

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

ITANAGAR PERMANENT BENCH

WP(C)62 (AP) 2018

1. Miss Hage Mamung,

D/o Hage Ranka,
R/o Hari Village,
P.O and P.S-Ziro,
District: Lower Subansiri,
Arunachal Pradesh

.....petitioner.

-VERSUS-

1. The State of Arunachal Pradesh

Represented by its Secretary, Department of Agriculture, Govt. of Arunachal Pradesh, Itanagar.

2. The Director of Agriculture,

Govt. of Arunachal Pradesh, Itanagar.

3. The Arunachal Pradesh Public Service Commission, Itanagar,

represented by its Secretary, Itanagar.

4. The Deputy Secretary-cum-Controller of Examination,

Arunachal Pradesh Public Service Commission, Itanagar.

5. Tage Lampung,

C/o Secretary,
The Arunachal Pradesh Public Service Commission,
Itanagar.

.....respondents.

By Advocates:

For the **petitioner:**

Mr. D. Mazumdar, Sr. Counsel
Mr. S. Biswas
Mr. T. Ete

For the **respondents:**

Mr. L. Perme, SC (Agriculture)
Mr. A. Apang, Sr. Counsel, Standing counsel
for APPSC
Mr. K. Tari
Mr. G. Kato
Mr. H. Gyati
Mr. G. Riba
Mr. T. Don
Mr. P. Kai

:::BEFORE:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : **25.08.2018**

Date of Judgment : **05.10.2018**

JUDGMENT & ORDER (CAV)

Heard Mr. D. Mazumdar, the learned Sr. counsel assisted by Mr. T. Ete, for the petitioner. Also heard Mr. A. Apang, the learned Standing Counsel, Arunachal Pradesh Public Service Commission (APPSC) and Mr. L. Perme, the learned Standing Counsel, Agriculture Department appearing for the respondent Nos. 1 & 2. Mr. K. Tari, the learned counsel appears for the private respondent No. 5.

2. Brief facts of the case may be noticed at the outset. The petitioner while pursuing the course of B.Sc. (Hons.), Agricultural Degree Programme under the Central Agricultural University, Imphal responded to the advertisement issued by the APPSC on 21.09.2016, for the post of Agriculture Development Officer (ADO). After being successful in the written examination, she was called for viva-voce test conducted on 3rd & 4th of May, 2017 and 10th of October, 2017. On

completion of the viva-voce test, as many as 22 candidates were shortlisted for the post of ADO. However, to the surprise of the petitioner, she did not find her name against the 22 shortlisted candidates for the post. Being aggrieved, she submitted an application under the Right to Information (RTI) on 31.10.2017. Acting upon her application, the authority concerned furnished her the answer sheets and statement of marks.

3. The petitioner, on perusal of the materials furnished to her found that the respondent authorities had committed anomalies and discrepancies in not awarding her marks for the correct answers given by her against the questions set in the written examination. According to the petitioner, had she been given marks against the correct answers given by her, she would have secured 280.45 marks in total and be placed in the second position amongst the 22 shortlisted candidates which was declared on 10.10.2017. Instead, she was only allowed 241.75 marks in the written examination while she was given 26.7 in the viva-voce test. Thus, a total marks of 268.45 was only allotted to her and thereby, denying her place among 22 shortlisted candidates. The petitioner therefore, submitted an application to the respondent No. 3 on 14.12.2017, asking for re-evaluation of the General Knowledge and Agriculture Paper-I, in respect of the written examination for recruitment to the post by highlighting the anomalies in the following manner:

- (i). In respect of General Knowledge Paper viz. Q. No. 12 and Q. No. 31, the Answer keys are wrongly given as option (b) & (c) respectively. The correct options should have been (a) & (c).*
- (ii). The answer given by the undersigned in respect of Q. No. 1 (a) and Q. No. 7 (b) in respect of Agriculture paper-I are correct and pertinent but the evaluator chose to award zero marks. This is blatant error thereby denying 10(ten) marks.*

4. The petitioner thus represented that she did not figure in the final select list only due to a shortage of 0.3 marks and that was because of the wrong evaluation. She therefore, requested that answer scripts may be re-evaluated.

Along with her representation, she also enclosed a photocopy of the relevant page of NCERT book/General Knowledge book to substantiate her claim.

5. Against the representation of the petitioner, the Deputy Secretary, APPSC on 08.02.2018, informed the petitioner that marks were awarded to candidates on the basis of answer keys provided and if re-evaluation of her General Knowledge paper is to be done, it will entail re-evaluation of the answer script of all the candidates. However, he informed that the APPSC was of the considered opinion that no candidate should be penalized for the mistake in answer keys provided by the resource person and therefore, a decision was made to award marks against the question No. 12 and question No. 31, to all candidates pro-rata, by taking into account the marks secured by each candidate out of 98 questions and excluding question No. 12 and question No. 31. After such process, with corresponding increase in the marks of all the candidates, rank/merit remained the same. Therefore, the petitioner did not figure in the merit already finalized and recommended to the Government. However, the petitioner still being aggrieved is before this Court through the present writ petition.

