

GAHC040009852018



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

Case No. : WA 14/2018

1:THE ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY AT ITANAGAR AP.

2: THE CHAIRMAN
ARUNACHAL PRADESH PUBLIC SERVICE COMMISSION
ITANAGAR
AP

VERSUS

1:MR. BHARAT SARING
S/O KATO SARING , R/O PARBUK VILLAGE, PO/PS ROING, LOWER DIBANG
VALLEY DIST. AP.

Advocate for the Petitioner : MR.A Apang, Sr. Advocate

Advocate for the Respondent : D Taggu

BEFORE

HON'BLE MR. JUSTICE PRASANTA KUMAR DEKA
HON'BLE MR. JUSTICE HITESH KUMAR SARMA

JUDGMENT & ORDER
(Oral)

(Hon'ble P.K. DeKA, J)

This appeal is directed against the judgment and order, dated 06-03-2018, passed by the learned Single Judge of this Court, in Review Petition No. 02 (AP)/20128.

2. We have heard Mr. A Apang, learned senior counsel and the Standing Counsel APPSC,

appearing on behalf of appellants and Ms. D. Danggen, learned counsel representing respondent.

3. The respondent/petitioner filed WP(C) No. 356(AP)/2012 for the following reliefs:

“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 the General English Paper, question No. 10(a) and question No. 10(b) of General Studies Paper-II, 2(f) and (j) of the Sociology Paper-II and question No. 2(l) of the Sociology Paper-I of the petitioner. And to award all the consequential benefits to the petitioner, if any, after re-evaluation.

ii. And/or to pass such order(s) as your Lordship may deem fit and proper in the facts and circumstances of the case.

AND

Pending disposal of the rule, your Lordship may be pleased to direct the respondent authority not to weed out the answers scripts and evaluation sheets of all the 26 (twenty Six) selected candidates of Arunachal Pradesh Public Service Combined Competitive Examination 2011-2012 including the answer scripts of the petitioner, or such interim order as may deem fit and proper by this Hon'ble Court in the interest of justice.”

4. The appellant/respondent, APPSC, filed its affidavit-in-opposition denying the allegations made in the writ petition. Amongst various stands, the appellant/respondent took the specific stand, which is as follows:

“..... the petitioner claim of not bearing any signature of evaluator in the award sheet is totally wrong. The reason behind this is to maintain secrecy. During photocopy of the award sheet the signature/initial of the evaluators are concealed for maintaining fiduciary relation disclosure of which may also put brake on the smooth functioning of the commission, i.e., question setting, moderation and evaluation etc. is exclusively depending on those expert panel.”

5. The WP(C) No. 356(AP)/2012 was disposed of vide order, dated 08-01-2018, with the following directions:

“Having given anxious consideration to the contentions made by the writ petitioner in the instant petition and the suggestion made thereto by the learned Standing Counsel for the respondents No. 2 & 3 as agreed to by the learned counsel for the petitioner, the instant writ petition is disposed of with a direction to the respondents No. 2 & 3 to re-evaluate the answer scripts of the petitioner, as stated above, within a period of 60 (sixty) days from the date of receipt of a certified copy of this order which will be furnished by the petitioner within a period of 10 (ten) days from today.”

6. Being aggrieved by the said order of the learned Single Judge, the appellant/respondent

filed a review petition, which was registered as Review Petition No. 02(AP)/2017 in WP(C) No. 356(AP)/2012. In the said review petition, amongst other, following submissions were made:

“That the petitioner did not suggest for re-evaluation of the answer script of the petitioner as reflected in paragraph 7 of the judgment and order dated 08-01-2018. The counsel for the petitioner also never submitted that the Commission has agreed to re-evaluate the answer script of the petitioner as mentioned in paragraph 5 of the judgment and order, dated 08-01-2018.”

7. The said review petition was disposed of vide order, dated 06-03-2018, by holding as follows:

“In view of passing of this order, as reflected in the sub-paragraphs of the preceding paragraph; Mr. Pada, learned standing counsel, APPSC, shall furnish a certified copy of this order, afresh, along with a copy of the earlier judgment & order, dated 08.01.2018, passed by this Court in WP(c)356(AP)2012, to the Respondents No. 2 & 3 viz. Arunachal Pradesh Public Service Commission (APPSC) immediately, i.e. within 15(fifteen) days from today, which shall be made available to the learned standing counsel by the Registry, free of cost.

