in the written examination is itself bad as offending Art.14 of the Constitution."

A similar question came up for consideration in **Minor A Peeriakaruppan vs. State of Tamil Nadu and**

others, 1971 (1) SCC 38. In this case the apex Court was dealing with a case relating to admissions to Medical Colleges where 75 marks out of 275 (20%) marks had been earmarked for interview. The Apex Court dealing with the contention that the marks allotted to the interview were excessive held as follows:

"13. Earmarking 75 marks out of 275 marks for interview as interview marks prima facie appears to be excessive. It is not denied that the interview lasted hardly for three minutes for each candidate. In the course of three minutes interview it is hardly possible to assess the capability of a candidate. In most cases the first impression need not necessarily be the best impression.....

14. Even when the interviews are conducted by impartial and competent persons on scientific lines very many uncertain factors like the initial nervousness on the part of some candidates, the mood in which the interviewer happens to be and the odd questions that may be put to the persons interviewed may all go to affect the result of the interview.....

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17. We may note that the committee had not divided the interview marks under various heads nor were the marks given on itemized basis. The marks list produced before us shows that the marks were given in a lump. This is clearly illegal."

In **Dr.J.P. Kulshrestha and others vs. Chancellor, Allahabad University and others**, (1980) 3 SCC 418, the

Apex Court was dealing with a case relating to the selection of Readers by the Allahabad University. In this case while dealing with the question whether the method of interview is a proper method for selecting persons for the post of Readers, the Court observed as follows:

"10....Certainly, cases arise where the art of interviewing candidates deteriorates from strategy to stratagem and undetectable manipulation of results is achieved by remote control tactics masked as viva voce tests. This, if allowed, is surely a sabotage of the purity of proceedings, a subterfuge whereby legal means to reach illegal ends is achieved. So it is that courts insist, as the learned Single Judge has, in this very case, suggested on recording of marks at interviews and other fair checks like guide-lines for marks and remarks about candidates and the like. If the court is skeptical, the record of the selection proceedings, including the notes regarding the interviews, may have to be made available. Interviews, as such, are not bad but polluting it to attain illegitimate ends is bad....."

In **Ajay Hasia etc. vs. Khalid Mujib Sehravardi and others**, AIR 1981 SC 487, a Constitution Bench of the Supreme Court while considering the question of suitability of interview for admission of candidates to the Regional Engineering College, quoted with approval the following observations from the book on

"Public Administration in Theory and Practice" by M.P.

Sharma:

"The oral test of the interview has been much criticized on the ground of its subjectivity and uncertainty. Different interviewers have their own notions of good personality for some, it consists more in attractive physical appearance and dress rather than anything else, and with them the breezy and shiny type of candidate scores highly while the rough uncut diamonds may go unappreciated. The atmosphere of the interview is artificial and prevents some candidates from appearing at their best. Its duration is short, the few questions of the hit or miss type, which are put, may fail to reveal the real worth of the candidate. It has been said that God takes a whole life time to Judge a man's worth while interviewers have to do it in a quarter of an hour....."

The Court then referred to **Ol Glenn Stahl:**

"Ol Glenn Stahl points out in his book on "Public Personnel Administration" that there are three disadvantages from which the oral test method suffers, namely, "(1) the difficulty of developing valid and reliable oral tests (2) the difficulty of securing a reviewable record on an oral test and (3) public suspicion of the oral test as a channel for the exertion of political influence" and we may add, other corrupt, nepotistic or extraneous consideration. The learned author then proceeds to add in a highly perceptive and critical passage:

"The oral examination has failed in the past in direct proportion to the extent of its misuse.

It is a delicate instrument and in inexperienced hands, a dangerous one. The first condition of its successful use is the full recognition of its limitations. One of the most prolific sources of error in the oral test has been the failure on the part of examiners to understand the nature of evidence and to discriminate between that which was relevant, material and reliable and that which was not. It also must be remembered that the best oral interview provides opportunity for analysis of only a very small part of a person's total behaviour. Generalizations from a single interview regarding an individual's total personality pattern have been proved repeatedly to be wrong."

The Apex Court then held as follows:

"18.....We would, however, like to point out that in the matter of admission of colleges or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, caliber and qualification.

