

GAHC010122452019



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

Case No. : WA 142/2019

1:THE ASSAM PUBLIC SERVICE COMMISSION AND ANR
REP. BY ITS CHAIRMAN, KHANAPARA, GUWAHATI, ASSAM, PIN- 781022.

2: THE SECRETARY

ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI- 781022
ASSAM

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
PERSONNEL (A) DEPARTMENT
GOVERNMENT OF ASSAM, DISPUR
GUWAHATI- 781006

Advocate for the Petitioner : MR. C BORUAH

Advocate for the Respondent : GA, ASSAM

Linked Case : WA 144/2019

1:THE ASSAM PUBLIC SERVICE COMMISSION AND ANR
REP. BY ITS CHAIRMAN
KHANAPARA
GUWAHATI, ASSAM, PIN- 781022.

2: THE SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA
GUWAHATI- 781022
ASSAM.
VERSUS

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

2: THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
PERSONNEL (A) DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006.

Advocate for the Petitioner : MR. C BORUAH
Advocate for the Respondent : MR. S BORTHAKUR

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR JUSTICE MANISH CHOUDHURY

JUDGEMENT AND ORDER
(ORAL)

Date : 04-06-2019

[A. K. Goswami, C.J. (Acting)]

Heard Mr. C. Baruah, learned counsel appearing for the appellants. Also heard Mr. K. N. Choudhury, learned Senior counsel, assisted by Mr. S. Borthakur and Mr. R. Sensua, learned counsel appearing for respondent No. 1 as well as Mr. H. K. Hazarika, learned State counsel for respondent No. 2 in both the appeals.

2. The challenge in these two intra-court appeals is to a common judgement and order dated 06.05.2019, passed in WP(C) 2187/2019 and WP(C) 2188/2019, allowing the writ petitions filed

by both the respondent No. 1 (hereinafter referred to as "the candidates") directing the appellants herein either to tick the 'C' series in the OMR Answer Sheets of the respondent No. 1 or, in the alternative, to evaluate their OMR Answer Sheets manually by examiners/evaluators in respect of General Studies paper of Combined Competitive (Preliminary) Examination, 2018, conducted by the Assam Public Service Commission (APSC) for screening the candidates for the Combined Competitive Examination (CCE) Main Examination, 2018 for recruitment to the services/posts of ACS and allied services under the Government of Assam. Further direction was issued to the effect that in case the candidates qualify in the Preliminary Examination, appropriate notification be issued by the APSC authorities allowing them to take part in the Main Examination and that the exercise be completed within a period of one week from the date of receipt of a certified copy of the order.

3. The APSC had issued an advertisement No. 9/2018, dated 17.05.2018, for holding Preliminary Examination of CCE, 2018 for screening candidates for Main Examination for filling up a total of 165 posts in Assam Civil Service (Junior Grade) and other allied services. Subsequently, the Government of Assam increased the number of posts by 96 posts and, accordingly, the same was duly notified by the appellants vide Addendum dated 26.06.2018. The Preliminary Examination of CCE, 2018 was to consist of two papers of objective type multiple choice question paper: (i) General Studies and (ii) the subject to be selected from the list of optional subjects given in the said advertisement. Respondent No. 1 in WA 142/2019, who was the petitioner in WP(C) 2187/2019, had opted for Indian History as the optional subject and respondent No. 1 in WA 144/2019, i.e., the petitioner in WP(C) 2188/2019 had opted for Education as the optional subject. The Preliminary Examination was held on 30.12.2018. Result of the Preliminary Examination was uploaded by the Controller of Examinations, APSC, in the website of the APSC on 20.03.2019 and, in such uploaded result, the Roll numbers of the candidates appeared in the list of invalid candidates. The reason for declaring them invalid candidates, as indicated in the uploaded result sheet, was that they had not mentioned the Series (A, B, C, D) in General Studies.

4. It transpires that the qualifying mark to be eligible for appearing in the Main Examination of the CCE, 2018 came to be 263 marks. The petitioner in WP(C) 2187/2019 secured 154 marks and the petitioner in WP(C) 2188/2019 secured 160 marks in the subject of History and Education, respectively. It is in these background facts, stating that they have bright chances of

clearing the Preliminary Examination if their paper for General Studies is evaluated, the writ petitions were filed by the two petitioners, essentially, praying for a writ of mandamus to the APSC authorities to evaluate their OMR Answer Sheets in respect of General Studies paper and to set aside the select list to the extent of declaring them to be invalid candidates.

5. Affidavits had been filed by the appellants in both the writ petitions taking identical stand. It was pleaded that the entire process of evaluation of OMR Answer Sheets is computerized with no scope for human interference. In absence of appropriate coding, the computerized programme could not read the OMR Answer Sheets of the candidates in respect of General Studies paper and, therefore, evaluation of OMR Answer Sheets in respect of General Studies paper of the candidates could not be done. Further stand taken is that there were clear instructions to the candidates to mention the appropriate Series in the OMR Answer Sheets in respect of General Studies paper.

6. The learned Single Judge by the impugned judgement opined that though mistake was squarely applicable to the candidates, the same was an unintentional one and the same was a bona fide mistake. By not mentioning the Series, the candidates could not have gained anything and there was no scope for any manipulation at a later stage by keeping the Series unmarked. It was observed that the idea of having the Preliminary Examination or test of any kind being to assess the knowledge of the students, the error on the part of the candidates in not mentioning the Series in the OMR Answer Sheets ought not to come in the way of a fair assessment of the merit of the candidates. Dealing with the submission of the appellants that any other mode of evaluation other than by way of computerized system is prohibited, the learned Single Judge observed that when the artificial intelligence does not work, there has to be human intervention and, accordingly, had issued the directions which have already been noticed hereinbefore. The learned Single Judge relied on a decision of the Hon'ble High Court of Andhra Pradesh in the case of *Smt. Sujata Cheruku and Anr. Vs. The State of Telengana*, reported in (2019) 1 ALT 147: 2018 Lab IC 1636, while drawing the aforesaid conclusions.

