

GAHC010113252019



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

Case No. : WP(C)/3341/2019

SHALINI KHAN
D/O- SRI ROBIN KHAN, R/O- H NO. 120A, HONURAM BORO PATH,
WALFORD KACHARI BASTI, GUWAHATI- 781005, DIST- KAMRUP(M),
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM, DISPUR,
GUWAHATI- 781006

2:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY ITS CHAIRMAN
JAWAHAR NAGAR
GHY- 22

3:THE SECRETARY
APSC
JAWAHAR NAGAR
KHANAPARA- 22

4:THE PRINCIPAL CONTROLLER OF EXAMINATIONS
APSC
JAWAHAR NAGAR
KHANAPARA
GUWAHATI- 2

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/3344/2019

GIRBANI DEKA
W/O- RANJAN ENGTI
R/O- HNO. 54/37
SEUJI PATH
NEAR NABAGRAHA TEMPLE
KHARGULI
GHY- 03
DIST- KAMRUP(M)
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2:THE APSC
REP. BY ITS CHAIRMAN
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GUWAHATI- 781022

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APSC

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KHANAPARA
GUWAHATI- 781022

Advocate for : MR. P MAHANTA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Date of Hearing : 04.09.2021

Date of Judgment : 21.08.2023

JUDGMENT AND ORDER (CAV)

Heard Mr. Kamal Nayan Choudhury, learned Senior counsel, assisted by Mr. Preetam Mahanta learned counsel for the petitioners in WP(C) No. 3341/2019 and WP(C) No. 3344/2019 as well as for the private respondent Nos. 5 to 8. Also heard Mr. Nilayananda Dutta, learned Amicus Curiae and Senior Counsel, Mr. Ranjit Kumar Deb Choudhury, learned Senior Government Advocate, Assam for the State Respondent, Mr. Tanmay Jyoti Mahanta, learned Senior Counsel and Standing Counsel, Assam Public Service Commission, assisted by Mr. Pankaj Pratim Dutta for the respondents in the Assam Public Service Commission.

2) Brief facts of the case are as follows:

The respondent Assam Public Service Commission vide No. 38.PSC/E-24/2017-18 dated 17.05.2018 issued the Advertisement No. 09/2018 informing that it will hold the Preliminary Examination of the Combined Competitive Examination, 2018 for screening candidates for the Main Examination for recruitment to the services/posts as per the actual number of vacancies as notified in accordance with the Assam Public Services Combined Competitive Examination Rules, 1989.

3) In the said advertisement dated 17.05.2018, the Assam Public Service Commission (APSC or Commission, in short) notified 165 numbers of vacancies for the posts/services of – (i) 43 posts of Assam Civil Service (ACS) (Junior Grade); (ii) 56 posts of Assam Land & Revenue Service (ALRS) (Junior Grade); (iii) 8 posts of Assam Police Service (APS) (Junior Grade); (iv) 10 posts of Superintendent of Taxes; (v) 1 post of Superintendent of Excise; (vi) 2 posts of Assistant Employment Officer; (vii) 10 posts of Labour Inspector; (viii) 32 posts of Inspector of Taxes and (ix) 3 posts of Inspector of Excise.

4) In continuation of its earlier Advertisement No. 09/2018 dated 17.05.2018 and in addition to those 165 numbers of advertised services/posts; pursuant to the Government Letter No.

AAP.346/2017/87 dated 25.06.2018, the APSC by issuing an Addendum on 26.06.2018 notified another 95 (ninety five) posts of Assam Civil Service (Junior Grade) and 1 (one) post of Labour Inspector. Thereby, the APSC for the Combined Competitive Examination, 2018 (CCE 2018, in short), advertised 138 (43+95) posts of Assam Civil Service (Junior Grade) and 11 (10+1) posts of Labour Inspector and all together for 261 (165 + 95 + 1 =261) numbers of vacancies in those nine categories of services/posts, noted above.

5) In both the Advertisement dated 17.05.2018 and the Addendum dated 26.06.2018, the APSC specified the quota of reservation against each of the category of services/posts, i.e., — reserved for (i) Other Back Ward Community (OBC)/More Other Back Ward Community (MOBC), (ii) Schedule Caste (SC), Schedule Tribe (Plains) (STP), (iii) Schedule Tribe (Hills) (STH), (iv) reserved for Persons with Disabilities (PwD) in the category of (a) Hearing Impaired (HI), (b) Visually Impaired (VI) and (c) Locomotor Disabled (LD), and (v) Reserved for Women (RFW).

6) The APSC in the said Advertisement dated 17.05.2018 specified that the Combined Competitive Examination, 2018 shall be of two successive stages – (i) The Preliminary Examination and (ii) The Main Examination (Written and Interview).

7) In the advertisement dated 17.05.2018 for the CCE, 2018 the APSC stated the pay scales admissible for each cadre/services/post advertised; the date of availability of the application form; the last date of submission of duly filled in application form; eligibility criteria of candidates like – nationality, minimum and upper age of the intending candidates with relaxation to the reserved category candidates as well as for Person with Disabilities (PWD) and Ex-servicemen; educational qualification etc. and also named the 31 numbers of centres for the Combined Competitive (Preliminary) Examination throughout the State of Assam, clarifying that the Combined Competitive (Main) Examination shall be held at Guwahati.

8) The APSC in its said Advertisement dated 17.05.2018 stipulated that the Preliminary Examination shall meant to serve as a screening test only, clarifying that the marks obtained in the Preliminary Examination by the candidates who are declared qualified for admission to the Main Examination will not be counted for determining the final order of merit.

9) The APSC in the said advertisement dated 17.05.2018 also laid down that based on the results of the Preliminary Examination; the number of candidates to be admitted to the written

part of the Main Examination will be 11 to 12 times the number of vacancies notified and that the selection of the CCE 2018 will be strictly on the basis of merit adhering to the norms of Vertical and Horizontal Reservation as per prescribed law in force.

10) The Preliminary Examination of said CCE 2018 consisted of —

Paper	Subject	Marks	Duration
Paper-I	General Studies	200	2 Hours
Paper-II	One subject to be selected from the list of 28 Optional Subjects	200	2 Hours
Total Marks		400	

11) The List of 28 Optional Subjects for the Paper-II of CCE 2018 Preliminary Examination, were – (i) Agriculture, (ii) Anthropology, (iii) Animal Husbandry & Veterinary Science, (iv) Botany, (v) Civil Engineering, (vi) Chemical Engineering, (vii) Chemistry, (viii) Commerce, (ix) Computer Science, (x) Economics, (xi) Education, (xii) Electrical Engineering, (xiii) Electronics, (xiv) Fishery Science, (xv) Geography, (xvi) Geology, (xvii) Indian History, (xviii) Law, (xix) Mathematics, (xx) Mechanical Engineering, (xxi) Medical Science, (xxii) Philosophy, (xxiii) Physics, (xxiv) Political Science, (xxv) Psychology, (xxvi) Sociology, (xxvii) Statistics and (xxviii) Zoology.

12) The Syllabi of the Optional Subjects of CCE 2018 (Preliminary) was of Degree level courses of the Universities of the State of Assam and those were uploaded in the APSC's website from where the candidates could download the same.

13) The questions of both the Papers – I and II of CCE 2018 (Preliminary) were of objective type with multiple choices, where the APSC provided the OMR (Optical Mark Recognition) answer sheets to the candidates for answering the questions, directing the candidates to use Black/Blue Ball Pen; prohibiting the use of eraser, chemical, correction fluid etc. for correcting the options once marked in the OMR answer sheet informing them that answer sheets bearing traces of such

use shall not be evaluated.

14) As per said advertisement dated 17.05.2018, the Candidates those who were declared by the APSC as qualified for admission to the Main Examination, they were required to apply again in the Prescribed Application Forms that were made available in the Website of the Commission at the relevant time.

15) The Main Examination of said CCE 2018 of the APSC consisted of (a) Written Examination and (b) Interview Test, which was as follows:

(a) Written Examinations				
Subject	Paper		Marks	Duration
General English	single		300	3 Hours
General Studies	single		300	3 Hours
Optional Subject-1	Paper-I	Any two optional subjects to be Selected from the list of Optional Subjects (two papers) each	200	2 Hours
	Paper-II		200	2 Hours
Optional Subject-2	Paper-I		200	2 Hours
	Paper-II		200	2 Hours
Total (Written) - 6 Papers			1400	
(b) Interview Test (Viva-Voce)			200	
Grand Total			1600	

16) The two subjects that were to be selected from the List of 29 Optional Subjects for the CCE 2018 (Main) were – (i) Agriculture, (ii) Anthropology, (iii) Animal Husbandry & Veterinary Science, (iv) Botany, (v) Civil Engineering, (vi) Chemical Engineering, (vii) Chemistry, (viii) Commerce & Accountancy, (ix) Computer Science, (x) Economics, (xi) Education, (xii) Electrical Engineering, (xiii) Electronics, (xiv) Fishery Science, (xv) Geography, (xvi) Geology, (xvii) History, (xviii) Law, (xix) Mathematics, (xx) Mechanical Engineering, (xxi) Medical Science, (xxii)

Philosophy, (xxiii) Physics, (xxiv) Political Science, (xxv) Psychology, (xxvi) Sociology, (xxvii) Statistics, (xxviii) Zoology and (xxix) Modern languages and literature (any one only) - (a) Assamese, (b) Bengali, (c) English Literature, (d) Hindi, (e) Bodo & Classical Languages, (f) Arabic, (g) Persian and (h) Sanskrit.

17) However, for said written examination of CCE 2018 (Main), the APSC did not allow the candidates to offer the combinations of the subjects of — (i) Anthropology and Sociology, (ii) Mathematics and Statistics, (iii) Philosophy and Psychology, (iv) Agriculture and Animal Husbandry & Veterinary Science and (v) not more than one of the Engineering subjects.

18) The syllabi of the subjects for said written examination was uploaded in the website of APSC wherefrom the candidates could download it and the questions of the written examination of CCE 2018 (Main) were of conventional type.

19) With regard to the Interview Test for the said CCE 2018 (Main) of APSC, as per its said advertisement dated 17.05.2018, based on the results of the written examination of CCE 2018 (Main); candidates, twice the number of vacancies advertised, were called for the interview and the candidates were interviewed by a Board as constituted by the APSC. Though the marks were fixed at 200 (two hundred) for the Interview Test (viva-voce), but there was no qualifying marks in the viva-voce and that the marks scored by the candidates in their Interview Test were added to their marks scored by them in the written examination of CCE 2018 (Main).

20) Following the norms of Vertical and Horizontal Reservation as per prescribed law in force and based on their merit, the APSC selected the candidates as per the marks obtained by them in the Main Examination (Written Examination + Interview Test) of said Combined Competitive Examination, 2018.

21) As per said advertisement dated 17.05.2018, the APSC recommended exactly the same number of candidates for different posts as advertised, allotting the cadre strictly on the basis of merit cum preferences opted by the candidates in their applications for the Main Examination of CCE 2018 and did not recommend a candidate for a post which he/she did not opt in his/her preference.

22) For the said CCE 2018 (Preliminary), the APSC received 60,274 numbers of applications. Though 24.11.2018 was the date fixed for the CCE 2018 (Preliminary), but it was postponed and

held on 30.12.2018 in 31 centres in the State notified by APSC, wherein 36,232 eligible candidates appeared, including the two petitioners of WP(C) Nos. 3341/2019 and 3344/2019 and the private respondent Nos. 5 to 8 of WP (C) No. 3341/2019.

23) On 13.03.2019, the APSC declared the result of said CCE 2018 (Preliminary) notifying that altogether 3361 numbers of candidates had qualified to appear in the Written Examination of CCE 2018 (Main). The APSC on 20.03.2019 in its website uploaded the answer keys of said Preliminary Examination of CCE 2018 (Preliminary) including the General Studies Paper and the Optional Papers as well as the OMR answer scripts of each of the candidates appeared in the said examination along with the marks obtained by them.

24) The APSC on 20.03.2019 in its website also notified the cut off marks of CCE 2018 (Preliminary) of different categories of candidates, which were —

Category	Male	Female	
Open	263	261	
OBC/MOBC	243	242	
Schedule Caste	228	223	
Schedule Tribe (Plains)	236	236	
Schedule Tribe (Hills)	219	219	
Persons with Disabilities	Hearing Impaired	Orthopedically Handicapped	Visually Impaired
	170	185	228

25) Since many candidates who appeared in the CCE 2018 (Preliminary), but did not find their names amongst the list of qualified candidates in the said examination as declared by APSC on 19.03.2019 and also found that the answer keys of General Studies Paper and Optional Papers pertaining to said preliminary examination uploaded by APSC in its website on 20.03.2019, to be wrong and erroneous, they submitted representations before the APSC with various queries.

26) The APSC on 27.03.2019 notified that it shall not entertain any further queries beyond the said date with regard to the preliminary examination of the CCE 2018 (Preliminary) held on 30.03.2019.

27) On receipt of information as well as the complaints relating to the accuracy of some of the answer keys to the Preliminary Examination of said CCE 2018 (Preliminary), the APSC on its own deliberation in that regard found that there were a few genuine inadvertences with regard to the answer keys of some of the subjects. As such, the APSC, in consultation with the domain experts, once again re-verified the answer keys and found some more candidates as qualified the CCE 2018 (Preliminary). Accordingly, the APSC decided to consider those candidates as qualified to appear in the written examination of CCE 2018 (Main), without prejudice to those 3361 numbers of candidates whose names figured in the CCE 2018 (Preliminary) result that was published by APSC earlier on 13.03.2019 who were considered as qualified to appear in the written examination of CCE 2018 (Main).

28) The APSC in that regard by Notification dated 30.04.2019 declared the Roll Numbers of 406 additional candidates and 2 PwD (OH) category candidates, as qualified in the CCE 2018 (Preliminary) that was held on 30.12.2018, in addition to those 3361 numbers of candidates whose results were declared earlier on 13.03.2019. As such, the APSC all together considered 3767 (3361 + 406) as qualified to appear in the written examination of CCE 2018 (Main).

29) APSC on 02.05.2019 issued a Press Release stating that despite its effort and utmost caution, the answer keys were correct to the extent possible; but discrepancies in the answer keys came to light after announcement of the results on 13.03.2019 which were genuine and inadvertent. As such, it arrived at the decision that the errors required to be corrected so that no deserving candidate was deprived of the opportunity to appear in the examination since its only consideration was not to make a candidate suffer for no mistake of his/her. In the said Press Release APSC also stated that on its own it had re-verified the answer keys with the help of available domain experts, it revised the wrong answer keys of many subjects. Based on said re-set answer keys, the APSC accordingly processed with the results of the Preliminary Examination of CCE 2018 that was held on 30.12.2018 and thereafter, it announced with an additional list wherein 406 candidates found place that was done without any prejudice to the results announced earlier (on 13.03.2019).

30) In the said Press Release dated 02.05.2019, it was also stated that by doing the same the

APSC demonstrated its desire to correct mistakes and not to allow the genuine candidates to suffer. In the same Press Release it was also stated that because of the internal mechanism, APSC had no scope to interfere in the process of setting of question papers and preparation of answer keys, since those were set and moderated by designated domain experts drawn from the academicians, clarifying further that there was no external influence for its said action and its decision was *suo moto* and unanimous and by the same APSC requested all to cooperate with its effort and to bear the inadvertences.

31) After the said Press Release dated 02.05.2019, the APSC on 09.05.2019 published the 2nd answer keys of the CCE 2018 (Preliminary) and by its Notification dated 15.05.2019 the APSC notified and informed the candidates who qualified to appear in the written examination of CCE 2018 (Main) that prescribed application forms for the said examination would be available for downloading in its website from 16.05.2019, and fixed 07.06.2019 as the last date of submission of application form for the said written examination of CCE 2018 (Main). In the said Notification dated 15.05.2019, the APSC also issued certain clauses as well as terms and conditions as relevant information for the candidates concerned.

32) In spite of publication of said additional list dated 30.04.2019 with 408 numbers of candidates, including 2 PwD (OH) category, as qualified in the CCE 2018 (Preliminary) in addition to those 3361 numbers of candidates whose roll numbers/results were declared earlier on 13.03.2019; as they did not find their Roll Numbers amongst the said list of 3361 numbers of candidates as well as in the list of 408 additional candidates dated 30.04.2019 newly uploaded/notified, after obtaining their answer scripts of General Studies as well as Optional Subjects of said CCE 2018 (Preliminary), the petitioners preferred these writ petitions stating that they performed well in the CCE 2018 (Preliminary) that was held on 30.12.2018 and they were hopeful of being qualified in the said preliminary examination so as to participate in the written examination of CCE (Main) 2018.

33) Since the APSC committed error/fault by providing wrong answers keys to some of the questions of said preliminary examination, which it admitted as evident from its Press Release dated 02.05.2019, the petitioners stated that their CCE 2018 (Preliminary) answer scripts were wrongly evaluated by APSC, where they should have been given more marks and if such marks would have been allotted to their answers, which the petitioners considered to be correct, they would have normally qualified to participate in the written examination of CCE 2018 (Main) by

obtaining the required cut-off marks as has been specified by the APSC. The petitioners also contended that both the answer keys uploaded and published by APSC were wrong and those need proper verifications.

34) In their writ petitions the petitioners prayed before the Court, amongst others, (i) for a declaration that the evaluation undertaken and done by the respondent APSC is bad in law and is liable to be re-evaluated, re-checked and to award correct marks to the questions under scrutiny, (ii) a writ in the nature of Mandamus directing the respondents in the APSC to award marks to the petitioners pertaining to their questions under scrutiny, both in the General Studies Paper as well as the Optional Subject Paper of said CCE 2018 (Preliminary) and thereafter, to allow them to sit for the written examination of CCE 2018 (Mains) and (iii) to set aside both the answer keys uploaded by the APSC and upon proper verification, after giving the candidates an opportunity to object, to issue a fresh error free answer keys that shall be subjected to all the candidates including the already notified 3361 candidates and thereafter to issue a fresh list after necessary adjustments in the cut offs, if required.

35) In the writ petitions, the petitioners also prayed for interim direction to the respondent APSC to allow them to submit application form for CCE 2018 (Mains) as per Notification dated 15.05.2019.

36) Some other candidates, whose names did not figure in the first as well as the additional list of qualified candidates for the written examination of CCE 2018 (Main), also preferred writ petitions on similar ground, seeking similar relief as that of the present two petitioners, which were (i) W.P.(C) No. 3228/2019 (ii) W.P.(C) No. 3229/2019, (iii) W.P.(C) No. 3230/2019, (iv) W.P.(C) No. 3231/2019 (v) W.P.(C) No. 3232/2019, (vi) W.P.(C) No. 3319/2019, (vii) W.P.(C) No. 3334/2019, (viii) W.P.(C) No. 3342/2019, (ix) W.P.(C) No. 3346/2019, (x) W.P.(C) No. 3348/2019, (xi) W.P.(C) No. 3364/2019, (xii) W.P.(C) No. 3368/2019, (xiii) W.P.(C) No. 3375/2019, (xiv) W.P.(C) No. 3376/2019, (xv) W.P.(C) No. 3377/2019, (xvi) W.P.(C) No. 3381/2019, (xvii) W.P.(C) No. 3595/2019, (xviii) W.P.(C) No. 3696/2019 and (xix) W.P.(C) No. 3743/2019; all together 21 writ petitions, including the present two writ petitions.

37) As the written examination of CCE 2018 (Main) was approaching fast, considering the said circumstances, in the initial stages of those writ petitions including the present two writ petitions, the Court on 29.05.2019 directed the petitioners therein to submit their necessary Forms for the said examination of CCE 2018 (Main) and further directed the respondent APSC provisionally to

accept the Forms of the petitioners, subject to the payment of requisite fees.

38) The Court by the said order dated on 29.05.2019 also directed APSC to make necessary verification pertaining to the claim of those petitioners that they had correctly answered the questions in their CCE 2018 (Preliminary), but were not awarded the marks, directing the APSC to apprise the Court the outcome of such verifications.

39) By filing a common affidavit in W.P.(C) No. 3228/2019, the APSC stated that as per the order of the Court on verifications of the answer scripts of CCE 2018 (Preliminary) of the twenty one candidates/writ petitioners, after taking up their matters with the paper setters/domain experts and obtaining their views, it was found that after awarding grace mark to them as decided on pro rata basis, only nine candidates out of those 21 writ petitions, i.e., petitioners of (i) W.P.(C) No. 3229/2019; (ii) W.P.(C) No. 3230/2019, (iii) W.P.(C) No. 3231/2019, (iv) W.P.(C) No. 3232/2019, (v) W.P.(C) No. 3342/2019, (vi) W.P.(C) No. 3375/2019, (vii) W.P.(C) No. 3376/2019, (viii) W.P.(C) No. 3381/2019 and (ix) W.P.(C) No. 3743/2019 had qualified in the CCE 2018 (Preliminary) so as to appear in the CCE 2018 (Main).

40) In the same affidavit, the respondent APSC with regard to the remaining 12 (twelve) candidates/petitioners of WP(C) No. 3328/2019, WP(C) No. 3319/2019, WP(C) No. 3334/2019, WP(C) No. 3341/2019, WP(C) No. 3344/2019, WP(C) No. 3346/2019 WP(C) No. 3348/2019, WP(C) No. 3364/2019, WP(C) No. 3368/2019, WP(C) No. 3377/2019, WP(C) No. 3595/2019 and WP(C) No. 3696/2019 concerned, including the present two writ petitions, submitted that as per the order of the Court, after taking up their matters with the paper setters/domain experts and obtaining their views, it was found that even after verification and awarding grace mark to them, they are not entitled to any further marks to pass the said CCE 2018 (Preliminary), so as to qualify themselves to appear in the written examination of CCE 2018 (Main).

41) After hearing the learned counsels for the parties and on consideration, particularly taking note of the interim order passed earlier on 29.05.2019, the Court by order dated 30.07.2019 passed in WP(C) No. 3328/2019 and the other connected twenty writ petitions allowed all the petitioners, including the present two writ petitioners, to appear in the Combined Competitive (Main) Examination, 2018 that was re-scheduled from 02.08.2019, directing the APSC not to declare their results, observing that it would be subject to the outcome of the writ petitions, further directing APSC to upload the Admit Cards in its website during the course of the day.

42) The respondent APSC submitted that from amongst the candidates out of those 3361 candidates who on 13.03.2019 were declared to have qualified to sit in the written examination of CCE 2018 (Main) [before correcting the answer keys of General Studies and Optional Papers of CCE 2018 (Preliminary)], 408 (406 +2) candidates who on 30.04.2019 were declared to have qualified for the said Main examination after re-setting the answer keys of the CCE 2018 (Preliminary) by the APSC and the 21 writ petitioners noted above, including the 12 writ petitioners who were not adjudged by the APSC that include the present two petitioners, out of those 3790 candidates [3361 + 408 (406 + 2) + 21 (9 + 12)], altogether 3218 numbers of candidates appeared in the written examination of the CCE 2018 (Main).

43) As directed by the Court on 30.07.2019, those 21 (9+12) writ petitioners appeared in the written examinations of CCE 2018 (Main) conducted by the APSC.

44) Since the APSC, in terms of the order of the Court dated 29.05.2019, after verification of the answer scripts of CCE 2018 (Preliminary) of those 21 writ petitioners/candidates found only nine candidates out of those 21 writ petitions as qualified to appear in the CCE 2018 (Main), noted above and in terms of the Order of the Court dated 30.07.2019 as those nine writ petitioners as well as the other twelve writ petitioners had already appeared in the written examinations of said CCE 2018 (Main), as such on the prayer of those nine petitioners, the Court by order dated 23.10.2019 disposed of those nine writ petitions, noted above, as infructuous. Consequently, at that stage, only twelve writ petitions were left for consideration, including the two writ petitions of the present petitioners.

