



2024:GAU-AS:12466-DB

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

1. WRIT APPEAL No.363 OF 2023

Saswati Das,
Daughter of Haren Das,
Resident of Rajeshwari, House No.22,
Ground Floor, Government Press Road,
Bamunimaidam, Guwahati, Assam - 781021.

.....Appellant

-Versus-

1. The State of Assam, represented by the
Chief Secretary to the Government of Assam,
Dispur, Guwahati – 781006, Assam.

2. The Assam Public Service Commission,
represented by its Chairman, Jawahar Nagar,
Guwahati – 781022, Assam.

3. The Secretary, Assam Public Service
Commission, Jawahar Nagar, Guwahati,
Assam – 781022.

4. The Principal Controller of Examinations,
APSC, Jawahar Nagar, Khanapara, Guwahati,
Assam – 781002.

5. Vidisha Bodo,
Daughter of Bhadreswar Bodo,
Resident of House No.341B, Near Hospital
Road, Damadi Hawar, PO: Maibang, District:
Dima Hasao, Assam – 788831.

6. Manish Baruah,
Son of Dwip Baruah,
Resident of House No.22, Senduri Ali, Nabin
Nagar, R.G. Baruah Road, Guwahati, Assam
– 781024.

7. Anupam Deka,
Resident of Khelmati Ward No.14, PO:
Khelmati, District: Lakhimpur, Assam, PIN –
787001.

8. Shalini Khan,
Daughter of Sri Robin Khan,
Resident of House No.120A, Honuram Boro
Path, Walford Kachari Basti, Guwahati –
781005, District: Kamrup (M), Assam.

9. Girbani Deka,
Wife of Mr. Ranjan Engti,
Resident of House No.54/37, Seuji Path,
Near Nabagraha Temple, Assam – 781003.

.....Respondents

2. WRIT APPEAL NO.361 OF 2023

Shalini Khan,
Daughter of Sri Robin Khan,
Resident of House No.120A, Honuram Boro
Path, Walford Kachari Basti, Guwahati –
781005, District: Kamrup (M), Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the
Chief Secretary to the Government of Assam,
Dispur, Guwahati – 781006, Assam.

2. The Assam Public Service Commission,
represented by its Chairman, Jawahar Nagar,
Guwahati – 781022, Assam.

3. The Secretary, Assam Public Service
Commission, Jawahar Nagar, Guwahati,
Assam – 781022.

4. The Principal, Controller of Examinations,
APSC, Jawahar Nagar, Khanapara, Guwahati,
Assam – 781002.

5. Saswati Das,
Daughter of Haren Das,
Resident of Rajeshwari House No.22, Ground
Floor, Government Press Road,
Bamunimaidam, Guwahati, Assam – 781021.

6. Vidisha Bodo,
Daughter of Bhadreswar Bodo,
Resident of House No.341B, Near Hospital
Road, Damadi Hawar, P.O.: Maibang,
District: Dima Hasao, Assam – 788831.

7. Manish Baruah,
Son of Dwip Baruah,
Resident of House No.22, Senduri Ali, Nabin
Nagar, R.G. Baruah Road, Guwahati, Assam
– 781024.

8. Anupam Deka,
Resident of Khelmati, Ward No.14, P.O.:
Khelmati, District: Lakhimpur, Assam, PIN -
787001.

.....Respondents

3. WRIT APPEAL NO.364 OF 2023

Girbani Deka,
Wife of Ranjan Engti,
Resident of House No.54/37, Seuji Path,
Near Nabagraha Temple, Assam-781003.

.....Appellant

-Versus-

1. The State of Assam, represented by the
Chief Secretary to the Government of Assam,
Dispur, Guwahati – 781006, Assam.

2. The Assam Public Service Commission,
represented by its Chairman, Jawahar Nagar,
Guwahati – 781022, Assam.

3. The Secretary, Assam Public Service
Commission, Jawahar Nagar, Guwahati,
Assam – 781022.

4. The Principal, Controller of Examinations,
APSC, Jawahar Nagar, Khanapara, Guwahati,
Assam – 781002.

5. Saswati Das,
Daughter of Haren Das,
Resident of Rajeshwari House No.22, Ground
Floor, Government Press Road,
Bamunimaidam, Guwahati, Assam – 781021.

6. Vidisha Bodo,
Daughter of Bhadreswar Bodo,
Resident of House No.341B, Near Hospital
Road, Damadi Hawar, P.O.: Maibang,
District: Dima Hasao, Assam – 788831.

7. Manish Baruah,
Son of Dwip Baruah,
Resident of House No.22, Senduri Ali, Nabin
Nagar, R.G. Baruah Road, Guwahati, Assam
– 781024.

8. Anupam Deka,
Resident of Khelmati, Ward No.14, P.O.:
Khelmati, District: Lakhimpur, Assam, PIN -
787001.

.....Respondents

4. WRIT APPEAL NO.371 OF 2023

1. Vidisha Bodo,
Daughter of Bhadreswar Bodo,
Resident of House No.341B, Near Hospital
Road, Damadi Hawar, P.O.: Maibang,
District: Dima Hasao, Assam, PIN -788831
(Bearing Roll No.1100550).

2. Anupam Deka,
Son of Late Durga Prasad Deka,
Resident of Khelmati, Ward No.14, P.O.:
Khelmati, District: Lakhimpur, Assam, PIN –
787001 (Bearing Roll No.1020895)

.....Appellants

-Versus-

1. Shalini Khan,
Daughter of Sri Robin Khan,
Resident of House No.120A, Honuram Boro
Path, Walford Kachari Basti, Guwahati,
District: Kamrup (M), Assam, PIN— 781005.

2. The State of Assam, represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati – 781006.

3. Assam Public Service Commission, represented by its Chairman, Jawahar Nagar, Guwahati – 781022.

4. The Secretary, Assam Public Service Commission, Jawahar Nagar, Khanapara – 781022.

5. The Principal Controller of Examinations, Assam Public Service Commission, Jawahar Nagar, Khanapara, Guwahati – 781022.

.....Respondents

5. WRIT APPEAL NO.373 OF 2023

Manish Baruah,
Son of Dwip Baruah,
Resident of House No.22, Senduri Ali, Nabin Nagar, R.G. Baruah Road, Guwahati – 781024, Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati – 781006, Assam.

2. The Assam Public Service Commission, represented by its Chairman, Jawahar Nagar, Guwahati – 781022, Assam.

3. The Secretary, Assam Public Service Commission, Jawahar Nagar, Guwahati Assam - 781022.

4. The Principal Controller of Examinations, APSC, Jawahar Nagar, Khanapara, Guwahati, Assam - 7981002.

5. Saswati Das,
Daughter of Haren Das,
Resident of Rajeshwari, House No.22, Ground Floor, Government Press Road, Bamunimaidam, Guwahati, Assam – 781021.

6. Vidisha Bodo,
Daughter of Bhadreswar Bodo,
Resident of House No.341B, Near Hospital
Road, Damadi Hawar, P.O.: Maibang,
District: Dima Hasao, Assam - 788831.

7. Anupam Deka,
Resident of Khelmati, Ward No.14, P.O.:
Khelmati, District: Lakhimpur, Assam, PIN -
787001.

8. Shalini Khan,
Daughter of Sri Robin Khan,
Resident of House No.120A, Honuram Boro
Path, Walford Kachari Basti, Guwahati –
781005 in the District of Kamrup (M),
Assam.

9. Girbani Deka,
Wife of Mr. Ranjan Engti,
Resident of House No.54/37, Seuji Path,
Near Nabagraha Temple, Assam – 781003.

.....Respondents

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellant(s) : Mr. K.N. Choudhury, Senior Advocate
Assisted by Mr. P. Mahanta, Advocate in
Writ Appeal No.363/2023; Writ Appeal
No.361/2023; Writ Appeal No.364/2023
and Writ Appeal No.373/2023.

