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

Writ Appeal No. 61 of 2019

1. The Assam Public Service Commission,
   Represented by its Chairman,
   Khanapara, Guwahati-781022, Assam.

2. The Secretary,
   Assam Public Service Commission,
   Khanapara, Guwahati-781022, Assam.

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

…… Appellants

-Versus-

1. Hrishikesh Das
   S/o Sri Hiten Kumar Das
   House No.-28, Village- Pilingkata,
   VIA- Bakrapara, P.O.-Basistha, Guwahati
   PIN- 781029, Dist.- Kamrup(M), Assam.

2. The State of Assam
   Represented by the Commissioner & Secretary,
   Department of Personnel,
   Dispur, Guwahati-781006.

…..Respondents

:: BEFORE::
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates

For the Appellants	:	Mr. T.J. Mahanta, Sr. Advocate & Sr. Standing Counsel, APSC.
	:	Mr. P.P. Dutta, Advocate
	:	Ms. P. Sharma, Advocate.
For the Respondent No.1	:	Mr. Nilayananda Dutta, Sr. Advocate
	:	Mr. A. Phukan, Advocate
	:	Ms. S. Sarma Hazarika, Advocate
For the Respondent No.2	:	Ms. M. Bhattacharjee, Govt. Advocate
Date of Hearing	:	09.09.2021, 10.09.2021 and 13.09.2021.
Date of Judgment	:	07.10.2021

JUDGMENT & ORDER

(N. Kotiswar Singh, J)

Heard Mr. T. J. Mahanta, learned Senior Standing Counsel, Assam Public Service Commission (APSC) assisted by Mr. P.P. Dutta and Ms. P. Sharma, learned counsel appearing for the appellants. Also heard Mr. Nilayananda Dutta, learned Senior Counsel assisted by Mr. A. Phukan and Ms. S. Sarma Hazarika, learned counsel for the respondent No.1/writ petitioner and Ms. M. Bhattacharjee, learned Govt. Advocate, Assam for the State/respondent No2.

2. The present appeal has been preferred against the order dated 20.08.2018 passed by the Ld. Single Judge in W.P.(C) No. 5576 of 2017 by which the Ld. Single Judge allowed re-evaluation of a competitive examination paper and award of additional marks in respect of certain

indisputably correct answers given by the candidate writ petitioner, for which no marks were awarded by the examiner.

3. For better appreciation of the issues involved, it would be apposite to refer to certain basic facts of the case.

FACTS IN BRIEF

4. The Assam Public Service Commission (APSC), the Appellant herein, conducted the competitive examinations in 2015, namely, the Combined Competitive Examination (CCE), 2015 for recruitment to various posts of the Assam Civil Services. The issue relates to the Mains Examination of the said competitive examination. The writ petitioner, Respondent no.1 herein, was one of the candidates. It was the case of the petitioner that having qualified both in the Preliminary and Mains Examinations, he was called for interview and as he did well in the interview, he was expecting to be selected.

However, when the results were declared he did not find his name in the select list. Being disappointed he applied for certified copies of the answer scripts. He was also furnished with the marks obtained by him in the *viva voce* and the cut off marks for each category of posts on applications being made under the Right to Information Act, 2005. He claims that he was wrongly evaluated and accordingly, given less marks in respect of a few answers given by him in the General Studies paper, thus, he was deprived of at least 12 marks.

He learnt that the "cut off" mark for the post of Inspector of Taxes in the "Open Category" was 973. Since, he scored 970 total marks, according to him, if the said 12 marks deprived of unjustifiably are added, he would cross the benchmark and will be within the select list on merit, at least for the post of Inspector of Taxes.

Thus, he expectantly applied to the APSC for re-evaluation of the said paper which however, was turned down by the APSC.

Being aggrieved, he approached the High Court by filing a writ petition, W.P. (C) No. 5576 of 2017, seeking re-evaluation of the paper in General Studies and for appointing him to the post of Inspector of Taxes, which was allowed by the Ld. Single Judge vide order dated 20.08.2018, which has been challenged by the APSC in this writ appeal.

5. The said writ petition was contested by the official respondents in the writ petition including the present appellant APSC, contending, inter alia, that the answer scripts had been evaluated by reputed examiners from well-known colleges and universities of Assam. It was further contended that considering the complaint lodged by the writ petitioner, the view of the concerned examiner was obtained by the Commission in the matter, who opined that the answers of the petitioner in the General Studies paper as mentioned in his complaint were not correct, appropriate or satisfactory and hence, the candidate did not deserve any more mark.

6. The Ld. Single Judge noted the submission advanced by Mr. Nilay Dutta, Ld. Senior Counsel appearing for the writ petitioner that the answers given by the petitioner in respect of Question Nos. 3(ix), 4(ii), 4(xv), 4(xviii), 4(xix), 4(xxxvii) and 4(xxxiii) of the General Studies Paper had not been correctly evaluated by the examiner as the result of which, the petitioner had been deprived of several marks and in turn, denied appointment to the post of Inspector of Taxes.

In order to support his claim, the Ld. Senior Counsel has referred to a number of sources to indicate that the answers given by the writ petitioner were indisputably correct.

7. Though the petitioner initially claimed that 7(seven) answers given were not correctly evaluated, before this Court, the petitioner has confined only to 5(five) questions, correctness of which answers, the Commission also has not disputed.

The aforesaid five questions-in-issue along with answers given by the petitioner are as follows:

"Q. No.4(xv) When was the province of Eastern Bengal and Assam created? What was its capital? [1+1= 2 marks]

Answer given by the petitioner : The province of Eastern Bengal and Assam was created on 16th October, 1905 with Shillong as its capital.

Q. No.4(xviii) Give the literacy rate and density of population of Assam as per Census 2011? [2 marks]

Answer given by the petitioner : Literacy rate – 72.19%

Density – 398 persons per square Km.

Q. No.4(xix) Mention two heads under revenue receipts of the Government of Assam. [2 marks]

Answer given by the petitioner: Sales Tax and Excise Duty.

Q. No.4(xxxii) What is a footloose industry? Give two examples. [1+1=2 marks]

Answer given by the petitioner : Footloose industry are those having fixed spatial cost.

Examples- Diamond industry and Computer Chip Industry.

Q.No.4(xxxiii) Which Global body designated Boko Haram as a terrorist group? Where does the terrorist group belong to? [1+1=2 marks]

Answer given by the petitioner : US State designated Boko Haram as a terrorist group.

It is from Nigeria."

8. It has been submitted that in respect of Question No.**4(xv)**, the petitioner had given the correct answer as to the date of creation of Eastern Bengal and Assam as 16th October, 1905, which is based on the authoritative works on the History of Assam by renowned historians of Assam, L. Prasad and Priyam Goswami though the petitioner made a mistake as regards the capital of the said new province. Thus, the petitioner was entitled to at least '1' (one) mark out of '2' (two), though he was awarded "0" "(zero)" mark by the examiner.

Similarly, in respect of Question No. **4(xviii**), it has been submitted that the answers given by the petitioner can be verified from the Government website itself and the petitioner is entitled to '1' (one) mark relating to the literacy rate of Assam during 2011 which was correctly answered by the petitioner though he was given '0' (zero) mark for the same.

In respect of Question No.**4(xix),** though the petitioner was allotted '0' (zero) mark out of '2' (two), the petitioner had given correct answers which can be verified from the authenticated Government sources and as such, he is entitled to '2'(two) marks.

Similarly, in respect of Question No.**4(xxxii)**, the answer given by the petitioner about the footloose industry, the petitioner had been given no marks, though he had given correct answers.

Similarly, in respect of Question No.**4(xxxiii)** though the petitioner made a mistake as regards the Global body which designated Boko Haram as a terrorist group by writing that it was US State which designated Boko Haram as a terrorist group, yet he gave the correct answer in respect of the second part, as the terrorist group belongs to Nigeria, of which there cannot be any dispute and it is well known fact as also available in the BBC website and as such was entitled to '1' (one) mark.

It has been accordingly, submitted that since the answers given by the petitioner were demonstratively correct and non-awarding of marks was wrong, the petitioner cannot be denied the marks entitled to him for giving the correct answers.

9. The Ld. Single Judge also noted the submission advanced by the opposing counsel, Mr. C. Baruah, the Ld. Standing Counsel for the APSC that matters pertaining to conduct of examination is within the exclusive domain of the Commission and this Court exercising jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the assessment made by the examiner of answers given by the candidates,

and relied on the decision of this Court in ***Ratul Kumar Das & Ors. Vs. State of Assam & Ors., 2009 (4) GLT 648***. He further, reiterated that the answers given by the petitioner had been correctly evaluated by the examiner and as such the question of awarding any additional marks in General Studies paper does not arise.

10. In the light of the submissions made by the learned counsel for the contesting parties, the Ld. Single Judge by an order dated 05.06.2018 granted time to the appellant Commission to inform the Court as to whether the Commission would be open to making an independent assessment of the answers in controversy and award fresh marks. However, the Commission took the stand that it would not be possible for the Commission to re-evaluate the answers of the petitioner as Rule 70(iv) of the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 (hereinafter referred to as the APSC Rules of 2010) do not permit such an exercise.

11. Under the aforesaid circumstances, the Ld. Single Judge referred the aforesaid answers under controversy to the Vice Chancellor of Cotton University, Guwahati to get the aforesaid answer script evaluated through competent academicians of his choice and submit the results thereof to the Court in a sealed cover. After the aforesaid exercise was undertaken by the academic experts, the same was submitted before the Court in a sealed cover, which was opened in the presence of the learned counsel of the contesting parties, whereupon it was found that the experts chosen by the Vice-Chancellor opined that the petitioner was entitled to at least 10.5 more marks than what had been awarded to him by the Commission in respect of the answers to the Question Nos. 3(ix), 4(ii), 4(xv), 4(xviii), 4(xix), 4(xxxii) and 4(xxxiii) of the General Studies paper.

12. Learned Senior counsel for the Commission, candidly did not dispute the correctness of the view of the academic experts as regards the answers given by the petitioner, which would have earned the petitioner

10.5 more marks, which in turn would have enabled the petitioner find a place in the merit list for the said post of Inspector of Taxes. However, learned counsel for the Commission reiterated the view that, inspite of such a position emerging, nothing could be done by the Commission as the rules do not permit re-evaluation.

13. Situated thus, the Ld. Single Judge proceeded to examine the issues on merit. The main issue raised before the Ld. Single Judge was whether the Court in exercise of jurisdiction under Article 226 of the Constitution of India could direct re-evaluation of answer scripts even if there was no specific provision under the Rules.

14. The Ld. Single Judge accepted the plea of the learned Senior Counsel of the writ petitioner that unlike in the pre-amended rules, the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 do not contain any provision for reassessment of answer books. However, it was contended that Rule 70(iv) of the Rules 2010 prohibiting the Commission from entertaining request for re-examination of the answer scripts created an anomalous situation by leaving no remedy left for any grievance. Under the circumstances, the learned Senior Counsel for the petitioner invoked the maxim, *"ubi jus ibi remedium"*.

