

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.607 of 2024

1. **Sajal Kanti Biswas**, son of Rabindra Kumar Biswas, resident of Badharghat Sreepally, Agartala, PO-Madhuban, PS-Amtali, District-West Tripura, Pin-799003, Age-39 years.
2. **Dipanjan Laskar**, son of Late Debasish Laskar, resident of Town Bardowali, Agartala, PO-Bardowali, PS-A.D. Nagar, District-West Tripura, Pin-799001, Age-28 years.
3. **Subhajit Debnath**, son of Sanjit Debnath, resident of North Kacharghat, Kailashahar, PO & PS-Kailashahar, District-Unakoti Tripura, Pin-799277, Age-31 years.
4. **Subrata Debnath**, son of Sushil Chandra Debnath, resident of village, PO & PS-Panisagar, District-North Tripura, Pin-799260, Age-30 years.
5. **Kaushik Das**, son of Sibu Chandra Das, resident of Joynagar, PO-Agartala, PS-West Agartala, District-West Tripura, Pin-799001, Age-26 years.

....Petitioner(s)

Versus

1. **Tripura Public Service Commission(TPSC)**, represented by its Secretary, Akhaura Road, PO-Agartala, PS-West Agartala, District-West Tripura, Pin-799001.
2. **The Secretary**, Tripura Public Service Commission (TPSC), Akhaura Road, PO-Agartala, PS-West Agartala, District-West Tripura, Pin-799001.
3. **The Chairman**, Tripura Public Service Commission (TPSC), Akhaura Road, PO-Agartala, PS-West Agartala, District-West Tripura, Pin-799001.

....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Chakraborty, Advocate Mr. S. Bhattacharjee, Advocate Mr. K. Nath, Advocate Ms. A. Debbarma, Advocate Mr. D. Paul, Advocate
For the Respondent(s)	:	Mr. Raju Datta, Advocate
Date of hearing & delivery of judgment & order	:	25.11.2024
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

By way of filing the instant writ petition, the petitioners have prayed for directing the respondents-Tripura Public Service Commission(for short, TPSC) to allow them to inspect their respective answer-scripts of the Main

Examination [i.e., Paper-I (English) & Paper-II (General Studies & Arithmetic)] conducted in connection with the Advertisement No.06/2021 dated 07.12.2021 and subsequent Addendum dated 02.05.2022 (Annexures-1 and 2 respectively to the writ petition).

At the request of learned senior counsel appearing for the petitioners and on being consented by learned counsel appearing for the respondents-TPSC, the matter has been taken up for hearing at the admission stage itself.

2. Facts:

The short fact of the case is that in pursuance of an advertisement dated 07.12.2021 and subsequent Addendum dated 02.05.2022, the petitioners had applied for various posts and participated in the selection process. After publication of result, the petitioners did not find their names in the list of successful candidates. Having found themselves unsuccessful in the examination, the petitioners submitted an application to TPSC to allow them to inspect their respective answer-scripts on the subjects mentioned above. The TPSC having received their applications followed by subsequent legal notice informed the petitioners about its inability to produce and show the answer-scripts to the petitioners for inspection on the basis of the notification dated 20.06.2024(Annexure-6 to the writ petition). Ultimately, prayer for inspection of answer-scripts had been rejected by the respondents-TPSC. Feeling aggrieved, the petitioners have approached this Court.

3. Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Chakraborty, learned counsel appearing for the petitioners. Also heard Mr. Raju Datta, learned counsel appearing for the respondents-TPSC.

4. Submissions on behalf of the petitioners:

4.1. Mr. Roy Barman, learned senior counsel appearing for the petitioners has submitted that the petitioners have the right to inspect their answer-scripts and rejection of the same is arbitrary and discriminatory. Furthermore, according to learned senior counsel, rejection to inspect the answer-scripts has raised serious doubt as regards the transparency in the process of conducting examination. So, to bring transparency, the petitioners should be allowed to inspect their answer-scripts.