: Ms. G. Goswami, Advocate in Writ
Appeal No.371/2023.

For the Respondent(s) : Mr. D. Nath, Senior Government
Advocate, Assam assisted by Mr. N. Das,
Junior Government Advocate, Assam.

: Mr. P.P. Dutta, Standing Counsel, Assam
Public Service Commission.

Date of Hearing : 24.10.2024.

Date of judgment : **11.12.2024.**

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

These writ appeals are preferred on behalf of the appellants challenging the judgment & order dated 21.08.2023 passed by the learned Single Judge in WP(C) No.3341/2019 (*Shalini Khan -Vs- State of Assam & Ors.*) and WP(C) No.3344/2019 (*Girbani Deka -Vs- State of Assam & Ors.*), whereby the learned Single Judge has dismissed the writ petitions filed on behalf of the appellants Shalini Khan (*appellant in Writ Appeal No.361/2023*) and Girbani Deka (*appellant in Writ Appeal No.364/2023*) and has concluded that as the appellants Shalini Khan and Girbani Deka as well as the appellants Saswati Das (*appellant in Writ Appeal No.363/2023*); Vidisha Bodo and Anupam Deka (*appellants in Writ Appeal No.371/2023*) and Manish Baruah (*appellant in Writ Appeal No.373/2023*) did not qualify in their Preliminary Examination of the Combined Competitive Examination, 2018 (hereinafter to be referred as "CCE, 2018"), no direction can be given to the State Government to consider their cases for appointment to the Civil Services and Civil Posts under the State Government.

2. The undisputed brief facts of the case are that the respondent Assam Public Service Commission (hereinafter to be referred as "APSC") had issued an Advertisement No.9/2018 dated 17.05.2018 inviting applications from the eligible candidates to appear in the Preliminary Examination of the CCE, 2018 for screening them for the

Main Examination for recruitment to the services/posts to be held for filling up of 165 number of vacancies for the posts/services in different categories, which has been specified in the advertisement itself. The last date for submission of the application forms for Preliminary Examination was fixed as 18.06.2018. Thereafter, taking into consideration the request made by the Government, the APSC had issued an Addendum on 26.06.2018 and notified another 96 vacancies in the posts/services of 2(two) categories and the last date for submission of the application from the interested candidates for their appearance in the Preliminary Examination has also been extended as such. In all, the APSC has invited applications from the interested and eligible candidates for their appearance in the Preliminary Examination for filling up of 261 vacancies of different categories of services/posts.

3. In the above-referred Advertisement and Addendum, it is clarified that the posts were reserved for the reserved category candidates as per the Rules in vogue in the State of Assam. In the Advertisement, it is mentioned that the Combined Competitive Examination consists of 2(two) successive stages, i.e. the Preliminary Examination and the Main Examination (Written and Interview). The other ancillary aspects, such as pay scale; eligibility criteria; minimum and upper age, etc., along with the disclosure of the centres where the Combined Competitive Examination is to be conducted has been mentioned. In the said Advertisement, it is also clarified

that the Preliminary Examination shall be meant to serve as a screening test only and the marks obtained by a candidate in the Preliminary Examination will not be counted for determining the final order of merit.

The other details mentioned in the Advertisement have already been noted by the learned Single Judge in the impugned judgment and there is no dispute about the same. Therefore, we refrain ourselves from looking into the admitted factual aspects which may not be of much relevance in deciding the controversy before this Court.

4. Be that as it may, the Preliminary Examinations pursuant to the above-referred Advertisement and Addendum took place on 30.12.2018 at different centres notified by the APSC in the Advertisement and Addendum. The result of the Preliminary Examination was declared by the APSC on 13.03.2019 and 3361 number of candidates were declared as qualified to appear in the Written Examination of the CCE, 2018. After declaration of the result, the APSC had uploaded the answer key of the said Preliminary Examination on its website on 20.03.2019.

5. It appears that certain candidates, who had appeared in the Preliminary Examination but failed to clear the same, had raised objections and queries regarding the answer key uploaded by the APSC on its website on 20.03.2019 and considering the same, the APSC, on its own, had revisited the result of the Preliminary Examination and declared 406 more candidates to be

qualified to appear in the Written Examination of CCE, 2018 in addition to 3361 number of candidates, who have already been declared as qualified to appear in the Written Examination of CCE, 2018 on 13.03.2019. The APSC had also issued a Press Release on 02.05.2019 stating that despite taking every caution, certain discrepancies in the answer keys came to light after declaration of the result on 13.03.2019 and with a view to ensure that no deserving candidate is deprived of the opportunity to appear in the Examination, the APSC, on its own, had re-verified the answer keys with the help of the available domain experts and revised the wrong answer keys of the many subjects and found that 406 candidates, in addition to 3361 candidates, were also eligible to appear in the written examination. Simultaneously, the APSC had also added 2(two) more candidates of disability category whose names were inadvertently missed from the list of eligible candidates. Certain other clarifications have been given in the Press Release justifying the decision of the APSC to revisit the result. Simultaneously, the APSC had published a second answer key on 09.05.2019 and uploaded the same in its website.

6. However, many of the persons, including the appellants Shalini Khan and Girbani Deka, who did not find their place in the list of the candidates eligible for appearing in the Written Examination pursuant to the declaration of the results by the APSC on 13.03.2019 and 30.04.2019 had approached the Writ Court by filing writ

petitions claiming that the answer scripts of the Preliminary Examination were wrongly evaluated by the APSC and they were awarded less marks than the marks they deserved to be awarded. It was claimed that both the answer keys uploaded and published by the APSC in its website on 20.03.2019 and 09.05.2019 were wrong and required further evaluation.

7. In the meantime, the APSC had issued a Notification dated 15.05.2019 informing the candidates, who were declared as qualified to appear in the Written Examination, that they may fill the prescribed application form by downloading the same through its website for their appearance in the Written Examination. The last date for submission of such application was fixed as 07.06.2019. It is noticed that including the writ petitions filed by Shalini Khan and Girbani Deka, 19 other writ petitions have also been filed raising the grievance about the correctness of the answer keys published by the APSC, details of which have already been given in the impugned judgment.

8. A Single Bench of this Court, considering the pleas raised by the appellants Shalini Khan and Girbani Deka and other similarly situated persons in other 19 writ petitions, on 29.05.2019, allowed the writ petitioners of those writ petitions to submit their necessary forms for Written Examination and directed the respondent APSC to provisionally accept their forms subject to payment of requisite fees. Simultaneously, the Single Bench also

directed the APSC to make necessary verification pertaining to the claim of those petitioners that they had correctly answered the questions in their Preliminary Examination but were not awarded correct marks and further apprise the Court about the outcome of such verifications.

9. Pursuant to the said direction, a common affidavit was filed by the APSC in one of the writ petitions and it is stated that as per the verifications of the answer scripts of 21 candidates/writ petitioners, it was found that after awarding grace mark to them on *pro-rata* basis, only 9 writ petitioners/candidates out of those 21 writ petitioners had qualified in the Preliminary Examination. In respect of the remaining 12 writ petitioners/candidates, including the appellants Shalini Khan and Girbani Deka, it was stated that after verification and after awarding grace marks to them, they were not entitled to any further marks to pass the Preliminary Examination so as to qualify themselves to appear in the Written Examination.

10. After considering the said stand of the APSC, the learned Single Bench of this Court, vide order dated 30.07.2019 passed in the said writ petitions, allowed all those writ petitioners, including the appellants Shalini Khan and Girbani Deka, to appear in the Written Examination scheduled to be held on 02.08.2019, however, has directed the APSC not to declare their results while observing that the same would be subject to the outcome of the writ petitions. The APSC was also directed to upload the Admit

Cards of those petitioners in its website during the course of the day. It appears that out of 3790 candidates, 3769 candidates who have been declared eligible to appear in the Main Examination by the APSC initially and 21 writ petitioners, including the appellants Shalini Khan and Girbani Deka, only 3218 candidates appeared in the Written Examination. Taking note of the fact that some of the writ petitioners out of the 21 writ petitions had already appeared in the Written Examination, 9 writ petitions were closed as infructuous by the Single Bench and as such, only cases of 12 writ petitioners, including the appellants Shalini Khan and Girbani Deka, remained pending for consideration by the learned Single Judge.