The learned Senior Counsel relied on the following decisions of the Hon'ble Supreme Court.

1. ***M/s Shiv Shankar Dal Mills and Ors. Vs. State of Haryana***, reported in ***(1980) 2 SCC 437.***
2. ***Union of India Vs. S.B. Vohra***, reported in ***(2004) 2 SCC 150.***
3. ***Sardar Amarjit Singh Kalra (Dead) by LRs. and Ors. Vs. Pramod Gupta (SMT) Dead by LRs. and Ors., (2003) 3 SCC 272.***

DECISION OF THE LD. SINGLE JUDGE

15. The Ld. Single Judge, on consideration of the submissions, held that the jurisdiction of the High Court under Article 226 of the Constitution of India is expansive in a case of this nature and whether the answer-script needs to be re-evaluated or referred for expert opinion would be a matter of discretion of the Court to be exercised depending upon the facts and circumstances of each case which, however, is required to be exercised with much circumspection and in a manner consistent of justice, equity and good conscience.

16. The Ld. Single Judge also noted that the Commission when offered to re-evaluate the answer script refused to do so taking the plea that Rule 70(iv) of the Rules of 2010 did not permit re-examination of the answer-scripts. However, when referred to subject experts through the Vice Chancellor (VC), Cotton University, Guwahati, it was found that the petitioner had correctly answered to some of the questions and was entitled to 10.5 more marks in the General Studies paper. The correctness of the said opinion of the academic experts was not contested by the Assam Public Service Commission (APSC) and as such, the Ld. Single Judge held that there was no good ground for rejecting the opinion of the subject experts.

17. The Ld. Single Judge, accordingly, held that if for admittedly correct answers, marks are not given, it would amount to travesty of justice and merely because the Rules of 2010 did not provide any remedy to such a candidate, it would not bar this Court to invoke the extra-ordinary jurisdiction under Article 226.

It was held by the Ld. Single Judge that once it is established on the basis of cogent materials on record that the petitioner had suffered legal injury due to error committed by the examiner in the evaluation of answers, denying him the benefit of the additional marks would not only be unfair but also be a travesty of justice. Accordingly, the Court

proceeded to direct the Commission to award additional 10.5 marks to the petitioner in the aforesaid General Studies Paper. Thus, the petitioner would cross the 973 "cut off" marks, in which event, the petitioner would be entitled to be recommended for appointment to the post of Inspector of Taxes against 1(one) post which was kept vacant by an earlier interim order passed by the Court on 11.09.2017.

The Ld. Single Judge noted that no other candidate had come forward with similar claim against the said post and accordingly, proceeded to allow the petition by granting the relief claimed and directed the Commission and other official respondents to take immediate steps for issuance of order of appointment in favour of the writ petitioner to the post of Inspector of Taxes after observing all the necessary formalities which exercise was to be carried out within a period of 60 (sixty) days.

18. Being aggrieved by the aforesaid direction of the Ld. Single Judge, the present appeal has been preferred by the appellants, Assam Public Service Commission (APSC).

SUBMISSION OF THE APPELLANTS

19. Mr. T.J. Mahanta, learned Senior Standing Counsel representing APSC has a pointed and focused submission that if any such re-evaluation or re-assessment of answer-scripts in respect of competitive examination is allowed as in the present case, that too, when the rules do not permit, it would jeopardize public interest. After select list is prepared and appointments made, if any such exercise is carried out, it would disturb the selection process and also appointments already made. Further, if such a prayer is allowed in respect of an individual, there is no reason why similar exercise may not be required to be taken in respect of other dissatisfied candidates, thus, in the process, creating a chaotic situation and there will be never ending uncertainty due to litigations which will not be in public interest.

20. According to Mr. Mahanta, learned Senior Standing Counsel for the APSC, certainty and expeditiousness ought to be the key elements in public competitive examinations as, because of such claim and litigation, it would introduce elements of uncertainty and cause delay in public appointments which are to be avoided.

21. Mr. Mahanta, learned Senior Standing Counsel, APSC has laid emphasis on the Rule 70(iv) of Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 whereunder it has been provided that the Commission shall not entertain any request for re-examination of answer scripts from candidates or any other person.

Rule 70 of the aforesaid Rules reads as follows:

"70. Preservation of scripts

(i) The used answer scripts shall be preserved atleast for six months from the date of declaration of results.

(ii) In case of candidates whose results are challenged in the Court, their scripts shall be preserved till the final disposal of the case or cases.

(iii) When the scripts are destroyed, it shall be done so in presence of the Secretary and the Principal Controller of Examinations in the office premise and records of such matters shall be maintained.

(iv) The Commission shall not entertain any request for re-examination of answer scripts from candidates or from any other person."

Thus, when there is a specific bar to entertain any request for re-examination of answer scripts from any candidate, the present impugned direction issued by the Ld. Single Judge would amount to passing an order contrary to the rules, which according to learned Senior Standing Counsel will not be permissible.

22. In this regard, learned Senior Standing Counsel has relied on the decision of the Hon'ble Supreme Court in ***Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission***, ***Patna and Ors***.

(***2004) 6 SCC 714,*** in which the Hon'ble Supreme Court had clearly held that in absence of any provision for re-evaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim for re-evaluation of marks. In the aforesaid ***Pramod Kumar Srivastava*** (supra), the Hon'ble Supreme Court referred to the earlier decision in ***Maharashtra State Board of Secondary and Higher Education Vs. Paritosh Bhupeshkumar Seth, (1984) 4 SCC 27.***

23. In para No.7 of the aforesaid decision, ***Pramod Kumar Srivastava*** (supra), it was held as follows:

> "7. We have heard the appellant (writ-petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the Ld. Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer- books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer- books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in ***Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others [(1984) 4 SCC 27 : AIR 1984 SC 1543***]. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the

> Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the Ld. Single Judge had clearly erred in having the answer-book of the appellant re-evaluated."

24. It has been submitted that in the present case it is not a case of absence of any provision for re-evaluation, rather there is a specific bar for re-evaluation as clearly mentioned under Rule 70(iv) of the aforesaid APSC Rules of 2010.

25. Mr. Mahanta, learned Senior Standing Counsel for the appellants has submitted that the fact situation in the aforesaid case of ***Pramod Kumar Srivastava*** (supra) is similar to the present case and submits that the aforesaid decision is squarely applicable in the present case.

26. In the aforesaid case of ***Pramod Kumar Srivastava*** (supra), the appellant had appeared in the Judicial Service (Competitive) Examination, 1999, who was unsuccessful in the written examination. He, then applied for scrutiny of his marks in General Science Paper wherein he had secured 35 marks. The Commission found that there was no mistake and accordingly, intimated to him. Thereafter, he filed a writ petition before the Patna High Court seeking for a direction to the Commission to re-evaluate his General Science Paper contending, *inter-alia*, that he secured very good marks in all other Papers, namely, General Hindi, General Knowledge, Law of Evidence & Procedure, etc. and also that he had

answered the questions of General Science correctly and he ought to have been awarded much higher marks in the said Paper. The Commission, in the said case, pleaded that there was only provision for scrutiny and not for re-evaluation of answer books under the Rules and since the appellant had applied for scrutiny which was allowed and since no mistake had been found, nothing further could be done in this regard. It was also contended by the Commission in the said case that a centralized mode of evaluation was adopted by the Commission wherein examiners approved and selected by the Commission were required to examine the answer-books under the guidance of Head Examiner and the model answers are prepared to be used as a guide of all examiners while examining the answer books to maintain uniform standard in awarding marks. Accordingly, it was submitted that in absence of any specific provision in the Rules for re-evaluation of answer-books, the request for re-evaluation cannot be allowed as it would otherwise open a floodgate for other candidates with similar plea which would ultimately delay in declaring the final results causing uncertainty. However, the Ld. Single Judge in the aforesaid case, directed production of answer-book of the appellant of General Science Paper which was shown to the learned Standing Counsel for the Patna University who apparently had science background and he opined that the appellant deserved more marks. On the basis of such opinion, the Ld. Single Judge directed the learned Standing Counsel, Patna University for a fresh evaluation of the answer-books by two experts through the Principal, Science College, Patna. On the basis of the fresh evaluation, the appellant was awarded 63 marks as against 35 marks earlier awarded to him by the examiners of the Commission. The writ petition was accordingly allowed by directing the Commission to reconsider the case of the appellant by treating his marks in General Science paper as 63.

26.1. Being aggrieved, the Commission preferred an appeal against the said decision of the Ld. Single Judge and the Division Bench allowed the

said appeal. The issue which arose for consideration before the Hon'ble Supreme Court was whether the Ld. Single Judge was justified in directing re-evaluation of answer-book of the appellant in the General Science Paper. It was noted that under the relevant rules of the Commission, there was no provision for re-evaluation though there was a provision for scrutiny for the purpose of checking whether all the answers given by the candidate have been examined and whether there has been any mistake in the totaling of marks of each question.

26.2. In the said case, apparently after scrutiny, no mistake was found in the mark of the appellant in General Science Paper. The Hon'ble Supreme Court also noted that there was no provision for any re-evaluation of answer-books under the relevant rules. In that context, Hon'ble Supreme Court held that in absence of any provision of re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of the marks.

26.3. The Hon'ble Supreme Court also highlighted the problems which may arise in case such a plea for re-evaluation is allowed in a competitive examination as the declaration of final result could be unduly delayed and the vacancy would remain unfilled for a long time.

Further, a situation may arise where upon re-evaluation the candidate may get lesser mark which could cause further complications. The Hon'ble Supreme Court also took exception to the manner in which the Ld. Single Judge got the answer-scripts of the appellant re-evaluated.

26.4. The Hon'ble Supreme Court also noted the advantage of having a centralized system of evaluation of answer-books wherein different examiners examine the answer-books so as to bring uniformity in the manner of assessment. Thus, the Hon'ble Supreme Court in the aforesaid case of ***Pramod Kumar Srivastava*** (*supra*) upheld the decision of the Division Bench in setting aside the direction of the Ld. Single Judge allowing re-evaluation of answer scripts.

27. Mr. T. J. Mahanta, learned Senior Standing Counsel for the appellants has submitted that similar is the case here.

Firstly, the Rules, rather being silent, in fact, prohibit any re-examination.

Secondly, this is a competitive examination and not merely an academic examination associated with pursuing any academic course. If any such re-evaluation is allowed, it will invite similar pleas from other candidates. Thus, declaration of the result would be unduly delayed and bring uncertainty in the competition and also delay filling of vacancies.

Thirdly, it has been further submitted that if the answer-script of only the appellant is re-examined, it will amount to discrimination as the answer scripts of other candidates who may also be dissatisfied with the result would be denied this benefit of re-examination and thus, they will be discriminated which will be in violation of Article 14 of the Constitution.