4.2. To fortify his submission, Mr. Roy Barman, learned senior counsel has placed reliance upon the judgments rendered by the Hon'ble Supreme Court in *Mradul Mishra vs. Chairman, U.P. Public Service Commission Allahabad and Ors.* decided on 16.07.2018 in *Civil Appeal No.6723 of 2018*[Arising out of *SLP(C) No.33006 of 2017*](Para 14) and *Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors.* reported in (2011) 8 *SCC 497*(Para 51, 59 and 66)

5. Submissions on behalf of the respondents-TPSC:

5.1. The above submissions of learned senior counsel for the petitioners have vehemently been objected by Mr. Datta, learned counsel appearing for the respondents-TPSC. The main ground for objection is that the instant writ petition has been filed after six months of conducting the examination and in the meantime, appointment orders in favour of the selected candidates have already been issued and the recommended candidates have also been appointed in the posts for which the advertisement was published.

5.2. Secondly, the learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of *Union Public Service Commission and Ors. vs. Angesh Kumar and Ors.* in Civil Appeal nos.6159-6162 of 2013

decided on 20th February, 2018, reported in (2018) 4 SCC 530. Mr. Datta, learned counsel for the respondents-TPSC has submitted that considering the need for transparency and accountability of the Commission, the answer-scripts should not be allowed to be inspected by the candidates who have appeared in the examination. It is further submitted that if this kind of prayer is allowed, then, the integrity of the Public Service Commission will be at stake and the entire system of conducting examination will be jeopardized. Mr. Datta, learned counsel for the respondents has candidly submitted that the entire process was completed maintaining optimum transparency and there is no scope of doubting the integrity about the evaluation of the answer-scripts. It is further contended that unless and until public interest is involved, the Court should not permit the candidates to inspect the answer-scripts.

5.3. Mr. Datta, learned counsel for the respondents-TPSC has placed reliance on para 12 of the case of *Prashant Ramesh Chakkarwar vs. Union Public Service Commission and others*, reported in (2013) 12 SCC 489 and paras 6, 7 and 9 of the case of *Angesh Kumar(supra)*. Reliance has also been placed on the decision of the Hon'ble Supreme Court in *Pranav Verma and Ors. vs. Registrar General of the High Court of Punjab and Haryana at Chandigarh and Anr.*, reported in (2020) 15 SCC 377 [Three-Judge Bench (SCC p 395 para 28)]

6. I have considered the submissions of learned counsel appearing for the parties and perused the documents enclosed to the writ petition. I have also gone through the counter affidavit and the judgments cited at the bar by learned counsel appearing for the parties.

7. **Discussion and conclusion:**

7.1. Before I delve into the merits of the writ petition, I may take note of the principles laid down in the case of **Angesh Kumar(supra)**, as extracted in the case of **Mradul Mishra(supra)**. The Hon'ble Supreme Court has also referred the case of **Aditya Bandopadhyay(supra)** while disposing the case of **Mradul Mishra(supra)**. The relevant portion is reproduced hereunder, for convenience:

“12. Reference has been made to Paragraphs 5 and 10 of the judgment which read as follows:

(5) It is submitted that though Sections 3 and 6 of the Act confer right to information (apart from statutory obligation to provide specified information Under Section 4), Sections 8, 9 and 11 provide for exemption from giving of information as stipulated therein. The exclusion by Sections 8, 9 and 11 is not exhaustive and parameters under third recital of the preamble of the Act can also be taken into account. Where information is likely to conflict with other public interest, including efficient operation of the Government, optimum use of fiscal resources and preservation of confidentiality of some sensitive information, exclusion of right or information can be applied in a given fact situation.

(10) Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. If rules or practice so require, certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters.

13. It may be noted that Paragraph 5 contains the submission while the finding is in Paragraph 10 of the decision.

14. In our opinion, permitting a candidate to inspect the answer sheet does not involve any public interest nor does it affect the efficient operation of the Government. There are issues of confidentiality and disclosure of sensitive information that may arise, but those have already been taken care of in the case of Aditya Bandopadhyay where it has categorically been held that the identity of the examiner cannot be disclosed for reasons of confidentiality.

15. That being the position, we have no doubt that the Appellant is entitled to inspect the answer sheets. Accordingly, we direct the Respondent U.P. Public Service Commission to fix the date, time and place where the Appellant can come and inspect the answer sheet within four weeks.