19.....Now there can be no doubt that, having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the Court as free from the vice of

arbitrariness.....We are of the view that, under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid"

In **Miss Arti Sapru and others vs. State of J&K and others**, (1981) 2 SCC 484 the Apex court held that in view of the judgment in **Ajay Hasia's** case allocation of more than 15% marks for interview in case of admission to Medical Colleges would be arbitrary and unreasonable. However, it did not interfere in the case and asked the State to revise the marks ratio.

In **Lila Dhar vs. State of Rajasthan and others**, (1981) 4 SCC 159, the Apex Court was dealing with a matter relating to recruitment of Munsifs under the Rajasthan Judicial Service Rules. The Court held that the weightage to be given to the interviews depends upon the fact whether the interviews are being held for employment, the nature of employment and whether it was being held for admission to an educational course. The Court held as follows:

"6.Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for

instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. That was what was decided by this Court in **Periakaruppan v. State of Tamil Nadu, Ajay Hasia vs. Khalid Mujib Sehravardi**, and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview-test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview-test is proposed to be entrusted and a host of other factors....."

In **Koshal Kumar Gupta and others vs. State of J&K and others**, AIR 1984 SC 1056, the Apex court held that for the purpose of interview for admission to Engineering College the allocation of 15 marks in interview was valid especially since the method of interview was virtually foolproof. The Supreme Court held as follows:

"15 marks assigned for viva-voce test were further split-up under four heads, namely, (i) Science-5 marks, (ii) General Knowledge-4 marks (iii) Curricular activities- 3 marks (iv) Personality test- 3 marks. In respect of the first three heads the Selection Committee prepared cards on each of which a question was typed referable to the 4 subjects, namely, Physics, Chemistry, Mathematics and General Knowledge, and they were kept in 4 different boxes. When the candidate entered the room for interview, he was required to pick-up at random one card from each of the four boxes, each box containing at least 150 cards and answer the question. A tape recorder was kept on the table in front of the members of the Selection committee and the candidate appearing for the interview and the two-way dialogue was recorded in full. Marks were assigned under each head of viva-voce test depending upon the merit of the answer. Thereafter, the merit list was prepared on the basis of the total marks obtained at written test and the viva-voce test and it was strictly adhered to save and except for reserved seats where also persons seeking admission to reserved seats had to stand in queue as in the

merit list. The method and the number of marks assigned for the viva-voce test was challenged on the ground that reservation of 15 marks for viva-voce test conferred arbitrary, unguided and uncanalised power on those conducting the viva voce test and that reservation of 15 marks for viva-voce test would have the pernicious tendency of affecting the merit disclosed by the marks obtained at written examination. Not a single case was pointed out in which the candidate otherwise being eligible for admission on merit, lost the same because of inability to get some marks under the personality test, the maximum being 3 only."

In **Javid Rasool Bhat and others vs. State of Jammu and Kashmir and others**, (1984) 2 SCC 631, the Apex Court held that the allotment of 15 marks for interview out of which 8 marks were for aptitude and 7 marks for general knowledge and general information were just and reasonable especially when the selection Committee consisted of the Chairman of the Jammu and Kashmir Public Service Commission and two members, namely, the principals of the two Government Medical Colleges of Srinagar and Jammu.

In **Ashok Kumar Yadav and others vs. State of Haryana and another**, (1985) 4 SCC 417, the apex Court considered in detail the question as to how many marks should be allotted for interviews. In this case the Court was concerned with selections made by the

Haryana Public Service Commission to the cadre of Haryana Civil and Allied Services. It was held that the allocation of 22.2% marks for the viva voce test in the case of Haryana Civil Services (Executive Branch) and other Allied Services were unreasonable. The Court directed as follows:

"29.We would therefore direct that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other Allied Services, where the competitive examination consists of a written examination followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. We would suggest that this percentage should also be adopted by the Public Service Commissions in other States, because it is desirable that there should be uniformity in the selection process throughout the country and the practice followed by the Union Public Service Commission should be taken as a guide for the State Public Service Commissions to adopt and follow..."

In **Atul Khullar and others vs. State of J&K and others**, 1986 (Supp) SCC 225, the Apex Court upheld the allocation of 15% marks for viva voce.

