

GAHC010113252019



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

Case No. : WP(C)/4719/2020

LEENA DOLEY AND 6 ORS.
D/O- SURJYA KANTA DOLEY
R/O- L.K. PATH
BISHNUJYOTI NAGAR
JORHAT
DIST.- JORHAT
ASSAM
PIN- 785001
ROLL NO. 1502960

2: NEELANJANA DAS
D/O- LT. SATYENDRA NATH DAS
R/O- KAHILIPARA
GHY-19
DIST.- KAMRUP (M)
ASSAM
ROLL NO. 1006312

3: SANDHYA BANTI DUTTA BORAH
D/O- DR. D. DUTTA
R/O- WARD NO. 1
AMGURI TOWN
STATION ROAD
DIST.- SIBSAGAR
ASSAM
PIN- 785680
ROLL NO-1019960

4: MANAS PRATIM MIRI
S/O- HEM CHANDRA MIRI

R/O- KALAPAHAR
GHY- 18
DIST.- KAMRUP (M)
ASSAM
ROLL NO. 1018481

5: JYOTISH NATH
S/O- TANKESWAR NATH
R/O- BAMUNJHAR
DARRANG
DIST.- DARRANG
ASSAM
PIN- 784148
ROLL NO. 1001712

6: ASRAFUL HUSSAIN
S/O- ANOWAR HUSSAIN
R/O- ZOO NARENGI ROAD
SAHAB TILA
GHY-21
DIST.- KAMRUP (M)
ASSAM
ROLL NO. 1011702

7: ABHIJIT RONGPI
S/O- BHARATI RONGPI
R/O- LALMATI
BARSAJAI
GHY-29
DIST.- KAMRUP (M)
ASSAM
ROLL NO. 1013758

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GHY-06

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

ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GHY-22
4:THE PRINCIPAL CONTROLLER OF EXAMINATIONS
ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GHY-22
5:THE CONTROLLER OF EXAMINATIONS
ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA
GHY-22

Advocate for : MR. B D KONWAR SR. ADV.
Advocate for : SR. GA
ASSAM appearing for THE STATE OF ASSAM AND 4 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. Bhaskar Dev Konwar, learned Senior Advocate, assisted by Mr. Rajeeb Kalita, learned counsel for the petitioners. Also heard 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) It is stated that pursuant to the Advertisement No. 09/2018 dated 17.05.2018 and the Addendum dated 26.06.2018, issued by the Assam Public Service Commission (APSC, in short) for the Combined Competitive Examination, 2018 (CCE, 2018, in short) for various services and posts under the State Government, the petitioners submitted their respective applications for the

Preliminary Examination and they appeared in the Preliminary Examination in the said Combined Competitive Examination, 2018 held on 30.12.2018 in different centers, specified and conducted by the APSC.

3) Said Preliminary Examination consisted of two papers of objective multiple choice questions of two hours each, where the multiple choice questions were to be answered in the OMR sheets, provided by the APSC.

4) On 13.03.2019, the APSC announced a List containing 3361 Roll Numbers who were declared to have qualified to appear in the Combined Competitive (Main) Examination, 2018 [in short, CCE, 2018 (M)]. In that list, the names of the petitioner Nos. 1, 2, 3, 5, 6 and 7 figured amongst those 3361 candidates. In addition to those 3361 candidates, the APSC on 30.04.2019 declared another List containing $(406+2)=408$ Roll Numbers as qualified to appear in the CCE, 2018 (Main) in which the name of the petitioner No. 4 figured.

5) The petitioners accordingly submitted their applications for Combined Competitive (Main) Examination, 2018 that consisted of written examination, followed by interview test/viva-voce as per the ratio of posts advertised *vis-à-vis*, the numbers of candidates, for those candidates who qualifies in the written examination. After filling up of the forms for the CCE, 2018 (Main), the petitioners appeared in the written examination at Guwahati that was conducted by APSC during the period from 02.08.2019 to 29.08.2019. The APSC on 12.10.2020 notified a List of 544 Roll Numbers declaring them to have qualified for the interview/viva-voce for the said Combined Competitive (Main) Examination, 2018 where interview was conducted by APSC from 28.10.2020. In that list of 544 Roll Numbers notified by APSC on 12.10.2020, the names of the petitioners did not figure.

