

GAHC010071302019



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

**Case No. : WP(C) 2187/2019**

1:IZAZ YUSUF AHMED  
S/O- SALAHUDDIN AHMED, R/O- H NO. 20, BISHNU RABHA PATH,  
BELTOLA, GUWAHATI, KAMRUP(M), ASSAM, PIN- 781028

VERSUS

1:THE STATE OF ASSAM AND 3 ORS  
REP. BY THE COMMISSIONER AND SECRETARY, PERSONNEL(A) DEPTT,  
GOVT OF ASSAM, DISPUR, GUWAHATI- 06

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

3:THE SECRETARY  
APSC  
JAWAHAR NAGAR  
KHANAPARA  
GUWAHATI- 781022

4:THE PRINCIPAL CONTROLLER OF EXAMINATIONS  
APSC  
JAWAHAR NAGAR  
KHANAPARA  
GUWAHATI- 78102

**Advocate for the Petitioner : MR. S BORTHAKUR**

**Advocate for the Respondent : SC, PERSONNEL DEPT.**

Linked Case : WP(C) 2188/2019

1:NAZIMUL ISLAM  
S/O- SAMIUL ISLAM  
R/O- VILL- HATSINGIMARI  
P.O- HATSINGIMARI  
P.S- SOUTH SALMARA  
DIST- SOUTH SALMARA MANKACHAR  
ASSAM  
PIN- 783135

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REP. BY THE COMMISSIONER AND SECRETARY  
PERSONNEL (A) DEPTT  
GOVT OF ASSAM  
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GUWAHATI- 06

2:ASSAM PUBLIC SERVICE COMMISSION  
REP. BY ITS CHAIRMAN  
JAWAHAR NAGAR  
KHANAPARA  
GUWAHATI- 22

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KHANAPARA  
GHY- 22

4:THE PRINCIPAL CONTROLLER OF EXAMINATIONS  
APSC  
JAWAHAR NAGAR  
KHANAPARA  
GHY- 22

Advocate for the Petitioner : MR. S BORTHAKUR  
Advocate for the Respondent : SC  
PERSONNEL DEPT.

**BEFORE  
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH**

**:: ORDER ::  
(ORAL)**

**06.05.2019**

Heard Mr. K. N. Choudhury, learned senior counsel assisted by Mr. R. Sensua, learned counsel and Mr. S. Borthakur, learned counsel for the petitioners. Also heard Mr. C. Baruah, learned Standing Counsel, APSC assisted by Mr. R. K. Talukder, learned counsel and Mr. S.S. Roy, learned Govt. Advocate for the State.

2. As the issues raised in these 2 (two) petitions are common and relate to same recruitment process, these two petitions are taken up together and disposed of by this common order.

3. The common grievance in these two petitions relate to what the Court sometimes considers an "inadvertent mistake". If that is so, any inadvertent mistake would be condonable.

Therefore, it may be ascertained whether this mistake was inadvertent or not and whether it can be condoned.

4. Apparently, these petitioners had appeared in the preliminary examination in terms of the advertisement issued by the Assam Public Service Commission (APSC) on 17.05.2018 for recruitment to various posts under the State as mentioned in the advertisement.

5. The aforesaid recruitment process consists of a preliminary examination and main examination. These petitions relate to the preliminary examination.

As per the examination scheme, the candidates are required to answer the objective type of questions in the preliminary examination in a specific format given by the authorities and to be answered only by way of highlighting or thickening the circles representing alternate answers given to the questions in the said format generally known as "Optical Mark Recognition (OMR)" format.

6. The aforesaid format has been used to facilitate evaluation of answers in a speedy manner which is to be done with the aid of computers.

In other words, the computers will recognise those highlighted answers proffered by the candidates on the basis of which the computer would instantly reflect the marks depending on the answers otherwise marks given. However, the computer would recognise the OMR sheet if the concerned "Series" mentioned in the OMR sheet is also ticked by the candidate concerned.

7. In the present petitions, the 2 (two) petitioners while giving answers in respect of General Studies subject in the Preliminary Examination did not tick the particular "Series" which the petitioners had been assigned in advance. Both the petitioners had been allotted Series 'C'. While giving answers to the aforesaid OMR sheets, the petitioners were to indicate the series so that when the OMR sheet is fed to the computer, the computer would automatically recognise that it belongs to 'C' category of candidates and accordingly, evaluate and reflect the marks of the candidates.

8. Since, the petitioners did not mark the particular series which they were assigned i.e. series 'C' as mentioned in the OMR sheet, when their OMR sheets were fed to the computer for evaluation, the computers did not recognise the said OMR sheets. As a result, though the petitioners had given their respective answers to the questions in the OMR sheets in the General Studies paper, the computer did not accept the OMR sheets. The authorities accordingly, awarded '0' mark in respect of the General Studies paper of the petitioners on the ground that the petitioners did not mention "Series C" in the General Studies paper.