45) During the deliberation of the matters, the Court enquired as to whether APSC had carried out any exercise or initiated any process to find out who amongst those 3361 numbers of candidates, whose CCE 2018 (Preliminary) results were declared on 13.03.2019 with the wrong answer keys, have rightly / correctly passed the said CCE 2018 (Preliminary) after re-verification of the answer keys and truly qualified to sit in the written examination of CCE 2018 (Main), to which the answer of APSC was 'no'. As such the Court by order dated 23.10.2019 directed the APSC to clarify its stand by filing affidavit.

46) Further, by order dated 23.10.2019, the Court directed that without the leave of the Court, the APSC shall not declare the results of the written examination of CCE 2018 (Main) as per its advertisement dated 17.05.2018 and addendum dated 26.06.2018.

47) In pursuance of said direction of the Court dated 23.10.2019, the APSC on 06.12.2019 (wrongly stamped as 06.11.2019) filed an additional affidavit stating that out of those 3361 numbers of candidates declared to have qualified to appear in the CCE 2018 (Main) as per the result of CCE 2018 (Preliminary) declared/uploaded on 13.03.2019 on the basis of the first answer keys uploaded/ notified in its website on 30.04.2019 that was later found to be wrong and after re-setting and correction of the answer keys of said preliminary examination, only 3263 numbers of candidates actually passed the said preliminary examination 2018 and from amongst those 3361 numbers of candidates, marks scored by 98 candidates had come below the cut-off marks so as to pass the said preliminary examination.

48) Since those 3361 candidates including those 98 candidates who on 13.03.2019 were already declared to have qualified to sit in the CCE 2018 (Main) and on the basis of revised answer keys as many as 406 candidates have been declared to have qualified in the said Preliminary Examination, 2018, without prejudice to the results declared earlier on 13.03.2019, being in the preliminary stages of said CCE, 2018; therefore, the APSC stated that those 98 candidates though ought not to have pass the said Preliminary Examination on the basis of revised answer keys, but being already declared on 13.03.2019 to have qualified the said examination and considering that there being two more subsequent stages to assess the merit and suitability of the candidates in CCE 2018 (Main) in the Written Examination and Interview Test, therefore, it (APSC) decided to give those 98 candidates a chance to participate in the CCE 2018 (Main), where out of those 98 candidates, only 68 candidates had appeared in the written examination CCE 2018 (Main).

49) In the said affidavit APSC also stated that as decided they had uploaded the marks of all the candidates after re-verification of the answer keys, wherein it annexed a copy of the minute in its meeting held on 30.04.2019 (Annexure-1) which is as follows:

MINUTES OF THE MEETING OF THE COMMISSION
Held on 30.4.2019 at 1.00 P.M.

Present :

- (i) Shri Dipak Kumar Sarma, IAS (Retd.), Chairman (i/c), APSC
- (ii) Shri Mukti Gogoi, IAS (Retd.), Member, APSC
- (iii) Shri P.K. Hazoari, ACS (Retd.), Member, APSC
- (iv) Shri S. Das Laskar, Hon'ble Member
- (v) Dr. Ajanta Nath, Hon'ble Member

Shri Prakash R. Gharphalia, ACS, Secretary and Smti Pubali Gohain, ACS, Principal Controller of Examinations (PCE) of the Commission were also present.

Item No.1: Re-verification of the answer keys in the subjects relating to the Combined Competitive (Preliminary) Examination, 2018 and finalisation of results thereof.

The PCE, APSC apprised that the Commission had uploaded the answer keys of the subjects and also the OMR sheets of each and every candidate of the Combined Competitive (Preliminary) Examination, 2018. Although utmost care was taken for ensuring accuracy, some genuine and inadvertent discrepancies in the answer keys were detected. The answer keys were therefore once again re-verified in consultation with the domain experts and accordingly the corrected answer keys were entered into the system which resulted in some more candidates being found to have qualified to appear in the Combined Competitive (Main) Examination, 2018. The subject-wise numbers of challenged question and actual number of answers found wrong were as follows:

Sl. No.	Subjects	Number of Questions challenged	Actual numbers of Questions found wrong
1	General Studies	34	3
2	Agriculture	5	3
3	Anthropology	5	3
4	AH & Vety. Science	7	3
5	Botany	3	1
6	Civil Engineering	3	2
7	Commerce	2	2
8	Economics	4	No correction
9	Education	19	6
10	Elect. Engineering	15	6
11	Electronics	3	1
12	Geography	2	1
12	Geology	9	7
14	Indian History	42	11
15	Law	1	1
16	Mathematics	2	2
17	Mech. Engineering	12	8
18	Philosophy	6	2
19	Physics	14	5
20	Political Science	25	14

21	Sociology	13	9
22	Zoology	2	2

The Commission took *suo-moto* cognizance of the matter of anomalies/ mistakes in the answer keys of the Combined Competitive (Preliminary) Examination, 2018 on receipt of information/complaints. After detailed deliberation on the issue, the Commission found that there were actually a few genuine inadvertences in the answer keys of some of the subjects. The Commission was of the view that the errors must be corrected and no genuine candidate should be deprived for no fault of his/hers. Hence, after due deliberation, and, in order to do justice to the concerned candidates, the Commission decided that:

1. There will not be any upward revision of the cut off marks for the preliminary examination.
2. Since, after feeding the correct answer keys into the system, it was found that 406 more candidates would qualify for the Combined Competitive (Main) Examination, 2018 on the basis of the earlier cut off marks, it was decided to declare these 406 candidates as qualified for appearing in the Combined Competitive (Main) 2018.
3. There will not be any prejudice towards the results declared on 13th March. Therefore, the 98 candidates out of 3361 candidates declared qualified to appear the Combined Competitive (Main) Examination, 2018 whose marks came below the cut off marks due to revision of answer keys, were not to be discarded and allowed to appear for CCE (Mains), 2018. In other words, the list of 3361 candidates earlier declared to have qualified to appear in the CCE (Mains) examination vide notification no. 49PSC/CONE-24/2018-19 dated Guwahati the 13th March, 2019 will remain intact.

In deciding so, the Commission opined that these 98 candidates have already been declared to have qualified for the Mains and removal of these candidates and inclusion of 406 fresh candidates in one go will entail complete cancellation of the notification and require issue of a fresh notification containing the new results. Since there are two more stages to assess the merit and suitability of candidates, the Commission decided to allow these 98 candidates to be given a chance.

4. The Commission further decided to address a Press Conference for greater public awareness and transparency regarding the decision taken.

The PCE further informed that Roll numbers 1009053 and 2301880 under OH category were not included in the earlier results due to technical error. The Commission decided to declare them to have qualified to appear in the C.C.(Main) Examination, 2018.

The Commission also decided to upload the marks of all the candidates after re-verification of answer keys.

50) Pursuant to the order of the Court dated 20.02.2020, the APSC filed another affidavit on 28.02.2020 providing the list of those 98 candidates, in sealed cover, who scored below the cut-off marks after revision of the answer keys of the Combined Competitive (Preliminary)

Examination, 2018 and also the list of 68 candidates out of those 98 candidates who appeared in the written examination of CCE 2018 (Main) with due authentication and signatures of the authority concerned of the APSC.

51) On 21.08.2020, the APSC filed an Interlocutory Application being I.A.(C) No. 1364/2019 in WP(C) No. 3228/2019 reiterating that the present petitioners are not qualified to appear in the written examination of CCE 2018 (Main) as they did not pass the CCE 2018 (Preliminary) even after verification of their answer scripts in terms of the order of the Court dated 29.05.2019, who were also allowed to appear in the written examination of CCE 2018 (Main) as per the order of the Court dated 30.07.2019. APSC in the said I.A. (C) No. 1364/2019 prayed to grant them leave to declare the result of the written examination of CCE 2018 (Main) that was conducted as per the advertisement No. 09/2018 dated 17.05.2018 by vacating/modifying/altering the order dated 23.10.2019 passed earlier in WP(C) No. 3228/2019 and other connected cases.

52) On being enquired, APSC stated that evaluations of all the answer scripts of the candidates those who had appeared in the written examination of CCE 2018 (Main) were completed and sought for leave of the Court to allow it to declare the result of the said (Main) Examination.

53) Pursuant to the order of the Court dated 08.09.2020 passed in said I.A.(C) No. 1364/2019 and the other connected cases, the APSC submitted the results of the written examination of CCE 2018 (Main) conducted in terms of the advertisement No. 09/2018 dated 17.05.2018 in sealed cover, duly authenticated and signed by its concerned authority including those 68 candidates, who ought not to have passed the CCE 2018 (Preliminary) as per the revised answer keys of APSC but participated in the written examination of CCE 2018 (Main) as well as those 12 writ petitioners, including the present two petitioners, who did not pass the CCE 2018 even after re-verification of the answer scripts of their CCE 2018 (Preliminary) pursuant to the order of the Court dated 29.05.2019, but appeared in the written examination of CCE 2018 (Main) as per the order of the Court dated 30.05.2019, whose results are subject to the outcome of their writ petitions.

54) After hearing the learned counsels for parties as well as the learned Amicus Curiae and considering the matters, the Court by order dated 09.10.2020 allowed the said I.A.(C) No. 1364/2019 of the APSC modifying the order 23.10.2019 passed earlier in WP(C) No. 3228/2019

and other connected cases, thereby allowed the APSC to declare the results of the written examination of CCE 2018 (Main) conducted by it, pertaining to the services/posts as advertised in the Advertisement No. 09/2018 dated 17.05.2018 as well as the Addendum dated 26.06.2018, both issued by the APSC.

55) By the said order dated 09.10.2020, the Court also allowed the APSC that after declaring the results of the written examination of CCE 2018 (Main), to conduct the Interview Test for the CCE 2018 (Main) as provided in Clause 5 (II) (B), (a), (b), (c) and (d) of the said Advertisement No. 09/2018 dated 17.05.2018, but restrained the APSC from declaring the final result of the Combined Competitive [(Main) (written + interview)] Examination, 2018, without the leave of the Court.

56) The Court, in the said order dated 09.10.2020 further directed that — *“ Though leave is granted to the APSC to declare the result of the written examination of the Combined Competitive (Main) Examination, 2018 and to proceed with the Interview Test for the said C.C. (Main) Examination, 2018; but it is made clear that, the same shall not create any right to the petitioners as well to those whom the APSC has declared to be qualified for their selection in the Combined Competitive (Main) Examination, 2018, in violation of the Rules of law. After completion of the process of Interview Test, noted above, the APSC shall do the needful to list the matter.”*

57) In terms of the said order of the Court dated 09.10.2020, the APSC on 12.10.2020 declared the results of the written examination of CCE 2018 (Main) and from the same, 544 numbers of candidates were called for the Interview Test of CCE 2018 (Main).

58) It was stated that out of those 544 candidates from the list of the candidates who passed the written examination of CCE 2018 (Main), only 541 numbers of candidates appeared in the Interview Test before the Board constituted by APSC. Amongst those 541 numbers of candidates appeared in the Interview Test, there were 8 (eight) candidates out of said 68 (sixty eight) candidates amongst the 98 candidates, who ought not to have passed the CCE 2018 (Preliminary) as per the revised and correct answer keys of APSC but participated in the written examination of CCE 2018 (Main) on the basis of relaxation given by the APSC and 3 (three) out of the 12 petitioners/ candidates of WP(C) Nos. 3228/2019, 3319/2019, 3334/2019, 3341/2019, 3344/2019, 3346/2019, 3348/2019, 3364/2019, 3368/2019, 3375/2019, 3377/2019 and

3696/2019 who did not pass the preliminary examination after the two results declared by the APSC on 13.03.2019 and 30.04.2019 and also after re-verification of the answer scripts of their CCE 2018 Preliminary Examination, but participated in the written examination of the CCE 2018 (Main) pursuant to the order of the Court dated 29.05.2019 and 30.07.2019, noted above.