28. Mr. T. J. Mahanta, learned Senior Standing Counsel, APSC submits that when there is a specific bar under the Rules, the direction of the Ld. Single Judge allowing for re-evaluation of answer scripts would be contrary to the said Rules which is not permissible as held by the Hon'ble Supreme court in ***A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Anr., (1986) 2 SCC 667***.

Though the aforesaid decision was in the context of the right of the minorities to establish a Medical College, it was held that no direction would be issued by the Court to the authorities to protect the interests of the students who were admitted in the said College which was established without affiliation being granted by the University which was necessary for setting up of a medical college. In that context, it was submitted on behalf of the students who had been already admitted to the MBBS course that the interest of the students may be sacrificed because of the mistake on the part of the management and sought for a direction from the Hon'ble Supreme Court to allow them to appear in the examination,

notwithstanding the fact that the affiliation had not been granted by the University, which was rejected by the Hon'ble Supreme Court by holding that any direction of that nature sought, would be in clear transgression of the provision of University Act and the regulations of the University and by a fiat, the Court cannot direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as it would be destruction of rule of law and such a direction of the Court would amount to direction to disobey the laws as observed in para No. 10 of the aforesaid decision in ***A.P. Christian Medical Educational Society*** (supra) which reads as follows:

> "10. Shri K.K. Venugopal, learned counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the Medical college established by the Daru-Salaam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws ……".

29. Accordingly, it has been submitted that in the present case, since there is a specific bar under Rule 70(iv) of the APSC Rules of 2010, any such direction to the Commission to re-evaluate the answer scripts of the petitioner would amount to violating the statutes, rules and as such, such a direction would be wholly illegal.

30. Mr. Mahanta, learned Senior Standing Counsel, APSC has also referred to the decision of ***Pranav Verma & Ors. Vs. Registrar General of the High Court of Punjab and Haryana at Chandigarh & Anr***., ***(2020) 15 SCC 377,*** wherein the decision of the Hon'ble Supreme Court in ***Pramod Kumar Srivastava*** (supra) was relied upon.

31. Mr. Mahanta, learned Senior Standing Counsel, APSC has also referred to the decision of ***Ran Vijay Singh and Ors. Vs. State of U.P. and Ors., (2018) 2 SCC 357,*** which was also relied upon by the writ petitioner, wherein the law on the subject of re-evaluation was summarized in para 30 thereof.

In para 30, it was held that if the statute, Rule or Regulation governing an examination permits re-evaluation or scrutiny of answer sheet, the Court may permit re-evaluation or scrutiny. However, where the Statute, Rules or Regulation does not permit re-evaluation or scrutiny of answer sheet, the Court may permit, if it is demonstrated very clearly that material error has been committed and that too in rare or exceptional cases. This position is distinct from the position where there is specific prohibition for any re-evaluation or scrutiny. In the subsequent paragraph No.31, the Hon'ble Supreme Court also observed that there cannot be any role for sympathy or compassion in such a matter. It was held that if an error is committed by the examination authority, the complete body of candidates suffer. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. It was held that all candidates suffer

equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible.

The Hon'ble Supreme Court, accordingly, held that the practice of the Court to interfere with the result of the examinations which places the examination authorities in an unenviable position which causes uncertainty and delay in the recruitment process affects adversely the public interest.

32. Para Nos. 30, 31, 32 of the aforesaid decision in ***Ran Vijay Singh*** (supra) are accordingly, reproduced hereinbelow.

> "30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:
>
> 30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;
>
> 30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;
>
> 30.3. The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics;
>
> 30.4. The Court should presume the correctness of the key answers and proceed on that assumption; and
>
> 30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty

> results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

33. Thus, the crux of the submission advanced on behalf of the appellant-APSC is that,

Firstly, the rules specifically debar any claim of re-evaluation and as such, the question of re-evaluation does not arise and hence, there cannot be any direction from the Court for re-evaluation. If such direction is issued contrary to the rules, it would be plainly illegal.

Secondly, if any re-evaluation is held only in respect of the petitioner and appointment is made as directed by the Ld. Single Judge, it will cause great injustice to a large number of candidates who may not be satisfied with the result but have not approached this Court. Thus, it will cause discrimination against them which would be contrary to Article 14 of the Constitution of India.

Thirdly, if this plea is allowed, as done by the Ld. Single Judge, it will open a flood-gate of similar claims which will delay the declaration of final results causing uncertainty and delay in the recruitment process, which will be against the public interest.

Fourthly, it has been submitted that the examination-in-issue relates to a competitive examination and not a usual examination for clearing academic course where increase in marks of a candidate may not cause any prejudice to any other candidate except perhaps ranking. It will merely increase the number of successful candidates. But in a competitive examination, increase in marks of a candidate may upset the entire merit list. Consequently, it may also disturb the appointments, if already made on the basis of the merit list. Thus, it will cause uncertainty and delay in the recruitment process.

34. Ms. M. Bhattacharjee, learned counsel for the State has endorsed the submission advanced by Mr. T.J. Mahanta, learned Senior Counsel for the APSC.

SUBMISSION OF THE RESPONDENT NO.1- WRIT PETITIONER

35. In response, Mr. N. Dutta, learned Senior Counsel for the writ petitioner/respondent No.1 has submitted that, first of all, Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 referred to by the APSC to show that the rules bar re-evaluation is not a statutory rule. Hence, the question of any bar for re-evaluation does not arise.

36. Mr. N. Dutta, learned Senior Counsel has submitted that there can be no dispute to the proposition of law and also referred to by learned Senior Standing Counsel, APSC that there can be no re-evalution if statutory rules specifically bar such a re-evaluation. However, it has been submitted by Mr. Dutta, learned Senior Counsel that in the present case there is no such statutory bar under the Rules.

37. It has been submitted that the aforesaid APSC Rules of 2010 were framed by the Commission and notified on 2nd August, 2010 in exercise of the powers conferred by proviso to Article 320 of the Constitution of India in supersession of previous Rules in respect of Procedure and Conduct of Business of Assam Public Service Commission (APSC). It has been submitted that these rules, at best, can be considered as internal guidelines for conducting the examination without having any statutory force.

38. In this regard, Mr. Dutta, learned Senior Counsel submits that the power and functions of Public Service Commission are dealt under Chapter II of Part XIV of the Constitution of India.

Article 320 of the Constitution of India deals with the functions of Public Service Commissions which provides that it shall be the duty of Union and the State Public Service Commission to conduct examination for appointments to the services of Union and the services of State respectively.

Article 320(3) further provides that the State Public Service Commission shall be consulted on all matters relating methods of recruitment to civil services for the civil posts, the principles to be followed in making appointment of civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers, and on all disciplinary matters and others as mentioned in sub-clause (3) of Article 320 of the Constitution of India.

Sub-clause 5 of Article 320 provides that all regulations under proviso to Clause (3) made by the President or the Governor of the State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the state may make during the session in which they are so laid.

39. Thus, according to Mr. Dutta, learned Senior Counsel, there is no power given to the Assam Public Service Commission to make any rule under Article 320 unlike in the case of Article 319 of the Constitution. The rule making authority in respect of Article 320 is the President or the Governor as the case may be and any such rules in the form of regulation made have to be laid before House of Legislature.

It has been submitted that in the present case, the said APSC Rules of 2010 were not framed by the Governor but by the Commission itself.

40. Further, the said Rules though were notified on 2nd August, 2010, were never published in official gazette and in fact, the APSC had taken the specific plea in ***Manash Pratim Baruah Vs State of Assam and Ors***. [***WP(C) No.1998/2017,*** disposed of on 16.07.2019**]** that though the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 are styled as Rules, these are basically a set of

procedures for smooth functioning of internal management and operation of affairs of the Commission, as stated in the affidavit filed by the APSC wherein the said Rules were challenged.

41. The Division Bench of this Court while disposing of the aforesaid writ petition in ***Manash Pratim Baruah*** (supra) passed the following order.

> "**16.07.2019**
>
> Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. T.C. Chutia, learned State counsel, appearing for respondent Nos.1 & 2 and Mr. C. Baruah, learned standing counsel, APSC, appearing for respondent Nos.3—5.
>
> By this writ petition, the petitioner challenges the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010.
>
> The respondent Nos.3, 4 and 5 had filed an affidavit on 03.04.2019 stating that after repealing the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010, a new set of procedures, named and styled as "Assam Public Service Commission (Conduct of Business) Procedure, 2019, are formulated and the same came into effect from 01.04.2019. It is also stated that the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010, though styled as a Rule, was basically a procedure for smooth functioning of internal management and operation of affairs of the Commission.
>
> Mr. Borthakur submits that in view of the above development, the present writ petition has been rendered infructuous. He submits that though the Assam Public Service Commission (Conduct of Business) Procedure, 2019 has taken care of many of the shortcomings present in Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010, liberty may be granted to challenge the aforesaid Assam Public Service Commission (Conduct of Business) Procedure, 2019, if need be.

> In view of the above submission of Mr. Borthakur, this writ petition is closed as infructuous reserving liberty to the petitioner to assail the Assam Public Service Commission (Conduct of Business) Procedure, 2019, if need be."

(emphasis added)

42. Thus, it has been submitted that it is very clear that the aforesaid Rules are not statutory Rules having force of law but merely a set of regulations for internal management of the Commission and as such, these cannot have any binding force to be treated as statutory Rules and as such, the issue of there being any statutory bar, as contended by Mr. T.J. Mahanta, learned Senior Standing Counsel, APSC does not arise in the present case.

43. Mr. Dutta, learned Senior Counsel further submits that in any event, Rule 70(iv) has to be read along with Rule 70(ii) which provides that in case of candidates whose results are challenged in the Court, their scripts shall be preserved till the final disposal of the case.

44. According to the learned Senior Counsel, this provision under Rule 70(ii) gives a clue for allowing re-examination of answer scripts, as otherwise, there would be no necessity to preserve the answer scripts of such candidates whose results are challenged in the Court till final disposal of the case.

45. According to Mr. Dutta, learned Senior Counsel, Rule 70(ii) has been incorporated to enable the Court to pass appropriate orders in respect of the answer scripts of the candidates who challenge the result in the Court and nothing can restrict or limit the extraordinary power of the High Court under Article 226 of the Constitution of India to pass appropriate orders. He further ventured to submit that even the bar mentioned in Rule 70(iv) placed on by the Commission not to entertain any request for re-examination is a self-imposed bar and cannot apply to the High Court in exercise of jurisdiction under Article 226.

46. Mr. Dutta, learned Senior Counsel further developed his argument by contending that in normal circumstances in matters relating to examination, the Court would not intervene. However, when the mistake or error committed by the examiner of the Commission is demonstratively wrong, nothing would come in the way of the Court to intervene.

