

GAHC010007882015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3184/2014

NARMAN DUTTA
S/O LT. NIRMALENDRA DUTTA
R/O LALGANESH
ODALBAKRA
P.S. DISPUR
GUWAHATI
DIST- KAMRUP METRO
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY-6

2:THE ASSAM PUBLIC SERVICE COMMISSION
APSC
REPRESENTED BY ITS CHAIRMAN
KHANAPARA
GHY-22

3:THE SECRETARY
APSC
JAWAHAR NAGAR
KHANAPARA
GHY-22

4:THE PRINCIPAL CONTROLLER OF EXAMINATIONS
APSC
JAWAHAR NAGAR
KHANAPARA
GHY-22

Advocate for : MR.B K SEN

Advocate for : appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : WP(C)/522/2015

GIAS UDDIN AHMED

S/O LT. GOFUR UDDIN MANDAL, VILL. and P.O. HATSINGMARI, P.O. SOUTH
SALMARA, DIST- UHUBRI, ASSAM, PIN-783135

VERSUS

THE ASSAM PUBLIC SERVICE COMMISSION and 3 ORS.
REP. BY ITS CHAIRMAN, JAWAHAR NAGAR, KHANAPARA, GHY-2

2:THE SECY.

THE ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR KHANAPARA GHY-2

3:THE PRINCIPAL CONTROLLER OF EXAMINATIONS
THE ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR KHANAPARA GHY-2

4:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
PERSONNEL B DEPTT. DISPUR GHY-

Advocate for the Petitioner : MR.N HAQUE

Advocate for the Respondent : SC, APSC

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 14.06.2024

Date of Judgment : 14.06.2024

Judgment & order(Oral)

Heard Mr. B. K. Sen, learned counsel for the petitioner in WP(c)3184/2014; and Mr. A.R. Bhuiyan, learned counsel for the petitioner in WP(c)522/2015. Also heard Mr. T. J. Mahanta, learned senior counsel, assisted by Ms. P. P. Das, learned counsel, appearing on behalf of respondents Assam Public Service Commission(APSC) in both the writ petitions as well as Ms. U. Das, learned Addl. Senior Government Advocate, Assam, appearing for the State respondents in both the writ petitions.

2. The petitioners in the above-noted writ petitions have presented a challenge to the results of the Combined Competitive(Preliminary) Examination, 2013, held on 29.12.2013, results of which were declared on 06.02.2014, to the extent of their exclusion therefrom which has been contended to be so done on account of wrong evaluation of the answers as given by the petitioners to the questions in the said Examination.

WP(c)3184/2014:

3. The writ petitioner in the present proceeding has projected that in pursuance to the Advertisement, No. 6/2013, dated 11.08.2013, issued by the Assam Public Service Commission (APSC) inviting applications from eligible candidates for the said Combined Competitive(Preliminary) Examination, 2013, the petitioner had submitted his application by selecting Sociology as his optional paper. The petitioner had appeared in the Combined Competitive(Preliminary) Examination, 2013, on 29.12.2013 and the results thereof, was published on 06.02.2014.

On perusal of the results so published and not finding his Roll No. figuring therein, the petitioner proceeded to prefer an RTI application on 27.02.2014, seeking information and documents from the PIO of the Assam Public Service Commission(APSC). It is contended that the information as sought for including the answer key of the said Examination pertaining to the Sociology and General Studies papers as undertaken by the petitioner, were furnished along with the OMR copies of the said papers pertaining to the petitioner, herein.

On perusal of the questions and the answer keys, the petitioner could gather that as many as 5 questions attended by him, answers of which, according to him

were correct, were held to be incorrect by the Assam Public Service Commission(APSC) while evaluating his OMR sheets for the paper of Sociology and resultantly, the petitioner could obtain only 234 marks out of the 400 marks prescribed. Similar irregularity was also noticed in the evaluation made by the Assam Public Service Commission(APSC) as regards the answers given by the petitioner against the General Studies paper. Accordingly, it is contended by the petitioner that in total, 9 questions were erroneously evaluated by the Commission and in the event, the marks were allotted to the petitioner for the 9 questions so involved; he would have scored more than the cut-off marks prescribed i.e. 242, entitling him to appear in the Combined Competitive(Mains) Examination, 2013. Being aggrieved by the said deprivation meted out to him, the petitioner has instituted the present proceeding.