In **Ashok alias Somanna Gowda and another vs. State of Karnataka and others**, (1992) 1 SCC 28, the Supreme Court was considering the validity of marks allotted in the interview in case of selection to the posts of Assistant Engineers, it was held as under:

"2.....However, the Rules are clearly in violation of the dictum laid down by this Court in the above referred cases and in case the marks for viva voce would have been kept say at 15 per cent of the total marks, the appellants before us were bound to be selected on the basis of marks secured by them in interview, calculated on the basis of converting the same to 15 per cent of the total marks."

In **St.Stephen's College etc., etc., vs. The University of Delhi etc.etc.**, AIR 1992 SC 1630, the Apex Court held as follows:

"64. The oral interview as a supplementary test and not as exclusive test for assessing the suitability of candidates for college admission has been recognized by this Court. But at the same time, to avoid arbitrariness in the selection it has been repeatedly held that there shall not be allocation of high percentage of marks for oral interview test. Where candidate's personality is yet to develop, it has been emphasized that greater weight has per force to be given to performance in the written examination and the importance to be attached to the interview test must be minimal. The Court has generally indicated that interview marks should not be more than 15 per cent of the total marks."

In **Indian Airlines Corporation vs. Capt.K.C.Shukla and others**, (1993) 1 SCC 17, where the Apex Court was considering the case of promotions to the post of Deputy Operations Manager and in **Madan Lal and others vs. State of J&K and others**, (1995) 3 SCC

486, where selections to the post of Munsifs in the State of Jammu and Kashmir were being made the Court upheld the viva voce examination in addition to the written test.

In **D.V. Bakshi and others vs. Union of India and others**, (1993) 3 SCC 663, the apex Court was dealing with a case where the examination was for grant of licence to Customs House Agents. The Supreme Court held that in such circumstances the allocation of 50% marks was justified where the nature of the job was such that it required a well developed personality. The court held that the test which is valid for competitive examination or admission to educational institutions may not be relevant in that case. With regard to the method of conducting the interview the Court held as follows:

"7.....If an oral test is, therefore, a 'must' as in this case, a heavy responsibility is cast on the examiners to maintain a proper record of the oral test in respect of each candidate and marks must preferably be assigned under each head considered relevant to evaluate the candidate.....That is why we have said that a heavy responsibility lies on those examining the candidates at the interview to ensure that proper record is maintained so that there is no room for suspicion in the minds of the unsuccessful candidates that the result of the oral test is tainted with bias for or against any candidate because even light proof in support of the charge may upset the

result of the oral test as a whole or qua a candidate, as the case may be.....”

In **Jasvinder Singh and others vs. State of J&K and others**, (2003) 2 SCC 132, the Court was concerned with a case relating to the selection to the post of Sub Inspector of Police and upheld the allocation of 20% marks for the interview.

The Apex Court in a recent judgment delivered in **Mridul Dhar (minor) and another vs. Union of India and others**, (2005) 2 SCC 65, was dealing with the whole gamut of questions relating to admissions to Medical Colleges. The directions of the Court are contained in para 35. Direction No.13 which is relevant for the purpose of the decision of the present case reads as follows:

“13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.”

From a perusal of the various judgments cited above it is clear that right from the very beginning the law has been that for admission to educational courses, where interviews are conducted, the weightage of marks given for the interview should be as low as possible. The law also is that persons of very high integrity who are impartial and known to be competent in their fields should be made members of the selection committees. Clear and unambiguous

guidelines should be given to them. The interview marks should be awarded under various heads to make the procedure more objective and transparent. The Court has held that where young children of impressionable mind, whose personality has still to develop are to be tested, then the admission should be, as far as possible, on the basis of the performance in the written test. The importance attached to the interview should be as less as possible.

The Apex Court has also drawn a clear-cut distinction between the weightage of marks to be given for interviews when admission to educational courses is to be made and the weightage when the interviews are conducted for recruitment to services. In the latter case, the nature of the service shall also be very relevant. This would also be a relevant factor to determine what should be the weightage of marks to be given for the interview. In case the interview is of persons who are of mature age and the requirement of the job is that person's personality is well developed then obviously higher marks can be kept for the interview. There can be no hard and fast rule in this regard.

From the judgments noticed above it is clear that in cases relating to admission to Medical and Engineering Colleges initially it was held that the marks for interview should not exceed 15% of the total

marks. However, in the latest case i.e. **Mridul Dhar (minor) and another**, the Apex Court has held that the marks obtained in the written test should not be tinkered by making a provision for marks by way of interview or any other mode. Therefore, the Supreme Court has moved from granting 15% marks to nil marks for the interview.

