

A THE ASSAM PUBLIC SERVICE COMMISSION & ORS.

v.

PRANJAL KUMAR SARMA & ORS.

(Civil Appeal No.9100 of 2019)

B NOVEMBER 28, 2019

**[R.BANUMATHI, A.S. BOPANNA AND
HRISHIKESH ROY, JJ.]**

Assam Public Service Commission (Conduct of Business)

- C *Procedure, 2019: Clause 12.2 – Clause 12.2 lays down that any proceeding in relation to interviews, selections or competitive examination, pending on the date of commencement of 2019 Procedure may be continued and completed in accordance with the provisions of the Rules in force prior to such commencement – By impugned order, High Court struck down the clause holding that*
- D *all pending interviews/selections and competitive examinations even if occasioned by advertisements issued prior to 01.04.2019 shall be guided by the 2019 Procedure and not 2010 Rules – Held: The norms existing on the date when the process of selection begins, control the selection and the alteration to the norms would not affect the ongoing process unless the new Rules are to be given retrospective effect – In the instant case, for the recruitment process for which advertisement was issued on 21.12.2018, the 2019 Procedure (which came into effect from 01.04.2019) can have no application, particularly when the first phase of the selection i.e. the screening test was conducted under the 2010 Rules – Clause*
- E *12.2 incorporated in the 2019 Procedure makes it abundantly clear that the interviews/selection or competitive examinations pending on the date of commencement of the Procedure should be continued and completed, in accordance with the 2010 Rules – Thus, recruitment process pursuant to the advertisement issued by the APSC on 21st December, 2018 must necessarily be conducted under the selection norms as applicable on the date of the advertisement – Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 – rr.29 and 30.*

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Allowing the appeal, the Court A

HELD: The concept of negative marking is introduced for the first time under *Clause 4(B)(ii)* which provides that for each wrong answer, @ 0.25 marks are deducted against each question. Besides the *Clause 4(B)(vi)* stipulates that marks for the interview shall not exceed 12.2 per cent of the total marks. B
The screening test in which the respondents and other candidates appeared on 30.06.2019 under *the 2010 Rules* had no negative marking and, therefore, the candidates could take the risk of guessing the correct answer in the multiple choice test, without the fear of being penalised for incorrect answer. In this backdrop, if the next segment of selection is to be conducted under *the 2019 Procedure*, the performance of the candidate in the aforesigned screening test to the extent of 87.8 per cent of the total marks, will determine the final selection of the candidate. If the contention advanced by the respondents is accepted and the next segment of the process of selection is carried out under *the 2019 Procedure*, it will give rise to an anomalous situation inasmuch as the screening test which was conducted without negative marking, under *the 2010 Rules*, without provisions for negative markings, will have a major bearing in the final outcome of selection. This would definitely prejudice the candidates who have undertaken exams under *2010 Rules*. If the direction in the impugned judgment of the High Court is to be followed for conducting the next segment of the selection, for the single recruitment process the candidates will be evaluated by two different sets of procedure i.e. *the 2010 Rules* and *the 2019 Procedure* and such dual norms must not govern the ongoing recruitment process. [Paras 11-12, 16-17] [1077-H; 1078-A-C; C
1079-C-F] D
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*State of Bihar and Others v. Mithilesh Kumar (2010)
13 SCC 467 : [2010] 10 SCR 161; N.T. Devin Katti
and Others v. Karnataka Public Service Commission
and Others (1990) 3 SCC 157 – relied on.* G

Case Law Reference

[2010] 10 SCR 161	relied on	Para 13	
(1990) 3 SCC 157	relied on	Para 13	H

- A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9100
of 2019

From the Judgment and Order dated 08.08.2019 of the Gauhati High Court at Guwahati in W.P.(C) No. 4600 of 2019

- B Parthiv K. Goswami, Ms. Palak Mahajan, Rahul Pratap, Vivek Gupta, Advs. for the Appellants.