11. At this stage, the Court enquired from the APSC that amongst the 3361 number of candidates who were initially declared successful by the APSC on 13.03.2019 to appear in the Written Examination, how many candidates have actually not qualified to appear in the Written Examination. The Single Bench, vide its order dated 23.10.2019, had directed the APSC to clarify its stand by filing an affidavit on the above aspect and further directed it not to declare the result of the Written Examination without the leave of the Court.

12. Pursuant to the said direction passed by the Single Bench, the APSC has filed an additional affidavit stating that out of the 3361 candidates, initially declared as qualified to appear in the Written Examination as per the

result declared on 13.03.2019, only 3263 number of candidates have actually passed the said Preliminary Examination and as such, remaining 98 candidates have failed to achieve the cut off marks so as to pass the said Preliminary Examination.

It was the stand of the APSC that those 3361 candidates, including the 98 candidates, who actually have not achieved the cut off marks in the said Preliminary Examination, were already declared as qualified to sit in the Written Examination and on the basis of the revised answer key as many as 406 candidates have been further declared qualified to appear in the written examination, without prejudice to the result declared earlier on 13.03.2019, those 98 candidates, though ought not to have passed the said Preliminary Examination, were given a chance to participate in the Written Examination.

It was further stated that out of those 98 unqualified candidates, only 68 had appeared in the written examination. In support of the above contention, the APSC has also annexed a copy of the minutes of its meeting held on 03.04.2019.

13. The stand of the APSC was that these 98 candidates have already been declared to have qualified in the Written Examination and removal of these candidates and inclusion of 406 fresh candidates in one go will entail complete cancellation of the Notification and a fresh Notification is required to be issued containing the new result and since there are 2(two) more stages to assess the

merit and suitability of the candidates, the APSC decides to allow those 98 candidates to be given a chance.

Pursuant to the direction given by this Court on 20.02.2020, the APSC has filed an affidavit providing the list of those 98 candidates in sealed cover who scored below the cut off marks in the preliminary examination after revision of the answer keys and also the list of 68 candidates, out of those 98 candidates, who appeared in the Written Examination.

14. Later on, on 21.08.2020, an interlocutory application was filed on behalf of the APSC for vacating/modifying/altering the earlier order passed by this Court and to grant leave to it to declare the result of the Written Examination of CCE, 2018. In the said interlocutory application, the Single Bench has passed an order on 08.09.2020 to produce the result of the Written Examination in sealed cover before it, including the result of those 68 candidates, who ought not to have passed the Preliminary Examination as per the revised answer key but participated in the Written Examination and also the result of 12 writ petitioners, including the appellants Shalini Khan and Girbani Deka who did not pass the Preliminary Examination but appeared in the Written Examination as per the Court's order.

On 09.10.2020, the Court had granted permission to the APSC to declare the result of the Written Examination and to conduct the interview test as per the conditions of the advertisement, however, restrained the

APSC to declare the final result of the CCE, 2018 without the leave of the Court. By the said order dated 09.10.2020, the Court has also allowed the remaining writ petitioners, including the appellants Shalini Khan and Girbani Deka to take part in the interview, *viva-voce* while making it clear that the same shall not create any right in favour of them.

15. Pursuant to the direction given by this Court on 09.10.2020, the APSC had declared the result of the Written Examination and had called 554 number of candidates for interview test and out of these 554 candidates, only 541 candidates appeared in the interview test. It also appears that out of those remaining 12 writ petitioners, 2 writ petitioners did not qualify in the written examination. Hence, their writ petitions were dismissed as not pressed by the Single Bench of this Court vide order dated 09.10.2020.

On the said date, the APSC had also filed another interlocutory application praying for vacation/alteration/modification of the earlier orders passed by the Single Bench seeking permission from the Court to declare the final result of CCE, 2018. This Court, vide order dated 16.12.2020, directed the APSC to place the final result of CCE in sealed cover before this Court.

It is seen that some of the writ petitioners, whose writ petitions remained alive, failed to come within the zone of consideration of interview test and, therefore, their writ petitions, out of the pending 9(nine) writ petitions, were dismissed as infructuous. Resultantly, writ petitions

filed on behalf of Shalini Khan and Girbani Deka and another writ petition containing 2(two) petitioners remained pending for consideration before this Court.

16. From the result produced by the APSC in the sealed cover, the Single Bench has found that the appellants Shalini Khan and Girbani Deka and 4 other candidates from the batch of 98 ineligible candidates of Preliminary Examinations have cleared the CCE [Main (Written + Interview)] Examination, 2018. The Court has also found that apart from the appellants Shalini Khan and Girbani Deka, 4 out of the 98 ineligible candidates, who failed to clear the Preliminary Examination, 255 number of other candidates have cleared the Main Examination and, therefore, vide order dated 22.12.2020 directed the APSC to publish the result of the Combined Competitive Examination (Main) 2018 of those 255 candidates. At the same time, the Single Bench had directed the APSC not to declare the result of the appellants Shalini Khan and Girbani Deka and the aforesaid 4 candidates amongst the 98 ineligible candidates, who failed to achieve the cut off marks in the Preliminary Examination, however, has also directed the State Government not to fill up 3(three) posts of Assam Civil Services (Junior Grade); 1(one) post of Assam Land & Revenue Service (Junior Grade); 1 (one) post of Inspector of Taxes and 1(one) post of Labour Inspector until further orders.

By the said order, the Court had also directed the APSC to retain the answer scripts of the Preliminary

Examination, Written Examination of the appellants until further orders. Pursuant to the said direction, the APSC has selected 255 candidates and provided appointment to them on respective services/posts as per their selection in terms of the result of the Final Examination.

17. When the results of the appellants Saswati Das; Vidisha Bodo; Anupam Deka and Manish Baruah, who are the above referred 4 candidates, were withheld by the APSC, they, for the first time, came to know that their results were withheld on account of the directions given by this Court in the writ petitions filed on behalf of the appellants Shalini Khan and Girbani Deka and other similarly situated persons and immediately they moved an application in WP(C) No.3341/2019 for their impleadment as party respondents and the Court has allowed the said application impleading them as party respondents.

18. The learned Single Judge, after taking into consideration the above-referred facts and circumstances of the case, had framed 2(two) questions to be answered. The questions so framed by the learned Single Judge are reproduced hereunder:-

“(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?"

19. During the course of hearing, the Single Bench has further directed the APSC to clarify its stand in respect of the 4(four) points. The said points are elaborated in Paragraph 83 of the impugned judgment and in response to the said points, the APSC has filed its response by way of an additional affidavit on 23.08.2021. The said clarifications have also been taken into consideration in Paragraphs 84 to 87 of the impugned judgment.

20. Having considered the rival arguments of the counsel for the parties, the learned Single Judge has dismissed the writ petitions filed on behalf of the appellants Shalini Khan and Girbani Deka and has also refused to grant any reliefs to the above-referred 4 candidates, who are also appellants before this Court, mainly on the ground that the condition of passing the Preliminary Examination is mandatory and in the absence of any provision for relaxation of any conditions in the Assam Public Services (Combined Competitive Examination) Rules, 1989 (hereinafter to be referred as "Rules of 1989") read with Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010, the APSC has no jurisdiction to relax such condition and, therefore, no relief can be granted to the them. At the same time, the learned Single Judge has also observed that the action of the APSC allowing the 98 ineligible candidates to take part in the Main Examination is found to be in clear violation of the Rules of 1989 which are statutory in nature and promulgated under Article 309 of the Constitution of India. The learned Single Judge has further opined that the said action of the APSC exhibiting favour to those 98 candidates is arbitrary, bias, illegal and unfair.