47. In this regard, Mr. Dutta, learned Senior Counsel has referred to the decision of Hon'ble Supreme Court in ***Uttar Pradesh Public Service Commission, through its Chairman and Anr. Vs. Rahul Singh and Anr., (2018) 7 SCC 254*** and has drawn attention of this Court to para Nos. 12 and 13 of the decision which are reproduced hereinbelow.

> "12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In Kanpur University case [***Kanpur University Vs. Samir Gupta, (1983) 4 SCC 309]*** the Court recommended a system of :
>
> (1) moderation;
>
> (2) avoiding ambiguity in the questions;
>
> (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.
>
> 13. As far as the present case is concerned even before publishing the first list of key answers the Commission had got the key answers moderated by two expert committees. Thereafter, objections were invited and a 26 member committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the

> key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answer is better or more correct."

48. Accordingly, Mr. Dutta, learned Senior Counsel has submitted that while the constitutional Court is to exercise restraint in the matter of re-evaluation, however, where the error is glaring and demonstratively wrong and apparent, in which non-inferential process of the reasoning is not required to show such an error, the Court certainly can intervene and the Court can entertain the plea challenging the correctness of the answers.

49. It has been submitted by Mr. Dutta, learned Senior Counsel that after the Ld. Single Judge directed the answer scripts of the petitioner/respondent No.1 in respect of General Studies paper to be evaluated through academic experts, it was found that the writ petitioner would be entitled to 10.5 more marks.

50. According to Mr. Dutta, evaluation by the examiner of the Commission was demonstratively wrong, denying the petitioner marks in the aforesaid 5(five) questions.

51. Mr. Dutta, learned Senior Counsel submits that as to what is meant by "*demonstratively wrong*" has been explained in ***Kanpur University, and Ors. Vs. Samir Gupta and Ors., AIR 1983 Supreme Court 1230.***

In ***Kanpur University*** (*supra*), it has been held that any such wrong can be said to be demonstratively wrong, if it can be ascertained without resorting to any inferential process of reasoning or by a process of rationalization and which no reasonable body of men well-versed in a particular subject would regard as correct.

52. According to Mr. N. Dutta, learned Senior counsel, the correctness of the answers given by the writ petitioner in respect of the aforesaid questions has not been disputed by the APSC and the answers given are

easily ascertainable from any authenticated source which do not require any reasoning or inference.

53. Thus, it can be said that the answers given by the petitioner are demonstratively correct and the assessment made by the examiners is demonstratively wrong. Though General Studies paper may consist of subjective questions, these questions-in-issue are purely objective in nature whose correctness can easily be ascertained by reasonable persons well versed in the aforesaid in the relevant subject.

54. It has been further submitted that the aforesaid decision in ***Kanpur University*** (*supra*) was rendered by a 3(three) Judges Bench which has not been overruled till now by any Larger Bench, and as such, it accordingly, holds the field.

In the aforesaid case of ***Kanpur University*** (*supra*), the Hon'ble Supreme Court very clearly held that if there is any error committed by the paper setter in giving answers and students answer correctly those questions but not accord to key answer, they cannot be penalized and would be entitled to re-evaluation of the papers by awarding the marks.

It was held in para 16 and 17 of the aforesaid case ***Kanpur University*** (*supra*) as follows:

> "16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in

U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong."

55. Coming to the issue of applicability of principle of "*ubi jus ibi remedium*", Mr. N. Dutta, learned Senior Counsel submits that in the earlier Assam Public Service Commission (Procedure and Conduct of Business) Rules, 1986, superseded by the APSC Rules of 2010, there were provisions for random checking of the tabulation to ensure correctness and accuracy of tabulation as well as assessment of answer books as provided under Rule 37.

Rule 37 of previous Rules of 1986 reads as follows:

"37. The Commission may cause random checking of the tabulation to ensure correctness and accuracy of tabulation as well as assessment of answer books."

The aforesaid provision of random checking of the tabulation to ensure correctness and accuracy of tabulation as well as assessment of answer books, however, has been done away with in the subsequent APSC Rules of 2010. The aforesaid Rules 2010 have taken away the scope for reassessment by putting a specific bar under Rule 70(iv).

56. According to Mr. Dutta, if demonstratively wrong assessment has been made by the examiners of the Commission for the correct answers given by the students, what will be the remedy available to the candidates

in the teeth of Rule 70(iv) of the Rules of 2010? It is in that context, Mr. Dutta has invoked the principle of "*ubi jus ibi remedium*" and has referred to the decision in ***Sardar Amarjit Singh Kalra (Dead) by LRS. & Ors. Vs. Pramod Gupta (Smt.) (Dead) by LRS. & Ors.,*** (***2003) 3 SCC 272,*** wherein the Hon'ble Supreme Court in para 33 held as follows:

> "33. Even assuming that the decree appealed against or challenged before the Higher forum is joint and several but deal with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the Courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned. As and when it is found necessary to interfere with the judgment and decree challenged before it, the Court can always declare the legal position in general and restrict the ultimate relief to be granted, by confining it to those before the Court only rather than denying the relief to one and all on account of a procedure lapse or action or inaction of one or the other of the parties before it. The only exception to this course of action should be where the relief granted and the decree ultimately passed would become totally unenforceable and mutually self-destructive and unworkable vis--vis the other part, which had become final. As far as possible Courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, `*ubi jus ibi remedium*' (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice."

57. To fortify this submission, Mr. Dutta, learned Senior Counsel has also relied on the decision of the Hon'ble Supreme Court in ***M/s. Shiv Shankar Dal Mills and Ors. Vs. State of Haryana and Ors., (1980) 2 SCC 437*** .

In para Nos. 1, 2 and 3 of ***M/s Shiv Shankar Dal Mills*** (*supra*), Hon'ble Supreme Court held as follows:

> "This big bunch of writ petitions shows how litigation has a habit of proliferation in our processual system since cases are considered in isolation, not in their comprehensive implications and docket management is an art awaiting its Indian dawn. The facts, being admitted, obviate debate. All these appellants and writ petitioners had paid market fees at the increased rate of 3 per cent (raised from the original 2 per cent) under Haryana Act 22 of 1977. Many dealers challenged the levies as unconstitutional, and this Court, in a series of appeals (C.As. Nos.1083 of 1997 etc.)* ruled that the excess of 1 per cent over the original rate of 2 per cent was ultra vires. This cast a consequential liability on the Market committees to refund the illegal portion. They were not so ordered probably because they could not straightway be quantified. The petitioners who had, under mistake, paid larger sums which, after the decision of this court holding the levy illegal, have become refundable, demand a direction to that effect to the Market Committees concerned. There cannot be any dispute about the obligation or the amounts since the Market Committees have accounts of collections and are willing to disgorge the excess sums. Indeed, if they file suits within the limitation period, decrees must surely follow. What the period of limitation is and whether Article 226 will apply are moot as is evident from the High Court's judgment, but we are not called upon to pronounce on either point in the view we take. Where public bodies, under colour of public laws, recover people's moneys, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of 'alternative remedy', since the root principle of law married to justice, is *ubi jus ibi remedium.* Long ago Dicey wrote :

> The law *ubi jus ibi remedium*, becomes from this point of view something more important than a mere tautological proposition. In its bearing upon constitutional law, it means that the Englishmen whose labours gradually formed the complicated set of laws and institutions which we call the Constitution, fixed their minds far more intently on providing remedies for the enforcement of particular rights or for averting definite wrongs, than upon any declaration of the Rights of Man or Englishmen.....The Constitution of the United States and the Constitutions of the separate States are embodied in written or printed documents, and contain declaration of rights. But the statesmen of America have shown an unrivalled skill in providing means for giving legal security to the rights declared by American Constitutions. The rule of law is as marked a feature of the United States as of England.
>
> 2. Another point. In our jurisdiction, social justice is a pervasive presence; and so, save in special situations it is fair to be guided by the strategy of equity by asking those who claim the service of the judicial process to embrace the basic rule of distributive justice, while moulding the relief, by consenting to restore little sums, taken in little transactions, from little persons, to whom they belong.
>
> 3. When we reminded counsel on both sides of these guide-lines of Good Samaritan jurisprudence and desired consensual disposal of these cases, we gratifying found welcome echo and we appreciatively record this stance."

58. Apart from questioning the stand taken by the APSC in the present case, Mr. N. Dutta, learned Senior Counsel has also questioned its conduct and drawn attention of this Court to the letter dated 08.10.2018 written by the Secretary, Assam Public Service Commission to the Secretary to the Government of Assam, Personnel(A) Department. According to him, the APSC accepted the verdict of the Ld. Single Judge rendered in WP(C) 5576/2017 and recommended the name of the petitioner for the post of Inspector of Taxes under Open Category. However, in spite of the said

recommendation being made by the Assam Public Service Commission, the State Government requested the APSC vide letter dated 31.10.2018 to file a review petition against the judgment and order passed in WP(C) No. 5576/2017 and contest the case before the Court.

However, APSC did not file any review petition and the present appeal has been filed by the APSC at the instance of the State Government.

Since the appeal was filed belatedly, the appeal was dismissed by the Division Bench of this Court on the ground of delay. The State Government then approached the Hon'ble Supreme Court, which remanded the matter to this Court for rehearing the appeal.

Thus, according to Mr. N. Dutta, learned Senior Counsel, it was the State of Assam which took the initiative to file SLP before the Hon'ble Supreme Court and appeal before this Court and not the APSC.

59. According to Mr. Dutta, learned Senior Counsel, APSC has tried to demonstrate that certain remedial measures were undertaken by referring the matter to the examiners for their views, as mentioned in para 5A of the affidavit-in-opposition filed by the Assam Public Service Commission before the Ld. Single Judge, which however, was awefully inadequate and superfluous.

In para No. 5A of the affidavit-in-opposition filed on behalf of the Assam Public Service Commission in WP(C) No. 5576/2017, it has been mentioned that the views of the concerned examiner was taken. As per the views of the Examiner, the answers provided to the questions by the student in General Studies paper, as mentioned in the petition are not correct, appropriate, up to the mark, point oriented and satisfactory. It was also opined that the sources of the answers as mentioned by the candidate are neither authentic nor authenticated. Moreover, the sentence construction of the answers is not good, suitable, upto the mark for the highest level administrative type examination.

Thus, as per the aforesaid views of the examiner communicated vide letter dated 30.10.2017 in response to APSC's letter dated 25.10.2017, the candidate does not deserve any mark.

60. As regards the aforesaid stand of the APSC, Mr. Dutta, learned Senior Counsel submits that it is unfortunate that the APSC should have accepted such a perfunctory opinion of the examiner who gave a very evasive response to the specific and pointed answers given by the petitioner.

61. According to Mr. Dutta, the aforesaid response of the examiner is wholly irrelevant, vague and does not provide the real answer to the questions and answers given by the writ petitioner which are demonstratively correct. In fact, no correct answer has been provided by the examiner except for stating that the answers given by the petitioner were not correct, appropriate and up to the mark. It has been submitted by the petitioner that on the contrary, the sources of answers given by the petitioner have been specifically mentioned which are reliable and can be verified by anyone and are in public domain and as such, the aforesaid exercise undertaken by the APSC is a *sham* exercise.