59) Out of those 12 writ petitions, petitioners of WP(C) Nos. 3228/2019 and 3319/2019 did not qualify in the written examination of CCE 2018 (Main) and they did not press those two writ petitions. Accordingly by order dated 09.10.2020 both the writ petitions WP(C) No. 3228/2019 and WP(C) No. 3319/2019, being not pressed, were dismissed and the interim orders passed earlier in their favour were vacated with further observations that the common orders passed earlier in WP(C) No. 3228/2019 and other connected cases (i.e., set of those 12 writ petitions) shall form the part of WP(C) No. 3341/2019 and other cases.

60) On 10.12.2020, the APSC filed another Interlocutory Application being I.A.(C) No. 2220/2020 in WP(C) No. 3341/2019 praying for vacation/ alteration/modification of the order of the Court dated passed earlier 09.10.2020 in I.A.(C) No. 1364/20220 in WP(C) No. 3228/2019 and other connected cases, noted above, stating that after completion of the Interview Test of the candidates concerned, the final result of the Combined Competitive [Main (Written + Interview) Examination], 2018 was ready for publication by the APSC and accordingly, in terms of the order of the Court dated 09.10.2020 sought for leave of the Court to declare the final result of said CCE 2018 (Main).

61) In pursuance of the order of the Court dated 16.12.2020, the APSC on 21.12.2020 placed the final result of the Combined Competitive [Main (Written + Interview) Examination], 2018 in sealed cover.

62) In the meanwhile, as the petitioners (candidates) of W.P.(C) Nos. 3334/2019, 3346/2019, 3348/2019, 3364/2019, 3375/2019, 3377/2019 and 3696/2019 did not come within the zone of consideration for the Interview Test of said CCE 2018 (Main), on the prayers of the respective petitioners, those seven writ petitions were closed being infructuous. Out of the batch of those 12 writ petitions only three petitioners (candidates) of writ petitions – WP(C) No. 3341/2019, WP(C) No. 3344/2019 and WP(C) No. 3368/2019 were within the zone of consideration for the Interview Test of said CCE 2018 (Main) and accordingly, they appeared in the Interview Test, noted above.

63) From the results of the CCE 2018 [(Main) (Written + Interview)], placed by the APSC in sealed covers it was found that 2 (two) petitioners (candidates) of WP(C) No. 3341/2019 and WP(C) No. 3344/2019 out of said 3 (three) petitioners from the batch of 12 (twelve) writ petitions, noted above and 4 (four) out of 8 (eight) from the batch of 98 such ineligible candidates of CCE 2018 (preliminary) have cleared the Combined Competitive [Main (Written + Interview)] Examination, 2018.

64) After hearing the learned counsels for the parties and considering the matter in its entirety, leaving aside those 2 (two) writ petitioners of WP(C) Nos. 3341/2019 and 3344/2019 from the batch of (12) twelve writ petitions, noted above, and 4 (four) out of 8 (eight) from the batch of 98 (ninety eight) such ineligible candidates of CCE 2018 (Preliminary), who have cleared the Combined Competitive [Main (Written + Interview)] Examination, 2018, the Court did not find any dispute with regard to the remaining 255 numbers of CCE 2018 [Main (Written + Interview)] selected candidates.

65) Accordingly, the Court by order dated 22.12.2020 passed in said I.A.(C) No. 2220/2020 in WP(C) No. 3341/2019, directed the APSC to publish the results of the Combined Competitive [Main] (Written + Interview)] Examination, 2018 of those 255 candidates.

However, by the said order dated 22.12.2020 passed in said I.A.(C) No. 2220/2020, the Court directed the APSC not to declare the results of Roll Nos. 1010716 and 1013210 of the petitioners of WP(C) No. 3341/2019, and WP(C) No. 3344/2019 presently pending before the Court as well as the Roll Nos. 1018525, 1020895, 1022654, 1100550 of the 8 (eight) from the 68 (sixty eight) out of 98 (ninety eight) ineligible candidates of CCE, 2018 (Preliminary) who participated in the Combined Competitive [Main (Written + Interview)] Examination, 2018.

66) By the said order dated 22.12.2020 the Court also directed the State Government in terms of the Advertisement No. 09/2018 dated 17.05.2018 and the Addendum dated 26.06.2018 not to fill up 3 (three) posts of Assam Civil Services (Junior Grade) out of 138 posts; 1 (one) post of Assam Land & Revenue Service (Junior Grade) out of 56 posts, 1 (one) post of Inspector of Taxes out of 32 posts and 1 (one) post of Labour Inspector out of 11 posts, until further orders of the Court.

67) Moreover, the Court in the said order dated 22.12.2020 directed the APSC to retain the

answer scripts of the Combined Competitive (Preliminary) Examination, 2018 as well as the Combined Competitive [Main (Written)] Examination, 2018 of the three writ petitioners of WP(C) Nos. 3341/2019, 3344/2019 and 3368/2019 as well as the seven writ petitioners of WP(C) Nos. 4719/2020 until further orders of the Court.

68) Thereafter, those 255 candidates on being selected in CCE 2018 (Main) were appointed in their respective services/posts as per their selection in terms of the said Advertisement No. 09/2018 dated 17.05.2018 and the Addendum dated 26.06.2018 that were issued by the APSC.

69) Pursuant to the orders of the Court dated 18.01.2021 passed in I.A.(C) No. 85/2021 Ms. Saswati Das, Ms. Vidisha Bodo, Sri Manish Baruah and Sri Anupam Dekha have been made party respondent Nos. 5, 6, 7 and 8, respectively, in WP (C) No. 3341/2019. The respondent Nos. 5 to 8 belong to the group of those 68 candidates out of 98 candidates who appeared in the written examination of CCE 2018 (Preliminary) and the APSC on 13.03.2019 while declaring the results of the said preliminary examination considered them to be qualified to appear in the CCE 2018 (Main) but on re-verification and on the basis of correct answer keys of the CCE 2018 (Preliminary), they were found as not qualified in the said preliminary examination as they failed to obtain the requisite cut-off/qualifying marks in the CCE (Preliminary) held on 30.12.2018 and ought not to have considered for CCE 2018 (Main), but allowed by the APSC to appear in the said Main examination.

70) Now the issues before the Court are –

(i) Whether the petitioners of these two writ petitions, who did not qualify the CCE 2018 (Preliminary) of the APSC even after the revised answer keys and also on re-verification of their answer scripts of said preliminary examination, but appeared in written examination of CCE (Main) 2018 of APSC after filing necessary applications for the same on the basis of the order of the Court dated 29.05.2019 and also appeared in written examination of said CCE (Main) 2018 pursuant to the order of the Court dated 30.07.2019 and on being passed the written examination of said CCE (Main) 2018 and being in the zone of consideration of the Interview Test for the said CCE (Main) 2018, appeared in the Interview Test and on consideration of their marks in the CCE [Main (Written + Interview)] 2018, were in the select list for the services/post as advertised by the APSC on 17.05.2018 and Addendum dated 26.06.2018, should allow the APSC to

declare their results and to direct for their appointments as per their selection in the CCE 2018 (Main) or otherwise?

(ii) Whether the respondent Nos. 5 to 8 who were declared to have qualified the CCE 2018 (Preliminary) by the APSC as their results of the said exam was declared on 13.03.2019 and allowed them to participate in the written examination of CCE 2018 (Main) and on being passed the said examination and on coming within the zone of consideration appeared in the Interview Test of CCE 2018 (Main) before the constituted Board and also got selected with their marks of Written + Interview in the CCE 2018 (Main) for the services/post as advertised by the APSC on 17.05.2018 and Addendum dated 26.06.2018, but actually did not qualify in the CCE 2018 (Preliminary) and scored below the cut off marks in said Preliminary Examination after the revised Answer Keys of CCE 2018 (Preliminary) as being found by the APSC should be allowed to declare their results by APSC and to direct for their appointments as per their selection in the CCE 2018 (Main) or otherwise?

71) Mr. K. N. Choudhury, learned Senior counsel has appeared for the present two writ petitioners as well as the impleaded respondent Nos. 5 to 8. The case of the petitioner of WP(C) Nos. 3341/2019 (Shalini Khan -Vs- The State of Assam and 7 others) is that with regard to her CCE 2018 (Preliminary), the respondent APSC did not award marks for a number of questions though she had correctly answered them. It is stated by her that 261 marks was declared to be a cut off marks for the open category of female candidates and after the 2nd Answer Key, i.e., the revised Answer Key of CCE 2018 (Preliminary), she scored 254 marks, was short by 7 (seven) marks. She stated that on scrutiny it was found that in 2 (two) questions of General Studies Paper and 6 (six) questions of Indian History Optional Paper of said CCE 2018 (Preliminary), carrying 2 marks each, she was not awarded marks. According to her had she been awarded marks for those 8 (eight) (6+2) questions, she would have scored 16 (sixteen) marks more and that would have made her aggregate score as 270 (254+16) that would have been much higher than the cut-off of 261.

72) In that regard, the petitioner Shalini Khan placed before the Court that though the Question Numbers - 66 (sixty six) and 93 (ninety three) of her General Studies – Series D Paper and Question Numbers - 8 (eight), 15 (fifteen), 44 (forty four) and 63 (sixty three) of her Indian

History Optional Paper of the CCE 2018 (Preliminary) she had answered correctly, but she was deprived of 10 (ten) marks. She named certain books with regard to those questions of General Studies – Series D Paper and Indian History Optional Paper on which she relied her answers and in not awarding those marks for her correct answers due to faulty Answer Keys, she has been illegally deprived from the qualification for the CCE 2018 (Main) of APSC.

73) The case of the petitioner of WP(C) Nos. 3344/2019 (Girbani Deka -Vs- The State of Assam and 3 others) is that with regard to her CCE 2018 (Preliminary), 261 marks was declared to be a cut off marks for the open category of female candidates and she was short of 7 (seven) marks after the 1st Answer Key and after the revised Answer Key, i.e., the 2nd Answer Key of CCE 2018 (Preliminary), she was short by 11 (eleven) marks. She stated that on scrutiny it was found that the respondent APSC did not award a total marks of 16 (sixteen) for 9 numbers of questions though she had correctly answered those questions.

74) In that regard, the petitioner Girbani Deka placed before the Court that though the Question Numbers - 17 (seventeen), 33 (thirty three), 44 (forty four) and 55 (fifty five) of her General Studies – Series B Paper and Question Numbers - 15 (fifteen), 25 (twenty five), 44 (forty four), 74 (seventy four) and 94 (ninety four) of her Indian History Optional Paper of the CCE 2018 (Preliminary) she had answered correctly, but she was deprived of 16 (sixteen) marks. She also named certain books with regard to those questions of General Studies – Series D Paper and Indian History Optional Paper upon which she relied her answers and in not awarding those marks for her correct answers due to faulty Answer Keys, she stated that she has been illegally deprived from the qualification for the CCE 2018 (Main) of APSC.

75) Both the petitioners stated that the APSC adopted different yardsticks/different answer keys to assess/screen the candidates, stating further that some of the candidates were assessed/screened by the first answer keys, that was admittedly erroneous and wrong, and the others by separate answer keys. It is also stated by them, that though the APSC of its own admitted that its first answer keys of CCE 2018 (Preliminary) was wrong and erroneous, in spite of that the APSC did not re-assess the 3361 number of candidates who were initially declared to have qualified for the written examination of CCE 2018 (Main) as their results were declared on 13.03.2019 on the basis of said first answer keys of CCE 2018 (Preliminary). Petitioners also stated that though the APSC called for the queries, but it did not considered those giving a blind

eye to them and it proceeded to reverify the answer keys of said CCE 2018 (Preliminary) unilaterally without examining the grievances of the candidates. According to the petitioners, even the 2nd answer keys of CCE 2018 (Preliminary) were also wrong.