WP(c)522/2015:

4. The writ petitioner, herein, had, also in pursuance to the Advertisement, No. 6/2013, dated 11.08.2013, issued by the Assam Public Service Commission(APSC) inviting applications for 241 nos. of various services as mentioned therein, submitted his application before the last date so fixed. The petitioner had selected Political Science as his optional paper and on being so issued with an Admit Card, appeared in the Combined Competitive(Preliminary) Examination, 2013. The results of the said Examination was declared on 06.02.2014, and on perusal of the same, the petitioner became aggrieved on not finding his Roll No. figuring amongst the candidates selected by the Assam Public Service Commission(APSC). The petitioner, accordingly, submitted an application on 31.03.2014, before the PIO of the Commission, seeking information and documents pertaining to the said Examination. The information was so made available to the petitioner vide a reply, dated 31.03.2014 and it was found that he had scored 98 marks in the General

Studies paper and 138 marks in the Political Science paper, totaling 236 marks. Further information was provided to the petitioner that the cut-off marks for the general category candidates was 242 marks. The petitioner, on examination of the answer key as provided along with the answers as given by him to questions figuring in both the General Studies and Political Science papers, found that 7 questions in both the papers were wrongly evaluated by the authorities of the Commission resulting in the petitioner being awarded a lower score than what he ought to have been so awarded.

It is contention of the petitioner that on account of wrong evaluation made in respect of the answers now identified by him in the matter in both the papers involved, he was denied an opportunity to appear in the Combined Competitive(Mains) Examination, 2013, which was held on 28.06.2014.

The petitioners in the above-noted writ petitions, have also relied on an order, dated 17.06.2014, in WP(c)2773/2014, wherein, this Court noticing the fact that there was wrong evaluation in respect of the answers given by the petitioner therein, with regard to the questions identified therein on account of usage of wrong answer key; this Court had proceeded to allow the petitioner therein, to appear in the Combined Competitive(Mains) Examination, 2013, which was scheduled then to be held on 28.06.2014. The petitioners, herein, have, therefore, contended that similar benefit was not extended to them by the Assam Public Service Commission (APSC) authorities and accordingly, have contended that they were discriminated against.

5. The lead argument in the matter was made by Mr. A. R. Bhuiyan, learned

counsel for the petitioner in WP(c)522/2015. Mr. Bhuiyan, learned counsel, has by reiterating the facts as noticed hereinabove, has contended that this Court vide order, dated 17.06.2014, in WP(c)2773/2014; having already permitted a person similarly situated and having similar grievance to participate in the further process of the selection process involved i.e. in the Combined Competitive(Mains) Examination, 2013; similar relief ought to have been extended to the petitioner, herein, by the Commission authorities.

6. Mr. Bhuiyan, learned counsel, by referring to the affidavit-in-opposition filed in the matter by the Assam Public Service Commission(APSC) authorities in WP(c)522/2015 has contended that in the said affidavit, it was categorically contended that the petitioner had actually given correct answers to 5 questions. However, on account of wrong answers being given in the answer key, the petitioner was deprived of 10 additional marks in his General Studies and Political Science papers.

7. Mr. Bhuiyan, has contended that the said admission being so made by the Assam Public Service Commission(APSC) authorities in the present proceeding, the petitioner's case ought to have been given the further due consideration for inclusion in the select list as prepared in pursuance to the Advertisement, No. 6/2013, dated 11.08.2013, against any one of the posts belonging to the services involved therein.

8. Mr. Bhuiyan, learned counsel for the petitioner in WP(c)522/2015, has further contended that this Court vide order, dated 17.06.2014, having come to a conclusion that the answers with regard to the questions considered therein, were

not correctly reflected in the answer key so published; the said benefit ought to have been extended to all candidates who had participated in the Combined Competitive(Preliminary) Examination, 2013 and the Commission, in the event, had taken recourse to the said process; the petitioner, herein, ought to have been afforded an opportunity to appear in the Combined Competitive(Mains) Examination, 2013.