6. Against the writ petition the respondent Nos. 3 & 4 (APPSC) have filed their affidavit-in-opposition on 24.07.2018, contending *inter-alia*, that the evaluation of the answer script of every candidate in all competitive examination conducted by the APPSC is done by 2(two) independent evaluators who are normally in the rank of Professor or Associate Professor and Government Universities and institutes of the concerned subject. In the present case also, evaluation was done by 2 (two) competent and independent evaluators. Both the evaluators have awarded '0' (Zero) marks against question No. 1(a) and question No. 7(b) not only to the petitioner but to other candidates including the respondent No. 5 who was selected and placed just above the petitioner in the merit list. That being the position, no prejudice was caused to the petitioner in awarding '0' (Zero) marks to her against question No. 1.(a) and question No. 7.(b) of the Agriculture Science paper-'1'.

7. Though it is the further contention of the petitioner that the answer keys of question No. 12 and question No. 31 of the General Knowledge paper carried wrong answers, the APPSC however, contends that in view of the wrong answer keys, they have decided to award marks to all the candidates pro-rata by taking in to account the marks secured by each candidate out of 98 questions and excluding question No. 12 & 31. The merit/rank after such process remains the same. Thus, the two wrong answer keys did not affect anyone in particular as it was the same for all the candidates.

8. In support of his submission the learned Sr. counsel for the petitioner relies upon the following decisions:

- (i). Kanpur University, through vice chancellor and Ors Vs. Samir Gupta and Ors., (1983) 4 SSC 309.**
- (ii). Manish Ujwals Vs. Maharishi Dayanand Saraswati Universitys, (2005) 13 SSC 744**
- (iii). Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors., (2004) 6 SSC 714.**
- (iv). Ran Vijay Singh & Ors. Vs State of U.P. & Ors., (2018) 2 SCC 357.**

9. The learned Standing counsel for the APPSC has relied upon the following decisions:

- (i). Judgment and order dated 14.6.18 passed in Civil Appeal No. 5839 of 2018, UPPSC through its Chairman and Anr. Vs. Rahul Singh & Anr.**
- (ii). Ran Vijay Singh & Ors. Vs State of U.P. & Ors., (2018) 2 SCC 357.**
- (iii). Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors., (2004) 6 SSC 714.**

10. I have heard the submissions advanced by the learned counsels for the rival parties and I have perused the materials available on record. Against the writ petition, the APPSC (respondents No. 3 & 4), as well as, the private respondent No. 5, have filed their respective affidavits-in-opposition. As may be noticed, the dispute revolves around non-allotment of marks against the question No. 12 and 31 in the General Knowledge paper, on account of wrong answer

keys. Secondly, it is the allotment of '0' (Zero) marks against question No. 1 (a) and question No. 7(b) in respect of Agriculture Paper – I. The APPSC through their affidavit-in-opposition have responded to the wrong answer keys given against question No. 12 and 31 in the General Knowledge paper by accepting the same. They contended that the Commission in view of the wrong answer keys decided to award marks to all the candidates pro rata, after taking into account the marks secured by each candidate by excluding question No. 12 & 31 out of the 100 questions. Therefore, only 98 questions were accounted and by allotting marks on pro rata basis against the 98 questions, the final score was prepared. Consequently, the two wrong answer keys did not affect the scoring of marks of any of the candidates, as it was the same for all the candidates. To justify the award of marks to all the candidates on pro rata basis, the APPSC has relied upon the decisions of the Apex Court rendered in ***Vikash Pratap Singh & Ors. Vs. State of Chhattisharh & Ors., (2013) 14 SSC 494.***

11. The learned Standing counsel for the APPSC has produced the calculation method adopted by the Commission which may be abstracted as below:

“ By using above formula, the Commission has calculated the compensatory marks for the commerce candidates as follows:-

Total no. of questions in Commerce paper	=125
No. of questions dropped (out of syllabus)/ dropped	=49
Remaining questions	=76

The marks secured out of 76 questions by candidate will be allotted to him/her on pro-rata basis by using formula adopted in V. P. Singh & Ors Vs. State of Chattisgarh & Ors as shown above.

That is, if a candidate secures 'P' marks out of 76 questions (i.e. 125-49), the compensated marks would be say Q;

$$\begin{aligned}
 Q &= \frac{P \times 125}{(125-49)} \\
 &= \frac{P \times 125}{76} \\
 &= P \times \frac{125}{76} \\
 &= P \times 1.6447368421
 \end{aligned}$$

That is compensated marks for each candidate in Commerce paper is equal to 1.6447368421 times the marks secured out of 76 questions by each candidate.