Naleen Kohli, AAG, Mrs. Rekha Pandey, Shiv P. Pandey, Raghav Pandey, Ms. Smriti Kumari, Debojit Borkakati, Vivek Sonkar, Advs. for the Respondents.

- C The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1 Leave granted.

- D 2. This appeal arises out of the Special Leave Petition (Civil) No. 23677 of 2019. The Assam Public Service Commission (for short “APSC”) has approached this Court to challenge the judgment and order dated 8th August, 2019 in W.P. (C) No. 4600 of 2019 whereby the Gauhati High Court struck down a portion of *Clause 12.2* of the *Assam Public Service Commission (Conduct of Business) Procedure, 2019* (hereinafter referred to as “*the 2019 Procedure*”). The following E portion of *Clause 12.2*, incorporated with effect from 1st April, 2019, under *the 2019 Procedure*, was struck down by the High Court.

- F “.....and any proceeding in relation to interviews, selections or competitive examination pending on the date of commencement of these Procedures may be continued and completed in accordance with the provisions of the Rules in force prior to such commencement.”

- G 3. The result of the above is that the norms of selection for an ongoing process gets changed mid-stream in course of recruitment, for the 65 vacancies of Assistant Engineer (Civil) under the Water Resources Department for which, the APSC had issued an advertisement on 21st December, 2018 (“Annexure P-I”). On the date of the advertisement, the previous norms i.e. the *Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010* (hereinafter referred to as “*the 2010 Rules*”), were in operation. The *2010 Rules* provided for assessment of academic merit, special knowledge, additional

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relevant qualification, relevant service experience etc. under *Rule 29* A and *30*, in the following manner: -

“29. The Commission may determine the qualifying standard by giving weightage on academic merit, subject knowledge, additional relevant qualification, service experience relevant to the post etc. for preparing the final order of select list. B

30. In the viva-voce test marks shall be allocated as below:

(i) 50% on academic/professional qualification/service experience relevant to the post/preferential qualification.

(ii) 50% for subject knowledge and general bearing. Out of this, C 20% shall be for subject knowledge and the remaining 30% for general bearing.

There shall be five gradings for Adviser/Expert’s marks viz., ‘Excellent’, ‘Very Good’, ‘Good’, ‘Fair’ and ‘Average’, the value of which shall be determined by the Commission.” D

4. The aforesaid *2010 Rules* were challenged by one Manash Pratim Baruah in the Gauhati High Court through W.P.(C) No. 1998 of 2017. He contended that the State Public Service Commission is not empowered to adopt any Rule in the nature of the *2010 Rules* as was done by the APSC, by invoking the powers under proviso to Article 320 of the Constitution of India. During the pendency of the Writ Petition, the *2010 Rules* were repealed and a new set of procedure i.e., “*The Assam Public Service Commission (Conduct of Business) Procedure, 2019*” came into effect, from 1st April, 2019. Accordingly, the APSC through their affidavit filed in the W.P.(C) No. 1998 of 2017 informed the High Court about adoption of the *2019 Procedure*. F

5. During that period, acting on the advertisement (dated 21.12.2018) to fill up the 65 posts of Assistant Engineer (Civil), the APSC on 12.06.2019 had notified that an OMR based screening test, with multiple choice objective type questions, will be conducted on 30.06.2019. The said screening test was conducted under the *2010 Rules* and as such there was no negative marking which was introduced for the first time by *the 2019 Procedure*, for the APSC conducted selections. G

6. The four respondents had offered their candidature by responding to the advertisement dated 21st December, 2018 and they H