This Court after considering the entire case law in CWP No.611/2004 **titled Rajeev Sharma vs. State of H.P. and others** vide its judgment dated 6.5.2005 passed the following directions:

".....However for future we wish to clearly state that for courses such as the Veterinary Pharmacist course and similar courses of this level the selection should be based only on the basis of tangible data such as written test or marks obtained in qualifying examination but not on the basis of any interview."

It is in the light of the aforesaid directions given by this Court earlier and the various pronouncements of the Apex Court that we must consider the revised criteria for interview submitted in the supplementary affidavit dated 1.6.2005. As far as granting five marks by conversion of total percentage of marks obtained in 10+2 examination to 50% is concerned there can be no problem. This is a tangible and objective method of assessment and as such we ourselves feel that the allotment for this criteria

(marks obtained in qualifying examination) could be granted a higher weightage.

As far as the second criteria i.e. granting five marks for extra-curricular activities i.e. cultural, sports and dramatics are concerned we are of the view that the criteria as reflected in this affidavit is absolutely vague and there is all likelihood of this being used arbitrarily. However, in case the State frames some proper, articulate and clear guidelines laying down tangible and objective criteria on the basis of which these marks are to be awarded then the same can be upheld. For example the State can have different marks for people who have played in a game or sport at the National level, State level or District level. While fixing these marks the popularity and extent to which the game is played may also have to be considered. Similarly for people who have done NCC the criteria may be whether they have obtained A, B or C certificate. For cultural, debates and dramatics also such criteria will have to be laid down to determine the basis on which the marks are to be granted.

In our opinion the allotment of two marks for knowledge and customs of H.P. and 3 marks of the discretion of the interview committee cannot be justified at all. As per the criteria given in the written test 15 marks were for general awareness which would also include knowledge about Himachal Pradesh.

In **Ajay Hasia's** case (supra) the Apex Court, taking into consideration the draw backs and imperfections of the overall interview test and taking special note of the conditions prevailing in the country particularly when there is deterioration in moral values and corruption and nepotism being on the increase held that more than 15% marks should not be awarded for interview. The conditions referred to by the Apex Court have unfortunately not improved. Much water has flown down the Ganges. The water is murkier not cleaner. This Court is not oblivious to the fact that standards of moral probity have fallen in the two decades since the decision in **Ajay Hasia's** case was rendered. Corruption and nepotism are on the increase. Therefore, there is an even greater need to ensure that the marks for interviews are further decreased, if not eliminated. As noted above in the latest judgment the Supreme Court has held that no marks should be allotted for viva voce and the like in cases relating to admission to Medical Colleges.

In the present case, we are dealing with a case relating to admission to the JBT course. In the State of Himachal Pradesh no interviews are being conducted for admission to the B.Ed. course which is a much higher level course for teaching qualification. This Court can take judicial notice of the fact that in the State of Himachal Pradesh no interviews are being held for admission to MBBS, LL.B, B.Sc., B.Ed., B.A., M.A.

and M.Sc. courses. These degrees are of much higher standard than the JBT course. There is no rationale for holding interviews for a lower level course like that of JBT when no interviews are being conducted for admission to educational courses leading to degrees/post graduate degrees in various professional fields as mentioned above.

There is, in our opinion, no justification for allotting three marks to be awarded by the interview Board at its own discretion keeping in view the overall personality and mental aptitude of the candidate. This is totally subjective and not in consonance with the latest directions of the Apex Court in **Mridul Dhar's** case supra.

We may point out that at the time of hearing of this case we had specifically asked the learned Advocate General as to whether the State was agreeable to forsake the allotment of 2 and 3 marks aforesaid and to frame proper guidelines for allotment of five marks for extra-curricular activities. The answer in so far as giving up the criteria of 2 or 3 marks respective for knowledge and custom of H.P. and at the discretion of the interview Board was in the negative. This demonstrates the hollowness of the claim of the State that it wants to make the appointments at the earliest. We had also suggested that the State may keep some marks for candidates who have higher qualifications but by laying specific

