GAHC010142942023

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

Case No. : WP(C)/3803/2023

IKBAL HUSSAIN BARBHUIYA
S/O- NIZAM UDDIN BARBHUIYA, R/O- DAKSHIN MOHANPUR PART- VII, P.O. DAKSHIN MOHANPUR, P.S. SONAI, DIST.- CACHAR, ASSAM, PIN- 788119

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, PERSONNEL (A) DEPARTMENT, DISPUR, GUWAHATI, PIN- 781006.

2:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN
JAWAHAR NAGAR
KHANAPARA
GUWAHATI
PIN- 781022.

3:THE SECRETARY

ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GUWAHATI
PIN- 781022.

4:THE PRINCIPAL CONTROLLER OF EXAMINATIONS
ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GUWAHATI

PIN- 781022

Advocate for the Petitioner : MR. K P PATHAK

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 27/06/2023

Heard Mr. H.K. Das, learned counsel for the writ petitioners in WP(C) 3643/2023 and Mr. K.P. Pathak, learned counsel for the petitioners in WP(C) 3797/2023 and WP(C) 3803/2023. I have also heard Mr. T. J. Mahanta, learned senior counsel assisted by Ms. P. Sarma, learned counsel appearing for the APSC and Mr. J.K. Goswami, learned Additional Senior Government Advocate, Assam, appearing for the State respondents.

The petitioners in this batch of writ petitions had participated in the Combined Competitive (Prelims) Examination, 2022, conducted by the Assam Public Service Commission (APSC) in terms of the advertisement No. 26/2022 dated 22/12/2022. The Preliminary Examination consisted of 2 (two) papers viz. General Studies Paper-I of 200 marks with 100 questions and General Studies Paper-II for 200 marks of 80 questions. The qualifying marks of GS Paper-I was fixed at 33% but there was no qualifying marks for GS Paper-II, though there was a cut off mark.

The common case of the petitioners in all these three writ petitions is that not only where the answers proposed by the APSC through the modified answer key found to be wrong, but the questions itself were incorrect, as a result of which, it was not possible for any of the candidates to give a proper answer. The questions referred to by the petitioners are as follows :-

General Studies Paper-II :-

(i) Question No. 11 of Series A,

(ii) Question No. 12 of Series A,

(iii) Question No. 4 of Series A.

In so far as General Studies paper –I is concerned, the following questions have been found to be erroneous by the writ petitioners :-

(i) Question No. 80 of Series A

(ii) Question NO. 39/A

(iii) Question No. 68/A.

It is the case of the petitioners that all those questions were wrong and, therefore, the benefit of the marks awarded in case of correct answers for each of those wrong questions ought to be given to the petitioners, in which event, they would have cleared the cut off marks and, hence, would have qualified for the mains examination.

Mr. T.J. Mahanta, learned senior counsel for the APSC, on the other hand, has strongly opposed the said prayer by submitting that there are expert opinion to suggest that the questions are not wrong. However, even if benefit of wrong question is to be given to the petitioners, similar benefits will have to be given to all the 10,148 candidates, who have qualified in the Preliminary examination and, therefore, the petitioners would not cross the cut off marks so as to qualify for the mains examination.

It appears from the submission of the learned counsel that there are in total 75,000 candidates, who had taken part in the CC(Prelims) Examination, out of which, 10,148 candidates have qualified for the Mains examination. The Mains examination are scheduled to commence from 08/07/2023.

Since the case of the petitioners is that the aforementioned questions were wrong, hence, the question of figuring out the correct answer cannot arise in these matters since there can be no correct answer to a wrong question.

Be that as it may, if the questions itself were wrong than full marks in respect of each of those questions i.e. 2 marks each, will have to be awarded to each of the candidates, who had participated in the Prelims examination, in which event, the cut off marks may rise by a few marks but the same would not materially alter the merit position of the petitioners since the aforesaid criteria will have to be uniformly applied across the board, with regard to all such candidates who had participated in the CC(Prelims) Examination.

As such, even if the basic arguments of the petitioners that the aforesaid questions were wrongly framed by the APSC is accepted, even then, the petitioners alone, to the exclusion of all other candidates, cannot be extended the benefit of 2 marks for each of the wrong questions, so as to qualify in the Prelims Examination.

For the reasons stated herein above, I am of the considered opinion that the relief prayed for

in these writ petitions cannot be granted.

In view of the above, these writ petitions are held to be devoid of any merit and the same are accordingly dismissed.

Parties to bear their own cost.

Since WP(C) 2384/2023 has already been disposed of by an order of this Court, the answer key and the original OMR Sheets produced by Mr. Mahanta, in terms of the order passed in the said proceeding, which have remained in the custody of this Court, be taken back. Court Master to do the needful.

JUDGE

sukhamay

Comparing Assistant