The appeal stands disposed of.”

7.2. On plain reading of the case *supra* and the principles enunciated therein, it can reasonably be held that if the prayer of a candidate is limited to the extent of inspection of answer sheets and not in conflict with larger public interest without affecting the efficiency of government functionalities and further, confidentiality of sensitive information is preserved, in that situation, right to inspect the answer sheets should not be denied.

7.3. In the case of **Prashant Ramesh Chakkarwar**(*supra*), the petitioners had challenged the method of moderation adopted by the Commission where the Hon'ble Supreme Court while rejecting the challenge had upheld the method of moderation adopted by the Commission observing thus:

"14.....The above procedure of 'moderation' would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.

26. The Union Public Service Commission ('UPSC', for short) conducts the largest number of examinations providing choice of subjects. When assessing inter se merit, it takes recourse to scaling only in Civil Service Preliminary Examination where candidates have the choice to opt for any one paper out of 23 optional papers and where the question papers are of objective type and the answer scripts are evaluated by computerised scanners. In regard to compulsory papers which are of descriptive (conventional) type, valuation is done manually and scaling is not resorted to. Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer scripts of descriptive/conventional type question papers in regard to same subject; and that scaling should be resorted to only where a common merit list has to be prepared in regard to candidates who have taken examination in different subjects, in pursuance of an option given to them."

From the above extracted portion of the judgment in Sanjay Singh case [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] , it is clear that the three-Judge Bench [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] had approved the method of moderation adopted by the Commission."

In the instant case, the petitioners have not challenged the method of moderation. So this judgment is of no relevance to the merits of the instant case. The judgment rendered in the case of **Pranav Verma**(*supra*) as cited by the

learned counsel appearing for the respondents-TPSC is also not relevant in deciding the disputes raised in this writ petition.

7.4. In the case of *Angesh Kumar(supra)*, as referred to by Mr. Datta, learned counsel for the respondents-TPSC, it has been observed that: “ *Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. If rules or practice so require, certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters*”.

7.5. Now, considering the facts of the instant writ petition, it is pertinent to mention that when the matter came up before this Court on 23.09.2024, following order at the stage of motion was passed:

“Heard Mr. K. Chakraborty, learned counsel appearing for the petitioners. Also heard Mr. Raju Datta, learned counsel appearing for the respondents-TPSC.

Mr. Datta, learned counsel for the respondents-TPSC has sought for an adjournment to file reply. In the meantime, considering the grievances of the petitioners, this Court requests Mr. Datta, learned counsel for respondents-TPSC to produce the answer scripts relating to the petitioners as well as last five selectees, whose names appeared in the selection list.

List the matter tomorrow (24.09.2024).”

Thereafter, the matter came up on 24.09.2024 when this Court had passed the following order:

“Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Chakraborty, learned counsel appearing for the petitioners. Also heard Mr. Raju Datta, learned counsel appearing for the respondents-TPSC.

By means of filing the instant writ petition, the petitioners have prayed for following reliefs:-

“(i) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, directing them, to transmit the records, lying with them, for rendering substantive and conscionable justice to the Petitioners, and for quashing/setting aside the impugned Notification dated 20.06.2024 (Annexure-6 supra);

(ii) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, to allow the Petitioners to inspect their respective answer scripts of the Main Examination [i.e., Paper-I (English) & Paper- II (General Studies & Arithmetic)], conducted in connection with the Advertisement No. 06/2021 dated 07.12.2021 & the Addendum dated 02.05.2022 (Annexures-1 & 2 respectively supra), by serving copies thereof;

(iii); Call for the records, appertaining to this Writ petition;

(iv) After hearing the parties, be pleased to make the Rule absolute in terms of (i) & (ii) above;

(V) Costs of and incidental to this proceeding

(vi) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;”

Let a notice be issued calling upon the respondents to show cause as to why a rule should not be issued as prayed for; and/or as to why such further order/s should not be passed as to this court may seem fit and proper.

Notice is made returnable within 6(six) weeks.

Since all the respondents have already entered their appearance, no formal notice is called for.