6) Being aggrieved, the petitioners preferred an Interlocutory Application being I.A. (Civil) 1806/2020 before the Division Bench of this Court seeking leave to appeal against an order dated 09.10.2020 passed in WP(C) No. 3228/2019 by which the Court allowed the APSC to declare the result of the written examination with regard to Combined Competitive (Main) Examination, 2018 pertaining to the post of Civil Services conducted in pursuance of the APSC's advertisement dated 17.05.2018 and Addendum dated 26.06.2018, further allowing the APSC to conduct the interview test for the said 2018 examination as provided in Clause 5 (II) (B), (a), (b), (c) and (d) in the said advertisement dated 17.05.2018, directing the APSC not to declare the final result of the Combined Competitive (Main) Examination, 2018 without the leave of the Court.

7) After hearing the parties and considering the fact that the said WP(C) No. 3228/2019, in which interim order was passed on 09.10.2020, was yet to be finally disposed of, the Hon'ble Division Bench by order dated 20.10.2020 disposed of said I.A. (Civil) No. 1806/2020 granting liberty to the petitioners to file separate writ petitions before the concerned Single Judge seeking all the reliefs as prayed for in the writ appeal that was proposed to be filed for which the said I.A. (Civil) No. 1806/2020 was filed seeking leave to appeal.

8) The petitioners, accordingly, preferred this writ petition on 05.11.2020, praying amongst others (i) to direct the APSC to place the answer scripts of the petitioners before the Court in respect of Combined Competitive (Main) Examination, 2018 for scrutiny and re-evaluation, (ii) to direct the APSC to rectify the list of candidates selected for appearance in the Viva-Voce as published on 12.10.2020 by eliminating 80 candidates or any other such candidates who have been included in the said list published on 12.10.2020 and to include their names in the said rectified list and to proceed with the selection process accordingly, (iii) to set aside and quash the results of the preliminary examination declared by the APSC on 13.03.2019 and 30.04.2019 directing the APSC to re-evaluate the answer scripts of all the candidates who appeared in the Preliminary of the Combined Competitive Examination, 2018 held on 30.12.2018 by issuing a final rectified answer key and to publish a fresh list of successful candidates and to proceed accordingly, by holding the Written Examination of Combined Competitive (Main) Examination, 2018 afresh and (iv) to set aside and quash the list of successful candidates of the Written Examination of Combined Competitive (Main) Examination, 2018 published by the APSC vide Notification dated 12.10.2020 directing the APSC to retake the Written Examination of Combined Competitive (Main) Examination, 2018, after rectifying all anomalies.

9) It is noted hereinabove that pertaining to the Advertisement dated 17.05.2018 and the Addendum dated 26.06.2018, issued by the APSC the Preliminary Examination for the said CCE, 2018 was held on 30.12.2018 and the result of the same, containing a List of 3361 Roll Numbers, was announced by APSC on 13.03.2019. After publication of the answer keys of the said preliminary examination and the individual OMR answer scripts of the candidates, on complaints of some of the aggrieved candidates that the answer keys were wrong and on its own finding with the domain expert, the APSC found that the Answer Keys, on the basis of which the result was declared on 13.03.2019, was wrong, as such, after correcting it, the APSC on 30.04.2019 declared another list containing $(406+2)=408$ Roll Numbers as qualified to be admitted to the

Combined Competitive (Main) Examination, 2018 in addition to those 3361 numbers of candidates, whose numbers were declared on 13.03.2019.

10) As some of the candidates of Preliminary Examination of CCE 2018 did not find their Roll Nos., neither in the list declared on 13.03.2019 nor in the list declared on 30.04.2018, noted above, they preferred writ petitions WP(C) No. 3328/2019 and other connected cases including WP(C) No. 3341/2019 and WP(C) No. 3344/2019, all together 12 (twelve) writ petitions.