- A appeared in the screening test conducted on 30.06.2019. Nevertheless they also filed the W.P.(C) No. 4600 of 2019 challenging *Clause 12.2* of the *2019 Procedure* which provided that notwithstanding the repeal of *the 2010 Rules*, the action taken under the repealed Rules including conduct of interview/selection or competitive examination or declaration of any result thereof by the APSC, shall be deemed to have been valid and the pending interviews/selections or competitive examinations may be continued and completed, in accordance with *the 2010 Rules*.
The basic challenge therefore, by the four respondents as writ petitioners, was to the saving clause for the ongoing recruitment process conducted under *the 2010 Rules*. It would be relevant to mention at this stage that
- B in view of the adoption of the *2019 Procedure* by repealing *the 2010 Rules*, the earlier W.P.(C) No. 1998 of 2017 was disposed of as infructuous on 16th July, 2019 by the High Court reserving the liberty to the writ petitioner to assail, if aggrieved, the newly formulated *2019 Procedure*.
- C 7. The Gauhati High Court on 22.07.2019 issued returnable notice in the W.P.(C) No. 4600 of 2019 and the Division Bench after noticing that the APSC is conducting large number of examinations made an observation that attempt would be made to dispose of the matter on the returnable date i.e. 08th August, 2019.
- D 8. The case was next considered on the returnable date and the High Court under the impugned judgment dated 08.08.2019 held that *the 2010 Rules* will have no application for those interviews/selections for which, exercise has not begun. The Court also observed that the advertisement issued prior to 01.04.2019 (the date of commencement of *the 2019 Procedure*) has no relevance for the applicability of *the 2019 Procedure* and accordingly held that even in a situation where the written examination was held but interview is yet to be conducted, the newly introduced *2019 procedure* has to be applied in the interview segment of the selection. It was finally observed that all pending interviews/selections and competitive examinations, even if occasioned by
- E advertisements issued prior to 01.04.2019 shall be guided by *the 2019 Procedure*. The Writ Petition of the respondents was accordingly allowed on 08.08.2019 by the High Court.
- F 9.1 Assailing the legality of the impugned judgment, Mr. Parthiv K. Goswami, learned counsel submits that currently the APSC, besides
- G conducting the subject recruitment/selection for the Water Resources

Department, is also undertaking selection process for the posts of, *inter alia*, Computer Operator/Typist, Forest Ranger, Agricultural Development Officer for which respective advertisements were issued prior to incorporation of *the 2019 Procedure* and the process of selection through screening test/written test were conducted under *the 2010 Rules*. Insofar as the recruitment for the 65 posts of Assistant Engineer (Civil) advertised on 21.12.2018, the learned counsel points out that the last date for applying for the post was stipulated as 02.02.2019 and thereafter around 6000 applicants including the four respondents, appeared for the screening test conducted on 30.06.2019 under *the 2010 Rules*. Adverting to these relevant dates, the appellants would argue that the process of selection in the present case had commenced with the issuance of advertisement well before *the 2019 Procedure* was notified with effect from 01.04.2019 and therefore, the selection should be in accordance with *the 2010 Rules* which prevailed on the date of the advertisement.

9.2 The appellant's counsel then argues that alteration of the selection norms by the APSC through *the 2019 Procedure* which has prospective application, should have no bearing on the ongoing process, on account of the savings clause incorporated in *the 2019 Procedure*.

10.1 Per contra Ms. Rekha Pandey, learned counsel appearing on behalf of respondent Nos. 1 to 4 (writ petitioners) by referring to the preamble of *the 2019 Procedure* argues that the new Procedure was adopted to bring in more transparency in the conducting of recruitment by the Commission, on account of the deficiencies noticed in the process in *the 2010 Rules*. She accordingly argues that adopting *the 2019 Procedure* for the viva-voce segment of the recruitment exercise would ensure weightage for merit and avoidance of arbitrary selection, which was possible under *the 2010 Rules*.

10.2 The respondents counsel then refers to *Rules 29 and 30* of *the 2010 Rules* to highlight that *the procedure* envisaged did not provide adequate weightage to test the merit of the candidates, on their academic/ professional qualification, service experience, etc. and therefore, *the 2019 Procedure* should govern the next phase of selection.

11. To deal with the rival submission, the relevant clauses in the process of selection envisaged under *the 2019 Procedure*, will bear consideration. The concept of negative marking is introduced for the

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- A first time under *Clause 4(B)(ii)* which provides that for each wrong answer, @ 0.25 marks are deducted against each question. Besides the *Clause 4(B)(vi)* stipulates that marks for the interview shall not exceed 12.2 per cent of the total marks. The screening test in which the respondents and other candidates appeared on 30.06.2019 under *the 2010 Rules* as earlier noted, had no negative marking and, therefore, the candidates could take the risk of guessing the correct answer in the multiple choice test, without the fear of being penalised for incorrect answer.