ANALYSIS OF THE RIVAL SUBMISSIONS

62. As we proceed to examine the issues at hand, we have noted that Mr. T.J. Mahanta, learned Senior Standing Counsel, APSC has not questioned or doubted the correctness of the answers given by the petitioner. However, he submits that correctness of the answers given by the petitioner is not the real issue at hand and the real issue is whether allowing re-evaluation and reassessment of answer-scripts in a competitive examination would, especially when there is a specific bar in the rules for re-examination of the answer scripts, be permissible or not.

63. According to Mr. Mahanta, learned Senior Standing Counsel, APSC, the core issue is not of correctness of the answers given by the petitioner but impermissibility of re-evaluation and reassessment in a competitive

examination and accordingly, has submitted that, it is this issue which is required to be decided in this appeal.

THE CORE ISSUE

64. The core issue to be decided in this appeal is whether re-examination/reassessment of answer-scripts is permissible as had been directed by the Ld. Single Judge and in fact, the main plank of the contention of the appellant is that under no circumstance specially when there is a bar for re-examination or reassessment, such an exercise cannot be undertaken in a competitive examination.

65. This is an issue which has confronted many Courts and in this context, the Hon'ble Supreme Court had given its views from time to time touching on many facets of this issue. As discussed above, the Hon'ble Supreme Court has not placed any blanket bar on any such reassessment or re-examination of answer-scripts but has allowed under certain circumstances.

66. However, without going into detail of the numerous decisions of the Hon'ble Supreme Court, it may be apposite to refer to the decision of the Hon'ble Supreme Court in ***Ran Vijay Singh*** *(supra*), where the Hon'ble Supreme Court succinctly summarized the law relating to examination in para 30.1 thereof wherein it has been held that if the statute, Rule or Regulation governing an examination permits re-evaluation of an answer sheet or scrutiny as a matter of right, then the authority conducting the examination may permit.

67. On the other hand, it has been held that if the statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it), then the Court may permit re-evaluation or scrutiny only if it is demonstratively very clear, without any "inferential process of reasoning or by a process of rationalization" and only in rare or exceptional cases, that a material error has been committed.

68. The Hon'ble Supreme Court, however, cautioned that the Court itself should not at all re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matter and academic matters are best left to the academics. There are other observations made by the Hon'ble Supreme Court in the aforesaid case of ***Ran Vijay Singh*** (*supra*), reference of which will be made in due course.

69. From the above, it is clear that where Rules permit re-evaluation of an answer sheet, the same may be allowed by the Court. However, where Rules do not permit or are silent, it may be permitted when it is demonstratively very clear that the answer given is correct. However, if there is a specific prohibition or bar under the Rules, the aforesaid limited scope of re-examination does not arise.

70. The aforesaid dictum of the Hon'ble Supreme Court in ***Ran Vijay Singh*** (*supra)* contained in para 30 referred to above has been also acknowledged by the learned Senior Counsel for the writ petitioner, in that, if there be any statutory bar, there cannot be any re-examination/re-assessment of answer script.

71. In the present case, there is no rule permitting re-evaluation of answer-scripts.

On the other hand, in the present case as discussed above, there is a specific bar under Rule 70(iv) of the Assam Public Service (Procedure and Conduct of Business) Rules, 2010.

72. Thus, on the basis of the aforesaid decision in ***Ran Vijay Singh*** (supra), the Assam Public Service Commission has submitted that as the Rules specifically bar re-evaluation, the question of re-evaluation does not arise and as such, the direction of Ld. Single Judge cannot be sustained in law.

73. Mr. N. Dutta, learned Senior Counsel for the writ petitioner while not disputing the proposition of law that if there is a specific bar under the

rules or statutes, there cannot be any re-scrutiny of the answer script, however, submits that the aforesaid bar under Rule 70(iv) of the Assam Public Service (procedure and Conduct of Business) Rules, 2010 cannot be considered to be a bar under any statue or Rule or Regulation governing an examination as far as the candidates are concerned, in so far as these Rules were not framed under any statute. As discussed above, it is the specific stand of the learned Senior Counsel for the writ petitioner that the aforesaid Rules are not statutory or do have force of law.

APSC RULES OF 2010

74. We have already discussed the provisions of Article 320 of the Constitution of India under which the aforesaid APSC Rules of 2010 purportedly had been framed. However, the APSC has not been able to show how Article 320 enables the Assam Public Service Commission to frame such Rules having force of law. Perhaps, it was in that context a Division Bench of this Court in ***Manash Pratim Baruah*** (*supra*) had observed that Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 had been made for smooth internal management and operation of affairs of the Commission, which was also based on the affidavit filed by the APSC in the aforesaid case of ***Manash Pratim Baruah*** (supra) to that effect.

75. We have also perused the affidavit filed by the APSC in the aforesaid case of ***Manash Pratim Baruah*** (supra) after requisitioning the records of the same and we have observed that the APSC, in the said case which is not related to this case, had filed an affidavit to the effect that the aforesaid Rules of 2010 have been framed for the smooth functioning of the internal management and operation of affairs of the Commission. In fact, the Division Bench of this Court as discussed above disposed of the writ petition, ***Manash Pratim Baruah*** (supra), by observing that Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 though styled as a Rule, was basically a procedure for smooth

functioning of internal management and operation of affairs of the Commission.

76. In course of the hearing nothing has been brought to our notice of any specific provision which would confer any power to the Commission to make such Rules as to have the force of law.

However, as regards the submission made by Mr. N. Dutta, learned Senior Counsel that Article 320 of the Constitution of India does not empower the Public Service Commission to make rules and regulations having force of law, we doubt the correctness of the said submission.

In ***A.P. Public Service Commission Vs. Baloji Badhavath, (2009) 5 SCC 1***, the Hon'ble Supreme Court held in para 23 thereof that the Commission which has been constituted in terms of Article 315 of the Constitution of India is bound to conduct examination for appointment to services of the State in terms of rules framed by the State. It is, however, free to evolve the procedure for conduct of examination.

Article 320 of the Constitution specifically provides that it shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointment to the services of the Union and State. Thus, if the Commission is empowered to evolve procedure for conducting the examination, certainly, Article 320 of the Constitution of India, in our view, would be a source of power for making rules and regulation.

If the Public Service Commission has been specifically empowered to conduct examination, in our view, the Commission will have all the ancillary power to effectuate the main function of conducting examination.

However, this issue perhaps may not detain us any longer for the reason that there is already a judicial decision of this Court in ***Manash Pratim Barua*** (supra) as noted above that the APSC 2010 Rules are but merely a set of procedures for smooth functioning of the internal management and affairs of the Commission.

It may be also noted that if the APSC seeks to debar re-evaluation or reassessment of answer-scripts, certainly, it is prohibitive in nature and thus, curtailing the right of a student for reassessment which, however, in our opinion, can be done if any such provision is mentioned in any Rules or Regulations which have the force of law. If such Rules or Regulations are merely guidelines or mere code of conduct, certainly, it cannot be said to have statutory force to deny any claim for re-evaluation. That is why, in that context, the Hon'ble Supreme Court in ***Ran Vijay Singh*** (*supra*) held that where the statute, Rule or Regulation governing an examination permits re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, the same has to be permitted. However, it cannot be permitted if there is a prohibition. It was, however, clarified that if the Rules either do not permit or prohibit, and are silent, where demonstratively apparent error has been committed by the examining authorities, re-evaluation can be permitted in exceptional cases.

77. If we have to treat the aforesaid APSC Rules of 2010 as non-enforceable and do not have the force of law being merely guidelines, we may examine if there is any other statute/rule/regulation which has the force of law which bars re-evaluation.

78. There is a set of rules known as Assam Public Services (Combined Competitive Examination) Rules, 1989 hereinafter, referred to as the APSC Rules of 1989 on the basis of which the Combined Competitive Examination, 2015 for recruitment to various Services/Posts of Assam Civil Service (Junior Grade) and its allied services was conducted, out of which the present dispute has arisen.

As we examine the said APSC Rules of 1989, it will be seen that there is no provision for re-scrutiny/re-evaluation or baring scrutiny/re-evaluation/re-examination.

These APSC Rules of 1989 were framed by the Governor of Assam in exercise of powers conferred by the proviso to Article 309 of the Constitution, regulating the recruitment to the Services specified in Schedule I of the said Rules. Thus, these rules have statutory force.

Rule 3 of the aforesaid Assam Public Services (Combined Competitive Examination) Rules, 1989 provides that notwithstanding anything contained in Assam Civil Service (Class-I) Rules, 1960[1], the Assam Taxation Service Rules, 1962[2], the Assam Police Rules, 1966, the Assam Labour Service Rules, 1970, the Assam Transport Service Rules, 1983[3], the Assam Supply Service Rules, 1970[4], the Assam Excise Service Rules, 1961[5], and any other Service Rules relating to services and posts mentioned in the in Schedule I, the Commission shall hold Combined Competitive Examination every year for selection of candidate for recruitment to the services in accordance with the procedure laid down in Schedule II.

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1 *Repealed* by the Assam Civil Services Rules, 1998
2 *Repealed* by the Assam Taxation Service Rules, 1995
3 *Repealed* by the Assam Transport Service Rules, 2003
4 Now Food & Civil Supply Service Rules, 1977
5 *Repealed* by the Assam Excise Service Rules, 1990.

Rule 3(2) provides that Commission shall after the main examination, prepare a merit list of candidates and forward such list to the Government for appointment to different services under the respective Service Rules.

Schedule II to the aforesaid Rules of 1989 provides the procedure for holding Combined Competitive Examination under the Assam Public Services (Combined Competitive Examination) Rules, 1989 which provides, *inter alia*, that Assam Public Service Commission will hold Combined Competitive Examination in two stages, namely, Preliminary Examination and Main Examination in accordance with the rules and procedures prescribed therein in respect of the following services which includes the posts which have been advertised in the present case.

(1) Assam Civil Service, Class-I (Jr. Grade).
(2) Assam Police Service (Jr. Grade)
(3) Labour Officer.
(4) Superintendent of Taxes.
(5) Superintendent of Excise.
(6) Superintendent of Jail.
(7) Assistant Registrar of Co-operative Societies.
(8) District Transport Officer.
(9) Inspector of Labour.
(10) Inspector of Taxes.
(11) Inspector of Excise.
(12) Inspector of Supply.
(13) Sr. Inspector/Auditor of Co-operative Societies.
(14) Assistant Employment Officer, and any other posts and services which the Government may include in consultation with the Commission from time to time.

The said Schedule II provides that the examination would be conducted by the Assam Public Service Commission and as per the Syllabi prescribed in Appendix-I and Appendix-II to these Rules.

Schedule II provides in detail how a candidate has to make his application, about the requisite qualifications, as to the documents required to be submitted etc.