In pursuance of the order dated 23.09.2024, Mr. Datta, learned counsel for the respondents-TPSC has produced the answer scripts relating to the petitioners before this Court.

I have perused the answer scripts and I do not find any discrepancy in the marks awarded in favour of the petitioners.

List the matter on 05.11.2024. In the meantime, the respondents may file their counter affidavits, if they so desire.”

7.6. From the order dated 24.09.2024, it comes to fore that the respondents-TPSC had produced the answer-scripts in terms of the order dated

23.09.2024. This Court on meticulous perusal of the answer-scripts had categorically observed that there was no discrepancy in accounting the marks awarded in favour of the petitioners. This Court had inspected the answer-scripts in front of the learned counsel appearing for the parties. The petitioners have not challenged the observation made by this Court as well as the inspection conducted by this Court about the awarding of marks. The Court cannot evaluate or re-assess the marks awarded by the examiners. It is now well-settled that the Courts should not step into the shoes of the evaluators or examiners and re-assess the answer scripts. It is absolutely within the prerogative of the examiners. The examiners, at the time of evaluation or assessment of the answer maintain and follow optimum standard and uniformity in awarding marks against each answer. As such, any candidate appearing in the examination cannot question or raise any doubt about the process of evaluation or assessment in awarding the marks against an answer given by the examiner.

In view of this, the Court's interference in this matter is not called for at all. That will definitely doubt the integrity and the competency of the Public Service Commission, which will paralyze the system.

7.7. In the light of the above observations, I am obviously reluctant to accept the submission of learned senior counsel for the petitioners for a direction upon the respondents-TPSC to place the answer-scripts to the candidates to inspect the same, particularly, when this Court itself has inspected the answer-scripts.

7.8. Now, entering into the second fold of submission advanced by learned senior counsel appearing for the petitioners that they have challenged the notification dated 20.06.2024(Annexure-6 to the writ petition), I find no reasonable ground to interfere with the said notification. For convenience, the

notification dated 20.06.2024 issued by the TPSC may be reproduced hereunder, in extenso:

**“TRIPURA PUBLIC SERVICE COMMISSION
AGARTALA**

No. F. 9 (29-146)/Exam/TPSC/2022

Dated, the 20 June, 2024

NOTIFICATION

It is for information of all concerned that in pursuance of Honb'le Supreme Court of India order arising upon Civil Appeal No.(s).6159-6162 of 2013 with C.A.No.5924/2013 and order of Tripura Information Commission vide Appeal No.TIC-08 of 2020-21/5888-89 dated 20.04.2021 the Commission's decision is inforce that inspection of Answer Scripts (Conventional Type)/ OMR base examination are not allowed by individual candidate or any third party. The same decision of the Commission not to allow inspection of Answer Scripts (Conventional Type)/ OMR base examination by individual candidate or any third party will continue. The Commission will not entertain such request either through plain paper application or RTI application.

*-Sd
(S Mog, IAS)
Secretary, TPSC”*

7.9. In my opinion, this notification cannot be said to be unreasonable and arbitrary. In the line of principles laid down in the cited cases supra, consistent view is that there must be some restrictions in allowing an individual candidate or any third party to inspect the answer-scripts. In the opinion of this Court, the notification dated 20.06.2024 issued by the TPSC is constitutionally valid since the intention behind the issuance of this notification is to prevent lodging of frivolous complaints *vis-à-vis* claims thereof that will lead to an unhealthy atmosphere in the smooth functioning and administration of Public Service Commissions. Furthermore, it goes without saying that Public Service Commissions are perpetually engaged in organizing numerous examinations throughout the year. Having viewed so, I am of the opinion that the notification dated 20.06.2024 cannot be said to put an unreasonable restriction, and does not offend Article 14 of the Constitution of India. Accordingly, the submission of learned senior counsel to quash the said notification is not accepted.

8. In the instant case, when this Court itself inspected the answer scripts of the petitioners, in that case, further direction upon the respondents-TPSC to place the answer-scripts before the petitioners will not be proper and justified.

9. In the light of the above discussions and for the reasons recorded here-in-above, I find no merit in the instant writ petition and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Snigdha

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