

GAHC010196202022



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

Case No. : WA/339/2022

SUBHASHISH DAS

S/O SANAT KUMAR DAS, R/O HOUSE NO. 22, BHASKAR NAGAR, B R PATH,
BYE LANE NO. 1, P.O.- VINOBHANAGAR, P.S.- FATASHIL AMBARI, DIST.-
KAMRUP (M), ASSAM, PIN- 781018.

VERSUS

THE STATE OF ASSAM AND 5 ORS. A

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
LABOUR WELFARE DEPTT., BLOCK-D, 3RD FLOOR, ASSAM SECRETARIAT,
DISPUR, GUWAHATI- 6, DIST.- KAMRUP (M), ASSAM.

2:THE ADMINISTRATIVE MEDICAL OFFICER

ESI SCHEME

ASSAM

JAWAHARNAGAR

KHANAPARA

P.O. AND P.S.- KHANAPARA

GUWAHATI- 781022

DIST.- KAMRUP (M)

ASSAM.

3:THE CHAIRMAN

SELECTION COMMITTEE FOR GRADE-IV AND PEON UNDER THE ESI
SCHEME

O/O- ADMINISTRATIVE MEDICAL OFFICER

ASSAM

P.O. AND P.S. KHANAPARA

GUWAHATI- 22

DIST.- KAMRUP (M)

ASSAM.

4:THE MEMBER SECRETARY
SELECTION COMMITTEE FOR GRADE-IV AND PEON UNDER THE ESI
SCHEME
ASSAM
P.O. AND P.S. KHANAPARA
KHAHNAPARA
GUWAHATI- 22
DIST.- KAMRUP (M)
ASSAM.

5:THE SELECTION COMMITTEE
REP. BY THE CHAIRMAN
O/O- ADMINISTRATIVE MEDICAL OFFICER

P.O. AND P.S.- KHANAPARA
KHANAPARA

GUWAHATI- 781022.

6:SATYABRATA DAS
C/O- THE ADMINISTRATIVE MEDICAL OFFICER
ASSAM
ESI SCHEME
ASSAM
JAWAHARNAGAR
KHANAPARA
P.O. AND P.S.- KHANAPARA
GUWAHATI- 781022
DIST.- KAMRUP (M)
ASSAM

B E F O R E

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellants	:	Ms. K.A. Pujari, Advocate Mr. K. Pujari, Advocate
For the Respondents	:	Mr. D.K. Sarmah, Addl. Sr. Govt. Advocate Mr. H.N. Sarmah, Advocate Mr. K. Mohammed, Advocate
Date of Hearing	:	23-02-2024
Date of Judgment	:	27-02-2024

Judgment and Order (CAV)

(Suman Shyam, J)

This writ appeal is presented against the judgment and order dated 12-08-2022 passed by the learned Single Judge in W.P.(C) No. 4547/2021 declining the relief prayed for by the writ petitioner. The appellant as writ petitioner had instituted W.P.(C) No. 4547/2021 assailing the selection of the respondent No. 6 as a Schedule Caste (SC) category candidate for appointment to a Gr-IV post. From the pleadings of the parties it is apparent that the selection process in general has not been called into question by the appellant but the dispute raised in this proceeding is only *inter-se* the appellant and the respondent No. 6. The facts and circumstances of the case, shorn of unnecessary details, are narrated here-in-below.

2. The Administrative Medical Officer, ESI Schemes, Assam i.e. the respondent No. 2 herein had issued advertisement notice dated 13-01-2021 inviting online applications for filling up 02 posts of Driver, 13 Gr-IV posts and 02 posts of Sweeper, totaling 17 numbers of posts. One post in the Gr-IV category was reserved for the SC category candidates. In response to the advertisement notice dated 13-01-2021, the appellant had submitted his application as a reserved category (SC) candidate for the Gr-IV post. As per the scheme of selection, the candidates were required to appear in a written test consisting of multiple choice objective type questions with each correct answer carrying 02 marks. The appellant had appeared in the written test held on 31-01-2021. On 26-02-2021, the select list of successful candidates was published wherein the name of the respondent No. 6 appeared as the selected candidate against the Gr-IV vacancy reserved for the SC category candidate. Dissatisfied with his non-selection, the appellant had made an application under the RTI Act

seeking information as regards the marks secured by him *vis-à-vis* the successful candidate i.e. the respondent No. 6. In response to the aforesaid query made by the appellant, the authorities had furnished him with the requisite information along with copy of the booklet of the answer sheet. On examining the information furnished by the respondent authorities, it transpired that the appellant had scored 38 (thirty eight) marks in total whereas the selected candidate, i.e. the respondent No. 6 had scored 42 marks. According to the appellant, there were serious anomalies in the answer key, as a result of which, the papers were wrongly evaluated. As such, the appellant had approached this Court by filing the aforesaid writ petition seeking re-evaluation of the answer scripts.

3. After examining the case of the appellant and on perusal of the records, the learned Single Judge had declined relief to him by holding that the appellant had failed to follow the instructions given to the candidates for putting "tick marks" only with regard to the correct option and that there were double ticks and/or overwriting in the answer sheet of the appellant. Moreover, the appellant had hand-written the name of a personality with regard to the answer furnished by him against question No. 7(d). As such, by relying on the decision of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu & Ors. Vs. G. Hemalathaa & Anr.*** reported in ***(2020) 19 SCC 430***, the learned Single Judge has held that since the appellant had failed to comply with the mandatory instructions given to the candidates, hence, there was no scope for granting any relief to him.