Schedule II also mentions that the decision of the Commission as to the eligibility or otherwise of a candidate for admission to the examination shall be final.

The aforesaid Schedule II also mentions that a candidate who is or has been declared by the Commission to be guilty of various misconducts mentioned therein shall be disqualified by the Commission from the examination for which he or she is a candidate.

The aforesaid Schedule II also enables the Commission to fix the qualifying marks in the Preliminary Examination and also the minimum marks for the Main (Written) Examination.

Further, Appendix I to the aforesaid Rules of 1989 lays down the plan of examination and how it has to be conducted. Detail plan of the examination and the manner to be conducted by the Commission are mentioned in Appendix I.

Appendix-I consists of three Sections - Section-I, Section-II and Section III.

Section-I of Appendix-I lays down the detail plan of Examination which is to be conducted by the Commission.

Section-II of Appendix I deals with the scheme and subjects for the Preliminary and the Main Examination and as to the total marks of the subjects and also duration of the Examination and as to how the answers are to be written.

Section-III of Appendix I deals with the syllabus of the subjects in which the candidates have to appear i.e. Degree Level Course of Universities of State of Assam and in respect of Optional subjects.

Appendix-II mentions the compulsory subject and list of optional papers.

Thus, the aforesaid Rules of 1989 lays down in detail the manner, methodology, the marks, duration of the papers, syllabi etc. relating to the competitive examination.

79. The aforesaid Rules deal exhaustively with all matters pertaining to Preliminary, Main examination as well as the viva-voce/interview, about fixing cut off marks etc., percentage of marks of relaxation in respect of any particular where sufficient candidates of SC and ST communities cannot qualify for recommendation for the posts, and all ancillary matters for conducting the said competitive examination.

The aforesaid Rules of 1989 thus, exhaustively deal with the holding of the combined competitive examination, including the procedure, the manner the examination is to be conducted by the APSC, about the syllabi, about the qualifying marks, manner of preparation of merit list, even how to write the answer papers etc.

Rule 5 of the aforesaid Rules of 1989 states that notwithstanding anything contained in these rules, the Governor of Assam shall have the right to amend or effect any change in these rules at any time as and when considered necessary.

Rule 6 further provides that if any difficulty arises in the application of these rules, the Governor may issue appropriate orders, as deemed necessary, for removing such difficulty.

Rule 7 provides that if any question arises as to the interpretation of these rules, it shall be decided by the Governor whose decision shall be final.

80. From the above, it is seen that no power has been delegated to the Commission to frame any rules to regulate or implement the provisions of the aforesaid Rules of 1989.

A perusal of the aforesaid Rules of 1989 would show that under these rules, the Commission has not been authorized to make any decision as regards the right or the claim of the candidate for re-examination or re-scrutiny. To that extent, we would hold that in absence of any such enabling power under the aforesaid Rules of 1989, the Commission cannot make any rules restricting the right of any candidate to claim for re-evaluation/re-scrutiny of answer scripts as far as the aforesaid Combined Competitive Examination is concerned.

The right to claim re-evaluation is a right which can be conferred by a statute or rule or regulation. As a corollary, a specific prohibition to claim for re-evaluation is also an abolition of a legitimate expectation of a candidate seeking re-evaluation. Thus, providing a right to re-evaluation or prohibiting such a claim amounts to creation of a right or denial of a right which can be conferred/denied when the examination body has any such statutory authority, which as discussed above, the APSC does not have so far as the said Combined Competitive Examination is concerned.

In view of above, it can be said that the rules are silent on the issue of re-evaluation.

81. As discussed above, for the purpose of deciding this appeal, the issue is whether any such statutory rule exists as far as the APSC is concerned, which debars re-examination. Apart from APSC Rules of 2010 [containing Rule 70(iv) which bars re-examination], which we have already held, do not have statutory force, there is no other statutory rule framed by the competent authority which debars re-evaluation.

THE RELEVANT LAW

82. From the rival submissions advanced by the contesting parties, it is quite evident that two strands of judicial view permeate the issue relating to re-evaluation/re-examination of answer scripts.

83. As submitted on behalf of the Appellants-APSC, one view as expressed by the Hon'ble Supreme Court in ***Pramod Kumar Srivastava*** (*supra*) is that in absence of any provision under the relevant rules of the Public Service Commission for re-evaluation of answer book, the examinees have no right to claim or demand for re-evaluation.

84. On the other hand, as submitted by Mr. N. Dutta, learned Senior Counsel for the writ petitioner, there is another set of judicial precedence under which, for demonstrative errors committed by the Commission in the matter of evaluation, the Court can intervene.

85. Thus, considering these apparently divergent views, it may be necessary to understand if there is really any conflict between the aforesaid two views or whether such divergent views are reconcilable or more apparent than real. To undertake this exercise, it would be necessary to analyse these two apparently divergent views minutely.

86. Coming to the case of ***Pramod Kumar Srivastava*** (supra), which is the linchpin to the case of the appellant-Commission, it is to be noted that the said case arose out of the recruitment to Judicial Services in Bihar for which the Judicial Services (Competitive) Examination, 1999 was conducted. One of the candidates who found that he secured 35 marks in General Science Paper claimed that since he had secured very well in all other Papers, he should have been awarded much higher marks in the said Paper also.

The Ld. Single Judge directed re-evaluation which was challenged before the Division Bench of the Patna High Court which, in turn, reversed

the decision of the Ld. Single Judge. Thereafter, an SLP was filed before the Hon'ble Supreme Court.

While deciding the said case in ***Pramod Kumar Srivastava*** (supra), the Hon'ble Supreme Court took the view that in absence of provision under the relevant rules for re-evaluation of answer book, the examinees do not have right to claim or demand re-evaluation.

87. The Hon'ble Supreme Court noted, as contended by the Bihar Public Service Commission that there was only provision for scrutiny and no provision for re-evaluation of answer-books. Secondly, there was a centralized system of evaluation of answer-books in which different examiners examine the answer books on the basis of model answers prepared by the Head Examiners with the help of other Examiners.

88. The Hon'ble Supreme Court also observed that at the time of re-evaluation ordered by the Ld. Single Judge, the model answer prepared by the Commission was not supplied to the two teachers of Patna Science College who made the re-evaluation and there can be variation of standard of awarding marks by different examiners.

89. The Hon'ble Supreme Court also took exception to the manner in which the Ld. Single Judge requisitioned the answer-book of the candidate in the Court and shown it to the Standing Counsel for Patna University who on perusal of the answer-script gave an opinion that the candidate deserved more marks and thereafter, the Ld. Single Judge got the answer scripts re-evaluated by two teachers from the Science College, Patna without furnishing the model answers.

90. Thus, what one can observe from the decision in ***Pramod Kumar Srivastava*** (supra) is that there were certain safeguards already put in place by the Commission to maintain uniformity and objectivity in the evaluation of answer-scripts and the Hon'ble Supreme Court also did not appreciate the manner in which re-evaluation was ordered by the High Court.

Under the aforesaid facts and circumstances, the Hon'ble Supreme Court held that in absence of any provision or relevant rules of the Public Service Commission, the examinees have no right to claim or demand re-evaluation.

The Hon'ble Supreme Court went on to observe that the manner in which the Ld. Single Judge proceeded to get the re-evaluation done would lead to various practical problems in a competitive examination which would have the potential of delaying the declaration of final results and also filling of vacancies. In fact, a position may also arise if the candidate secures lesser mark after re-evaluation which may lead to de-selection.

91. While analysing the decision of the Hon'ble Supreme Court in ***Pramod Kumar Srivastava*** (supra), what we can observe is that, though the matter pertains to re-evaluation of a paper in a competitive examination, there was no discussion as to whether the re-evaluation was sought in respect of objective or subjective questions, which, in our view, would have a bearing in the present case in as much as the dispute which has arisen in the present case relates to purely objective questions and the petitioner is claiming that the answers given by the him are correct and the APSC had made a demonstratively wrong error and the APSC has not denied the correctness of the answers given by the writ petitioner. Such a situation in our mind will not arise if the questions are subjective in which event there can be more than one answer and there cannot be any uniformity to the answer because of different perceptions.

92. In the aforesaid case of ***Pramod Kumar Srivastava*** (supra), the Hon'ble Supreme Court also referred to the decision in ***Maharashtra State Board of Secondary and Higher Secondary Education and Anr. Vs. Paritosh Bhupeshkumar Seth and Anr.*** (*supra*).

In ***Maharashtra State Board of Secondary and Higher Secondary Education*** (supra), the issue related to challenge to the Regulation 104(1) and (3) of the Maharashtra Secondary and Higher

Secondary Education Boards Regulations, 1977 which did not permit re-evaluation of answer-scripts and disclosure or inspection of answer books or other documents to examine, which was challenged on the ground of violation of principle of natural justice, which was rejected by the Hon'ble Supreme Court by holding that the principle of *audi alteram partem* cannot be applied as no decision-making process which brings about adverse civil consequences to the examinees is involved in an examination.

93. In the said case, the Hon'ble Supreme Court also noted the procedure safeguards which have been put in place by the Maharashtra Secondary and Higher Secondary Education Board to ensure that answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractices had been effectively adopted.

94. In the other case ***Pranav Verma*** (*supra*) where a different view was taken, the matter related to recruitment process of the Haryana Civil Service (Judicial Branch) Examination-2017.

On certain results being questioned by some of the candidates, the Hon'ble Supreme Court constituted a Committee consisting of Hon'ble Dr. A.K. Sikri, J., a former Judge of Hon'ble Supreme Court to look into some of the answer-scripts of the Main Exam to make an assessment whether the evaluation undertaken should be accepted by the Court. Hon'ble Mr. Justice Sikri, after a deep insight and thorough evaluation of the answer-scripts gave his report along with valuable suggestions. He gave the report that the procedure of evaluation was uniform, evaluation was done by multiple evaluators i.e. one evaluator examining and marking one question in all the mark-sheets which ensured uniformity and prevented chance grading and every candidate's answers were marked on the same parameters by the same examiner and it was also found that there was no

examiner variability, which ensured equal level play field for all the candidates and the only set back which was pointed out was that evaluators had no opportunity to see overall performance of the candidates and take a holistic view, for which adequate remedies were put in place. Some suggestions were made for moderation of mark. Other recommendation and the observations made by the Hon'ble Supreme Court in the aforesaid case of ***Pranav Verma*** (supra), perhaps, may not be necessary for our consideration as not relevant to the issue at hand.

95. While dealing with the issue of prayer of the petitioner in ***Pranav Verma*** (supra) for re-evaluation by an independent expert committee, it was not approved of, as many posts were lying vacant for a considerable long period of time and as such, it was held that re-evaluation will entail further delay and apart from that, it was held that Hon'ble Justice Sikri had thoroughly examined the said situation by recommending of grace-marks.