guidelines, for example candidates who are graduates could get 3 marks and candidates who are post graduates could be awarded five marks extra. We had also suggested that a video recording be done of the interview but this suggestion was also not acceptable to the State. In case the State had agreed to our suggestions which suggestions were acceptable to the petitioners as well as the private respondents the appointments could have been made at the earliest and there was no need to conduct another interview because under the first criteria the marks can be awarded on the basis of certificates without holding any interview. This clearly shows that the State is unduly, and for totally unholy reasons, enamoured with the idea of having some marks for interview which can be awarded at the discretion of the members of the interview Board. It is this discretion that this Court will not permit keeping in view the fact that young children have to be interviewed and the State has not placed any data or scientific study before us to show that such interview is necessary for admission to the JBT course where the essential educational qualification is only 10+2. As observed above most of the students who have to appear for the interview belong to rural areas. Why should there be any element of arbitrariness in the selection procedure, when in a course of much higher level i.e. MBBS course the Apex Court has clearly held that the

merit determined by a competent examination should not be tinkered with by making a provision like grant of marks for interview or any other mode? Thus, at this level there is no justification for holding the interview.

In view of the above discussion we are of the view that no marks should be allotted for interview. As already indicated in our judgment in **Rajiv Sharma's case** (supra), in educational courses of this level the selection should be based only on the basis of objective criteria and tangible data such as written test, marks obtained in qualifying examination and also marks may be awarded for extra-curricular activities such as sports, dramatics, debates, etc. but only after laying down absolutely clear guidelines that these marks are to be awarded on a particular basis and after identifying the authorities who would be entitled to issue the requisite testimonials/certificates in this regard. We therefore allow the writ petitions and quash the selections made by the State for admission to the JBT Course.

Keeping in view the self-professed urgency expressed by the State that more than 2000 posts of JBT teachers are lying vacant, we while quashing the selection process in so far as the allocation of marks for interviews are concerned hereby direct that State shall grant admission to the candidates on the basis of the written test held on 18.4.2004. The State

shall also be entitled to allot 10 marks, to be awarded on the basis of the percentage of marks secured by the candidate in 10+2 examination. In addition to the allotment of these 10 marks, candidates with the higher qualification(s) shall be allotted additional marks as under:-

- (1) Candidates possessing Graduate level qualification - 3 additional marks
- (2) Candidates possessing Post Graduate level and above qualification - 5 additional marks

If the State Government is keen that additional, extra marks should be allotted for extra-curricular activities such as sports, debates, symposia, culture activities like dramas and dances etc. etc., it shall be open to the State to formulate specific, very clear, unequivocal and categorical guidelines with respect to allocation of marks for such activities and accordingly make such allocation. The guidelines should be clear and totally unambiguous. They should not leave any scope for any discretion, any manipulation or any play at the hands of anyone. No more than 5 marks should be allotted for the aforesaid extra-curricular activities and based on the said guidelines the candidates who fulfill all the prescribed requirements and conform to all the prescribed guidelines can be awarded marks suitably for extra-curricular activities which would

ultimately be added in the aggregate marks of the candidates for determining their inter-se merit.

The net result is that the candidates shall be selected on the basis of the allocation of the maximum marks as herein below indicated :

- | | |
|--|-----------------------------|
| (1)Written test : | 75 marks |
| (2)Qualifying examination, i.e.
10+2 examination: | 10 marks |
| (3)Higher education
qualification(s) : | 3 & 5 marks
respectively |
| (4)Extra-curricular activities: | 5 marks |

Keeping in view the urgency expressed by the State Government based on their stated pressing need to fill up the seats urgently, we direct that, based on the aforesaid parameters the entire selection and the entire admission process should be completed, as far as possible before 28th February, 2006. The list of the successful candidates should be published in at least two newspapers having wide circulation in the State. Individual intimations should also be sent to the successful candidates. In the publications to be carried in the newspapers (as directed hereinabove) the marks obtained by the successful candidates in all the aforesaid sub-groups shall be separately indicated, as also the aggregate of marks obtained by them.

We hope and trust that by 31st March, 2006 the academic session with respect to the successful

candidates who had appeared in the written test held on 18th April, 2004 shall start.

All the writ petitions are disposed of in the aforesaid terms. All miscellaneous applications shall also stand disposed of. No orders as to costs.

(V.K. Gupta)
Chief Justice.

January 12, 2006.
PV.

(Deepak Gupta),
Judge.