9. Per contra, Mr. T. J. Mahanta, learned senior counsel, appearing for the Assam Public Service Commission(APSC), has submitted that while it is correct that in the affidavit-in-opposition so filed by the Commission authorities in the meantime on 31.10.2018, in WP(c)522/2015, it was contended that the petitioner was entitled to 10 more marks, however, the said aspect of the matter would be of no relevance in-as-much as by the time, the petitioner had instituted the present proceeding raising grievance with regard to the manner in which his General Studies and Political Science papers were evaluated in the Combined Competitive(Preliminary) Examination, 2013; the selection process had already been concluded and only, the results thereof, was pending to be announced.

10. Mr. Mahanta, learned senior counsel, has contended that the Combined Competitive(Mains) Examination, 2013, was held on 28.06.2014, while the writ petition being WP(c)522/2015, was instituted by the petitioner, herein, before this Court only on 28.01.2015, and accordingly, it is not permissible to have the case of the petitioner considered in terms of the said selection process at this belated point of time. The learned senior counsel has further contended that on conclusion of the selection and publication of the result involved, the candidates so selected were appointed by the competent authority of the Government of Assam against their respective posts and further, the said selected candidates have also not been

arrayed as party respondents in the present proceeding and accordingly, the petitioner at this belated stage, is not entitled to any relief, whatsoever, in the matter.

11. Mr. Sen, learned counsel for the petitioner in WP(c)3184/2014, while adopting the arguments advanced in the matter by Mr. Bhuiyan, learned counsel for the petitioner in WP(c)522/2015; has contended that although the petitioner had instituted the present proceeding on 24.06.2014, however, this Court vide order, dated 26.06.2014, was pleased not to grant any interim directions in favour of the petitioner in the matter and accordingly, he was prevented from appearing in the Combined Competitive(Mains) Examination, 2013, which was held on 28.06.2014.

12. Mr. Mahanta, learned senior counsel, appearing for the respondents Assam Public Service Commission(APSC), in relation to the contentions as made in WP(c)3184/2014; has reiterated the submissions as made by him in connection with writ petition being WP(c)522/2015.

13. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

14. Certain dates pertaining to the selection process being relevant, is noticed at the outset.

The Assam Public Service Commission(APSC) had issued an Advertisement, No. 6/2013, dated 11.08.2013, for the Combined Competitive(Preliminary)

Examination, 2013, for the purpose of filling up 241 nos. of vacant posts figuring in various services. The said Combined Competitive(Preliminary) Examination, 2013, was held on 29.12.2013 and the results thereof, were published on 06.02.2014. Further, the Combined Competitive(Mains) Examination, 2013, was held on 28.06.2014 and the results thereof, after holding the viva voce Examination, was declared in the month of May, 2015.

15. The writ petition being WP(c)522/2015, was so instituted before this Court by the petitioner, therein, on 28.01.2015, and by the said date; the selection process in the matter was already completed and only, the results of the selection was to be so declared which was also accordingly declared in the month of May, 2015.

16. This Court had dealt with a similar issue in the proceedings of WP(c)2773/2014 and had vide order, dated 17.06.2014, noticing the fact that the answers of the petitioner, therein, were erroneously evaluated on account of wrong answers given in the answer key by the Commission authorities, proceeded to direct the Commission authorities to allow the petitioner, therein, to appear in the Combined Competitive(Mains) Examination, 2013, scheduled to be held on 28.06.2014. While proceeding to issue the said direction; this Court had appreciated the fact that the Combined Competitive(Mains) Examination, 2013, not yet been conducted; the balance of convenience has not tilted in favour of the Commission authorities and to ensure that the rights of the petitioner therein, is protected; had directed the Commission authorities to allow the petitioner, therein, to participate in the said Combined Competitive(Mains) Examination, 2013.

17. Admittedly, in the case of the petitioner in WP(c)522/2015; he had approached this Court after the selection process was concluded and this position is evident in the affidavit-in-opposition filed in the matter by the Commission authorities. Although it is also an admitted position that the petitioner was deprived of 10 marks in his General Studies and Political Science papers, which marks, if would have been assigned to the petitioner, herein, he would have been entitled to participate in the Combined Competitive (Mains) Examination, 2013. The above being the position, while the petitioner admittedly was denied an opportunity to appear in the said Combined Competitive(Mains) Examination, 2013, it is to be noted that the proceedings as initiated by the petitioner, herein, was so instituted belatedly after the selection process was so completed.