The above formula was fed in Excel Sheet for result tabulation. Calculation for SI. 350 (Political Science optional subject paper) and SI.351 (Commerce optional subject paper) are shown below.

For example,

SI. No.350-Optional subject Pol. Science (Normal calculation)

No. of correct answers=86

Marks for correct answers=86X2=172

SI. No. 351-Optional Subject Commerce

No. of correct answers=44

Marks as per normal calculation=44X2=88

Compensated marks = $88 \times \frac{125}{76}$
=144.73684=144.74

Randomly taken:

SI. No. 2160-Optional Subject Commerce

No. of correct answers=34

Marks as per normal calculation=34X2=68

Compensated marks=
 $=68 \times \frac{125}{76}$
=111.842

SI. No. 5467-Optional subject Commerce

No. of correct answers=19

Marks as per normal calculation=19X2=38

Compensated marks=
 $=38 \times \frac{125}{76}$
=62.499999
=62.5 "

12. In respect of question No. 1 (a) and 7(b) of Agriculture Paper-I, the APPSC has taken the stand that evaluation of answer script of every candidates in all competitive exams conducted by the Commission is done by two competent

evaluators who are ordinarily in the rank of Professor or Associate Professor of Government Universities and institute of concerned subject. In the present case as well, evaluation was done by two competent and independent evaluators. Both the evaluators have awarded '0' (Zero) marks against the above two questions for many other candidates besides the petitioner. Therefore, the petitioner having been awarded '0' (Zero) marks cannot have any legitimate grievances. The APPSC has also taken the stand that the conduct of exams by the Commission is guided by the provisions of the APPSC Conduct of Exams Guidelines, 2012. As per Rule 37, Clause-IV(a) and (b), it is provided that after evaluation of an answer book of a paper, a second evaluation of the same answer book/script is done by a different examiner/evaluator and thereafter, the average marks obtained out of the two evaluation is to be accounted as the final marks. Further, if there is a difference of about 30 marks or more between the two evaluations by two different examiner, then a third evaluation of the same answer book/ script is done. Consequently, the average total marks obtained out of the two closer marks will be accounted as the final marks. As for re-evaluation of answer sheets, there is no provision as such in the APPSC examination Guidelines.

13. The Apex Court in the case of *Ran Vijay Singh & Ors.*(Supra) held 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. 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. The decision of **Ran Vijay Singh & Ors.**(Supra) was also adopted by the Apex Court in **UPPSC, through its Chairman and another**(Supra).

14. In the case of **Pramod Kumar Srivastava** (Supra) the Apex Court held that the High Court was of the view that the Rule provided for re-evaluation of marks give an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-book. Negating this view, the Apex Court held that in the absence of a specific provision conferring a right upon an examinee to have his answer book re-evaluated, no such direction can be issued. Taking course to re-evaluation is bound to give rise to practical problems and which will in fact not be in public interest.

15. In **Manish Ujwals Vs. Maharishi Dayanand Saraswati Universitys**(Supra) a challenge to the rank in the entrance test conducted by the University concerned for admission to Medical and Dental course to various Colleges in the State of Rajasthan was considered. The grievance of the students was that various key answers on the basis where all the answer-sheets were evaluated were wrong and consequently, wrong and erroneous ranking was prepared. The Apex Court held that University and those preparing the answer keys have to be very careful and an abundant caution is necessary, as a result of wrong and erroneous key answer, students having merit are made a causality. Consequently, re-evaluation was directed. However, with outmost respect, this decision cannot be applied to the present case, inasmuch as, the APPSC keeping in view to the wrong answer keys have decided to award marks to all candidates pro rata by taking into account the marks secured by each candidates out of the 98 questions by omitting the two questions.

16. In the case of **Kanpur University through its Vice-Chancellor and Ors.** (Supra) the Apex Court held that the answer key 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 rationalization. It

must be clearly demonstrated to be wrong, so much so, that no reasonable body of men well-versed in the particular subject would regard as correct. This decision in my considered opinion and with outmost respect cannot be applied to the instant case, inasmuch as, as observed earlier, the two questions with wrong answer keys have been omitted by the APPSC and thereafter, marks were awarded to all the candidates on pro rata basis.

17. Under the facts and circumstances and upon considering the case in its entirety, I am of the considered opinion that the petitioner cannot be said to have any legitimate grievance, requiring the intervention of this Court. As such, the writ petition being found devoid of any merit, the same is accordingly **dismissed**.

18. Any interim order passed earlier, shall stand vacated.

JUDGE

Victoria