76) On behalf of the two petitioners and the respondent Nos. 5 to 8, Mr. Choudhury, learned Senior counsel that even assuming but not admitting that they may not have cleared the screening process of CCE 2018 (Preliminary), but on their merit they have been selected in the CCE 2018 after a laborious process of written examination and interview test/viva voce in the CCE 2018 (Main) and none from the candidates participated in the said CCE, 2018 or any other have challenged the said selection of the petitioners and the respondent Nos. 5 to 8 as arbitrary, illegal or unfair. Since they have been selected in said CCE 2018 (Main) on their merit, therefore, their results of said Main Examination should be declared and necessary order should be passed for their recruitment as per their said selection. Relying on the Judgment of the Hon'ble Supreme Court in the case of *A.P. Public Service Commission -Vs- Balaji Badhavath*, reported in (2009) 5 SCC 1, Mr. Choudhury, learned Senior counsel submitted that — *It is the function of the Commission (Public Service Commission) as to how it would judge the merit of the candidates and unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the Courts would not ordinarily interfere therewith.*

77) Mr. Choudhury, learned Senior counsel on behalf of the petitioners and respondent Nos. 5 to 8 also relied upon the a decision of a coordinate Bench of this Court in the case of *Hrishikesh Das -Vs- Assam Public Service Commission and Others*, reported in 2018 (5) GLT 311, stating that the appeal preferred against the said decision by the State of Assam was dismissed by the Hon'ble Division Bench of this Court and also by the Hon'ble Apex Court.

78) The APSC in its affidavit filed on 01.02.2021 stated that with regard to the petitioner of WP (C) No. 3341/2019 (Roll No. 1013210) (Shalini Khan) she secured 254 marks in the CCE 2018, (Preliminary) and on its suo-moto verification, she secured 258 marks that is below the cut-off marks of 261.

79) In the said affidavit of APSC filed on 01.02.2021, it contended that with regard to the petitioner of WP (C) No. 3344/2019 (Roll No. 1010716) (Girbani Deka) she secured 254 marks in the CCE 2018, (Preliminary) and after suo-moto verification, her marks were decreased to 250 that is also below the cut-off marks of 261. As both the writ petitioners in their CCE 2018

(Preliminary) obtained marks below the cut-off marks of 261 and as such they failed to be admitted for the CCE 2018 (Main).

80) The APSC in its affidavit filed on 01.02.2021 with regard to private respondent Nos. 5, 6, 7 and 8 of WP(C) No. 3341/2019 stated that Saswati Das (Roll. No. 1022654), Vidisha Bodo (Roll No.1100550), Manish Barua (Roll No. 1018525) and Anupam Deka (Roll No. 1020895) could make it to the final select list of CCE 2018 (Main), but in pursuance of the order of the Court dated 22.12.2020, it has withheld their recommendations to the government.

81) In the said affidavit, APSC stated that CCE 2018 (Preliminary) was a screening test and that those private respondent Nos. 5, 6, 7 and 8 could not clear the said preliminary examination by whisker and that those four candidates by virtue of their own merit could successfully clear the Written Examination as well as the Interview Test of CCE 2018 (Main) and on consideration of the marks of both Written Examination and Interview Test, their names figured in the final selection list and therefore, their recommendation by APSC is valid. APSC stated that though the respondent Nos. 5 to 8 secured lower marks than the cut-off marks due to revision of Answer Keys of CCE 2018 (Preliminary), but their cases have been taken care by the APSC in its resolution dated 30.04.2019.

82) The APSC, in its said Affidavit filed on 01.02.2021, at the same time stated that the two writ petitioners though secured their position in the final select list of CCE 2018 (Main) after written examination and interview test, but the Commission is of the view that since preliminary examination is meant to serve as a screening test only and the merit and suitability of the candidates are assessed only on the basis of the performance of the candidates in the CCE [Main (written and Interview Test)], therefore, the APSC left it to the decision of the Court stating that the Commission will not have any objection to any decision taken by the Court treating the two writ petitioners in similar manner like the other private respondent Nos. 5 to 8.

83) Considering the above, the Court on 12.03.2021 directed the respondent APSC as well as the State respondent, represented by its Chief Secretary to file their respective affidavits and to clarify their stand with regard to the following:

- i) Whether a candidate who passed the preliminary examination on the basis of a wrong answer key and subsequently, before holding the main examination, on the basis of a correct answer key found to have failed to obtain the requisite cut off marks to appear in the main

examination, is entitled to appear in the said Main examination?

- ii) Whether the statutory body like APSC, has the power to give such concession/relaxation to a candidate who failed to qualify the required qualifying marks on the basis of the correct answer key to appear in the next level of examination for open selection of recruitment to the public post/service though the said candidate was earlier declared to have obtained such qualifying marks on the basis of a wrong answer key, more particularly after issuance of the advertisement, which did not state about any such concession?
- iii) Under what provisions of law, the State Government is empowered to accept the list of the candidates for recruitment to the public post where the concerned select list forwarded by the Public Service Commission contains the candidates who actually failed in the Preliminary examination for such selection to the public posts/services on the basis of correct answer keys, but the Commission on the basis of wrong answer keys initially declared those candidates to have cleared the said examination?
- iv) Respondent APSC shall specify whether the petitioners of WP(C) Nos.3341/2019 (Shalini Khan) and 3344/2019 (Girbani Deka) have correctly answered the questions of CCE Preliminary Examination 2018 involved in these petitions and if so, whether are entitled to any additional marks and if on getting such additional marks whether the petitioners could obtain the requisite qualifying/cut off marks in the said Preliminary examination?

84) With regard to the said queries made by the Court on 12.03.2021, the APSC on 23.08.2021 filed an Additional Affidavit replying as follows:

With regard to the query No. (i), APSC stated that –

(i) The Commission, vide its meeting dated 30.04.2019 on point that these 98 candidates have already been declared to have qualified for the Combined Competitive (Main) Examination, 2018 and removal of these candidates and inclusion of 406 fresh candidates in one go will entail complete cancellation of the notification of result dated 13.03.2019, and require issuing of a fresh notification containing the new results. Since there are two more stages to assess the merit of suitability of candidates, the Commission decided to allow these 98 candidates to be given a chance.

(ii) Thereafter, in terms of order dated 18.01.2021 passed in WP (C) No. 3341/2019 by the Court, the Commission had discussed the matter again in its meeting dated 25.01.2021 and the Commission, in respect of the 4 out of 98 candidates, is of the considered opinion that as the Combined Competitive (Preliminary) Examination is a Screening test and they could not score above the cut-off marks by a small margin and that these 4 candidates by virtue of their merit could successfully clear Combined Competitive (Main) Examination and Interview, both of whose marks are taken into consideration in the final selection, hence the Commission fully stood by their recommendation vide resolution dated 30.04.2019 as justified. Whereas in respect of the

two petitioners, Shalini Khan [WP(C) No. 3341/2019] and Girbani Deka [WP(C) No. 3344/2019], the Commission has decided to leave the matter to the discretion of the Court.

(iii) The Commission however, in order to maintain its integrity, fairness and impartiality in the matter of selection of candidates, again discussed the matter in an urgently convened meeting on 18.03.2021 at 11:30 AM to clarify the stand of allowing the 98 candidates to appear in the Combined Competitive (Main) Examination, 2018. Accordingly vide resolution dated 18.03.2021, the Commission further resolved that the decision of allowing those 98 candidates vide resolution dated 30.04.2019 be a one-time decision which shall not be treated as a precedent in any of the examinations including the Combined Competitive Examination in future.

85) With regard to the query No. (ii), the APSC stated that –

(i) Admission of candidates in the Combined Competitive (Main) Examination is governed by Rule 8 and 11 of Schedule – II and Clause 2 of Section-I of Appendix-I of the Assam Public Service Commission (Combined Competitive Examination) Rules, 1989. The aforesaid provisions have vested a certain degree of discretion on the Commission regarding admitting of candidates to Combined Competitive (Main) Examination.

(ii) That in clause 6 (e) of the advertisement of the CCE (Preliminary) 2018, it is clearly mentioned that "the decision of the Commission is to the eligibility or otherwise of a candidate for admission to the examinations shall be final".

(iii) Rule 77 of Chapter-VII of the Assam Public Service Commission (Procedure & Conduct of Business) Rules, 2010 further provides that "the commission may deal in such manner as they deem fit with any matter not specifically provided for in these Rules".

(iv) In the present case in hand, the Commission had declared the result of the Combined Competitive (Preliminary) Examination, 2018 on 13.03.2019 wherein a total of 3361 candidates were declared to have passed including those 98 candidates who had scored below the cut-off marks as per the re-verified answer keys. Since those 98 candidates were already declared to have qualified for appearing in the Combined Competitive (Main) Examination, 2018 vide its result declared on 13.03.2019, the Commission vide its decision taken in the meeting held on 30.04.2019 had decided not to disqualify them on the basis of the re-verified answer keys considering the fact that (a) the Combined Competitive (Preliminary) Examination is merely a screening process and no candidates should suffer for no fault of theirs. (b) Also, there would be fathered two stages viz Combined Competitive (Main) Examination and Interview to assess the merit and suitability of the candidates.

(v) The Commission has, further resolved that the decision of allowing 98 candidates by resolution dated 30.04.2019 be a one-time decision which shall not be treated as a precedent in

any of the examinations including the Combined Competitive Examination in future.

86) In that additional affidavit the APSC did not answer the query No. (iii)

87) With regard to the query number (iv), the APSC stated that –

Both the Writ Petitioners Shalini Khan (WP(C) No.3341/2019) and Girbani Deka (WP(C) No. 3344/2019) belong to the remaining 12 candidates out of 21 Writ Petitioners who even after re-verification of their answer sheets as per the order of the Court dated 29.05.2019 passed in WP(C) No. 3228/2019 and its batch of Writ Petition, could not qualify Combined Competitive Examination (Preliminary), 2018, but appeared in the Combined Competitive (Main) Examination, 2018 as per the order of the Court dated 30.07.2019. Detail contention of the Writ Petitioners have been clearly dealt with in the Affidavit-in-Opposition of the Commission dated 29.07.2019 (hereinafter to be referred as 1st Affidavit) which the Commission has relied on a reaffirmed the same so far as the claim of the petitioners in respect of their marks is concerned. In order to clear doubts, the Commission has further verified the marks with the help of domain experts and the findings of the Commission in respect of the claim of above petitioners are given separately in the tables annexed therewith.

From the tables appended there with the Commission stated that both the Writ Petitioners Shalini Khan and Girbani Deka are not entitled to additional marks as claimed and therefore, could not score the cut-off marks 216 for open category in the Combined Competitive (Main) Examination, 2018.

That apart the right of re-evaluation of the petitioners is also limited and there is no provision in the Assam Public Service Commission (Procedure & Conduct of Business) Rules, 2010 permitting re-evaluation of the individual answer script of the petitioners.

88) In the said additional affidavit filed on 23.08.2021, the APSC categorically placed the correct answers relating to Question Numbers - 66 and 93 of the General Studies – Series D Paper as well as Question Numbers - 8, 15, 44 and 63 of the Indian History Optional Paper of the CCE 2018 (Preliminary) of Shalini Khan (WP(C) No. 3341/2019), the answer given by the said petitioner in her Answer (OMR) Sheet, Answer as per the First Answer Key, Answer as per the Revised Answer Key (suo-moto), View of APSC after Court's order on the basis of Domain Expert's View and Remark/Justification of APSC with Reference Book/Materials, the reasons for awarding Grace Mark against the respective answer to a question and also for awarding of Grace Mark on Pro Rata Basis.

