

GAHC010113252019



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

Case No. : WP(C)/3341/2019
with
WP(C) 3344/2019

SHALINI KHAN
D/O- SRI ROBIN KHAN, R/O- H NO. 120A, HONURAM BORO PATH,
WALFORD KACHARI BASTI, GUWAHATI- 781005, DIST- KAMRUP(M),
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM, DISPUR,
GUWAHATI- 781006

2:THE ASSAM PUBLIC SERVICE COMMISSION
REP. BY ITS CHAIRMAN
JAWAHAR NAGAR
GHY- 22

3:THE SECRETARY
APSC
JAWAHAR NAGAR
KHANAPARA- 22

4:THE PRINCIPAL CONTROLLER OF EXAMINATIONS
APSC
JAWAHAR NAGAR
KHANAPARA
GUWAHATI- 2

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE JUSTICE MANASH RANJAN PATHAK
O R D E R

12.03.2021

Heard Mr. K.N. Choudhury learned Sr. Counsel assisted by Mr. P Mahanta, learned counsels for the petitioners and the newly impleaded private respondents. Also heard the learned *Amicus Curie* Mr. N. Dutta, Sr. Counsel as well as Mr. T.J. Mahanta, learned Sr. Counsel assisted by Mr. P P Dutta, learned Counsel for the respondent APSC.

For filling up the vacant posts of Assam Civil Services, the respondent APSC on 17.05.2018 issued the advertisement No. 09/2018 stating that it will conduct Combined Competitive Examination (CCE) 2018 for that purpose and accordingly invited applications from the eligible candidates. Said CCE examination had two parts, Preliminary and Main Examinations. Further the Main Examination had two components (i) written and (ii) interview/viva-voce.

The CCE Preliminary examination 2018 was held on 30.12.2018. Said Preliminary examination was conducted by the APSC for screening of the candidates for the Main Examination for recruitment to the public post/services advertised on 17.05.2018. APSC declared the result of the said Preliminary examination on 13.03.2019 where 3361 candidates were declared to be eligible to appear in the CCE Main (written) examination. After declaring the result of the said Preliminary examination, APSC uploaded the answer keys on the basis of which it found those 3361 candidates to be eligible for the CCE Main written examination. However, the said answer keys were found to be wrong and the APSC on its own deliberation published another answer keys stating the same to be the correct one and on the basis of the new answer keys APSC found 406 additional candidates qualified to appear in the CCE Main written examination. However, on the basis of said new answer keys APSC found that out of those 3361 candidates who on 10.03.2019 were declared to be eligible to appear in the CCE Main written examination on the basis of first answer keys, which later were found to be wrong, 98 candidates failed to obtain 261 marks, the required qualifying marks of to appear in the said CCE Main examination. But the APSC allowed those 98 candidates to appear in the CCE Main written examination along with the other candidates found to be eligible to appear in the said examination on the basis of APSC's said second answer keys.

Respondent Nos. 5 to 8 belong to those 98 candidates who not only passed the CCE Main written examinations but also appeared in the CCE Main interview/viva-voce.

Petitioners of WP(C) Nos.3341/2019 (Sailini Khan) and 3344/2019 (Girbani Deka) also appeared in the said CCE Preliminary 2018 examination but their names did not figure amongst the eligible candidates to appear in the CCE Main written examination after declaration of the result by the APSC neither in the first instance on 10.03.2019 on the basis of said wrong answer keys nor in the second instance after the second alleged correct answer keys. Hence, they filed the writ petitions to give them proper marks to their answers given by them in the said preliminary examination enabling them to sit in the CCE Main written examination. With regard to those petitioners, Court allowed them to sit in the said Main written examination subject to the outcome of their petitions. Both the petitioners passed the said Main written examination and on the basis of Court's order they appeared in the CCE Main interview/viva-voce examination.

Pursuant to the order of the Court in the present proceedings CCE Main (written + viva-voce) 2018 results of both the petitioners as well as the respondent Nos. 5 to 8 have been kept in abeyance/withheld. The stand of the APSC now is that since it allowed the respondent Nos. 5 to 8 to appear in the CCE Main written examinations, which they have passed and subsequently appeared in the viva-voce, their results should be allowed to be declared. However, with regard to the two writ petitioners APSC stated that both the petitioner failed to secure the requisite cut off marks of 261 in their CCE Preliminary 2018 examination not only on the basis of the first answer keys but also on the basis of the second answer keys. However, with regard to those two petitioners, APSC has left the decision of the Court regarding declaration of their result, stating that APSC shall have no objection to any decision taken by the Court treating those two petitioners in similar manner like the respondent Nos. 5 to 8.

Respondent No. 1, the State represented by the Chief Secretary of the State as well as the respondent Nos. 2 & 3 APSC by filing their respective affidavits shall clarify their stand with regard to the following:

- i) Whether a candidate who passed the preliminary examination on the basis of a wrong answer key and subsequently, before holding the main examination, on the basis of a correct answer key found to have failed to obtain the requisite cut off marks to appear in the main examination, is entitled to appear in the said Main examination?
- ii) Whether the statutory body like APSC, has the power to give such concession/relaxation to a candidate who failed to qualify the required qualifying marks on the basis of the correct answer key to appear in the next level of examination for open selection of recruitment to the public post/service though the said candidate was earlier declared to have obtained

such qualifying marks on the basis of a wrong answer key, more particularly after issuance of the advertisement, which did not state about any such concession?

- iii) Under what provisions of law, the State Government is empowered to accept the list of the candidates for recruitment to the public post where the concerned select list forwarded by the Public Service Commission contains the candidates who actually failed in the Preliminary examination for such selection to the public post/service on the basis of correct answer keys, but the Commission on the basis of wrong answer keys initially declared those candidates to have cleared the said examination?
- iv) Respondent APSC shall specify whether the petitioners of WP(C) Nos.3341/2019 (Sailini Khan) and 3344/2019 (Girbani Deka) have correctly answered the questions of CCE Preliminary examination 2018 involved in these petitions and if so, whether are entitled to any additional marks and if on getting such additional marks whether the petitioners could obtain the requisite qualifying/cut off marks in the said Preliminary examination?

Respondents 1 and 2 & 3 shall file their respective affidavits within three weeks by serving copies of the same on the respective counsels of petitioners. Thereafter petitioners may submit their replies, if any, within ten days of receiving such affidavits.

List after six weeks.

Copy of this order may be served on the learned Amicus Curie as well as the learned Senior Government Advocate, Assam for the State for the respondent No.1 and Mr. P P Dutta learned counsels for the respondent APSC.

JUDGE

Comparing Assistant