96. Further, the Hon'ble Supreme Court also noted that there is no provision in the Recruitment Rules for re-evaluation and any such direction would run counter to the mandate in ***H.P. Public service Commission Vs. Mukesh Thakur***, ***2010 16 SCC 759*** which laid down that in the absence of any provision under the statute or statutory rules/regulation, the Courts should *not generally* direct any re-evaluation

Para 25 of the observation made in ***Pranav Verma*** (supra) reads as follows:

> "25. The alternative prayer of the petitioners for re-evaluation by an Independent Expert Committee is not worth acceptance. Firstly, for the reason that these 107 posts are already lying vacant for a considerable long period and the re-evaluation would further delay it. Secondly, Justice Sikri has thoroughly examined the fact situation before recommending the award of grace marks. Thirdly, there is no provision for re-evaluation in the Recruitment Rules and any such direction would run counter to the

> mandate of this Court in *H.P. Public Service Commission v. Mukesh Thakur [(2010) 6 SCC 759*], laying down that in the absence of any provision under the statute or statutory rules/regulations, the Courts should not generally direct re-evaluation."

97. Referring to the decision in ***Centre for Public Interest Litigation Vs. High Court of Delhi***, (***2017) 11 SCC 456***, the Hon'ble Supreme Court further observed that the direction for re-evaluation were given only as a special cause.

98. Thus, the view of the Hon'ble Supreme Court in ***Pranav Verma*** (supra) appears to be that where the specific rules do not provide for re-evaluation, the same cannot be allowed. However, there is also an observation that the Court should not generally direct re-evaluation and it can be done only in special cases. Thus, it appears that re-evaluation had not been totally ruled out or totally barred under any circumstance though the opinion appears to be where there is no rule for re-examination, it should not be allowed. However, it is not mentioned anywhere that under any circumstances re-evaluation cannot be allowed.

99. On the other hand, the other decisions relied upon by the learned Senior Counsel for the writ petitioner would show that where the errors committed by the Commission or the examining body are demonstratively wrong, re-evaluation may be allowed, if the rules are silent on it.

100. In ***Kanpur University*** (supra), which is a decision of three Judges Bench, the Hon'ble Supreme Court noted with approval the submission advanced by the University that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong and that it should not be held wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong as held in para 16 quoted above.

The Hon'ble Supreme Court held that if there was a case of doubt, the Court would have unquestionably preferred the key answer. However,

where matter is beyond the realm of doubt, it would be unfair to penalize the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstratively wrong as observed in para No. 17 of ***Kanpur University*** (supra) quoted above.

The said decision of ***Kanpur University*** (supra) was followed in the subsequent decision in ***Abhijit Sen and Ors. Vs. State of U.P. and Ors., AIR 1984 Supreme Court 1402*****.**

101. After discussing the law in ***Maharashtra State Secondary and High Secondary Education*** (supra), ***Pramod Kumar Srivastava*** (supra) relied upon by the appellants, and other cases, the Hon'ble Supreme Court in ***Ran Vijay Singh*** (supra) summarized the law in the paragraph Nos. 30, 31, 32 quoted above.

In ***Ran Vijay Singh*** (supra), the Hon'ble Supreme Court reiterated the view that if a statute, Rule or Regulation governing an examination permits re-evaluation then the same may be allowed. However, where the Statutory Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of answer sheet (as distinct from prohibiting it) then the Court may not permit unless it is demonstrated very clearly without any "inferential process of reasoning or by a process of rationalization" and that too, only in rare and exceptional cases that a material error has been committed.

102. In another decision rendered soon, thereafter, in ***Uttar Pradesh Public Service Commission Vs. Rahul Singh , (2018) 7 SCC 254***, the Hon'ble Supreme Court after discussing the decision in ***Kanpur University*** (supra) and ***Ran Vijay Singh*** (supra) reiterated the legal position in the following words,

> "12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts

must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In *Kanpur University* case (supra), the Court recommended a system of –

(1) moderation;

(2) avoiding ambiguity in the questions;

(3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.

13. As far as the present case is concerned even before publishing the first list of key answers the Commission had got the key answers moderated by two expert committees. Thereafter, objections were invited and a 26 member committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answer is better or more correct."

103. Thus, the current view of the Hon'ble Supreme Court appears to be that where the mistake is glaring and clearly apparent and where no inferential process of reasoning is required to show that answer is right, the Court may intervene.

104. From the above discussions what comes out is that while the Hon'ble Supreme Court in ***Pramod Kumar Srivastava*** (supra) had categorically held that in absence of any provision in the relevant rules of the Public Service Commission which conducted the examination, the examinees have no right to claim or demand re-evaluation, it was held so in the context of proper safeguards put in place by the Commission,

another decision rendered by the Hon'ble Supreme Court in ***Pranav Verma*** (supra), held that in absence of any provision under the statute regulations the Court should *not generally* direct re-evaluation and direction for re-evaluation should be given only in special and exceptional case where a demonstratively visible error had been committed. Thus, the subsequent decision by three Judges Bench in ***Pranav Verma*** (supra) opened the window for intervention by the Court where it did not completely rule out in absolute terms intervention by the Court which could be done in a very rare and special case and where the error is demonstratively visible.

105. In our view also, in the light of the decisions discussed above, the rare and special case making room for intervention by this Court will be where, the wrong committed by the Commission in evaluating the answer of a candidate is demonstratively clear without having to resort to any inferential process of reasoning or process of rationalization as observed in subsequent decisions of the Hon'ble Supreme Court in ***Ran Vijay Singh*** (supra), ***Uttar Pradesh Public Service Commission Vs. Rahul Singh*** (supra).

106. This, of course, is subject to the caveat that where statutory rules specifically bar any such re-evaluation, perhaps, any direction by the Court would be contrary to statutory rule which may not be permissible.

107. However, in the present case as discussed above, we have already observed that there is no such statutory bar or prohibition for re-evaluation/re-scrutiny in respect of examinations conducted by the APSC in the Combined Competitive Examination, 2015. We have already discussed about the competency and authority of the Assam Public Service Commission in laying down rules and regulation which have force of law and we have already discussed that the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 are not statutory rules

having the force of law as far as the issue relating to re-evaluation is concerned.

108. Thus, we are left with the consideration as to whether the error committed by the Commission in denying marks to the writ petitioner in the present case is demonstratively wrong, without resorting to any inferential process of reasoning or a process of rationalization. If that is so and if the answer is positive, in our view, the petitioner would be entitled to the additional marks claimed by him.

109. Accordingly, we now focus our attention to the answers given by the writ petitioner to the aforesaid questions-in-issue.

As discussed above, though initially the petitioner had claimed that he had given right answers in respect of seven questions, now it has been confined to only five questions which have been reproduced above.

110. As we proceed to examine, we may also clarify that the questions referred to above are purely objective in nature and there is no element of subjectivity involved in the answers to these questions.

For example, to the Question No.4(xv), "When the province of Eastern of Bengal and Assam was created?", there could be only one answer which had been answered by the petitioner that "the province of Eastern Bengal and Assam was created on 16th October 2015", which is ascertainable from any historical book. Writ petitioner had given the correct answer. The answer can be easily demonstrated from any book authored by any renowned historians. The answer is not disputed by the Commission also.

Similarly, as regards the Question No. 4(xviii), about the literary rate and density of population of Assam as per census 2011, the petitioner had given the answer correctly for the first part, that is, 72.19%. The said figure relates to the official data, which can be said to be correct one and the same has been reflected in the census report as contained in

Government website http://www.census2011.co.in and http://www.pnrdassam.nic.in and 2016 Assam Year Book. Since the petitioner has given the correct answer in respect of the literacy rate, the petitioner can be awarded 1(one) mark of which he was not given any mark. The Commission has not contested this claim of the writ petitioner.

In respect of the other question i.e. Question No. 4(xix), that is, "Mention two heads under revenue receipts of Government of Assam", the question is very basic and the answer is also clearly reflected in the Government of Assam websites "http://assamagribusiness.nic.in and htt://finance.assam.gov.in" i.e. Sales Tax and Excise Duty which are two revenue receipts. There cannot be any doubt about the correctness of the answer being given. The APSC has also not contested this claim of the writ petitioner.

Similarly, in respect of Question No.4(xxxii), as to what is a footloose industry and to give two examples, the petitioner had given the answers. He gave the answer that "Footloose industry are those having fixed spatial cost". As regards the examples of footloose industry, the answer given by the petitioner is "diamond industry and computer chip industry". The answers are demonstratively correct for which he can be awarded 2 (two) marks though he was not given any mark.

Similarly, as regards Question No.4(xxxiii), as to which global body designated Boko Haram as a terrorist group and as regards the second part of the question, as to where the said terrorist group belongs to, the petitioner gave the correct answer in respect of second part of the question by mentioning it to be from Nigeria of which, there cannot be any dispute, as it is a well known fact that Boko Haram is based in Nigeria and the APSC has not also disputed the correctness of this answer.

Thus, the writ petitioner would be entitled to at least '7' (seven) more marks, in which event he will get 977 total marks which is above the cut off mark of 973.

111. We also hasten to observe that in the aforesaid answers given by the petitioner, the petitioner also indicated the sources of his information about the answers when he submitted his representation to the APSC and the answers have not been denied/disputed by the appellant-APSC.

112. Before this Court also, learned Senior Standing Counsel, APSC, Mr. Mahanta, has not denied the correctness of the answers given by the writ petitioner as far as the aforesaid questions are concerned. However, he has submitted that the present appeal has been filed purely on the question of law as to whether any re-evaluation is permissible or not, even if the petitioner had given the correct answers.

113. We are of the view that the answers given by the petitioner as mentioned in the writ petition can be said to be demonstratively correct and as a corollary, deprivation of marks by the Commission to the writ petitioner in respect of the answers to the aforesaid referred questions is demonstratively wrong, and ascertainment of correctness of these answers does not require any inferential process of reasoning or involves a process of rationalization.

114. We would also like to observe that the expression 're-evaluation' 're-assessment,' 're-examination' normally is associated with an element of subjectivity, element of reasoning, application of mind and thought process to arrive at any particular conclusion.

The words "evaluation", "assessment", "examination" normally and ordinarily entails a subjective element of mental process and reasoning as such, any re-assessment/re-examination/re-evaluation also would involve the aforesaid mental process of application of mind, and obviously, when any matter is re-evaluated, re-examined or re-assessed in respect of a subjective answer, it could lead to a different result because of differing points of view and perceptions.

It is also to be noted that in the cases where the Hon'ble Supreme Court had allowed re-assessment, re-examination and re-evaluation,

there, demonstratively wrong/error had been committed by the Commission where the element of any such mental exercise is absent.

115. Thus, this Court would hold that where any re-examination does not involve any mental exercise and where the assessment by the examining body is demonstratively wrong in which any element of inferential process of reasoning or a process of rationalization is not involved, even if the word "re-evaluation" or "re-scrutiny" or "re-examination" is used, any such apparent error ought to be allowed to be corrected and the Court can intervene also.