12. In the above backdrop, if the next segment of selection is to be conducted under *the 2019 Procedure*, the performance of the candidate in the aforenoted screening test to the extent of 87.8 per cent of the total marks, will determine the final selection of the candidate. The question, therefore, is whether this would be fair on the candidates when the performance of few would be determined more by lucky guess and the real merit may have no role in the aggregate score. The other relevant question is whether the method of selection should be permitted to be changed midway, by adopting *the 2019 Procedure* incorporated with effect from 01.04.2019 for the vacancies, which were advertised on 21.12.2018.

13. The law with regard to applicability of the Rules which are brought anew during the selection process have been crystalized by this Court. It has been held that the norms existing on the date when the process of selection begins, will control the selection and the alteration to the norms would not affect the ongoing process unless the new Rules are to be given retrospective effect. (See *State of Bihar and Others vs. Mithilesh Kumar*¹). Similarly in *N.T. Devin Katti and Others vs. Karnataka Public Service Commission and Others*², this Court held that a candidate has a limited right of being considered for selection in accordance with the Rules as they existed on the date of advertisement and he cannot be deprived of that limited right by amendment of the Rules during the pendency of the selection, unless the Rules are to be applied retrospectively.

14. If we proceed with the above enunciation of the law in *Mithilesh Kumar* (supra) and *N.T. Devin Katti*(supra), the conclusion is inevitable that for the current recruitment process for which

H ¹(2010) 13 SCC 467

H ²(1990) 3 SCC 157

advertisement was issued on 21.12.2018, *the 2019 Procedure* (which came into effect from 01.04.2019) can have no application, particularly when the first phase of the selection i.e. the screening test was conducted under the *2010 Rules*. A

15. One must also be conscious of the savings *Clause 12.2* incorporated in *the 2019 Procedure* which makes it abundantly clear that the interviews/selection or competitive examinations pending on the date of commencement of *the Procedure* should be continued and completed, in accordance with *the 2010 Rules*. B

16. In the present case, if the contention advanced by the respondents is accepted and the next segment of the process of selection is carried out under *the 2019 Procedure*, it will give rise to an anomalous situation inasmuch as the screening test which was conducted without negative marking, under *the 2010 Rules*, without provisions for negative markings, will have a major bearing in the final outcome of selection. This would definitely prejudice the candidates who have undertaken exams under *2010 Rules*. The consistent law on the issue also makes it clear that recruitment process pursuant to the advertisement issued by the APSC on 21st December, 2018 must necessarily be conducted under the selection norms as applicable on the date of the advertisement. Moreover, having regard *Rule 29* and *Rule 30* of *the 2010 Rules*, it must also be said that merit of the candidates would definitely be assessed in the selection exercise, undertaken by the APSC. The APSC is also capable of conducting a fair selection and we believe that they will keep in mind, the lawful expectation and the constitutional mandate. C

17. If the direction in the impugned judgment of the High Court is to be followed for conducting the next segment of the selection, for the single recruitment process the candidates will be evaluated by two different sets of procedure i.e. *the 2010 Rules* and *the 2019 Procedure* and such dual norms must not in our opinion, govern the ongoing recruitment process. D

18. In view of the foregoing, we are persuaded to hold that the recruitment process initiated by the APSC through the advertisement dated 21.12.2018 for the 65 posts of Assistant Engineer (Civil), of the Water Resources Department should be finalised under *the 2010 Rules*. Consequently, the direction issued for application of *the 2019 Procedure* E

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A in the impugned judgment is found to be not merited and the same is accordingly interfered. The appeal stands allowed by permitting the APSC to complete the process of selection for the advertised posts, by following *the 2010 Rules*.

B Devika Gujral

Appeal allowed.