It may be mentioned here that in respect of the optional paper, the petitioners duly were awarded 154 and 160 marks respectively. Thus, if the answers in the General Studies are evaluated, they claim that they would be eligible to appear in the Mains Examination.

9. Being aggrieved, the present petitioners have approached this Court for direction to the Assam Public Service Commission (APSC) authorities to evaluate their answers in the General Studies paper so that they could, if successful can appear in the Mains Examination.

10. These petitions have been contested by the Assam Public Service Commission (APSC) primarily on 2 (two) grounds.

11. It has been contended by the learned Standing Counsel, APSC that the candidates, including the petitioners, were instructed to indicate the series may marking it, which they did not do. It was specifically mentioned under Instruction No. 2 of the OMR sheet that ***Answer Sheet without marking Series as mentioned in the space provided for in the***

***Answer Sheet shall not be evaluated.***

12. Therefore, in the present cases, the petitioners have to blame themselves for the situation in which they have landed as it was their fault by not marking the series which was required to be done.

13. Since, the petitioners did not follow the instructions and it was part of the examination, the APSC could not be faulted for not evaluating the answers and as such awarding of '0' mark in respect of General Studies also cannot be faulted. Under the scheme adopted by the Assam Public Service Commission (APSC), all the answers in the General Studies were to be evaluated by the computer only as per the format prescribed to which the candidates had to give their respective answers and human intervention had to be avoided for various reasons.

In the present case, since the OMR sheets of the petitioners had been rejected by the computer, as such, they have been given '0' mark.

14. The contention of learned Standing Counsel, APSC is based on the affidavit- in-opposition filed.

15. Mr. C. Baruah, learned Standing Counsel, APSC has also produced the original answer scripts of the present petitioners in the OMR format.

16. This Court has gone through the pleadings, records and heard the submissions advanced.

17. The original OMR sheets of the petitioners clearly indicate they had given their respective answers to the questions in the said format and they had ticked/marked those relating to their roll number, test booklet number, subject code etc. correctly.

However, this Court has also noted as recorded in the column where the candidates are to indicate the "Series", the same had not been marked by the petitioners which accordingly led to non-recognition of their OMR sheets by the computer resulting in non evaluation.

18. Mr. K.N. Choudhury, learned senior counsel for the petitioners submits that the aforesaid mistake was purely inadvertent and was not deliberate and no fraudulent act is involved on the part of the petitioners. It was merely a plain omission on the part of the candidates to indicate the "Series" in the OMR sheet.

19. Learned senior counsel for the petitioners submits that petitioners had themselves given the answers to the questions and as such, the mistake which has occurred has nothing to do with the merit and knowledge of the examinee petitioners and is merely a procedural

mistake which has no relevant or relation to the answers given by the petitioners.

20. Accordingly, it has been submitted by the learned senior counsel for the petitioners that the petitioners may not be made to suffer for the aforesaid lapse, which was purely unintentional and which has also nothing to do with the merit of the case.

21. Learned senior counsel for the petitioners has referred to a decision of the Hon'ble High Court of Andhra Pradesh in ***Smt. Sujata Cheruku and Anr. Vs. The State of Telengana, (2018) 1 ALT 147: 2018 Lab IC 1636***, where a similar situation arose in the recruitment process for the posts of Trained Graduate Teachers (TGT) and Post Graduate Teacher (PGT), wherein the question booklet consisted of 4 (four) series i.e. A, B, C and D.

In the aforesaid case, the answer Booklets contained 4 circles for filling of respective paper series for the purpose of evaluation.

In the said case, the Invigilator had given the candidate A series Booklet by mistakes, though it was meant for another candidate who was sitting before her in the examination. Since, series A booklet was given to her, the candidate darkened the circle A in the OMR sheet. But later on, the Invigilator took back A series Booklet and gave her B series booklet and asked her to erase the darkened circle by whitener in the OMR sheet.

Similar mistake occurred also in the second case therein. Because of the aforesaid mistakes, the name of the petitioners did not find figure in the list of successful candidates though they had secured more marks than the cut off marks as per the key published by the authorities.

In that regard, the Hon'ble High Court of Andhra Pradesh observed in para 28 of the aforesaid decision as follows:

*“28. An opportunity comes once in a life time to many persons. That opportunity cannot be taken away by taking the aid of an un-intentional mistake committed by such person in life. All the examinations conducted for employment or for seats in Colleges are competitive and that competition cannot be eliminated by virtue of mistakes committed by the candidates unintentionally and not related to the merit of the candidate. Once has to see the intention behind the mistake when it can be discerned. The mistake relating to the booklet number, question number, hall ticket number and the personal particulars of the candidate will not have any bearing on the substantive merit of the candidate. In the examination hall, where a competitive*

*examination is held, the mental condition of the candidate would be different and it is prone to committing mistakes. Unless those mistakes are related to the merit of the candidate, to the extent they can be condoned can be condoned and an opportunity should be given to the candidate to compete along with others. In the above cases, the candidate admittedly committed a mistake in bubbling the relevant hall ticket number/roll number, though the boxes provided they have correctly written the number. Thus, the answer scripts can be easily identified, though it cannot be processed by the computer. Even if it involves some manual error, such type of answer scripts can be valued as it does not relate to the merit of the candidate."*

22. Accordingly, Hon'ble High Court of Andhra Pradesh had held that since the aforesaid mistake was unintentional and nothing to do with the merit or knowledge of the candidates concerned, it ought not to adversely effect their opportunities to appear in the recruitment process.

23. In the present case, the facts are also somewhat similar. Though in the present case, there was no mistake on the part of the Assam Public Service Commission (APSC) and mistake was purely on the part of the candidates concerned, but the fact remains that the aforesaid mistake was unintentional as there is no allegation from the Assam Public Service Commission (APSC) that it was an intentional or fraudulent act and that such mistake had no relation to the answers given by the petitioners. In fact, there could not be such allegation of fraudulent act by the very nature of the mistake committed because of carelessness, which the petitioners claim to be bonafide and unintentional mistake. The petitioners had nothing to gain by not marking the Series. Their Series number had been already allotted in terms of their Roll number/booklet number. There could not have been any scope of manipulation at any later stage by keeping the series number unmarked. Different "Series" had different organisation of the questions, though the questions were same. Different "Series" had the questions juggled differently to minimise scope for copying by candidates.

24. As also mentioned above, in the present case, this mistake also has no relation to the answers given by the petitioners. The petitioners had given their answers to the questions by darkening the concerned spaces as meant for answers as per instructions and petitioners seem to have followed other instructions other than this marking of the "Series".

25. This Court also would like to make the observation that taking aid of artificial intelligence in the form of computer is merely to assist the Commission consisting of human beings to make their onerous and bulky tasks easier and to avoid errors attributable to human mistakes which occasionally occurs in the examination systems.

In other words, use of computer is to assist and supplement the human efforts and to avoid errors as far as possible. It cannot be said that if certain procedures had been assigned to artificial intelligence, it would naturally debar any human intervention. Let us assume an instance where the computer brakes down and for some unforeseen reasons remain inoperative, in such event, would there not be assessment of answer scripts? Certainly, there can be human intervention by manual assessment though it may be more time consuming and more cumbersome. There cannot be any inflexible rule that OMR sheets cannot be evaluated by human and can only be done by computer.

The idea of having such test is to assess the knowledge of the students. Therefore, if any such mistake has occurred during the examination which has nothing to do with the knowledge or merit of the student and where no fraudulent act on the part of the candidate is involved, this Court is of view that this technical error on the part of the petitioners ought not come in the way of the fair assessment of the merit of the petitions.

26. In the present case, the "Series" of the candidates were given in advance, and the petitioners had been assigned with 'C' Series, which they cannot change. Accordingly, even at this stage for the purpose of evaluation, if the particular "C" Series is ticked by the authorities themselves, it would not create any undue advantage to the petitioners except that it will now be acceptable by the computer for evaluation of the answers. However, if for any reason, the Assam Public Service Commission (APSC) considers that it may not be appropriate to tick the "C" Series in the OMR sheets at this stage, as it may amount to interpolating or tinkering with the original OMR sheets of the candidates, nothing prevents Assam Public Service Commission (APSC) from getting the OMR sheets evaluated manually through Evaluators, as the answers are indicated by the highlighted marking.

27. Learned Standing Counsel, APSC submits that there is no rule that the answer sheets have to be evaluated only by the computer and all other mode or procedure of evaluation is prohibited. In any event, such a stand would have been highly unreasonable, for if the artificial intelligence does not work, human intervention has to be always available as a last

resort.

28. In that view of the matter, this Court is of the opinion that the present petition should be allowed. It is accordingly, directed that the Respondent APSC shall either tick the 'C' Series in the OMR sheets of the petitioners so that the computer can accept the OMR sheets for evaluation or, in the alternative, the answers given by the petitioners in the OMR sheets shall be evaluated manually by Examiners/Evaluators according to the answers given by the candidates. The Original OMR sheets of the petitioners are returned herewith to the learned Standing Counsel, APSC for doing the needful as directed above.

29. If upon such assessment of the answers of the petitioners in the General Studies paper the petitioners are found to be qualified in the preliminary test for appearing in Main Examination, consequently, necessary notification shall be issued by the APSC for allowing the petitioners to take part in the Main Examination, which exercise shall be undertaken within 1 (one) week from the date of receipt of a certified copy of this order.

**JUDGE**

**Comparing Assistant**