89) Similarly with regard to the petitioner, Girbani Deka (WP(C) No.3344/2019), the APSC in

its said affidavit filed on 23.08.2021 also placed the correct answers relating to the Question Numbers - 17, 33, 44 and 55 of General Studies – Series B Paper and Question Numbers - 15, 25, 44, 74 and 94 of her Indian History Optional Paper of the CCE 2018 (Preliminary), the answer given by the said petitioner in her Answer (OMR) Sheet, Answer as per the First Answer Key, Answer as per the Revised Answer Key (suo-moto), View of APSC after Court's Order on the basis of Domain Expert's View and Remark/Justification of APSC with Reference Book/Materials, the reasons for awarding Grace Mark against the respective answer to a question and also for awarding of Grace Mark on Pro Rata Basis.

90) Learned Amicus Curiae, Senior Counsel Mr. Dutta, submitted that out of those 3760 candidates who appeared in the CCE 2018 (Main) Examination, issues now relate to only 6 (six) numbers of candidates that include – (i) the 4 (four) candidates, i.e., respondent Nos. 5 to 8, who did not obtain cut-off marks in the Combined Competitive (Preliminary) Examination, 2018 after the revised answer keys of CCE 2018 (Preliminary) were uploaded by the APSC and (ii) the present 2 (two) writ petitioners who did not pass the said Preliminary Examination even after revised answer keys of CCE 2018 (Preliminary) and also after re-verification of their answer scripts in the said examination, but were allowed by the Court to appear in the Combined Competitive (Main) Examination, 2018 subject to the outcome of their writ petitions.

91) Mr. Dutta, as such submitted that out of those 3760 candidates who had already participated in the Combined Competitive (Main) Examination, 2018, there are no dispute with regard to 3680 numbers of candidates.

92) Learned Amicus Curiae also submitted that as per the provisions of the Rule 63 of the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 as applicable to the Combined Competitive Examination, 2018 advertised by APSC on 17.05.2018, the number of candidates to be admitted to the personality test/interview should be twice, i.e., 1:2, the number of vacancies to be filled in the various services and posts maintaining Reservation policies and the relevant Rules of recruitment. As such against 261 numbers of posts as advertised by APSC in its advertisement dated 17.05.2018 and addendum dated 26.06.2018 maximum 522 numbers of candidates (261 X 2) were called for personality test/interview with any such additional candidate that may be allowed if more than one candidate who obtained the same cut-off mark.

93) It is submitted by learned Amicus Curiae that no one has challenged the decision of the APSC to allow the 98 candidates out of those 3361 candidates, who, after the revised answer keys of the CCE 2018 (Preliminary) uploaded by APSC, failed to obtain cut-off mark to qualify to appear in the CCE 2018 (Main) and that out of those 98 candidates only 68 candidates appeared in the said Main Examination, 2018 and 30 did not and from amongst those 68 out of 98, only 4 (four) are now in the Select List on the basis of marks secured by them in their written examination and interview test in CCE 2018 (Main).

94) Learned Amicus Curiae also stated that similarly, there is also no challenge with regard to the present 2 (two) writ petitioners who are allowed by the Court to appear in the said 2018 Main Examination, subject to the outcome of their writ petitions. It is also stated by learned Amicus Curiae that none including any aggrieved candidate of CCE 2018 have challenged the selection of the two petitioners as well as that of the four respondents Nos. 5 to 8 in the CCE 2018 [Main (Written Examination + Interview Test)] as arbitrary, illegal and unfair.

95) Mr. Dutta, learned Amicus Curiae stated that considering the case of the present 2 (two) writ petitioners, who did not qualify the CCE 2018 (Preliminary) and the 4 (four) respondent Nos. 5 to 8, who ought not to have pass the CCE 2018 (Preliminary), and as they secured the required marks in the CCE 2018 [Main (Written Examination + Interview Test)], the percentage of qualifying the said CCE 2018 (Main) by such ineligible candidate in the CCE 2018 (Preliminary) is very nominal, i.e., only six.

96) As the advertisement of CCE 2018 for said recruitment was issued on 17.05.2018, Mr. Dutta learned Amicus Curiae submitted that the Court may consider to declare the result of the Combined Competitive Examination, 2018 [Main (Written Examination + Interview Test)] conducted by APSC with regard to these 6 (six) candidates, i.e., the two writ petitioners and the private respondent Nos. 5 to 8 and that the respondent authorities may be permitted to proceed in accordance with Rules.

97) Considered the submission of the learned Amicus Curiae and also the learned counsels for the parties.

98) It is to be noted herein that in its advertisement No. 09/2018 dated 17.05.2018 APSC notified that it will hold the Preliminary Examination of the Combined Competitive Examination,

2018 for screening candidates for the Main Examination for recruitment to the services/posts as per the actual number of vacancies, specified in the said advertisement, in accordance with the Assam Public Services Combined Competitive Examination Rules, 1989.

99) From the said advertisement dated 17.05.2018, it can be seen that Clause 5 (I) relates to Preliminary Examination. Sub-Clause 5 (I) (f) of the said advertisement stipulated that the Preliminary Examination meant to serve as a screening test only and Sub-Clause 5 (I) (g) provided that the marks obtained in the Preliminary Examination by the candidates who are declared qualified for admission to the Main Examination will not be counted for determining the final order of merit.

100) As such, reading the first paragraph of the said advertisement dated 17.05.2018 along with said Clause 5 (I) and Sub-Clauses 5 (I) (f) and (g), it is seen that the APSC is required to conduct a Preliminary Examination for screening of the candidates for the Main Examination of the Combined Competitive Examination, 2018 for recruitment to the services/posts as advertised by it. From the said Advertisement of the APSC, it is also seen that the candidates who, after the said Preliminary Examination, are declared qualified to take admission for the Main Examination, marks obtained by those candidates in their Preliminary Examination, shall not be counted with the marks obtained by them in the Main Examination, in determining the final order of merit.

101) It is already noted above that the APSC, after determining the category wise cut-off marks including that of male and female candidates in said Preliminary Examination for the purpose of screening the candidates for the Main Examination of CCE 2018 for recruitment to the services/posts as advertised, the APSC notified the cut-off marks in its website on 20.03.2019 after declaring the results of said Preliminary Examination on 13.03.2019 that was held on 30.12.2018.

102) From the Minutes of the meeting of the APSC held on 30.04.2019 annexed by APSC in its Affidavit, it can be seen that the APSC admitted their mistake with the answer keys of said Preliminary Examination on 13.03.2019 that was held on 30.12.2018 stating that though it took utmost care for ensuring accuracy in the answer keys relating to Combined Competitive (Preliminary) Examination, 2018, but some genuine and inadvertent discrepancies were detected in those. As such, those were once again re-verified in consultation with the domain experts and the answer keys of said Preliminary Examination of CCE, 2018 were accordingly, corrected and on

entering those corrected answer keys into the system 406 more candidates were found to have qualified to appear in the Main Examination of CCE, 2018, viz, those 406 additional candidates in their Preliminary Examination held on 30.12.2018, obtained the requisite cut-off marks that was set by APSC and notified in its website.

103) After the suo-moto cognizance taken by the APSC relating to the matter of anomalies/mistakes in the answer keys of Preliminary Examination of CCE, 2018 on receipt of information and complaints and on finding that there were actual and genuine in-advertencies in the answer keys of some of the subjects of said Preliminary Examination; the APSC considered that the errors must be corrected so that genuine candidates are not deprived without their fault. As such, APSC decided that there shall not be any upward revision of the cut-off marks of the Preliminary Examination that was held on 30.12.2018. APSC admitted that on feeding the correct answer keys of said Preliminary Examination into the system and on the basis of its said cut-off marks, it found 406 more candidates qualified for the Main Examination of CCE, 2018 and accordingly, it decided to declare the results of those 408 more candidates as qualified for appearing in the CCE (Main), 2018.

104) After feeding the correct answer keys of said Preliminary Examination, held on 30.12.2018, the APSC found that out of 3361 numbers of candidates declared by APSC on 13.03.2019 to have qualified to appear in the CCE (Main), 2018, marks of 98 candidates amongst those 3361 candidates came below the cut-off marks as set by APSC. As such, those 98 candidates out of 3361 candidates on the basis of the correct and revised answer keys of Preliminary Examination that was held on 30.12.2018, since did not secure/obtain the requisite cut-off/qualifying marks, therefore, they did not qualify the said preliminary examination for admission to the CCE (Main), 2018.

105) The APSC came to the finding that if these 98 candidates (within 3361 candidates) who on 13.03.2019 were declared by it to have qualified for taking admission for the CCE (Main) 2018; but on the basis of correct answer keys those 98 candidates failed to obtain the requisite cut-off marks in the Preliminary Examination of CCE, 2018 so as to take admission to the CCE (Main), 2018, are to be removed from the list declaring them as ineligible and not qualified to take admission in said Main Examination and, if these 406 fresh candidates are allowed to be entered as qualified to take admission for the said Main Examination in one go itself, then the same will

necessitate complete cancellation of APSC's earlier Notification dated 13.03.2019 (containing the list of 3361 candidates, inclusive of those 98 candidates), requiring the APSC to issue a fresh Notification containing the new results.

106) As such, finding these 98 candidates as ineligible/not qualified for taking admission in the CCE (Main) 2018 on the basis of correct answer keys of Preliminary Examination of CCE 2018 that was held on 30.12.2018 and in that backdrop, the APSC, to save itself, entailing complete cancellation of its earlier Notification dated 13.03.2019, requiring it to issue a fresh Notification containing the new results. In its said meeting held on 30.04.2019, the APSC decided to allow those 98 candidates to participate in the CCE (Main) 2018 on the basis of wrong and erroneous answer keys of said Preliminary Examination in the CCE (M), 2018. For that in the said meeting held on 30.04.2019, the APSC decided that it will not discard those 98 disqualified candidates, deciding further that it shall keep the list of 3361 candidates, including those 98 candidates declared earlier on 13.03.2019, as intact, to have qualified to appear in the CCE (Main), 2018 on the basis of said wrong and erroneous answer keys of said Preliminary Examination holding that there shall not be any prejudice towards the result declared on 13.03.2019, stating that there shall be two more stages to assess the merit and suitability of the candidates. Accordingly, the APSC decided to give chance to those 98 candidates selected on the basis of wrong and erroneous answer keys of preliminary examination, who are otherwise ineligible and not qualified in the preliminary examination on the basis of correct answer keys.

107) In the said meeting dated 30.04.2019, the APSC also decided to address a press conference for greater public awareness and transparency. Accordingly, on 02.05.2019, the APSC issued a Press Release stating that the APSC's only consideration is not to make a candidate suffer for no mistake of his/her. APSC in the said Press Release stated that it found that the discrepancies in the answer keys were genuine and inadvertent and accordingly, arrived at a decision that the errors need to be corrected so that no deserving candidate is deprived from the opportunity to appear in the examination. APSC itself stated that of its own, it took up re-verification of the answer keys with the help of available domain experts and revised the wrong answer keys and based on the reset answer keys results were processed and announced in which additional list of 406 candidates found place that was done without any prejudice to the results announced earlier (on 13.03.2019).

108) The respondent Nos. 5, 6, 7 and 8 of WP(C) No. 3341/2019 are amongst those 98 candidates, who on the basis of correct and revised answer keys of Preliminary Examination failed to obtain the requisite cut-off/qualifying marks for admission to the CCE (Main), 2018; but as on 13.03.2019 the APSC, on the basis of wrong answer keys, declared them as qualified to take admission in the Main Examination of CCE, 2018; the APSC on 30.04.2019 allowed to admit them in the CCE, 2018 (Main).

109) As such, the APSC was fully aware that the first answer keys of said Preliminary Examination held on 30.12.2018 were wrong, where there were genuine and inadvertent mistakes and that the said erroneous answer keys were required to be corrected. On re-verification and after correcting the wrong answer keys with the help of available domain experts, though the APSC had reset the correct answer keys of said Preliminary Examination held on 30.12.2018, but at the same time to save itself from requiring it to completely cancel the select list published vide Notification dated 13.03.2019 that was prepared on the basis of wrong answer keys and causing it to issue a fresh Notification containing the new results on the basis of correct answer keys; the APSC in its meeting held on 30.04.2019 decided to allow those 98 candidates to take admission in the CCE (Main), 2018 on the basis of said wrong answer keys, who actually did not qualify the Preliminary Examination of CCE, 2018 that was held on 30.12.2018.