21. Before proceeding further, it would be appropriate to take into consideration the stand of the APSC taken before the learned Single Judge during the course of hearing of the writ petitions as well as the minutes of the

meeting of the APSC, wherein certain decisions have been taken in respect of the controversy involved. The above minutes of the meeting of the APSC are reproduced hereunder:-

*“Minutes of the Meeting of the Commission held on
30.4.2019 at 1.00 PM*

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. Gharphalla, ACS, Secretary and Smti Pubali Gohain, ACS, Principal Controller of Examinations of the Commission were also present.

Item no.1: Re-verification of the answer keys in the subjects relating to the Combined Competitive (Prel.) Examination, 2018 and finalization 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 (Prel.) 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 questions and actual number of answers found wrong were as follows:-

<i>Sl. No.</i>	<i>Subjects</i>	<i>Number of questions challenged</i>	<i>Actual numbers of questions found wrong</i>
<i>1</i>	<i>General Studies</i>	<i>34</i>	<i>3</i>
<i>2</i>	<i>Agriculture</i>	<i>5</i>	<i>3</i>

3	<i>Anthropology</i>	5	3
4	<i>AH & Vety Science</i>	7	3
5	<i>Botany</i>	3	1
6	<i>Civil Engineering</i>	3	2
7	<i>Commerce</i>	2	2
8	<i>Economics</i>	4	No correction
9	<i>Education</i>	19	6
10	<i>Electrical Engineering</i>	15	6
11	<i>Electronics</i>	3	1
12	<i>Geography</i>	2	1
13	<i>Geology</i>	9	7
14	<i>Indian History</i>	42	11
15	<i>Law</i>	1	1
16	<i>Mathematics</i>	2	2
17	<i>Mechanical Engineering</i>	12	8
18	<i>Philosophy</i>	6	2
19	<i>Physics</i>	14	5
20	<i>Political Science</i>	25	14
21	<i>Sociology</i>	13	9
22	<i>Zoology</i>	2	2

The Commission took suo-moto cognizance of the matter of anomalies/mistakes in the answer keys of the C.C. (Prel) 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 CCE (Mains), 2018 on the basis of the earlier cut off marks, it was decided to declare these 406 candidates as qualified for appearing in the CCE (Mains), 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 CC (Mains) Examination 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 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 opened 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. (Man) Examination, 2018.

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

.....”

**“MINUTES OF THE MEETING OF THE COMMISSION
HELD ON 25.1.2021 AT 12.00 PM**

Present:

- (i) Dr. Ajanta Nath, Chairman (i/c)
- (ii) Dr. Niranjana Kalita, Member, APSC
- (iii) Shri S.K. Gohain Boruah, IAS (Retd.), Member, APSC
- (iv) Shri Debeswar Malakar, IAS (Retd.), Member, APSC

Smti Indira R. Kalita, ACS, Secretary, Smti Pubali Gohain, ACS, PCE & and Smti Nayana Borah, ACS, Joint Secretary, APSC were also present in the meeting.

Item no.1: *WP(C) no.3341/2019 (Shalini Khan Vs. State of Assam & others) and batch of cases*

It was pointed out that the Hon'ble Gauhati High Court vide order dated 22.12.2020 passed in IA (Civil) no.2220/2020 in WP(C) no.3341/2019 was pleased to direct the Commission to declare the final results of the CCE, 2018 and withheld results of 6(six) candidates.

Further, the Hon'ble High Court vide order dated 18.01.2021 passed in WP(C) no.3341/2019 directed the Commission to clarify its stand with regard to the aforesaid 6(six) candidates by filing fresh affidavits in this regard on or before 28.01.2021.

The Commission discussed the matter and observed that out of 98 candidates, 68 appeared in the C.C. (Mains) Exam and out of these 68 candidates, 4-candidates viz Saswati Das (R.N.-1022654), Vidisha Boro (R.N.-1100550), Manish Baruah (R.N.-1018525) and Anupam Deka (R.N.-1020895) could make it to the final select list and in pursuance of the order dated 22.12.2020 of the Hon'ble High Court withheld their recommendation to the Govt. The Commission is now of considerate opinion that CC (Prel) Exam is a screening test and they could not clear it by a whisker and these 4 candidates by virtue of their own merit could successfully clear C.C. (Main) Exam & viva-voce both of whose marks are taken into consideration in the final selection, hence the Commission fully stood by their recommendation as justified.

With regard to the petitioner in W.P(C) No.3341/2019 (Shalini Khan Vs SoA & Ors.) and the petitioner in W.P.(C) No.3344/2019G (Girbani Deka Vs. SOA & Ors.), the Commission opined that the Hon'ble High Court in the interim allowed both the petitioners (W.P(C) No.3341/2019 & W.P(C) No.3344/2019) to appear in the CCME, 2018 and they cleared both the CCME and viva-voce by securing positions in the final select list by virtue of their own merit.

As such, the Commission in respect of these two petitioners leave the matter to be decided by the Hon'ble

High Court and hence the Commission have nothing to object to any decision taken by the Hon'ble High Court by considering the fact that both the writ petitioners have qualified for recommendation by the Commission on assessment of their respective merit in CCEM, 2018 and interview."

***"MINUTES OF THE MEETING OF THE COMMISSION
HELD ON 18.3.2021 AT 11.30 AM***

Present:

- (i) Shri Rajiv Kumar Bora, IAS (Retd.), Chairman*
- (ii) Dr. Ajanta Nath, Member, APSC*
- (iii) Dr. Niranjana Kalita, Member, APSC*
- (iv) Shri S.K. Gohain Boruah, IAS (Retd.), Member, APSC*
- (v) Shri Debeswar Malakar, IAS (Retd.), Member, APSC*
Smti Indira R. Kalita, ACS, Secretary & PCE (i/c) was also present in the meeting.

Item no.1: Order dated 12.3.2021 passed by the Hon'ble Gauhati High Court in WP(C) no.3341/2019 (Salini Khan Vs State of Assam & others and a bunch of writ petitions in connection with CCE, 2018.

The Commission convened this urgent meeting today to discuss regarding filing of an additional affidavit to clarify its stand allowing 98 candidates to appear in the CCE (Main), 2018 vide Minutes of Meeting dated 30/4/2019.

1.1 The APSC had declared the results of the CCE (Prel.). 2018 on 13-03-2019 wherein 3361 candidates were declared to be eligible to appear in CCE (Main), 2018. APSC thereafter uploaded answer keys of CCPE 2018 and OMR Sheets of each and every candidate of the CCE (Prel), 2018 in its website. However, on detection of some genuine and inadvertent discrepancies in the official answer keys, the Commission decided suo-moto to re-verify the answer keys with the help of domain experts and found that there were genuine & inadvertent mistakes in some of the answer keys of CCPE 2018. Accordingly, corrected answer keys were entered into the system and as such

some 406 candidates were found to have qualified to appear in the CCME 2018. However 98 candidates out of 3361 candidates declared to have cleared CCPE 2018 on 13-03-2019 were found to have secured lower than the cut off marks due to the revision of answer keys. The Commission had therefore decided to correct the said genuine and inadvertent errors and was of the view that no genuine candidate should be deprived for no fault on his/her parts. Hence, the Commission, in its meeting dated 30/4/2019 had decided that:-

- (i) There will not be any upward revision of the cut off marks for preliminary examination.*
- (ii) Since after feeding the correct answer keys into the system, it was found that 406 more candidates would qualify for the CCE (Main), 2018 on the basis of the earlier cut off marks, it was decided to declare these 406 candidates as qualified for appearing in the CCE (Main), 2018.*
- (iii) 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 CC (Main) Examination whose marks came below the cut off marks due to revision of answer keys, were not to be discarded and allowed to appear for CC (Main) Exam, 2018. In other words, the list of 3361 candidates earlier declared to have qualified to appear in the CC (Main) 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.

1.2 Accordingly Commission allowed those 98 candidates who secured lower marks than the cutoff marks due to revision of answer keys and had already been declared to have qualified, to appear in the Combined Competitive Examination (Main), 2018 considering that it being the preliminary stage and there being subsequent stages to assess the merit and suitability of the candidates.

1.3 The matter was again discussed by the Commission in its Meeting dated 25/1/2021 in pursuance of the Order of the Hon'ble Gauhati High Court passed in W.P.(C) No.3341/2019 (Shalini Khan vs SOA & ors) to clarify its stand in respect of 6 (six) selected candidates i.e. Saswati Deka (Roll No.1022654), Vidistha Bodo (Roll No.1100550), Manish Baruah (Roll No.1018525), Anupam Deka (Roll No.1020895), Salini Khan (Roll No.1013210 - Writ Petitioner in W.P.(C) 3341/2019) and Girbani Deka (Roll No.1010716-Writ Petitioner in W.P.(C) 3344/2019). The Commission after discussion on the matter had observed that

'The Commission discussed the matter and observed that out of 98 candidates, 68 appeared in the C.C. (Mains) Exam and out of these 68 candidates, 4-candidates viz Saswati Das (R.N.-1022654) Vidisha Boro (R.N.-1100550), Manish Baruah (R.N.-1018525).and Anupam Deka (R.N.-1020895) could make it to the final select list and in pursuance of the order dated 22.12.2020 of the Hon'ble High Court withheld their recommendation to the Govt. The Commission is now of considerate opinion that as CC(Prel) Exam is a screening test and they could not clear it by whisker and these 4 candidates by virtue of their own merit could successfully clear C.C. (Main) Exam & viva-voce both of whose marks are taken into consideration in the final selection, hence the Commission fully stood by their recommendation as justified.

With regard to the petitioner in WP(C) No.3341/2019 (Shalini Khan Vs SoA & Ors.) and the petitioner in W.P.(C) No.3344/2019 (Girbani Deka Vs. SOA & Ors.) the Commission opined that the Hon'ble High Court in the interim allowed both the petitioners (W.P.(C) No.3341/2019 & W.P.(C) No.3344/2019) to appear in the CCME 2018 and they cleared both the CCME and viva-voce by securing positions in the final select list by virtue of their own merit.

As such, the Commission in respect of these two petitioners leave the matter to be decided by the Hon'ble High Court and hence the Commission have nothing to object to any decision taken by the Hon'ble High Court by considering the fact that both the writ petitioners have qualified for recommendation by the Commission on assessment of their respective merit in CCEM, 2018 and interview.'

1.4 *In view of the order of the Hon'ble Gauhati High Court dated 12/3/2021 passed in WP(C) No.3341/2019 (Salini Khan Vs State of Assam & others and a bunch of writ petitions, the Commission had a threadbare discussion on the probable consequence/impact of the decision vide Minutes of the Meeting dated 30/4/2019 on its subsequent functioning in fair and transparent manner. The Commission after threadbare discussion unanimously came to a conclusion that the Commission took the decision in its minutes dated 30.4.2019 allowing 98 candidates to appear in the CCE (M), 2018 by taking the same as one off special case considering that there was no fault on the part of those 98 candidates who were declared to have qualified under the pre-revised answer keys.*

1.5 *The Commission however, in order to maintain its integrity, fairness and impartiality in the matter of selection of candidates, has further unanimously resolved that the decision dated 30.4.2019 was, keeping in view the unprecedented and unusual circumstances, a one-time decision, which shall not, in any way, be treated as a precedent in any of the examinations including the CCE in future.*

1.6 *The Commission further opined that the Commission depends entirely on the domain experts for matters related to question setting, moderation, and answer keys of any examination. While the Commission does not absolve itself in any way from its overall responsibility, it is to be noted that the internal mechanism hardly allows any scope to the Commission to directly interfere in the process of setting of question papers and preparation of answer keys as these are set and moderated by designated domain experts drawn from the academia.*

1.7 The Commission decided to forward the resolution taken today to the Sr. Standing Counsel, APSC for placing the same before the Hon'ble Court by way of additional affidavit clarifying the stand of the Commission as directed by the Hon'ble Court.

The Secretary/PCE shall take necessary steps accordingly.”

22. In Writ Appeal No.361/2023 and Writ Appeal No.364/2023, this Court, while issuing notices to the respondents, including the State and the APSC, considering the submissions made on behalf of the counsel for the appellants that the APSC has allowed the 98 other candidates who were shown to be selected in the first answer key but ousted in the revised answer key *suo moto* issued by the respondent APSC to appear in Written Examination and, looking to this fact, the appellants are also entitled to equitable relief, this Court had directed the APSC to take instructions on the said submissions advanced by the appellants’ counsel and in response to the same, the APSC has filed an affidavit on 03.11.2023 and along with the said affidavit has produced the minutes of the meeting of the APSC held on 19.10.2023. The said minutes of the meeting are reproduced hereunder:-

“MINUTES OF THE MEETING OF THE COMMISSION
HELD ON 19.10.2023 AT 1.00 PM IN THE MATTER OF
WA NO.361/2023 (SHALINI KHAN -VS- SOA) AND
364/2023 (GIRBANI DEKA -VS- SOA)

Present:

i) Shri Bharat Bhushan Dev Choudhury, IAS
(Retd.), Chairman

ii) Dr. Ajanta Nath, Member

ii) Shri Ghana Kanta Pegu, ACS (Retd.), Member

iv) Dr. Padma Sharma, Member

v) Smti Nazreen Ahmed, ACs (Retd.), Member

It was apprised in the meeting that vide WA No.361/2023 (Shalini Khan -Vs- SoA) and 364/2023 (Girbani Deka), 2(two) candidates of CCE-2018 challenged the order dated 21.08.2023 passed in WP(C) No.3341/2019 (Shalini Khan vs SOA & ors) & W.P.(C) 3344/2019 (Girbani Deka vs SOA & ors) by the Hon'ble High Court relating to CCE-2018 wherein the Hon'ble Court dismissed the respective Writ Petitions of both the appellants/Writ Petitioners holding that they did not qualify the Preliminary Examination of the CCE-2018 held on 30/12/2018 on the basis of the correct answer key published by the APSC. Accordingly, the claim of the other candidates who got themselves impleaded as Respondent No.5 (Saswati Deka), 6 (Vidisha Bodo), 7 (Manish Baruah) & 8 (Anupam Deka) of W.P.(C) 3341/2019 was also dismissed who secured the posts ACS (Jr. Grade) and ALRS respectively.

It was apprised that these two candidates namely Shalini Khan and Girbani Deka cum appellants although unsuccessful in CC (P) E-2018 were allowed by the Hon'ble High Court vide order passed in WP(C) No.3341/2019 & W.P.(C) 3344/2019 respectively provisionally to appear in CC (M) E-2018 which were preferred challenging the official answer keys of the CC (P) E-2018. Ultimately they secured ACS (Jr. Grade) and ALRS respectively.

It was also apprised in the meeting that Counsel representing these two appellants cum candidates during hearing in WA No.361/2023 (Shalini Khan -Vs- SoA) and 364/2023 (Girbani Deka) made following submission during hearing of the appeals:-

'The writ petitions were filed on behalf of the appellants in the year 2019 questioning the validity of the answer key and the revised answer key issued by the APSC. The petitioners were granted interim protection and conditional permission to appear in the final examination. The appellants have cleared the final examination as well as viva-voce and thus, they are now entitled to be appointed against the posts for which they sought selection. The writ petitions were heard finally on 04/09/2021 and came to be rejected by judgment dated 21.08.2023, i.e. after a gap of nearly two years. The

appellant in WA 364/2023 would face the risk of crossing the upper age limit for selection. It is further submitted that 98 other candidates who were shown to be selected in the first answer key, were ousted in the revised answer key Suo Moto issued by the APSC, but they have been allowed to appear in the final examination by the APSC on its own. It is thus submitted that the appellants are also entitled to equitable relief.'