18. A perusal of the statements as made in the writ petition being WP(c)522/2015, would reveal that the petitioner was in the knowhow of the wrong evaluation as made in his case on receipt of the RTI reply along with requisite documents including the answer Key from the Commission authorities as far back as on 31.03.2014 and it is seen that the petitioner thereafter, had not taken any steps to assail the same either before this Court and/or before the authorities of the Assam Public Service Commission(APSC). The petitioner had referred to the proceedings instituted before this Court in WP(c)2773/2014 and the order, dated 27.06.2014, passed by this Court therein. However, the said decision of this Court would not advance the case of the petitioner herein, in-as-much as the order, dated 17.06.2014, was so passed basing on the factual matrix obtaining in the said case and also noticing the fact that the petitioner therein, had approached this Court prior to holding of the Combined Competitive(Mains) Examination, 2013, which admittedly is not the case of the petitioner, herein.

19. The petitioner in WP(c)522/2015, given his conduct, can be denoted as a fence sitter and having not assailed the deprivation meted out to him at the appropriate point of time; this Court after the process of selection involved having been concluded and appointments thereon being so effected, cannot now, at this belated point of time, reverse the clock and require the Commission authorities to again consider the case of the petitioner in the said selection process which would now mandate holding of a written Examination as well as a viva voce test. Further, the case of the respondents as projected in the matter being that the posts as advertised, were all filled-up; this Court would not be in a position to pass any orders adverse to such selected candidates on account of the fact that they are not present before this Court to defend their rights in the matter.

20. The petitioner in WP(c)3184/2014 although had instituted the proceeding before this Court on 24.06.2014, it is seen that such institution was only 4 days before the scheduled date for holding of the Combined Competitive(Mains) Examination, 2013, which was scheduled to be held on 28.06.2014. However, this Court on noticing the facts available in the matter vide order, dated 26.06.2014, had rejected the prayer of the petitioner, therein, for a direction to the Commission authorities to allow him to appear in the Combined Competitive(Mains) Examination, 2013.

21. At this stage, it would be relevant to take note of the reliefs as claimed for by the petitioner in WP(c)3184/2014, wherein he had prayed for a disposal of a representation, dated 17.04.2014, and had also prayed before this Court to ascertain the correctness of the answers given by him against the 9 questions spread over in his 2 papers.

22. The Assam Public Service Commission(APSC) authorities by way of filing an affidavit-in-opposition in WP(c)3184/2014, had categorically contended that it is not permissible for the Commission to undertake a review or re-evaluation of the answer scripts since as per Rule 70(IV) of the Assam Public Service Commission(Procedure & Conduct of Business) Rules, 2010, there exists no provision to entertain any request for re-examination of answer scripts from candidates or from any other person.

23. It is contended that the representation of the petitioner, dated 17.04.2014, submitted by the petitioner in WP(c)3184/2014, was disposed of by the Commission authorities in the above lines vide a communication, dated 05.09.2014.

24. In view of the above position and also given the relief as sought for by the petitioners; the grievance of the petitioner in WP(c)3184/2014, if to be considered by this Court at the belated stage, would require this Court to put the clock back and direct the Assam Public Service Commission(APSC) authorities to hold a Combined Competitive(Mains) Examination, 2013, again for the petitioner, herein, and then to hold a viva voce test in his case which admittedly is not permissible at this distant point of time.

25. In view of the conclusions as reached by this Court hereinabove and the fact that the selection process was concluded long back and persons so selected were also appointed to their respective services; this Court at this belated stage, would not consider issuing directions to the Assam Public Service Commission(APSC) authorities to hold a selection process for the petitioners, herein, in the above-noted writ petitions. Further, insofar as concerns the petitioner in WP(c)522/2015;

he having belatedly approached this Court and that too, after conclusion of the selection process involved, he would not be entitled to the reliefs as prayed for by him.

26. Accordingly, this Court does not find any merit in the contentions advanced by the petitioners in the above-noted writ petitions and holds that the writ petitions are devoid of any merit and consequently, both these writ petitions are hereby dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant