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

Case No. : WP(C) 356/2012

1:SHRI BHARAT SARING
S/O SHRI KATO SARING, VILLAGE PARBUK, PO/PS ROING, DIST. LOWER
DIBANG VALLEY,A P

VERSUS

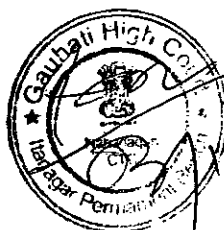
1:THE STATE OF A.P.AND 2 ORS.
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF AP, ITANAGAR

2:THE ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION
REPRESENTED BY THE CHAIRMAN
ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION

3:THE SECRETARY
ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION
ITANAGA

Advocate for the Petitioner : MrP Taffo
Mr. T. Gyadi
Ms. N. Danggen
O. Perme
Mr. O. Duggong
T. Tatak
D. Taggu
A. panor
M. Molo

Advocate for the Respondent : Mr. A. Apang, S.C. APPSC
Ms. P. Pangu, Jr. Govt. Adv.



BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

Date of hearing: 29th October, 2021.

Date of judgment: 2nd November, 2021.

JUDGMENT AND ORDER (CAV)

Heard Ms. N. Danggen, learned counsel for the petitioner. Also heard Ms. P. Pangu, learned Junior Government Advocate appearing for the respondent no.1 and Mr. A. Apang, learned senior counsel, assisted by Ms. N. Anju, learned standing counsel for the respondent nos. 2 and 3.

2) After clearing the Arunachal Pradesh Public Service Commission Combined Competitive (Preliminary) Examination, the petitioner and had unsuccessfully appeared for the Arunachal Pradesh Public Service Commission Combined Competitive (Mains) Examination, 2011-12. On 21.08.2012, the petitioner had made a request for re-evaluation of General English and General Studies Paper-II and as the said request yielded no result, the present writ petition was filed on 27.09.2012, *inter alia*, seeking a direction upon the respondents to re-evaluate the said two answer scripts.

3) The learned counsel for the petitioner submits that this writ petition has a chquered history. Initially, the writ petition was allowed by judgment and order dated 08.01.2018, by directing the respondent nos. 2 and 3 to re-evaluate the answer scripts of the petitioner within a period of 60 (sixty)



days from the date of receipt of a copy of the order. Aggrieved by the said judgment, the APPSC had filed a review petition, which was registered as Review Petition No. 2/2018. The review petition was disposed of without interfering with the judgment passed in the writ petition. Therefore, aggrieved by (i) the judgment and order dated 08.01.2018 in this writ petition, and (ii) judgment and order dated 06.03.2018, passed in Review Petition No. 2/2018, the respondent no.2 had preferred an intra-Court appeal before the Division Bench of this Court and both the said judgment and order were set aside by the Division Bench of this Court vide judgment and order dated 03.12.2019, passed in W.A. No. 14(AP)/2018, with a direction that the matter is remanded for fresh consideration by the learned Single Judge on verification of the records to be produced by the respondent no. 2 herein, further directing that the said exercise be carried out within the outer limit of 31.01.2020. The said review petition was formally closed by order dated 31.01.2020. In connection with order dated 06.03.2018, passed in Review Petition No. 2/2018, the petitioner had preferred a review petition, which was registered as Review Petition No. 8/2018. However, in view of the judgment passed in W.A. No. 14(AP)/2018, the said review petition was closed by order dated 31.01.2020.

4) On re-commencement of this proceeding, the learned standing counsel for the respondent no. 3 had produced the answer scripts of General English Part-I, General English Part-II, General Studies Part-I, General Studies Part-II, Sociology Part-I, Sociology Part-II, Public Administration Part-I and Public Administration Part-II. However, after several dates, it was recorded vide order dated 05.02.2020 that the answer key was not available and that in absence of answer-key, this Court had expressed in the order that it was finding it very difficult to verify whether the answer given by the petitioner was correct or incorrect and accordingly, the matter was adjourned. Thereafter, by order



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dated 03.03.2021, without commenting on *inter se* merits of the dispute, this Court had expressed its view that an endeavor should be made to settle this matter outside the Court. In the said context, the learned Junior Government Advocate has produced a copy of letter dated 29.04.2021 by the Deputy Secretary (AP), Department of Administrative Reforms, Government of Arunachal Pradesh by wherein it is stated that a meeting was held on 28.01.2021 under the Chairmanship of the Chief Secretary with the representative of the Department of Administrative Reforms and the APPSC and that in the said meeting, the Secretary, APPSC had ruled out that they can be a party to out of Court settlement of the issue and reference was made in respect of filing of the herein before referred review petition against the order dated 08.01.2018 passed in this writ petition. Accordingly, it emerged in the said meeting that it was not possible to have any out of Court settlement, providing therein that in administrative decision regarding selection of a successful candidates can be taken by the APPSC only. A copy of said instruction is retained as a part of the record.

5) The learned counsel for the petitioner has submitted that she was permitted to inspect the answer scripts produced by the learned standing counsel for the respondent nos. 2 and 3 and thereafter, the petitioner had filed an additional affidavit on 08.09.2017, wherein the petitioner had given better particulars to demonstrate that the petitioner had been given incorrect marks and thereby the petitioner was deprived from being awarded appropriate marks. It is submitted that although the petitioner had been unsuccessful in the exams, but there was only a difference of 1.84 marks between the last successful candidate and the petitioner.

6) In the said context, on a cursory perusal of the order-



sheets, there appears to be no order of this Court prior to 08.09.2017 (date when additional affidavit was filed by the petitioner), permitting inspection of the answer script by the petitioner or his learned counsel. Be it mentioned that it appears that vide judgment and order dated 03.12.2019, the Division Bench of this Court had permitted this Court for verification of records produced by the learned standing counsel for the respondent nos. 2 and 3.

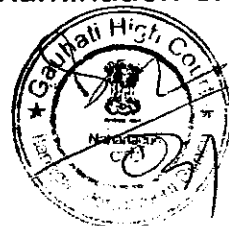
7) The learned counsel for the petitioner has submitted that the petitioner had reasons to apprehend that 25 (twenty five) marks was denied to him and even if dispute is raised in the Bar in respect of certain answers given by the petitioner, still the petitioner would have been entitled to at least 6 (six) marks, which is stated to be of great relevance to the petitioner as the difference of marks between the last successful candidates and the petitioner was only 1.84 marks. Accordingly, it is submitted that if on re-evaluation of the answer script, the petitioner gets 2 (two) more marks, he would have cleared the Arunachal Pradesh Public Service Combine Competitive Examination, 2011-12 and would have to be recommended for appointment. It is submitted that the marking in English grammar is similar to arithmetical problems where answers can only be right or wrong and it is submitted that there cannot be a third alternative. It is further submitted that for same set of answers given by the petitioner, while some other successful candidates were awarded marks, but the petitioner was not awarded any marks. It is also submitted that in respect of certain questions while one invigilator given marks to the petitioner, the other invigilator did not give any marks to the petitioner and therefore, as per the marking pattern followed by the respondent nos. 2 and 3, no marks was given to the petitioner. In this regard the learned counsel for the petitioner had compared the answer-scripts appended to the writ petition and additional affidavit filed by the petitioner.



8) The learned counsel for the petitioner had further submitted that at the time when the writ petition was filed, the petitioner was not aware as to whether his writ petition would be allowed and whether he would be entitled to be awarded more marks than the last successful candidate because at that relevant point of time, the petitioner was not allowed to see his own answer scripts as compare it with answer scripts of other successful candidates. Accordingly, it is submitted that the petitioner would not be rendered un-entitled to any relief in this writ petition merely because the last successful candidate had not been impleaded in this writ petition and no challenge was made to their appointment. In this regard, it is submitted that the Court can always direct the respondent authorities to appoint the petitioner without disturbing the appointment to the other successful candidates.

9) In support of her submissions, the learned counsel for the petitioner has placed reliance on the following cases, viz., (i) *Ran Vijay Singh & ors. vs. State of Uttar Pradesh & Ors.*, (2018), 2 SSC 357, (ii) *Manish Ujwal & ors. vs. Maharishi Dayanand Saraswati University & ors.*, (2005) 13 SSC 744, (iii) *Jatin Baruah (Dr.) vs. State of Assam & ors.*, 2005 (Suppl) GLT 897, (iv) *Ajit Borah vs. State of Assam & ors.*, 2005 (4) GLT 642.

10) *Per contra*, the learned senior counsel appearing for the respondent nos. 2 & 3 has submitted that in this writ petition the prayer of the petitioner is limited to re-evaluation and no consequential relief has been prayed for. It is submitted that the petitioner has not prayed for a direction upon the respondent authorities to appoint him by setting aside the select list and/or appointment of the last successful candidate by re-drawing up the select list. Accordingly, it is submitted that except for an academic discussion, no point would be served even if the Court undertakes examination of the answer scripts

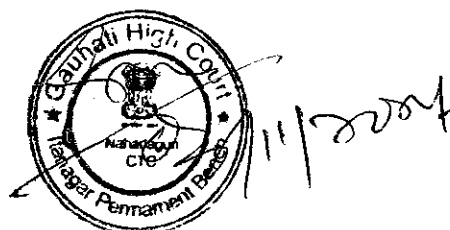


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of the petitioner and other successful candidate so as to *prima facie* record its satisfaction before issuing any direction for re-evaluation of the petitioner's answer-scripts.

11) It is also submitted that the respondent no. 2 is merely a body set up for conducting public service examination in the State and therefore, is merely holding the status of a recruitment agency. It is submitted that it is for the State Government to offer appointment to a candidate recommended by the respondent no. 2. It is further submitted that the Court would also consider the fact that out of the successful candidates whose name were recommended by the respondent no. 2 all the posts were filled up. Therefore, it would be too late in the day for the Court to now order re-evaluation of answer scripts. It is submitted that by re-evaluating answer scripts, no purpose would be achieved if no consequential prayer is made either for preparing a fresh select list of successful candidates or for appointing the petitioner. It is submitted that the petitioner cannot be appointed without dislodging the appointment given to at least the last successful candidate.] In support of his submission, learned senior counsel for the respondent nos. 2 & 3 has placed on reliance on the following cases, viz., (i) *Public Service Commission Uttaranchal vs. Mamta Bisht*, AIR 2010 SC 2613, and (ii) *Pramod Kumar Srivastava vs. Chairman, Bihar Public Service Commission, Patna & ors.*, (2004) 6 SSC 714.

12) Adopting the argument of the learned senior counsel for the respondent nos. 2 and 3, the learned State counsel has submitted that by virtue of order dated 03.03.2021, this Court had directed the learned State counsel to obtain instruction as to whether the petitioner can be accommodated in any post, commensurate to his qualification with an observation that the said

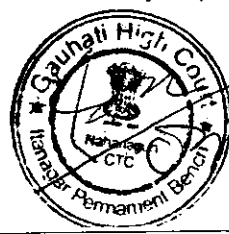


consideration may be made without that same being a precedent for any other case and that the respondents are not inclined to agree for an out of court settlement and/or compromise in the matter.

13) The present writ petition relates to Arunachal Pradesh Public Service Commission Combined Competitive (Mains) Examination, 2011-12. It is seen that the Arunachal Pradesh Public Service Commission Rules of Procedure and Conduct of Examination Guidelines, 2012 does not contain any provision for re-evaluation of answer script. However, by passage of time, in supersession of the said 2012 guidelines, the APPSC has notified the Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines, 2017, and the learned senior counsel appearing for the respondent nos. 2 and 3 submits that the said 2017 guidelines is now in force. Under Clause 31(D)(vi) of the said 2017 guidelines, it has been provided that "*after announcement and declaration of the final result no re-evaluation of answer scripts shall be permitted under any circumstances.*"

14) The Supreme Court of India in the case of *Uttar Pradesh Public Service Commission, through its Chairman & anr. vs. Rahul Singh & anr., (2018) 7 SCC 254*, in no uncertain terms, by relying upon the decision rendered in the case of *Ran Vijay Singh (supra)*, has laid down that that the High Court is not supposed to itself enter into re-evaluation. It would be relevant to quote para-12 of the case of *Rahul Singh (supra)*:-

"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 v. Samir Gupta, (1983) 4 SCC 309], the*



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Court recommended a system of:

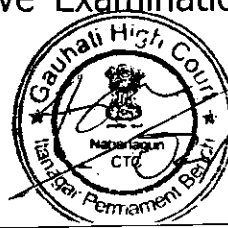
(1) moderation;

(2) avoiding ambiguity in the questions;

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

(15) Therefore, it is now well settled that the Constitutional Court cannot by itself re-evaluate the answer scripts. However, the learned senior counsel for the respondent nos. 2 and 3 is right in submitting that in this writ petition, the petitioner has not made any prayer to set aside the selection list or to assail the appointment of the last selected candidate in connection with the Arunachal Pradesh Public Service Combine Competitive Examination, 2011-12. The petitioner has also not made a prayer for a direction upon the respondent authorities to appoint the petitioner to any of the posts for which competitive examinations were held. The prayer is only to the following effect – *"(i) issue writ in the nature of mandamus directing the respondent authority to re-evaluate the answer scripts specifically the question no. 5(a) (vi), 5(a)(ix), 5(b) (iv), 5(b)(iii), 6(a)(ii), 6(b)(ii), 6(b)(iv), 6(c)(iv), 2 of General English Paper, question no. 10(a) and 10(b) of General Studies Paper-II, 2(f) and 2(j) of Sociology Paper-II and question no. 2(i) of Sociology Paper-I of the petitioner. And to award all the consequential benefits to the petitioner, if any, after evaluation. (ii) And/or to pass such order(s) to your Lordship may deem fit and proper in the facts and circumstances of the case."*

(16) It is a normal practice of the Government of India and the Governments of every State to conduct "Combined Competitive Examinations" every year to fill-up various civil posts. Such competitive examinations are held to fill up specified number of posts. Therefore, in the absence of anything to the contrary, the Court may presume that all the vacancies for which Arunachal Pradesh Public Service Combine Competitive Examination, 2011-12 was held,



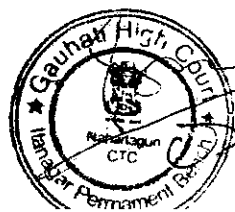
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were filled-up. It is also presumed that any vacancy that may have been arisen subsequently, were also filled-up by subsequent competitive examinations conducted by the APPSC.

(17) In this case, as indicated above, the prayer in the writ petition is only to direct that the answer given by the petitioner to particular questions be re-evaluated. Therefore, even if the said prayer is allowed and re-evaluation of particular questions is conducted, there is no way that the petitioner would become entitled to any consequential direction upon the respondent authorities to appoint the petitioner. If a recruitment examinations is conducted to fill-up specified number of vacant posts, unless, appointment made to at least one successful candidate is set aside, a direction cannot be issued to the respondent authorities to prepare a fresh list of selected candidates after a lapse of more than 9 (nine) years of filing of the writ petition, as it would certainly lead to dismissal of service of the last selected candidate and that too, without giving any opportunity to the candidate who is likely to be adversely and prejudicially affected. Therefore, the Court is inclined to accept the submissions made by the learned senior counsel for the respondent nos. 2 and 3 that in the absence of impleading at least the last selected candidate, the petitioner would not be entitled to any relief without interfering with said appointment.

18) In this regard, it would be relevant to quote para nos. 6 to 8 of the case of *Mamta Bisht (supra)*, which is extracted below:-

“6. It is a settled legal proposition that vacancies over and above the number of vacancies advertised cannot be filled up. Once all the vacancies are filled up, the selection process comes to an end. In case a selected candidate after joining resigns or dies, the vacancy, so occurred cannot be filled up from the panel, which stood already



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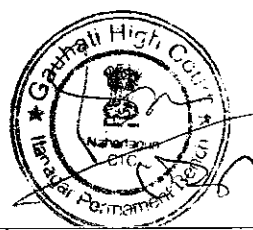
exhausted. (*Vide Rakhi Ray v. High Court of Delhi, AIR 2010 SC 932*).

However, in the instant case, the advertisement itself made it clear that the vacancies could be increased and decreased and before completion of the selection process, a decision had been taken to fill up 42 instead of 35 vacancies and the reservation policy had been implemented accordingly.

7. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in *Udit Narain Singh Malpaharia v. Board of Revenue AIR 1963 SC 786*, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (*Vide Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153; Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, AIR 1974 SC 2105; and Sarguja Transport Service v. State Transport Appellate Tribunal, AIR 1987 SC 88*).

8. In *Prabodh Verma v. State of U.P. & Ors., AIR 1985 SC 167; Tridip Kumar Dingal v. State of West Bengal, (2009) 1 SCC 768: (AIR 2008 SC (Supp) 824)*, it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

19) Therefore, in the absence of any or some of the successful candidates being impleaded in this writ petition, the instant writ petition is



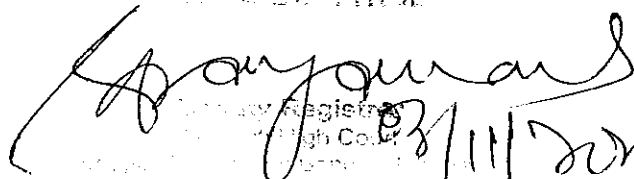
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found to be hit by the principles of non-joinder of necessary and proper parties. Therefore, even if in compliance of the decision dated 03.12.2019, passed by the Division Bench of this Court, the Court verifies the answer scripts of the petitioner and then sent for re-evaluation, it would only be a matter of academic interest as no consequential relief in the nature of issuing a direction upon the respondent authorities to declare the petitioner as a successful candidate in respect of Arunachal Pradesh Public Service Combine Competitive Examination, 2011-12; or for appointing the petitioner to any post for which the said examination was held, can be granted because of the herein before referred observation made by the Supreme Court of India in para-6 of the case of *Mamta Bisht (supra)*. On this point the present case is found distinguishable from the facts under which the cases of *Ran Vijay Singh (supra)*, *Manish Ujwal (supra)*, *Jatin Baruah (supra)*, and *Ajit Borah (supra)*, cited by the learned counsel for the petitioner were decided, as such, no purpose would be served by burdening this order with discussion on the said cases.

20) In view of the discussions above, this writ petition fails and the same is dismissed, leaving the parties to bear their own cost.

Sd/- K.R. Serrana
JUDGE.


Comparing Assistant

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Registrar
High Court
03/11/2019