On the basis of the submission made by the Counsel representing these two appellants cum candidates during hearing in WA No.361/2023 (Shalini Khan -Vs- SoA) and 364/2023 (Girbani Deka), Hon'ble Gauhati High Court vide order dated 22/9/2023 required the Standing Counsel of APSC to take instruction on the submissions made by the appellants' counsel.

It was further apprised in the meeting that subsequent to the order dated 22/9/2023 passed in WA No.361/2023 (Shalini Khan -Vs- SOA) and 364/2023 (Girbani Deka), the Respondent No.5 to 8 of W.P.(C) 3341/2019 also filed separate Writ Appeals being No. W.A. No.363/2023 (Saswati Das vs SoA & ors), W.A. 371/2023 (Vidisha Bodo & Anupam Deka), and W.A. No.373/2023 (Manish Baruah).

It was apprised in the meeting that the APSC had declared the results of the CCE (Prel.), 2018 on 13-03-2019 wherein 3361 candidates were declared to be eligible to appear in CCE (Main), 2018. APSC thereafter uploaded answer keys of CCPE 2018 and OMR Sheets of each and every candidate of the CCE (Prel), 2018 in its website. However, on detection of some genuine and inadvertent discrepancies in the official answer keys, the Commission decided suo-moto to re-verify the answer keys with the help of domain experts and found that there were genuine & inadvertent mistakes in some of the answer keys of CCPE 2018. Accordingly, corrected answer keys were entered into the system and as such some 406 candidates were found to have qualified to appear in the CCME 2018. However 98 candidates out of 3361 candidates declared to have cleared CCPE 2018 on 13-03-2019 were found to have secured lower than the cutoff marks due to the revision of answer keys. The Commission had therefore decided to correct the said genuine and inadvertent errors and

was of the view that no genuine candidate should be deprived for no fault on his/her parts. Hence, the Commission, in its meeting dated 30/4/2019 had decided that:-

- 1. There will not be any upward revision of the cut off marks for preliminary examination.*
- 2. Since after feeding the correct answer keys into the system, it was found that 406 more candidates would qualify for the CCE (Main), 2018 on the basis of the earlier cut off marks, it was decided to declare these 406 candidates as qualified for appearing in the CCE (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 CC (Main) Examination whose marks came below the cut off marks due to revision of answer keys, were not to be discarded and allowed to appear for CC (Main) Exam, 2018. In other words, the list of 3361 candidates earlier declared to have qualified to appear in the CC (Main) 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.

Accordingly Commission allowed those 98 candidates who secured lower marks than the cutoff marks due to revision of answer keys and had already been declared to have qualified, to appear in the Combined Competitive Examination (Main), 2018 considering that it being the preliminary stage and there

being subsequent stages to assess the merit and suitability of the candidates.

It was apprised in the meeting that out of those 98 candidates, 4 candidates i.e. Respondent No.5, 6, 7 & 8 of W.P.(C) 3341/2019 obtained 2(two) posts of ACS (Jr. Grade), 1(one) post of Inspector of Labour and 1(one) post of Inspector of Taxes out of 98 candidates of CC (P) E-2018 who were allowed to appear in CC (M) E-2018 vide minutes of the Commission dated 30.04.2019. These 98 candidates including aforesaid 4 respondents of writ appeals were initially declared to have passed in results of CC (P) E-2018. But after suo-moto re verification of answer key of CC (P) E-2018 undertaken by the Commission, they were found to be short of cut-off marks.

It was also apprised in the meeting that during pendency of the WP(C) No.3341/2019 (& batch of case), the Commission vide additional affidavit dated 01/02/2021 wherein it was contended that 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 i.e. appellants of WA No.361/2023 and WA No.364/2023 in similar matter like the other private respondent Nos.5 to 8.

It was apprised in the meeting that the Commission, held its meeting dated 18/3/2021 to clarify its stand with regard to the queries made the Hon'ble Court in pursuance of the order of the Hon'ble Court dated 12/3/2021. The decision of the meeting dated 18/3/2021 was duly informed vide Additional affidavit dated 23/03/2021 filed in the Hon'ble High Court whereby it was clarified its stand before the Hon'ble Court 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.

(i) 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.'

It was thus resolved in the meeting that the Commission shall go by its earlier stand as per the additional affidavit dated 01/02/2021 as well as 23/03/2021 filed by the Commission in WP(C) No.3341/2019 (& batch of case) the Commission left the matter to be decided by the Hon'ble Court in respect of entitlement of the Writ Appellant as well as respondents No.5-8. The Commission shall, however, clarified that the Writ Appellants i.e. Shalini Khan and Girbani Deka

are not entitled to any more additional marks as claimed.”

23. The APSC has also took a stand before the learned Single Judge that the provisions of the Rules of 1989 gives a certain degree of discretion on the APSC regarding admitting of candidates in Combined Competitive (Mains) Examination. It was also contended that Rule 77 of the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 empowers the APSC to deal with any matter which is not specifically provided in the said Rules in the manner as they deem fit.

24. From the above, it is clear that the APSC has justified its action before the learned Single Judge of allowing the 98 candidates, who had actually not cleared the Preliminary Examination, to appear in the Main Examination by contending that there is no fault on the part of those candidates, who were initially declared eligible to appear in the Written Examination but on revision of the answer keys, were found that they have not cleared the Preliminary Examination, which is a mandatory condition for appearing in the Written Examination.

The another reason, which compelled the APSC to allow those 98 candidates to appear in the Main Examination though they have not cleared the Preliminary Examination, was that during the course of revision of the answer keys, 406 other candidates, who were initially declared to have not obtained the requisite cut off marks in the Preliminary Examination, had actually obtained the

requisite cut off marks and if those 98 candidates are removed from the list of eligible candidates and if another 40 fresh candidates are included than this may lead to complete cancellation of the results requiring issuance of a fresh Notification containing new results which may take more time.

The APSC was of the opinion that the Preliminary Examination are conducted only for the purpose of shortlisting of candidates and as the marks obtained by a candidate in the Preliminary Examination are not counted in the final result, those ineligible 98 candidates can be allowed to appear in the Main Examination because the merit and suitability of the candidates is to be decided in the subsequent stages of examination.

25. The APSC has also admitted its fault, although not in so many words, that it has failed to discharge the overall responsibility but has also tried to shift the responsibility on the domain experts, while contending that in the process of setting up of question papers and preparation of answer keys, the APSC is dependent on the designated domain experts only and has hardly any scope to interfere.

The APSC has also emphasized that allowing those 98 ineligible candidates to appear in the Written Examination is only a one time decision in view of unprecedented and unusual circumstance which shall not be, in any way, treated as a precedent in any examination in future.

The APSC has also contended that the 4(four) appellants, namely, Saswati Das; Vidisha Bodo; Anupam Deka and Manish Baruah, have missed their Preliminary Examination by a whisker but have performed well in the subsequent stages and find their place in the final merit list and, therefore, their names deserve to find place in the final list.

In respect of the 2(two) appellants, namely, Shalini Khan and Girbani Deka, the stand of the APSC is more or less similar as the stand taken in the cases of the other 4(four) appellants and it is reiterated by the APSC that whatever decision the Court would take in respect of those appellants, they will abide by it.

26. Though the State Government has not clarified its stand before the Single Bench in specific terms, therefore, during the course of hearing of these appeals, this Court has opined that a lenient view is required to be taken in favour of the appellants and as such directed the State Government to place its views through an affidavit. Pursuant to the same, an affidavit is filed on behalf of the Commissioner & Secretary to the Government of Assam, Personnel (A) Department on 28.06.2024 and explained the views of the State Government in the following manner:-

“That the State Government has observed that the concerned 6 (six) Nos.(4+2) of candidates who were selected by the Assam Public Service Commission (APSC) for recruitment to the posts of Assam Civil Services and Allied Services under the State Government could not

qualify truly in the Combined Competitive Examination (Preliminary) 2018.