7. Mr. C. Baruah, learned counsel for the appellants has contended that clear instructions had been given to the candidates that in absence of any marking of the Series in OMR Answer Sheet of General Studies paper, the OMR Answer Sheets shall not be evaluated. In view of the admitted position that the candidates in question had not marked the Series in respect of General Studies paper, the computer could not evaluate their OMR Answer Sheets and, therefore, necessarily, no marks could be awarded to the candidates in General Studies paper. He submits that sanctity of

the examination has to be maintained and any tinkering with the process of examination will erode the confidence of the general public and when the entire system is based on computerized checking of the OMR Answer Sheets, the direction of the learned Single Judge to examine the OMR Answer Sheets of the candidates, if necessary, by manual process, cannot be sustained in law.

8. Per contra, Mr. Choudhury has supported the judgement of the learned Single Judge and has also placed reliance in the case of *Union of India vs. Guduru Raja Surya Praveen*, reported in (2015) SCC OnLine Hyd 437. It is submitted by him that no prejudice will be caused to any person if the APSC is directed to evaluate the OMR Answer Sheets of the candidates in the subject of General Studies. He submits that during the time of examination the candidates remain in considerable mental stress and, therefore, at times, unwittingly minor mistakes may be committed by the students. When the mistakes can be corrected without any consequences, unless such recourse is taken, the candidates will lose a valuable year and miss the opportunity for appearing in the Main Examination subject to clearing the Preliminary Examination.

9. The Revised Instructions to Candidates for Combined Competitive (Preliminary) Examination, 2018, at Clause 14, indicates that a specimen copy of Answer Sheet (OMR) is enclosed with e-Admission Certificate for guidance of candidates and the candidates were advised to read and follow the instructions scrupulously. It is also indicated at Clause 15 that in case of General Studies, the Test Booklet shall be in four Series, namely, "A, B, C and D" and that the Series mentioned in the General Studies Question Booklet should be marked in the space provided for the Series in Answer Sheet. Answer Sheet without marking the Series in case of General Studies shall not be evaluated and this part of the instructions is darkened. In the OMR Sheet, on Side-I, below the box meant for filling up the Series, it is indicated that Series is applicable for General Studies only and that Answer Sheet without marking Series in GS paper shall not be evaluated. In the OMR Answer Sheet, on Side-II, "Instructions/Guidelines For The Candidate" is printed and at Clause 12 thereof it is reiterated that Series is applicable for General Studies paper only and that Answer Sheet without marking Series in General Studies shall not be evaluated. In the Test Booklet of General Studies, at Sl. Nos. 1 and 2, it is indicated as follows:

"1. The name of the Subject, Roll Number as mentioned in the Admission Certificate, Test Booklet No., Series and Subject Code shall be written legibly and correctly in the space provided on the Answer Sheet with black pen.

2. Answer Sheet without marking Series as mentioned above in the space provided for in the Answer Sheet shall not be evaluated.”

10. From the above, it is evident that the candidates had been duly advised by issuing appropriate directions/instructions at different stages to mark the Series in the appropriate space failing which, it was indicated in no uncertain terms, that the Answer Sheet shall not be evaluated.

11. Admittedly, the writ petitioners had not marked the Series in the space provided in their respective OMR Sheets. The question that has fallen for consideration is whether, in absence of marking in the OMR Sheet for General Studies paper indicating the Series, a writ of mandamus can be issued to the appellants to evaluate the Answer Sheets of the candidates by manual process if it was not possible to evaluate the same through the computer.

12. A similar question had fallen for consideration before the Hon'ble Supreme Court in *Civil Appeal No. 3899/2019 [SLP (C) No. 35187/2017]* in the case of *State of Uttar Pradesh & Ors. vs. Upendra Nath Yadav*. In the aforesaid case, the candidate had appeared for Uttar Pradesh Civil Police and Platoon Commander Direct Recruitment Examination and he was given a Booklet having Code SPU-02 No. 795933 of the Series-C, but he did not fill up the Booklet Series in the prescribed box of OMR Sheet. The candidate was not selected as he did not fill in the details in the prescribed box and his result was not declared on account of the said default. A writ petition having been filed by the candidate, a Single Judge of the High Court of Uttar Pradesh directed the respondents therein to evaluate the OMR Sheet of the candidate and the said decision was affirmed by the Division Bench. The State of Uttar Pradesh filed Special Leave Petition before the Hon'ble Supreme Court. It was contended on behalf of the State of Uttar Pradesh that it had been specifically provided in the instructions given to the candidates that the candidate must fill up his Roll number and Question Paper Series in the Answer Sheet at the specified place failing which the Answer Sheet would not be evaluated and zero mark would be awarded. As the required box for Question Booklet Series was not filled up by the candidate, the OMR Sheet of the writ petitioner was not evaluated by the computer machine. Accepting the arguments in the above background of facts, the Hon'ble Supreme Court set aside the judgements of the High Court.

13. The ratio of the aforesaid case applies with all force to the present factual matrix. The entire examination process was designed on evaluation of the OMR Answer Sheets by computer and, therefore, in such a scenario, human intervention is not permissible.

14. In view of the above discussion, we are of the considered opinion that the impugned judgement of the learned Single Judge cannot be sustained and, accordingly, the same is set aside and quashed.

15. The writ appeals are allowed and disposed of. No cost.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant