

BEFORE

HON'BLE MR JUSTICE L.S.JAMIR

Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. C. Baruah, learned Standing counsel, APSC appearing for the respondent Nos. 2, 3, 4 and 5 as well as Mr. S.R. Baruah, learned Government Advocate appearing for the respondent No. 1.

The petitioner is having a degree in Bachelor in Science with Honours in Physics.

The Assam Public Service Commission (APSC) made an advertisement dated 13-08-2013 calling for application for recruitment to various post, amongst which, there were 11 (eleven) posts for Labour Inspectors, out of which, 3 (three) were reserved for OBC/MOBC and 1 (one) post was reserved for OBC woman. The petitioner applied for the post of Labor Inspector as an OBC candidate. He was successful in the preliminary examination as well as in the written examination. Consequently, he was called for the viva-voce test by calling letter dated 25-02-2015.

However, when the select list was published on 12-05-2015, his name did not appear. The last person from amongst the OBC candidate who was selected had obtained 908 marks whereas, the petitioner obtained 907 marks. Accordingly, the petitioner made an RTI application requesting for his answer scripts. In response, the answer scripts of the petitioner were furnished. On going through the answer scripts, the petitioner found that in the General Studies Paper, his answer to question No.3 (a) and 3 (f) were not evaluated by the examiner.

Being aggrieved, the petitioner has approached this Court by way of the instant writ petition praying for a direction to the respondents, more particularly, the APSC for evaluation of his answers to Question No. 3 (a) and 3 (f) of the General Studies Paper.

Mr. S. Borthakur, learned counsel for the petitioner submits that the cut-off mark in respect of the OBC candidate for appointment to the post of Labour Inspector was 908 marks and the petitioner had obtained 907 marks. It is submitted that on receipt of the answer scripts through the RTI application, it has come to light that the answers given by the petitioner in respect of Question No. 3 (a) and 3 (f) of the General Studies Paper were not evaluated by the examiner. Therefore, had the two answers been evaluated, the petitioner could have scored higher marks than that was awarded to him which could have allowed him for consideration for appointment to the post of Labour Inspector.

Learned counsel for the petitioner also submits that on an application through RTI, the petitioner has come to learn that 2 (two) number of posts reserved for OBC/MOBC advertised through the Combined Competitive Examination, 2013 are still vacant due to non-joining of the selected candidates. He also submits that this Court by an interim order passed on 26-06-2015 had also directed the respondents not to fill up 1 (one) post in the category of Labour Inspector. In that view of the matter, learned counsel for the petitioner submits that in the alternative, the respondents may also be directed to consider for accommodation of the petitioner to the vacant post of Labour Inspector.

Mr. C. Baruah, learned Standing Counsel, APSC, on the other hand, submits that the allegations of the petitioner that his answers to Question No. 3 (a) and 3 (f) of the General Studies Paper has not been evaluated is not correct inasmuch as, the APSC had written to the examiner by letter dated 30-07-2015 requesting for his opinion after careful examination of the matter. Thereafter, the examiner had furnished his opinion expressing his regret that he had inadvertently failed to put zero marks against the said answers inasmuch as, the answers given by the petitioner did not deserve any marks. He also submits that Rule 70 (iv) of the Assam Public Service Commission (Procedure and Code of Business) Rule, 2010 (hereinafter the Rules of 2010) provides that the Commission shall not entertain any request for re-examination of answer scripts from the candidate or from any other persons. Therefore, in terms of the opinion given by the examiner as well as Rule 70 (iv) of the Rules of 2010, the claim of the petitioner for evaluation of his answer scripts cannot be entertained. Further, it is also submitted that as the name of the petitioner did not appear in the select list, it would

ld be inappropriate for the APSC to consider the case of the petitioner despite the fact that there are still 3 (three) posts of Labour Inspector vacant.

Mr. S.R. Baruah, learned Government Advocate appearing for the respondent No.1 submits that as the subject matter pertains to evaluation of the petitioner's answer scripts, the respondent No.1 has nothing to say in the matter.

I have considered the submissions forwarded by the learned counsel for the parties.

The entire facts of the matter pertains to non-awarding of marks to the answers made by the petitioner to Question No. 3 (a) and 3 (f) of the General Studies Paper. This Court has considered the affidavit-in-opposition filed by the APSC wherein, they have made a categorical statement that non-awarding of the marks was an inadvertence on the part of the examiner though in the opinion of the examiner, the petitioner deserves only zero marks. The contention of the learned Standing Counsel, APSC that Rule 70 (iv) of the Rules of 2010 does not permit for reexamination of answer scripts from the candidates has also been considered. Rule 70 (iv) of the Rules of 2010 is reproduced herein below:-

70 (iv) The Commission shall not entertain any request for reexamination of answer scripts from candidate or from any other persons.

A reading of Rule 70 (iv) of the Rules of 2010 would clearly indicate that the Commission shall not entertain request for re-examination of answer scripts. The case in hand pertains to non-awarding of marks to the answers made by the petitioner. Therefore, in the considered opinion of this Court, it is not a case of reexamination of answer scripts inasmuch as, no marks were awarded to the answers given by the petitioner to Question No. 3 (a) and 3 (f) in the General Studies Paper. Therefore, Rule 70 (iv) of the Rules of 2010 is not applicable to the present case.

The answer scripts that were furnished to the petitioner through the RTI application is annexed to the affidavit-in reply filed by the petitioner on 23-02-2017 as Annexure A3. A consideration of the same would clearly indicate that though the petitioner has given his answer to Question No. 3 (a) and 3 (f), no marks were awarded to those answers. In that view of the matter, it appears that the allegations of the petitioner with regard to non-awarding of marks to the 2 (two) answers is correct.

In the facts and circumstance of the case as discussed herein above, the respondent Nos. 2, 3, 4 and 5/APSC are directed to send the answer scripts of the petitioner with regard to General Studies Paper for evaluation of the answers made by the petitioner to Question No. 3 (a) and 3 (f) to the examiner. Let such exercise be completed within a period of 6 (six) weeks from the date of receipt of a copy of the order of this Court by the respondent Nos. 2, 3, 4 and 5. While evaluating the answers to Question No. 3 (a) and 3 (f) of the General Studies Paper, the examiner should not be influenced by the opinion given by him to the APSC earlier.

Depending on the evaluation of the answers to the Question No. 3 (a) and 3 (f) of General Studies Paper, the APSC shall thereafter pass consequential orders.

This Court has also taken into consideration the submissions of the learned counsel for the petitioner that as per the RTI information, there are 2 (two) number of posts reserved for OBC/MOBC due to non-joining of the selected candidates as well as 1 (one) post which has not been filled up in terms of the interim order passed by this Court on 26-06-2015. In the event, the petitioner is not awarded any marks by the examiner after evaluation to the answers to Question No. 3 (a) and 3 (f) of the General Studies Paper, the APSC is also given liberty to consider the case of the petitioner against the vacant post of Labour Inspector inasmuch as, he has also been awarded 907 marks. However, such exercise shall be made in accordance with law and if found permissible.

With the above observations and directions, this writ petition is disposed of.