4. By relying on the decision of the Supreme Court rendered in the case of ***Rajesh Kumar & Ors. Vs. State of Bihar & Ors.*** reported in ***(2013) 4 SCC 690*** and in the case of ***Ran Vijay Singh & Ors. Vs. State of UP and Ors.*** reported in ***(2018) 2 SCC 357***, the learned Single Judge had also observed that in case of wrong answer key leading to

erroneous awarding of marks, the way forward would be to exclude the offending question itself.

5. From a careful examination of the pleadings on record, we find that the entire controversy involved in this proceeding is pertaining to the answers furnished by the appellant and the respondent No. 6 with regard to question Nos. 7, 13 and 19 and the marks awarded to the respective candidates in respect thereof. Therefore, the said aspect of the matter would call for proper consideration by this Court. However, before advertng to the answers with regard to question Nos. 7, 13 and 19 and the marks awarded to the respective candidates, it would be pertinent to reproduce the instruction given to the candidates for providing their answers here-in-below:-

“Each objective type of question have four alternative answers. Candidates have to put tick marks in the right options only. Double tick or over writing will be treated as wrong answer.”

6. During the course of hearing, Mr. H.N. Sarma, learned counsel for the respondent Nos. 2 and 3 has produced the original answer script of the appellant. From a scrutiny of the answer script, we find that the correct answer with regard to question No. 7 was option [d] and the appellant had also put his tick mark on the said option. However, having done so, he had also written the name of a personality viz. “Syed Sadullah” by the side of the correct option. He was awarded ‘0’ marks for question No. 7, treating the answer to be incorrect.

7. As regards question No. 13, the correct answer was option [b] and the appellant had answered the said question correctly by putting tick mark on the correct option but he was awarded ‘0’ marks for the said answer. For question No. 19, the correct answer is option [d] but the appellant had put his tick mark on option [b]. That apart, he had also put some

marking on option [d] with over-writings therein, as a result of which, his answer to this question was treated to be incorrect and the appellant was not awarded any marks.

8. Insofar as the respondent No. 6 is concerned, we find that he had put tick mark against option [a] in respect of multiple choice answers provided for question No. 7 which is incorrect answer but he was awarded 02 marks for the same. The respondent No. 6 had marked option [b] for question No. 13, which was the correct answer but just like the appellant, he was also given '0' marks for the correct answer. In respect of question No. 19, the respondent No. 6 had put his tick mark against option [d] which is the correct answer and therefore, he was rightly awarded 02 marks for the same.

9. After going through the materials on records, we find that while exercising his option with regard to question No. 7, the appellant had failed to adhere to the instructions given to the candidates. Although he had put tick mark on the correct option, yet, as noted above, he had also written the name of a personality therein, thus acting in violation of the instructions given to the candidates, thereby invalidating the answer itself. Therefore, in our opinion, he was rightly denied any marks for the said answer.

10. Coming to question No. 13, we find that the appellant and the respondent No. 6 had both given the correct answers but both of them were not awarded any marks. It is to be noted herein that the difference in marks between the appellant and the respondent No. 6 is of 04 marks. As against question No. 13 both the candidates have not been awarded any marks despite having given the correct answer. Therefore, no prejudice can be said to have been caused to the appellant on such count.

11. Insofar as the answer to question No. 19 is concerned, it is established from the record

that the appellant had tick marked the wrong option and had also overwritten in the answer script, whereas the respondent No. 6 had given the correct answer. Therefore, the appellant cannot have any grievance in this regard.

12. Coming to question No. 7 in the context of the answer given by the respondent No. 6, the question was "Who is the first Prime Minister of Assam?". The correct answer ought to have been "none of the above" as in option [d] but the respondent No. 6 was awarded 02 marks for tick marking option [a], which was obviously not the correct answer. However, what would be significant to note herein is that even if these 02 marks awarded to the respondent No. 6 is taken out from the purview of the selection process, even then, the total score of the respondent No. 6 would be 40 marks against the total score of 38 marks by the appellant. As such, we are of the opinion that erroneous marking in respect of the answer script of respondent No. 6 with regard to question No. 7, did not make any material difference in the *inter-se* merit position of these two contesting candidates.

13. During the course of argument, Ms. K.A. Pujari, the learned counsel for the appellant has argued that overwriting in the answer script pertaining to question No. 19 was not done by him but was inserted subsequently by manipulating records. Such argument of the appellant's counsel does not merit consideration by this Court for the following reasons. Firstly, as noted above, the appellant has clearly tick marked the wrong option for question No. 19 and therefore, he was not entitled to any mark for the said answer. Secondly, the allegation of manipulation of answer script has been denied by the respondent and the appellant has failed to substantiate his claim on the above aspect. Therefore, in exercise of jurisdiction under Article 226 of the Constitution of India, this Court cannot enter into adjudication of such a disputed question of facts.

For the reasons stated hereinabove, we are of the unhesitant opinion that in the facts and circumstances of this case, the learned Single Judge has rightly declined any relief to the appellant/ writ petitioner and therefore, the impugned order dated 12-08-2022, in our view, does not call for any interference by this Court. Consequently, this appeal is held to be devoid of any merit and the same is accordingly dismissed.

Parties to bear their own cost.

Records be returned back.

JUDGE

CHIEF JUSTICE

GS

Comparing Assistant