It is herein made clear that the period of 60(sixty) days shall be counted afresh and only from the date of receipt of the certified copy of this order to be furnished by the learned standing counsel, in the manner, as indicated above.

The instant review petition accordingly stands disposed of.”

8. While passing the above order, the learned Single Judge observed as follows:

“8. Having regard to the backdrop of the facts and circumstances averred by Mr. Pada, learned standing counsel, APPSC, and on consideration of the submissions made by Ms. Danggen, learned counsel for the respondent/writ petitioner, as stated above, and upon perusal of the contents of this petition as well as the judgment & order, dated 08.01.2018, this Court is of the considered view that revisionary power as enshrined under Article 226 of the Constitution of India, can be invoked by the Court, in this matter, without affecting/altering the main operative portion. Resultantly, the earlier Paragraphs No. 5, 6 & 7 of the judgment & order, dated 08.01.2018, shall be substituted by the following Paragraphs and the same shall form a part of the earlier judgment & order, dated 08.01.2018, henceforth:

“5. Mr. Pada, learned standing counsel, APPSC, on the other hand, contends that re-evaluation of the answer scripts of the petitioner or some other selected candidates, is not permissible as per the APPSC Conduct of Examination Guidelines, 2012, as there is no system in place for re-evaluation of the answer script of the examinees. Learned standing counsel also contends that if such an occasion arises which required for perusal of the records for effective adjudication of the matter, at hand, then this Court may call for the original records of the petitioner and other selected candidates, for perusal/verification.

Mr. Pada, further contends that in the event, if at all the Court is inclined to dispose of this matter by issuing a direction for re-evaluation of the answer script(s) of the petitioner then adequate time may be granted to the respondents Arunachal Pradesh Public Service Commission (APPSC) for complying with such direction for re-evaluation.

6. *Ms. Danggen, learned counsel for the respondent/writ petitioner, on the other hand, submits that notwithstanding the averments made by Mr. Pada, learned standing counsel, APPSC, as noted above; considering the matter in its entirety, this writ petition may be disposed of today by issuing appropriate directions as regards the prayer made by the writ petitioner in this petition. Ms. Danggen, has, however, drawn attention of this Court to the decisions rendered by the Apex Court as well as this Court in the cases of: (i). **Manish Ujwal & Ors. Vs. Maharishi Dayanand Saraswati University & Ors.**, reported in (2005) 13 SCC 744; (ii). **Ajit Borah Vs. State of Assam & Ors.**, reported in (2005) 4 GLT 642; and (iii). **Jatin Baruah (Dr.) Vs. State of Assam & Ors.**, reported in (2005) SUPPL GLT 897.*

7. *Having given my anxious consideration to the contentions made by the writ petitioner in the instant petition and taking into account, the matter in all its aspects as well as for securing the interest of justice; the instant writ petition is disposed of with a direction to the respondents No. 2 & 3 to re-evaluate the answer scripts of the petitioner, as stated above, within a period of 60(sixty) days from the date of receipt of a certified copy of this order which will be furnished by the petitioner within a period of 10(ten) days from today.”*

9. The learned Single Judge also made an observation on the submission made by the learned counsel for the appellant/respondent that re-evaluation of the answer script of candidates is not permissible as per the APPSC Conduct of Examination Guidelines, 2012, as there is no system in respect of re-evaluation of the answer script of the examinee. The learned Single Judge also took note of the fact that if occasion arises requiring perusal of the record for effective adjudication of the matter, the Court may call for the original records for perusal/verification.

10. Mr. A Apang, learned Standing Counsel APPSC submits that the relevant records is still with him and keeping in view the Rules cited taken note of by the learned Single Judge, in our considered view, it will be appropriate to set aside both the impugned orders, passed in WP(C) No. 356(AP)/2012 as well as in Review Petition No. 2(AP)/2017, which we accordingly do. The matter is remanded for fresh consideration by the learned Single Judge on verification of the records to be produced by the appellant/respondent. The said exercise shall be carried out within the outer limit of 31-01-2020.

11. Registry shall take necessary action for listing the matter before the appropriate Bench.
12. The writ appeal stands disposed of accordingly.
13. The record produced by Mr. A Apang, learned Standing Counsel APPSC, as called for earlier, is returned.

JUDGE

JUDGE

Comparing Assistant