It is mandatory that a candidate is to qualify Combined Competitive Examination (Preliminary) with minimum cut off marks for admission into Combined Competitive Examination (Mains) as per the Assam Public Services Combined Competitive Examination Rules, 1989. The Assam Public Services Combined Competitive Examination Rules, 1989 is a Statutory Rules framed under Article 309 of the Constitution of India for regulating the recruitment and conditions of the services and posts under the Government specified in Schedule-I. Neither there is any provision of 'Relaxation' in the Assam Public Services Combined Competitive Examination Rules, 1989 to select such candidates who could not qualify in the Combined Competitive Examination (Preliminary) nor any provision for conferring any such power of relaxation upon the APSC to select such candidates.

It is considered opinion of the State Govt. that selection and appointment of such ineligible candidates who did not qualify in the Combined Competitive Examination (Preliminary) with requisite cut off marks violating the Statutory Rules framed under the Article 309 could not be permissible. It is mandatory for a candidate to pass Combined Competitive Examination (Preliminary) with requisite cut-off marks and is not a mere screening test. Such instances will malign the image of the Government in the public eyes as well as demoralize the aspiring candidates for Civil Services. Moreover, it will create a bad precedence in future.

Further the State Respondent cannot agree to the views of the APSC furnished in their affidavit wherein the APSC has taken a stand in respect of 4(four) candidates (namely Saswati Das, Anupam Deka, Vidisha Bodo and Manish Baruah) stating that they could not score the cut off marks by a small margins in the CCE (Prelim), 2018 and these candidates by virtue of their merit could successfully clear the Main Examination and interview and therefore the APSC recommended for consideration. In respect of Shalini Khan and Girbani Deka, it is stated that they are not entitled to any marks and the Commission decided to leave the matter to the discretion of the Hon'ble Court. In this regard, the State Respondent has viewed that all the 6 (six) candidates could not pass the CCE (Prelim), 2018 that debars them from selection for

appointment as per the statutory rules, no matter whether they were disqualified by a small margins or a big margins. They are, after all not qualified as per required norms.

Further, their cases not be considered on any ground like sympathy though some of them have claimed that they did not accept other job offers. It is pertinent to say that any candidate appearing in Combined Competitive Examination is not barred to accept any other jobs. The sanctity of examination is required to be maintained at any cost.

That State Respondent has found 'no merit' in their appeals for selection and appointment to the post of Assam Civil Services and Allied services under the State Government."

27. From the above, it can be gathered that the State has emphasized on the fact that condition of passing of Preliminary Examination for a candidate appearing in the Combined Competitive Examination is a mandatory condition and the same cannot be relaxed and admittedly when the appellants have failed to pass the Preliminary Examination, their appearance in the subsequent stages of Examination would be of no consequence.

The State is also of the opinion that such instances will malign the image of the Government in public eyes apart from demoralizing the aspiring candidates for Civil Services and may create a bad precedent in future. It appears that the main concern of the State Government is to the effect that such concession may become a precedent resulted into compromising with the future selections.

28. We refrain ourselves from addressing the issue raised by the appellants Shalini Khan and Girbani Deka in

relation to their objection regarding the answer keys in view of the decision of the Hon'ble Supreme Court rendered in ***Ran Vijay Singh & Ors. -Vs- State of Uttar Pradesh & Ors.***, reported in ***(2018) 2 SCC 357***, wherein the Hon'ble Supreme Court has criticized the concerned High Court for ascertaining the correctness of question by itself taking up the task of re-evaluation.

29. Now in the facts and circumstances noted above, the question remains that whether the appellants are entitled to be declared as successful in CCE, 2018 though admittedly they have failed to clear the Preliminary Examination by obtaining the cut off marks as required.

30. The plan of Combined Competitive Examination is detailed out in Section 1 of Appendix-I of the Rules of 1989, which is reproduced hereunder:-

“PLAN OF EXAMINATION

1. 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.

2. 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.

3. *The Main Examination will consist of written Examination and interview test. The written Examination will consist of 2 compulsory papers on General English and General Studies subjects and two question papers each on any two subjects from the list of optional subjects as set out in the list in Section-II. The interview will carry marks as shown in Section-II (with no qualifying marks).*

Marks thus obtained by the candidates in the Main Examination (Written part as well as interview), would determine their final ranking. Candidates will be allotted to the various services keeping in view their ranks in the Examination and (respective), preference expressed by them for different posts.”

From the above, it is clear that the Preliminary Examination is meant to serve a Screening Test only and the marks obtained in the Preliminary Examination by the candidates cannot be counted for determining the final order of merit. However, only those candidates, who have qualified in the Preliminary Examination, will be eligible for admission to Written Examination and marks obtained by a candidate in the Written Examination and interview can only be counted for final marking.

31. The Hon’ble Supreme Court in ***Pankaj Sharma -Vs- State of Jammu & Kashmir & Ors.***, reported in **(2008) 4 SCC 273** has explained the nature of the Combined Competitive Examination, while taking into

consideration the provisions of the Kashmir Combined Competitive Examination Direct Recruitment Rules, 1995, wherein the provisions of Preliminary Examination and Main Examination are almost similar to the provisions of the Preliminary and Main Examinations contained in the Rules of 1989. The Hon'ble Supreme Court has observed that the purpose of clearing the Preliminary Examination is only for getting entry into the second examination, i.e. the Main Examination. It is also observed by the Hon'ble Supreme Court that the question of disability would arise only in case of participation at the stage of selection where the merit of a candidate was to be adjudged but as the marks secured by a candidate in the Preliminary Examination are not to be counted for final selection and preparation of the merit list, the same cannot affect the final result. Relevant portion of the said judgment is reproduced hereunder:-

“40. The learned Single Judge observed that the question of disability could arise only in case of his participation at the stage of selection where the merit of a candidate was to be adjudged. In our view, the learned single Judge was right. It is clarified by the 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' and 'selection' or 'merit' was not to be based on the result of preliminary examination.

41. As already noted, preliminary examination was the first step and was limited to the process of 'shortlisting' of candidates in the ratio of 1:13 and was not relevant for final selection of candidates

and preparation of merit list/select list. The marks obtained at the preliminary examination were not to be counted for final selection and preparation of merit list. It was limited to getting entry in the main examination. It, therefore, cannot be said that by not granting benefit of additional marks to 'selected' candidates which were given to 'unselected' candidates, injustice had been done to 'selected' candidates.”

Hence, it is now settled that the Preliminary Examinations are conducted only for the purpose of shortlisting of candidates and question of disability would arise in case of participation of the candidate at the stage of selection, where merit of a candidate was to be adjudged.

32. In the present case, though the appellants have failed to clear the Preliminary Examination, which were of course conducted only for the purpose of shortlisting of candidates, but in the subsequent examination (written and interview), they found their place in the merit according to their performance.

33. It is to be noticed that the appellants Shalini Khan and Girbani Dekha have approached the Writ Court raising a grievance about the correctness of the answer keys published by the APSC twice in respect of Preliminary Examination of CCE, 2018 and at no point of time, anybody had questioned the action of the APSC to allow the 98 persons, who have failed to clear the Preliminary Examination, to appear in the Written Examination. It is not clear under what circumstances the Single Bench has

directed the APSC to disclose as to actually how many candidates have passed the Preliminary Examination and how many candidates, who have not passed the Preliminary Examination but were allowed to appear in the Written Examination.

We have no doubt that while adjudicating a controversy raised, a Writ Court, while exercising extraordinary jurisdiction and to do complete justice, can seek clarifications and explanations from the respective parties to understand the complexity of the issues raised or discovered during the course of adjudication but at the same time, it needs to be clarified that under what circumstances, the Court was compelled to venture into the areas and the issues which were not raised or pleaded in specific terms.