11) Pursuant to the order of the Court those 12 (twelve) writ petitioners, who did not qualify the said Preliminary Examination of CCE 2018, but directed the APSC to allow them to participate in the CCE, 2018 (Main), with the observation, result of the said examination shall not be declared without the leave of the Court and that the result of those 12 petitioners shall be subject to the outcome those writ petitions. During the deliberation of those twelve writ petitions, on being enquired by the Court, the APSC on Affidavit stated that out of those 3361 numbers of candidates, who were declared as qualified to be admitted to the CCE, 2018 (Main) by the APSC on 13.03.2019, the APSC found 98 such candidates did not qualify the said Preliminary Examination on the basis of the correct answer keys, out of which 68 such candidates appeared in the Combined Competitive (Main) Examination, 2018.

12) Since there was an order of the Court not to declare/publish the result of the written examination of the CCE, 2018 (Main), without the leave of the Court, the APSC filed an interlocutory application IA(C) No. 1364/2019 in WP(C) No. 3228/2019, seeking leave of the Court to declare the result of the written examination of the CCE, 2018 (Main). The Court by order dated 09.10.2020 allowed the said I.A.(C) No. 1364/2019 in WP(C) No. 3228/2019 of the APSC to declare the results of the written examination of CCE 2018 (Main) conducted by it and also to conduct the Interview Test for the CCE 2018 (Main) as provided in Clause 5 (II) (B), (a), (b), (c) and (d) of Advertisement No. 09/2018 dated 17.05.2018, after declaring the results of said written examination and also directed the APSC not to declare the final result of the Combined Competitive [(Main) (written + interview)] Examination, 2018, without the leave of the Court.

13) At that stage the petitioners preferred the I.A. (Civil) No. 1806/2020 before the Division Bench of this Court seeking leave to appeal against the said order dated 09.10.2020 passed in WP(C) No. 3228/2019, noted above.

14) Main contention of the petitioners herein are that out of 3361 numbers of candidates declared by the APSC on 13.03.2019 to have qualified to participate in the CCE, 2018 (Main), but after the correct answer keys of Combined Competitive (Preliminary) Examination, 2018, the APSC though found 98 candidates out of those 3361 candidates failed to obtain the requisite cut-off mark fixed by it so as to qualify to appear in the Combined Competitive (Main) Examination, 2018, allowed those 98 candidates to participate in the written examination of CCE, 2018 (Main), out of which 68 such ineligible candidates appeared in the Combined Competitive (Main) Examination, 2018. Petitioners also stated that similarly, the 12 (twelve) writ petitioners who did not qualify the Combined Competitive (Preliminary) Examination, 2018 securing the requisite cut off mark on the basis of the correct answer they were allowed by the Court, by an interim order, to appear in the CCE, 2018 (Main) that is subject to the outcome of their writ petitions. As such, those 68 candidates and 12 writ petitioners, together 80 candidates who did not qualify the Combined Competitive (Preliminary) Examination, 2018 securing the requisite cut-off marks, fixed by the APSC, appeared in the written examination of CCE, 2018 (Main).

15) Petitioners also stated that as per the submission of the learned Amicus Curiae some from those 80 (68+12) ineligible candidates, have been included in the list published under the Notification dated 12.10.2020 of the APSC declared to have qualified in the written examination for appearing in the interview test/viva-voce of CCE, 2018. The petitioners stated that they are in a better footing than those 80 candidates, as those 68 candidates due to concession given by the APSC appeared in the written examination of CCE, 2018 (Main) and the 12 writ petitioners appeared in the said written examination on the strength of the interim order of the Court.

16) It is contended that if those 80 candidates (68+12) had not been allowed to appear in the written examination of CCE, 2018 (Main) and had been eliminated, then the petitioners who had appeared in the written examination of CCE, 2018 (Main) on their own merit, would have stood the chance of having their Roll Numbers amongst those 544 selected candidates for appearing in the Viva-Voce vide Notification/List dated 12.10.2020.

17) Petitioners submitted that inclusion of any of them from amongst those 80 (68+12) ineligible candidates from the said list, notified by the APSC on 12.10.2020 for the interview/viva-voce is illegal and had those 80 ineligible candidates not been so included in the said list notified on 12.10.2020, then the petitioners would have found their place in that list and would have gone ahead for the interview test/viva-voce of CCE, 2018 (Main).

18) The petitioners also submitted that the entire evaluation process of the written examination of Combined Competitive (Main) Examination, 2018 was ambiguous and fraud as there was no criteria for any answer evaluation that resulted in allotment of random marks irrespective of optional subjects as a consequence to that the petitioners have suffered and have been deprived of their rightful opportunity to compete in the interview test/viva-voce of said CCE, 2018 (Main).