110) It is already noted above that the respondent APSC in its Advertisement No. 09/2018 dated 17.05.2018 categorically informed all concerned that it will hold the Preliminary Examination of the Combined Competitive Examination, 2018 for screening candidates for the Main Examination for recruitment to the services/posts as per the actual number of vacancies as notified in accordance with the Assam Public Services Combined Competitive Examination Rules, 1989.

111) The Assam Public Service Combined Competitive Examination Rules, 1989, is a statutory Rule under Article 309 of the Constitution, regulating the recruitment to the services and posts under the Government specified in Schedule-I of the said Rules.

112) As per Rule 2(d) of said 1989 Rules, 'Combined Competitive Examination' means the Examination conducted by the Assam Public Service Commission recruitment to the services and posts mentioned in Schedule-I and includes both the Preliminary Examination and the Main Examination.

113) As per Rule 2(e) of said 1989 Rules - 'Preliminary Examination' means the first stage of examination conducted by the Commission for screening candidates for the Main Examination.

114) Rule 2(f) of said 1989 Rules defines 'Main Examination', which means the second stage of examination both written and viva-voce conducted by the commission for selection of candidates for appointment to the services.

115) As per Rule 3 of said 1989 Rules, the Assam Public Services Commission is required to hold Combined Competitive Examination every year for selection of candidate for recruitment to the services under the State Government in accordance with procedure laid down in the Schedule-II of said 1989 Rules.

116) Schedule-II of said 1989 Rules lays down the procedure for holding Combined Competitive Examination under the 1989 Rules, by the Assam Public Service Commission in two stages, namely, Preliminary Examination and Main Examination in accordance with the rules and procedures as prescribed in the said Schedule.

117) Clause 8 and 9 under Schedule-II of said 1989 Rules provide that –

(8) The decision of the Commission as to the eligibility or otherwise of a candidate for admission to the examination shall be final.

(9) No candidate will be admitted to the Preliminary/Main examination unless the candidate holds a certified of Admission from the Commission for that purpose.

118) Clause 11 of Schedule-II of said 1989 Rules stipulates that —

Candidates who obtain such minimum qualifying marks in the Preliminary Examination as may be fixed by the Commission at their discretion shall be admitted to the Main examination, and candidates who obtain such minimum marks in the Main (Written) Examination as may be fixed by the Commission at their discretion shall be summoned by them for an interview for personality and under tests:

Provided that the selected candidate belongs to S.C./S.T. may be summoned for interview for a Test stated above by the Commission by applying relaxed standard of less marks up to 10% if it is found by the Commission that sufficient number of candidates from these communities are not likely to be summoned for interview on the basis of

general standard in order to fill up vacancies reserved for them.

It is further provided that in spite of relaxed standard sufficient number of candidates of S.C. & S.T. Communities is not available the Commission may decide to raise the percentage of relaxation even higher to the extent considered fair by the Commission if the cut-off mark of general standard is 55% or above.

It is further provided that the candidates applying for the Assam Police Service and called to the interview may be required to undergo physical standard test as may be prescribed by the Government.

119) Section-I of Appendix-I of said 1989 Rules relates to Plan of Combined Competitive Examination. Clause-1 of said Section-I under Appendix-I provides that — The Combined Competitive Examination comprises two successive stages.

- (i) Preliminary examination for the selection of candidates for the Main Examination; and
- (ii) The Main Examination (Written and Interview) for the selection of candidates for various services and posts.

120) Clause-2 of said Section-I under Appendix-I provides that — The Preliminary Examination will consist of papers of objective type (Multiple choice) question and carry maximum of 200 marks each of 2 hours duration as set out in Section II. This Examination is meant to serve as a screening test only; the marks obtained in the Preliminary Examination by the candidates who are declared qualified for admission to the Main Examination will not be counted for determining the final order of Merit. The number of candidates to be admitted to the Main Examination will be 11 to 12 times the number of vacancies to be filled in the various services and posts. Only those candidates who are declared by the Commission to have qualified in the Preliminary Examination will be eligible for admission to the Main Examination of that particular year, provided they are, otherwise eligible for admission to the Main Examination.

121) Section-II of said 1989 Rules relates to Scheme and Subjects for the Preliminary and the Main Examination. In Section-II of said 1989 Rules, below the Clause 'NOTES', there is a Clause 'GENERAL'. Sub-Clause (ii) of said Clause 'GENERAL' stipulates that — The Commission have discretion to fix qualifying marks in any or all the subjects of the Examination.

122) Though the APSC in its statements made in their affidavits filed in these cases projected

that Preliminary Examination is meant to serve as a screening test only, but from the statutory provisions of said 1989 Rules, noted above, it is clear and explicit that Preliminary Examination is the first stage of Combined Competitive Examination for screening candidates for the Main Examination, i.e., the second stage of Combined Competitive Examination.

123) As per said 1989 Rules, the Commission has the discretion to fix the minimum cut-off/qualifying marks for any or all the subjects of the Preliminary and the Main Examination.

124) From said 1989 statutory Rules, it is evident that only those candidates who qualifies the Preliminary Examination securing/obtaining such minimum cut-off/qualifying marks as set/fixed by the APSC for the Preliminary Examination and then declared by the APSC that those candidates have qualified the said preliminary examination, then only such candidates will be eligible for admission to the Main Examination of that particular year, provided they are otherwise eligible for admission to the Main Examination. [Clause 11 of Schedule-II, Clause-1 of Section-I under Appendix-I and Clause-2 of Section-I under Appendix-I of the statutory 1989 Rules].

125) As such, the Preliminary Examination is the qualifying examination, which the candidates have to qualify with the minimum cut-off marks as set by the APSC, a process of screening of candidates, to be admitted to the Main Examination that contains two parts, written examination and interview test. Said 1989 statutory Rules clearly indicates that before admitting to the Main Examination of the Combined Competitive Examination conducted by the APSC, i.e., before permitted to take part in the said Competitive Examination; the candidate have to clear the said Preliminary Examination, i.e. the screening test; securing the cut-off/qualifying marks as set/fixed by the APSC.

126) However, as per said 1989 statutory Rules, the candidates, after qualifying the Preliminary Examination are declared by the Commission to have qualified for taking admission to the Main Examination, the marks obtained by those candidates in the qualifying Preliminary Examination will not be counted or added with the marks obtained by them in their Main (Written and Interview) Examination in determining the final order of merit.

127) On perusal, it is seen that there is no provision of 'Relaxation' in the Assam Public Services Combined Competitive Examination Rules, 1989. Said 1989 Rules has no such provision granting any such power of relaxation to the Assam Public Service Commission so as to relax any

of the statutorily provided essential qualification in it, like – without first being qualified in the Preliminary Examination obtaining/securing the qualifying/cut-off marks as fixed/set by it and allowing such candidates by the APSC for taking admission to the Main Examination or enabling such candidates to participate in the Main Examination of the Combined Competitive Examination.

128) In said statutory 1989 Rules, however there is provision for relaxation for interview test only for the selected candidates belonging to the S.C./S.T. category for relaxation standard of less marks up to 10% or raise the percentage of relaxation even higher to the extent considered fair by the Commission if the cut-off mark of general standard is 55% or above, as the case may be, if it is found by the Commission that sufficient number of candidates from these communities are not likely to be summoned for interview on the basis of general standard in order to fill up the vacancies reserved for that category. (Clause 11 of Schedule-II of 1989 Rules).

129) Though APSC in its affidavit mentioned about the Rule 8, Rule 11, Schedule II, Section 1 Clause 2, Rule 77 of the Assam Public Service Commission (Procedure & Conduct of Business) Rules, 2010; stating that on the basis of those provisions jurisdiction is vested on the APSC to exercise its discretion to certain degree in admitting the candidates to Combined Competitive (Main) Examination 2018 and to deal with any such matter as they deem fit that are not specifically provided in the said 2010 Rules. But in the advertisement No. 9/2018 dated 17.05.2018, the APSC categorically stated that the Combined Competitive Examination, 2018 shall be in accordance with the Assam Public Services Combined Competitive Examination Rules, 1989 and that in the said Advertisement dated 17.05.2018 or by any Corrigendum, after the said advertisement dated 17.05.2018 and even prior to the holding of the Preliminary Examination of said Combined Competitive Examination, 2018 on 30.12.2018, the APSC nowhere mentioned about the applicability of said 2010 Rules with regard to the said 2018 Examination. Further, on perusal of said 2010 Rules of APSC it is seen that the even in said 2010 Rules the power of relaxation have not been expressly conferred upon APSC to have the jurisdiction to relax the rules and other essential qualification or to give relaxation or concession to any ineligible candidate, who did not qualify the Preliminary Examination with requisite cut-off marks on the basis of correct answer keys, but passed the same on a wrong answer keys, permitting such candidates to take part in the Main Examination,.

130) It is well settled that — *If a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.* [Emphasis provided - *Taylor -Vs- Taylor*, reported in (1875) 1 Ch D 426; *Nazir Ahmed -Vs- Emperor*, reported in AIR 1936 PC 253 (2); *Ramchandra Keshav Adke -Vs- Govind Joti Chavare*, reported in (1975) 1 SCC 55; *Shiv Kumar Chadha -Vs- Municipal Corpn. of Delhi*, reported in (1993) 3 SCC 16]

131) The above noted settled principle of law is attracted with full force in the present case, pertaining to the applicability relating to the said statutory 1989 Rules; where, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, as the candidates not qualified in the Preliminary Examination on the basis of correct answer keys, could not have been permitted by the APSC to participate in the Main Examination that too by relaxing or by giving concession to those candidates, who are otherwise ineligible in the Preliminary Examination as they did not secure/obtain the requisite cut-off/qualifying marks on the basis of the correct answer keys in the Preliminary Examination, that too by exercising the power of concession and/or relaxation with regard to those candidates who are not qualified in the Preliminary Examination, as noted above, without having any such authority or power or jurisdiction of relaxation/concession under the said 1989 Rules.

132) In the case of *Sanjay Kumar Manjul -Vs- UPSC*, reported in (2006) 8 SCC 4, the Hon'ble Apex Court have held that — *The Public Service Commission can relax essential qualification only if it have the jurisdiction to relax the rules and that such power of relaxation must be expressly conferred.*

133) In the case in hand as per said statutory 1989 Rules qualifying the Preliminary Examination with the requisite cut-off marks, as fixed by the APSC is the *sine qua non* for admitting a candidate to the Main Examination of Combined Competitive Examination. Without having any jurisdiction and/or power of relaxation that too without being expressly conferred to it under the said 1989 Rules, the APSC allowed those 98 ineligible candidates who did not qualify in the Preliminary Examination on the basis of the correct answer keys, which is an essential condition of said 1989 Rules. Permitting those 98 ineligible candidates to take part in the said

CCE, 2018 (Main) by the APSC as because the Commission on 13.03.2019 declared 3361 candidates including those 98 candidates to have qualified for the Main Examination, inspite of admitting the fact that the first answer keys of said Preliminary Examination, result of which was declared on 13.03.2019, was wrong and erroneous, and further, the APSC itself found that those 98 candidates did not secure the requisite cut-off marks in that Preliminary Examination as fixed by the APSC for the said examination on the basis of the correct answer keys of the said Preliminary Examination. Said action of the APSC is found to be in clear violation of said 1989 Rules, a statutory Rule under Article 309 of the Constitution.