34. Another aspect which cannot be ignored is that the APSC, being the recruiting agency, is primarily responsible for conducting the Combined Competitive Examination in different stages in a fair and transparent manner. A complete mechanism is provided under the Rules of 1989 and the Rules of 2010 for conducting the Combined Competitive Examination at different stages. However, in the present case, we have no hesitation in saying that APSC has miserably failed to discharge its primary responsibility of conducting the CCE, 2018, particularly the Preliminary Examination in a fair and transparent manner.

The initial result of the Preliminary Examination of CCE, 2018 was declared on 30.03.2019. However, the APSC itself had discovered that the answer key published by it is not correct and, therefore, on its own, the APSC had re-verified the answer key and came to the conclusion that some of answers in the initial answer key are not correct and, therefore, it had revisited the result and published a new answer key. As per the new answer key, 406 candidates, who had initially not qualified the Preliminary Examination for appearing in the Main examination, had also cleared the Preliminary Examination. At the same time, the APSC has also discovered that 98 persons, who had actually not cleared the Preliminary Examination, were declared as eligible for appearance in the Main Examination in the initial result published on 30.03.2019. If we add 406 persons in the list of eligible candidates, who appeared in the Preliminary Examination after excluding 98 persons, who have not cleared the Preliminary Examination but were declared as eligible for appearing in the Main Examination, then also there is a variation of around 10% in the actual number of persons, who have cleared the Preliminary Examination but have been declared as failed in the said Examination. Apart from that, in response to the direction given by this Court on 29.05.2019, the APSC had filed a common affidavit in all the 21 writ petitions and has stated that on further verification of answer scripts of Preliminary Examination of 21 candidates/writ petitioners, in consultation with the paper setters/domain experts, it was found that after

awarding grace marks to them on *pro-rata* basis, further 9 candidates out of those 21 writ petitioners, had qualified the Preliminary Examination. It is not clear from the said affidavit that how the APSC has awarded grace marks on *pro-rata* basis to the 9 candidates out of the 21 writ petitioners.

35. In this fact situation, the initial result of the Preliminary Examination declared by the APSC as well as the subsequent revised result declared by it of the Preliminary Examination of CCE, 2018 is shrouded in doubt and raises suspicion. If we examine the cases of the appellants Shalini Khan and Girbani Deka in the above noted facts and circumstances of the case, it cannot be concluded with certainty that the grievance raised by the said appellants that they were not awarded correct marks in the Preliminary Examination, has no merit.

36. In respect of the 4(four) appellants, namely, namely, Saswati Das; Vidisha Bodo; Anupam Deka and Manish Baruah, the same logic applies and in their cases also it can be said that their exclusion from the list of successful candidates, who have cleared the Preliminary Examination is mired in controversy. The above referred 4(four) appellants have no clue till the declaration of the final result of the CCE, 2018 that they have not cleared the Preliminary Examination. With no doubt in their mind, they appeared in the Written Examination and have also qualified for interview test and as per their own merit, have

successfully find place in the merit list. After declaration of the initial result of the Preliminary Examination on 30.03.2019, the above referred 4(four) appellants have a legitimate expectation of their selection in the CCE, 2018 and on the strength of that expectation, they successfully cleared the written as well as the interview tests and as such, they are entitled to get relief applying the principle of legitimate expectation.

37. In respect of the appellants Shalini Khan and Girbani Deka, we are of the opinion that these 2(two) appellants are also entitled to get relief on the basis of equity. The APSC has, on its own, allowed 98 candidates to appear in the Written Examination though as per it, they had failed to qualify the Preliminary Examination. However, it is another thing that out of those 98 candidates, only 68 candidates have actually appeared in the Written Examination and ultimately only 4 candidates out of those 68 candidates have successfully cleared the CCE, 2018. When the APSC has, on its own, allowed 98 candidates who have not cleared the Preliminary Examination, to go into the further stage of Combined Competitive Examination, there is no reason to grant the some equitable relief to the appellants Shalini Khan and Girbani Deka.

At the same time, we find that the finding of the learned Single Judge that the APSC has no power to relax the condition of clearing the Preliminary Examination is not suffering from any infirmity. However, as observed earlier,

the appellants are entitled for reliefs on the doctrines of legitimate expectation and equity.

38. Another aspect which cannot be ignored is that the APSC has disclosed before the Single Bench in December, 2020 itself that all the 6(six) appellants, namely, Shalini Khan; Girbani Deka; Saswati Das; Vidisha Bodo; Anupam Deka and Manish Baruah, have successfully cleared the Combined Competitive Examination after passing the written as well as interview tests and taking note of the above fact, probably the Single Bench has directed the APSC 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. The Division Bench of this Court has continued the said order and the same is still in currency. The appellants were, therefore, aware that they have successfully cleared the examination in December, 2020 itself and knowing that, they may not have attempted for any other competitive examination in the hope of a favourable decision from the Writ Court.

However, the final hearing of the writ petitions filed by the appellants Shalini Khan and Girbani Deka, wherein the other 4(four) appellants, namely, Saswati Das; Vidisha Bodo; Anupam Deka and Manish Baruah, have also been impleaded as party respondents, was concluded on 04.09.2021 but the judgment in the above referred writ

petitions was delivered only on 21.08.2023, i.e. almost after 2(two) years of the final hearing. Had the appellants known their fate immediately after disclosure of the fact that they have successfully cleared the CCE, 2018 but have failed to clear the Preliminary Examination and, therefore, their participation in future stages of selection is of no use, they might have attempted to appear in future competitive examinations or other examinations. That is why the Hon'ble Supreme Court time and again cautioned the Courts to deliver the verdicts in expeditious manner after concluding the final hearing in any matter.

39. At the same time, we are also of the view that sympathies and compassion cannot be extended in each and every case. Sympathy cannot override the law but in a given case in the spirit of justice, good conscience and equity, relief can be granted to the aggrieved party if the same may not affect a large number of persons or a third party.

40. It is to be noted that while providing appointment to the appellants, no other person, who appeared in the CCE, 2018 is going to be affected and when the rights of a third party are not going to be affected, it is safe to issue a direction to the APSC to declare the result of the appellants and to forward it to the State Government with a further direction to the State Government to provide appointment to the appellants on the posts reserved as per the direction of this Court and as per their merit. At the same time, it is

made clear that this arrangement is a one-time arrangement and shall not be treated as a precedent in future. The reliefs are being granted to the appellants in the peculiar facts and circumstances of the case.

41. Resultantly, the writ petitions are allowed. The impugned judgment & order dated 21.08.2023 passed by the learned Single Judge in WP(C) No.3341/2019 and WP(C) No.3344/2019 is set aside.

42. The APSC is directed to declare the result of the appellants within a period of 2(two) weeks from the date of production of a certified copy of this judgment & order and to forward the same to the State within 1(one) week from the date of declaration of the result. The State Government is directed that on receiving the recommendation from the APSC, as directed above, it shall provide appointment to the appellants on the posts reserved as per the direction of this Court and as per their merit, within a period of 4(four) weeks from the date of receipt of the recommendation from the APSC.

43. During the course of hearing of these appeals, the learned senior counsel appearing for some of the appellants and other counsel for the remaining appellants have fairly submitted that if the appellants are granted relief on the basis of equity, they shall not insist to grant them service benefits from any retrospective date and are ready to accept the complete service benefits from the date of joining on their respective posts.

In such circumstances, it is ruled that the appellants will get all the service benefits from the date of joining in the service and not from any retrospective date.

44. Before parting with the record, we may add a word of caution for the APSC that while conducting the Combined Competitive Examination in future, it shall make every effort to conclude the Combined Competitive Examination and all other examinations with full responsibility and in a fair and transparent manner. The preparation of the answer keys and declaration of the result be carried out in a full proof manner without leaving any ambiguity in the minds of the candidates or the public at large.

45. With these directions and observations, these writ appeals are disposed of. No orders as to costs.

JUDGE

CHIEF JUSTICE

Mukut

Comparing Assistant