19) The petitioners further contended that the CCE, 2018 (Preliminary) is vitiated due to application of wrong answer keys as well as illegal award of grace marks to unsuccessful candidates by the APSC in said preliminary examination, has accumulative negative impact on the succeeding stages of the selection in the written examination of CCE, 2018 (Main) and the results thereof. As such, the petitioners stated that the results of the Preliminary Examination of CCE, 2018 is required to be checked afresh by the APSC after issuing a final, totally error free, answer keys, by publishing a fresh list of successful candidates in the CCE, 2018 (Preliminary) and to conduct the written examination of CCE (Main) afresh, accordingly.

20) Issues relating to the ineligible candidates of CCE, 2018 (Preliminary) conducted by APSC, and their appearance in the written examination as well as interview/viva-voce of CCE, 2018 (Main) and also their names being in the list of candidates as qualified in the CCE, 2018 (Main), including those 12 (twelve) writ petitioners and 68 candidates, mentioned by the petitioners, are connected with WP(C) No. 3341/2019 and WP(C) No. 3344/2019, wherein judgment have been delivered today, dismissing both the writ petitions holding that neither those two writ petitioners nor the private respondent Nos. 5, 6, 7 & 8 of WP(C) No. 3341/2019 are entitled for their selection in the CCE, 2018 (Main) as none of them secured the requisite cut-off marks as fixed by the APSC in the Preliminary Examination of the CCE, 2018 that was held on 30.12.2018, on the basis of the correct answer keys, which is an essential condition as per the Assam Public Services Combined Competitive Examination Rules, 1989, the relevant statutory Rule on the basis of which the Combined Competitive Examination, 2018 was held.

21) The petitioners herein neither before submitting their application forms for the written examination of Combined Competitive (Main) Examination 2018 nor before appearing in the said written examination lodged any complaint before the APSC or file any representation before it with their grievances of having no criteria for evaluation of any answer in said written examination of CCE, 2018 (Main), whereas the petitioners without any protest participated in the

written examination of the Combined Competitive (Main) Examination, 2018.

22) It is seen that only after declaration of the results of the written examination of Combined Competitive (Main) Examination, 2018 by the APSC in its Notification dated 12.10.2020, not finding their Roll Numbers therein, the petitioners for the first time approached the Court by filing the said I.A. (C) No. 1806/2020 seeking leave to appeal against the order dated 09.10.2020 passed in WP(C) No. 3228/2019. It is also seen that the petitioners did not raise any queries and/or objections before the APSC with regard to the results of the preliminary examination of CCE, 2018 that were declared on 13.03.2019 and on 30.04.2019 and raised the dispute for the first time in this petition.

23) The petitioners, all throughout, participated in the Preliminary Examination of the Combined Competitive Examination, 2018 and on being declared qualified to participate in the Combined Competitive (Main) Examination, 2018; accordingly, participated in the Written Examination of said Main Examination, without any protest and/or objection before the APSC, taking the benefit of said 1989 Rules to that extent. But as their Roll Numbers did not figure in the list published by the APSC on 12.10.2020 notifying those candidates for the interview test/viva-voce for the said Main Examination; the petitioners have approached the Court challenging the selection made by APSC in the preliminary examination of the Combined Competitive Examination, 2018 as well as the written examination of said Combined Competitive (Main) Examination, 2018. Therefore, the petitioners now cannot be allowed to challenge the preliminary examination of the Combined Competitive Examination, 2018 as well as the Written Examination of said Combined Competitive (Main) Examination, 2018 praying before the Court for a direction to the APSC to redo the entire process of selection of Combined Competitive (Preliminary) Examination and Written Examination of said Combined Competitive (Main) Examination, 2018, afresh. Law is well settled that a person cannot be allowed simultaneously or at the same time, to approbate and reprobate, i.e. cannot eat the cake and have it too. [Emphasis provided – *Rani Inder Kumari -Vs- State of Rajasthan*, reported by (1976) 1 SCC 377, decided by a Bench of three Hon'ble Judges].