116. However, as cautioned by the Hon'ble Supreme Court both in ***Pranav Verma*** (supra) as well as in ***Ran Vijay Singh*** (supra), in matter of competitive examination, as the aforesaid exercise may involve uncertainty and delay in publication of results, consequently, entailing delay in filling up of public offices, extreme caution and care must be taken by the Court even while intervening in the matter of demonstratively wrong evaluation by the Commission. Thus, where the examinee comes at a belated stage, such a claim, should not be allowed.

117. In the present case, what we have noted is that the Commission itself furnished the copy of the answer scripts to the petitioner on an application filed by the petitioner under the Right to Information Act, 2005 whereupon the petitioner discovered the aforesaid errors in the evaluation and he did apply to the Commission for re-evaluation. However, the Commission did not respond to his application compelling him to approach this Court.

118. We also have noted that this Court did not straightway direct for re-evaluation but offered the Commission as to whether they would be willing to have a re-look into the matter.

However, the Commission declined to do so. On the contrary, the Commission tried to justify the same by referring to the opinion of the examiner concerned who gave the opinion that the answers of the

petitioner are not correct, appropriate, up to the mark, point oriented, satisfactory. In addition, the examiner gave the opinion that the sources of the answers mentioned by the candidate are neither authentic nor authenticated. It was also opined that the sentence construction of the answers is not good, suitable, up to the mark for the highest state level administrative type examination and accordingly, gave the opinion that the candidate does not deserve any more marks.

119. In our opinion, the stand taken by the concerned examiner cannot be said to be correct as the answers given by the petitioner are not vague, but are clear and specific and are correct.

120. Further, what we have also noted is that there is no safety measures or safeguards put in place by the APSC to rule out, as far as possible any such mistake in the assessment, evaluation, scrutiny of answer scripts.

121. In this connection, one may refer to the earlier regulations of the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 1986 wherein certain measures were put in place under Rule 37 as quoted above.

However, such mechanisms or safety valves are missing in the present regulation, Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010.

In other words, there is no system or mechanism put in place by the Commission in the present examination system to check and cross check and rectify any such error which may be committed by the examiner. In fact, existence of such safeguards was one of the reasons why the Hon'ble Supreme Court in ***Pramod Kumar Srivastava*** (supra) had directed that in absence of provision for re-evaluation under relevant rules of the Commission, the examinees have no right to claim or demand.

In para Nos. 4 and 9 of the decision in ***Pramod Kumar Srivastava*** (supra), Hon'ble Supreme Court clearly observed that a centralized mode of evaluation had been adopted by the Commission wherein examiners approved and selected by the Commission are required to examine the answer books under the guidance of a Head Examiner. Para Nos. 4 and 9 are accordingly, reproduced hereinbelow.

> "4. In the counter affidavit filed by the Commission before the Ld. Single Judge it was pleaded that in the rules, there was only a provision for scrutiny and there was no provision for re-evaluation of the answer-books. The appellant had applied for scrutiny of his marks in General Science paper which was done and no mistake had been found and the marks remained the same, namely, 35. It was further pleaded that a centralized mode of evaluation is adopted by the Commission wherein examiners approved and selected by the Commission are required to examine the answer-books under the guidance of a Head Examiner. In order to avoid vagaries of wide difference in standard in awarding marks, the Bihar Public Service Commission follows the pattern of Union Public Service Commission wherein the Head Examiner with the assistance of other examiners prepares a model answer and this is used as guidance by all other examiners while examining the answer-books, and by this process a uniform standard in awarding marks is maintained. It was also submitted that in absence of any provision in the rules for re-evaluation of the answer-books, the said exercise cannot be done and any direction for re-evaluation will open a floodgate for other candidates to come out with similar plea which will ultimately cause a great delay in declaring the final result."
>
> "9. Even otherwise, the manner in which the Ld. Single Judge had the answer-book of the appellant in General Science paper re-evaluated cannot be justified. The answer-book was not sent directly by the Court either to the Registrar of the Patna University or to the Principal of the Science College. A photocopy of the answer-book was handed-over to the standing counsel for the Patna University who returned the same to the

> Court after some time and a statement was made to the effect that the same had been examined by two teachers of Patna Science College. The names of the teachers were not even disclosed to the Court. The examination in question is a competitive examination where the comparative merit of a candidate has to be judged. It is, therefore, absolutely necessary that a uniform standard is applied in examining the answer-books of all the candidates. It is the specific case of the Commission that in order to achieve such an objective, a centralized system of evaluation of answer-books is adopted wherein different examiners examine the answer-books on the basis of model answers prepared by the Head Examiner with the assistance of other examiners. It was pleaded in the Letters Patent Appeal preferred by the Commission and which fact has not been disputed that the model answer was not supplied to the two teachers of the Patna Science College. There can be a variation of standard in awarding marks by different examiners. The manner in which the answer-books were got evaluated, the marks awarded therein cannot be treated as sacrosanct and consequently the direction issued by the Ld. Single Judge to the Commission to treat the marks of the appellant in General Science paper as 63 cannot be justified."

122. Similarly, in para No. 7 of the aforesaid decision in ***Pramod Kumar Srivastava*** (supra), it was observed that the examination in question was a competitive examination where the comparative merit of a candidate has to be judged and it is therefore, absolutely, necessary that a uniform standard is applied in examining the answer-books of all the candidates. It is the specific case of the Commission in the said case that in order to achieve such an objective, a centralized system of evaluation of answer-book on the basis of model answers prepared by the Head examiner with the assistance of other examiners was already in existence.

It was thus, held in para No. 7 in ***Pramod Kumar Srivastava*** (supra) as follows:

"7. We have heard the appellant (writ-petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the Ld. Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer- books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer- books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in ***Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others, [(1984) 4 SCC 27: AIR 1984 SC 1543]***. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the Ld. Single

Judge had clearly erred in having the answer-book of the appellant re-evaluated."

123. In this context, it may be also observed that this Court in ***Rohit Purkayastha & Ors. Vs. Board of Secondary Education, Assam and Ors., 2000 (3) GLT 83,*** considering that a large number of students failed to the extent of more than 50% of the students, and *there was no safeguards provided for cross-checking of assessment made by the examiners to safeguard the interest of students* directed for a Committee to cross-check the marks and to award marks afresh if found to be in accordance with the quality of marks obtained by the students.

It was held in para (10) of the said decision in ***Rohit Purkayastha*** (supra) as follows:

"(10) Considering all the facts and circumstances, in our view, such circumstances have been made out which throw some suspicion as to the under-marking in the Fine Arts practical examination held at gopal Boro High School as a result of which apparently more than 50% of the students have failed and have been awarded very low marks even though apparently they have drawn the drawings according to the question paper. In our view in such a case where a large number of students seem to have been affected by reason of apparent under-marking and there is no safe-guard which is provided or in case it is there, none has been provided as according to the respondent there would be no Head Examiner, we feel that it would an appropriate case for interference so that the suspicion which has been created is cleared and the young students, their interest may not suffer for all time to come as their career is yet to start. We, therefore, set aside the order passed by the learned Single Judge and provide that the Board shall appoint a committee of two qualified persons to check the answer sheets of Fine Arts practical to cross-check the marks as awarded to the appellants and if necessary, the said committee may award the marks afresh as thought fit in accordance with the quality of answer made be the appellants. The committee would consist of persons other than the examiners who had initially examined the answer sheets.

> This exercise shall be undertaken and completed within 6(six) weeks from today. Parties to bear then own cost."
>
> (emphasis added)

124. In the present case, there is no such safety mechanism adopted by the APSC to prevent any such demonstratively visible error.

The approach of the APSC in referring to the concerned examiner only, without any provision for cross checking the correctness of the assessment made by the examiner, is thus, ineffectual, unavailing and does not have even a modicum of safeguards.

CONCLUSION AND DECISION

125. Under the circumstances in absence of any safeguards provided for the minimizing or reducing errors in evaluation, we are of the view that Mr. N. Dutta, learned Senior Counsel for the petitioner is correct in seeking to invoke the principle of *"ubi jus ibi remedium"*.

We also hold that where the rules are silent on the issue of re-examination, if demonstratively error had been committed by the Commission, the Court can intervene as has been done in the present case.

126. We also have noted that the Ld. Single Judge had passed an interim order for reserving one post of Inspector of Taxes vide order dated 11.09.2017 which was never vacated and we have been informed that the post still exists.

127. Since the Ld. Single Judge's direction to keep one post of Inspector of Taxes vacant, which merged with the final order still subsists, and as also informed that the vacant post still exists, the writ petitioner/respondent No.1 can be appointed to that vacant post. The matter perhaps would have been otherwise, if there had been no reservation of post against which the writ petitioner could be adjusted and appointed.

128. In this regard, we also would like to observe that the apprehension expressed by the APSC or the State Government that such a plea if allowed would open a flood gate of candidates seeking similar claim, may not be a ground to reject those candidates like the present writ petitioner, who are alert, diligent and who promptly approach the Court. As mentioned above, in many of the cases where the Hon'ble Supreme Court had allowed re-evaluation, the Hon'ble Supreme Court had provided a cut-off date for such exercise.

The Supreme Court did not give a blanket order for allowing any candidate to approach the Court for re-evaluation at any point of time and restricted relief to those candidates who had approached the Court in time as mentioned in ***State of Orissa and Ors. Vs. Prajnaparamita Samanta and Ors., (1996) 7 SCC 106***.

In Para 8 of the aforesaid decision in ***Prajnaparamita Samanta*** (*supra*), it was held as below.

> "8. Admittedly, the petitioners and the appellants in question had approached either the High Court or this Court after the decision of the High Court on 27-3-1992. The High Court has rightly set down the said date as a cut-off limit and directed consideration of the answer books only of those examinees who had approached the High Court till that date. It is only those who are diligent and approach the court in time who can be given such relief. The academic year cannot be extended for any length of time for the benefit of those who choose to approach the court at their sweet will. The consideration on the basis of which relief is granted in such cases is always circumscribed by the tenure of the academic year(s) concerned. We, therefore, do not see anything wrong if the High Court has laid down the said date as the cut-off date for the purpose. In the circumstances, there is no merit in these writ petitions and the civil appeals, and they are dismissed with no order as to costs."

129. In the present case, the petitioner had promptly approached the APSC and thereafter, on not being satisfied with the response of the APSC, he promptly approached this Court. It has not been brought to our notice in this proceeding that any other candidate had approached this Court as promptly as the petitioner making a similar claim.

130. Thus, we are satisfied that the present case fulfills all the requirements for intervention by the Court as held by the Hon'ble Supreme Court in the cases as discussed above.

131. Accordingly, for the reasons discussed above, we are of opinion that the decision of the Ld. Single Judge rendered in WP(C) No.5576/2017 on 20.08.2018 does not warrant interference by this Court and accordingly, the appeal is dismissed.

132. No order as to cost.

JUDGE **JUDGE**

Comparing Assistant