134) The Hon'ble Supreme Court in the case of *Rajesh Kumar -Vs- State of Bihar*, reported in (2013) 4 SCC 690 have held that — *If the key which was used for evaluating the answer sheets was itself defective, the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.*

135) In the said case of *Rajesh Kumar* (supra), the Hon'ble Apex Court have also held that — *Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option,*

in the facts and circumstances of the case.

136) It is settled by the Hon'ble Supreme Court that — *Re-evaluation is a good option not only to do justice to those who may have suffered on account of an erroneous key being applied to the process but also to the candidates in the matter of allocating them their rightful place in the merit list.*

137) Though the APSC in its said Press Release, stated to have maintained transparency by re-entering the correct answer keys and allowing 406 additional candidates who were found to have qualified for the CCE (Main), 2018 and also stating that APSC has demonstrated its desire to correct its mistakes in not allowing the genuine candidates to suffer; but at the same time the action and decision dated 30.04.2019 of the APSC in admitting those 98 candidates in the CCE (Main), 2018 on the basis of wrong and erroneous answer keys, who actually failed to obtain the cut-off/qualifying marks in the CCE (Preliminary), 2018 on the basis of correct answer keys, thereby ineligible and not-qualified to appear in the CCE (Main), 2018; the Court found the said action and decision of APSC as arbitrary, bias, illegal and unfair, exhibiting favour to those 98 candidates, as the APSC itself admitted and was also fully aware that the first answer keys of Preliminary Examination of Combined Competitive Examination, 2018 were wrong and erroneous.

138) From the affidavit of APSC it is noticed that with regard to the petitioner of WP(C) No. 3341/2019, Shalini Khan, the APSC after due consideration granted marks to her in said Preliminary Examination of CCE, 2018 held on 30.12.2018, in which she initially obtained 254 marks and with the correct answer keys and after suo moto verification of answer scripts relating to the said examination and also as per direction of the Court, the APSC found that from 254 marks it was enhanced to 258. The APSC after such verification concluded that even if the said candidate is awarded Grace Mark on pro rata basis or even the said candidate is awarded full marks 2 (two) against the Question No.15 in the Optional Paper of Indian History, that candidate cannot score the minimum cut-off mark of 261 in said Preliminary Examination.

139) Similarly, from the affidavit of APSC it is also noticed that with regard to the petitioner of WP(C) No. 3344/2019, Girbani Deka, the APSC after due consideration granted marks to her in said Preliminary Examination of CCE, 2018 held on 30.12.2018, in which she initially obtained 254 marks and with the correct answer keys and after suo moto verification of answer scripts relating to the said examination and also as per direction of the Court, the APSC found that from 254

marks it was reduced to 250. The APSC after such verification concluded that even if the said candidate is awarded full marks 2 (two) each against the Question No.55 in the General Studies Paper and Question No. 15 in the Optional Paper Indian History, i.e. 4 (2+2) (four), but the candidate cannot score the minimum cut-off mark of 261 in said Preliminary Examination.

140) Mr. Choudhury, learned Senior Counsel though on behalf of those two petitioners placed certain books relating to the answers given by those petitioners with regard to the questions involved in the matters, but at the same time the APSC has also placed before the Court the name of the relevant books on the basis of which its domain expert has prepared the correct answers relating to those questions.

141) In catena of decisions, the Hon'ble Supreme Court have held that – *"In the absence of any provision for re-evaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks."* In the Assam Public Services Combined Competitive Examination Rules, 1989, applicable in the present case, there is no provision for re-examination or re-evaluation of answer scripts. Moreover, said 1989 Rules as noted above is a statutory Rules. In the absence of any such specific provision in the relevant 1989 statutory Rules conferring a right upon an examinee to have his or her answer-books re-evaluated, there cannot be any direction from the Court to the APSC for re-evaluation of answer scripts of Preliminary Examination of CCE 2018 of the petitioners held on 30.12.2018.

142) The Hon'ble Apex Court have also settled the law that – *If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate, it has no expertise in the matter and academic matters are best left to academics. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.* In the present writ petitions, the petitioners could not place anything before the Court regarding any glaring mistake on the part of the APSC in evaluating their answer scripts of Preliminary Examination of CCE, 2018 held on 30.12.2018.

143) The Court is aware of a the Judgment of the Hon'ble Supreme Court wherein it was

clarified by the Public Service Commission that the selection was not based on preliminary examination. It was relevant only for the purpose of qualifying and getting entry to the second examination i.e. Main Examination; in other words, it was in the nature of "screening test", where "selection" or "merit" was not to be based on the result of preliminary examination. But this Court is of the view that said decision of the Hon'ble Apex Court is not applicable in the present cases.

144) With regard to the cases in hand, the Combined Competitive Examination, 2018 was held under the provisions of the Assam Public Services Combined Competitive Examination Rules, 1989, a statutory Rules under Article 309 of the Constitution of India, where it is an essential condition for a candidate to pass Preliminary Examination securing the cut-off marks as fixed by the APSC for his or her admission to the Main Examination, though the preliminary examination under the said 1989 Rules is the screening test or qualifying test to get an entry to the second, i.e., the Main examination. Furthermore, in the said case the Hon'ble Apex Court found that there was no arbitrariness on the part of the Commission concerned showing any "bias" or exhibiting "favour" towards any individual candidate. But that is not the condition in the present cases. The APSC in violation of the statutory provisions of said 1989 Rules, that too without having any jurisdiction under the said Rules, allowed 98 such candidates to participate in the Main Examination of CCE 2018, including the four Respondents No. 5 to 8 in WP(C) No. 3341/2019, who did not qualify the Preliminary Examination on the basis of the correct answer keys, but found qualified on the basis of wrong answer keys, admitted by APSC itself, showing its favour to those 98 ineligible candidates.

145) The terms and conditions of recruitment to public services and post under the State Government involved in these cases are governed by the Assam Public Service Combined Competitive Examination Rules, 1989, a statutory Rule under Article 309 of the Constitution. Any provisions of said statutory Rules of recruitment can be altered only by reason of amendment of the said 1989 Rules only. The State, as is well known, has no say in that behalf. The APSC on its own cannot relax or give concession to any of the ineligible candidate by relaxing the statutory essential condition of recruitment, i.e., without being qualified in the Preliminary Examination by securing the requisite cut-off marks on the basis of correct answer keys, permitting such ineligible candidates to participate in the Main Examination of Combined Competitive Examination, 2018 violating the provisions of said 1989 Rules, being a statutory Rule under Article 309 of the Constitution, that too without being expressly conferring any power of relaxation upon the APSC

under the said 1989 Rules.

146) Furthermore, when the terms and conditions of the services of an employee are governed by the rules made under a statute or under the proviso appended to Article 309 of the Constitution of India laying down the mode and manner in which the recruitment would be given effect to, even no order under Article 162 of the Constitution of India can be made by way of alterations or amendments of the said rules. A fortiori if the recruitment rules could not be amended even by issuing a notification under Article 162 of the Constitution of India, the same cannot be done by way of a circular, letter or minute or a press release etc. If any recruitment is made in contravention of the statutory rules of recruitment, even regularisation is not permissible in exercise of the statutory power conferred under Article 162 of the Constitution. It is settled that any recruitment/appointment made in violation of the constitutional scheme would be a nullity. The recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules is permitted, it will open a back-door for illegal recruitment without limit. [Emphasis provided: *Punjab State Warehousing Corporation -Vs- Manmohan Singh*, reported in (2007) 9 SCC 337; *Umarani -Vs- Registrar, Coop. Societies*, reported in (2004) 7 SCC 112, *State of Karnataka -Vs- Umadevi (3)*, reported in (2006) 4 SCC 1 and *M.A. Haque (Dr) -Vs- Union of India*, reported in (1993) 2 SCC 213]

147) Merits of the two petitioners and the private respondents Nos. 5 to 8 of WP(C) No. 3341/2019, involved in the present cases, are not disputed. At the same time sympathy or compassion does not play any role in the matter of consideration of their cases for any direction on their favour. Both, the writ petitioners as well as the four private respondents No. 5, 6, 7 and 8 of WP(C) No. 3341/2019 did not qualify the Preliminary Examination of Combined Competitive Examination, 2018 held on 30.12.2018 securing the cut-off marks fixed by the APSC that was conducted under the provisions of the Assam Public Services Combined Competitive Examination Rules, 1989, a statutory Rules under Article 309 of the Constitution of India. As per said 1989 statutory Rules, one of the essential conditions is that to be qualified for admission to the Main Examination of Combined Competitive Examination, one has to qualify the Preliminary Examination securing the cut-off marks as fixed by the APSC at first.

148) While considering the cases of the present petitioners and allowing them to participate in the Main Examination of CCE, 2018; the Court categorically observed that their results shall not

be declared and would be subjected to the outcome of the writ petitions.

149) Further, on 09.10.2020 while allowing the APSC to declare the result of the Written Examination of CCE, 2018 (Main) and allowing it to proceed with the Interview Test after declaring the result of said written examination, also directed the APSC not to declare the final results of CCE, 2018 without the leave of the Court, the Court specifically observed that the same shall not create any right to the petitioners as well as to those whom the APSC had declared to be qualified for their selection in the Combined Competitive (Main) Examination, 2018 in violation of the Rules of Law. Further, by order dated 22.12.2020, the Court directed the APSC not to declare the results of the Combined Competitive [Main (Written + Interview)] Examination, 2018 with regard to the present petitioners and the respondent Nos. 5 to 8 of WP(C) No. 3341/2019. Neither the results of Combined Competitive [Main (Written + Interview)] Examination, 2018 of those candidates have been declared nor they have been appointed to the services/posts that were advertised by APSC on 17.05.2018 and as per addendum dated 26.06.2018 and that those posts have not been filled up as per the direction of the Court dated 22.12.2020.

150) The petitioners of WP(C) No. 3341/2019 and WP(C) No. 3344/2019 as well as the respondent Nos. 5, 6, 7 & 8 of WP(C) No. 3341/2019 cannot be equated with those 255 candidates whose CCE 2018 (Main) results were already declared and appointed to various services and post as advertised by APSC on 17.05.2018, as those 255 candidates qualified both the Preliminary Examination of CCE 2018 as well as the CCE 2018 [Main (Written + Interview)], but the present two petitioners and the respondent Nos. 5, 6, 7 and 8 of WP(C) No. 3341/2019 did not qualify the Preliminary Examination of CCE 2018, as required under the Assam Public Services Combined Competitive Examination Rules, 1989, being an essential condition for admission in the Main Examination of CCE 2018.

151) The Hon'ble Supreme Court in the case of *U. P. Power Corporation Limited -Vs- Ayodha Prasad Mishra*, reported in (2008) 10 SCC 137 have held that – *Just as equals cannot be treated unequally, un-equals also cannot be treated equally.*

152) As the petitioners and the private respondent Nos. 5, 6, 7 and 8 did not qualify in their Preliminary Examination of the Combined Competitive Examination, 2018, that was held on 30.12.2018, as noted above, the Court cannot direct to consider their cases for appointment to the civil services and civil post under the State Government even though they might have been

selected by the APSC in the Combined Competitive (Main) Examination 2018 in violation of the Assam Public Services Combined Competitive Examination Rules, 1989, a statutory Rules under Article 309 of the Constitution of India.

153) For the reasons above, both the writ petitions are dismissed. As the petitioners of WP(C) No. 3341/2019 and WP(C) No. 3344/2019 as well as the private respondent Nos. 5, 6, 7 and 8 of WP(C) No. 3341/2019 did not qualify the Preliminary Examination of the Combined Competitive Examination, 2018 that was held on 30.12.2018, on the basis of correct answer keys published by the APSC and as per the provisions of the Assam Public Services Combined Competitive Examination Rules, 1989; a statutory 5Rules under Article 309 of the Constitution; therefore, they cannot be considered for the services and posts under the State Government as advertised by the APSC in its advertisement No. 9/2018 dated 17.05.2018 and the Addendum dated 26.06.2018.

154) No orders as to the costs.

JUDGE

Comparing Assistant