24) In the case of *Om Prakash Sukla Vs. Akhilesh Kumar Sukla*, reported in 1986 (Supp) SCC 285, the Hon'ble Supreme Court, comprising a Bench of three Hon'ble Judges, have held that — “when the petitioner appeared at the examination without protest and when he found that he would not succeed he filed a petition challenging the said examination, the High Court should not

have granted any relief to such a petitioner”.

25) As per the Advertisement No. 09/2018 dated 17.05.2018 issued by the APSC, the selection to the posts advertised therein was as per the Assam Public Services Combined Competitive Examination Rules, 1989, which is a statutory Rule under Article 309 of the Constitution. In the said 1989 statutory Rules, there is no provision for re-examination or re-evaluation of answer scripts of the examinations to be conducted under it. In the absence of any such specific provisions in the relevant statutory Rules of 1989 conferring a right upon the 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 the Combined Competitive Examination, 2018 and/or Written Examination of Combined Competitive (Main) Examination, 2018 of the petitioners as well that of the other candidates. It is settled by the Hon'ble Supreme Court 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/her marks.”*

26) The Hon'ble Apex Court have also settled 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 case in hand, the petitioners could not place anything before the Court regarding any such glaring mistake on the part of the APSC in evaluating their answer scripts of Written Examination of the Combined Competitive (Main) Examination, 2018.

27) The petitioners, only on presumption, stated that their Roll Numbers would have figured in the Notification dated 12.10.2020, a List containing 544 Roll Numbers, issued by the APSC notifying those candidates for the interview test/viva-voce for the said Combined Competitive (Main) Examination, 2018, had those 80 (68+12) candidates, not qualified in the Preliminary Examination of the Combined Competitive Examination, 2018 on the basis of correct answer keys,

not been allowed to participate in the written examination of the Combined Competitive (Main) Examination, 2018. Petitioners stated that in that case their Roll Numbers would have figured in the said Notification dated 12.10.2020 and they would have appeared in the interview test/viva-voce for the said Main Examination of the Combined Competitive Examination, 2018, stating that they have performed well in the written examination of said CCE, 2018 (Main).

28) But it is not case of the petitioners, that they have scored sufficient marks in their written examination of said Combined Competitive (Main) Examination, 2018, as per their category and/or caste wise and if amongst those 80 (68 +12) candidates, whose Roll Numbers figured in the said Notification dated 12.10.2020 issued by APSC, are eliminated then their names would have been in that list of 12.10.2020. Petitioners have failed to place their marks secured by each of them in their written examination of said Combined Competitive (Main) Examination, 2018 so as to establish their case in that regard, which they could have obtained from APSC, even through the process of RTI. But on the other hand, the petitioners have alleged that the entire evaluation process of the written examination of Combined Competitive (Main) Examination, 2018 of the APSC was ambiguous and fraud as there was no criteria for any answer evaluation that resulted in allotment of random marks irrespective of optional subjects and as a consequence of that they have suffered and have been deprived of their rightful opportunity to compete in the interview test/viva-voce of said Combined Competitive (Main) Examination, 2018, which they failed to prove and establish in their writ petition, and further participated in the process of selection of the Combined Competitive Examination, 2018, conducted by the APSC under the Assam Public Services Combined Competitive Examination Rules, 1989, a statutory Rule under Article 309 of the Constitution; without submitting their protest and/or objection, if any before the APSC at any point of time, in that regard.

29) It is already stated above that some of the issues raised by the petitioners in this petition have already been considered and decided by passing judgment today in WP(C) No. 3341/2019 and WP(C) No. 3344/2019 involving the cases of those 68 candidates and 12 writ petitioners, mentioned by the petitioners, holding that neither the petitioners of those two writ petitions nor the private respondent Nos. 5, 6, 7 & 8 of WP(C) No. 3341/2019 are entitled for their selection in the Combined Competitive (Main) Examination as none of them secured the requisite cut-off marks as fixed by the APSC in the Preliminary Examination of the Combined Competitive Examination, 2018 that was held on 30.12.2018, on the basis of the correct answer keys, which is

an essential condition as per the Assam Public Services Combined Competitive Examination Rules, 1989, the relevant statutory Rule on the basis of which said Combined Competitive Examination, 2018 was held.

30) For the reasons stated above, this writ petition, being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant