

(2008) 06 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (Civil) No(s). 166, 306, 346 to 350, 352, 517, 885 and 1595 of 2008

Adhar Barman and ors.

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 03-06-2008

Acts Referred:

Citation : (2008) 5 GLR 434

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : H.Thakuria, A.J.Sarma, A.Maleque, A.S.Choudhury, A.Y.Choudhury, B.D.Konwar, B.Sarma, D.Burma, D.C.Borah, A.Chetry, D.Kakati, A.Chamuah, I.H.Borbhuiya, I.Hussain, J.M.Konwar, K.Hussain, M.H.Ahmed, M.K.Borah, N.Dutta, N.N.Ahmed, R.Ali, D.K.Mishra, A.Dutta, R.Kalita, R.Duarah, S.Das, S.Jahan, S.Kanungo, U.K.Nair, R.Hussain, Advocates appearing for Parties

Judgement

1. The challenge in the present writ petitions, which were heard analogously, is in respect of the selection and proposed appointments of the respondents 5 to 84 in W.P.(C) No. 1892/2008 in the post of Physical Instructor in the Higher Secondary High Schools of the State. A narration of the facts of WP(C) No. 166/2008 will be sufficient to notice the facts involved in all the writ petitions as the pleadings and the grounds of challenge are more or less similar in all the cases.

2. The posts in question were advertised in all leading newspapers of the State on 28th January, 2007. The number of vacancies proposed to be filled up were not specifically mentioned though the advertisement issued contained detailed stipulations with regard to the conditions of eligibility and the format in which the selection was proposed to be held. Two hundred fifty applications were received pursuant to the advertisement issued. After scrutiny, two hundred six call letters were issued. In all, one hundred eighty six candidates appeared. Candidates (e.g., the respondent No. 4) who had become qualified after the advertisement was issued but before the date of selection were also allowed to take part in the

selection. The written test was originally scheduled to be held on 14.7.2007 which was subsequently shifted to 22.7.2007. However, the physical aptitude test was held as per schedule on 15th and 16th July, 2007.

A Selection Committee consisting of the Director, Sports and Youth Welfare, Govt. of Assam; the Deputy Secretary, Sports and Youth Welfare Department, Govt. of Assam; and the Deputy Director and Assistant Director, Sports & Youth Welfare Directorate was constituted. The Selection Committee, in turn, constituted another body to conduct the physical aptitude test. The interview was held by the members of the Selection Committee. In the meeting of the Selection Committee that was held on 21.5.2007, i.e., prior to the date of the written examination, it was resolved that the written test will be of 100 marks, the physical aptitude test of 40 marks and the vivavoce segment will have 10 marks. However, in the same meeting dated 21.5.2007 it was resolved by the Selection Committee "that the marks secured by each candidate in each of the three tests will be converted to percentage marks (i.e., out of 100) and that the sum total of the three percentages will be taken as the actual marks secured".

On completion of the selection process, a select list consisting of eighty names was prepared. However, the same was not published. Instead, the list of the selected candidates was sent to the concerned authority for police verification. It is at this stage that the writ petitions were filed challenging the selections made and the appointments proposed on that basis.

3. The pleadings contained in the writ petitions, broadly, are to the effect that the respondent No. 4 and some other selected candidates did not satisfy the eligibility criteria on the date when they had submitted their application in response to the advertisement issued. It is alleged by the petitioners that the respondent Nos. 5 to 8 did not participate in the physical aptitude test at all or their performance in the said test was not up to the mark; yet, they were selected. The writ petitioners have further averred that the conduct of the written examination was marred by serious irregularities and there was a free exchange of questions and answers over the mobile phones of the candidates. The petitioners state and aver that their performance in all segments of the selection had been excellent and, therefore, they deserve to find a place in the select list. It is on the aforesaid broad basis that the challenge in the writ petitions have been made.

4. An affidavit dated 5.2.2008 was filed on behalf of the respondents denying the allegations made in the writ petition and asserting that the selections held were conducted in a free and fair manner and merit alone was the criteria in making the selections in question. In the said affidavit filed by the Director, Sports & Youth Welfare, it was specifically stated that a total of 150 marks, with the sub divisions already noticed, were earmarked for the selection and further that each segment of the selection was conducted under the supervision of the duly constituted committees, the compositions of which were mentioned in the affidavit filed.

5. Taking note of the stand taken by the respondents in the affidavit filed, by order dated 6.2.2008, the court required the respondents to make available the answer scripts of the selected candidates; the proceedings of the Committee constituted to hold the physical aptitude test along with the marks secured by each candidate as well as the proceedings of the Interview Board along with the marks secured by the candidates. This was done only to verify the broad outlines of the decision making process involved in the present case. Further information was also sought by the court with regard to the stand taken by the petitioners that persons who were not eligible on the date of the advertisement were also considered for selection.

6. Acting pursuant to the order of the court, a set of written instructions dated 14.2.2008 (marked with the letter "X") were placed before the court, as received by the learned Govt. Advocate from the Director of Sports & Youth Welfare. Furnishing the documents required to be placed before the court, the Director had conveyed the further information that some persons who were not eligible on the date of the advertisement or the date of submission of applications, but had become eligible before the selections were held were also issued call letters and allowed to take part in the selection.

7. On 28.2.2008, when the matter was posted for consideration, the court had a cursory look at some of the answer scripts that were made available only for the purpose of the limited satisfaction that the totaling of the marks awarded by the examiner is correct. No scrutiny of any other kind was contemplated. However, some discrepancies having been found in the totaling of the marks of some candidates, the court, by its order dated 28.2.2008, directed the Director of Sports & Youth Welfare to have the total marks secured by each candidate retotalled and place the outcome there of before the court. Pursuant thereto, another set of written instructions dated 10.3.2008 (marked with the letter "Y") were placed before the court by the Director admitting that discrepancies have been found in respect of the computation totalling of the marks in respect of as many as twenty four candidates.

8. The above fact made it necessary for the court to examine the answer scripts in a more detailed manner. On completion of the said exercise, the court found the marks of eight candidates to have been tempered with by attempts to erase the marks originally given and by substitution of fresh marks. In respect of forty four other candidates, it was found that in respect of Question No. 3 against which a total of 4 marks were allotted against 8 subquestions with 1/2 marks each, the examiner had awarded 1 mark for each right answer against the 1/2 mark allotted. Subsequently, the excess mark awarded was deleted but the total marks secured by the candidates were maintained by awarding that many excess marks against the Essay, In respect of twenty eight of the answer scripts examined by the court no discrepancies were found. All the answer scripts examined by the court were of the successful candidates. The Roll numbers of the candidates whose answer scripts were scrutinized by the court are recorded

in the order of the court dated 13.3.2008, by which order, the court had also issued notice to Sri Dhruba Hazarika, Sri P.K. Baruah, Sri R.P. Baruah and Sri J.N. Barchetia who were the members of the Selection Committee as constituted. The said notice was issued to the aforesaid officers to explain the situation and also to furnish explanation as to why, if required, criminal prosecution should not be directed to be initiated against them. By the order dated 13.3.2008, the court also directed the select list to be published in the newspapers as in the event the anomalies/irregularities detected were to have a vitiating affect, the selections would be required to be interfered with by the court.

9. Pursuant to the aforesaid order dated 13.3.2008 passed by the court, the four officers in question have filed their separate affidavits. In so far as two officers i.e., Sri R.R Baruah and Sri J.N. Barchetia are concerned, the aforesaid persons, in their affidavits filed, disclaim any role in the matter of examination of the answer scripts which apparently was done by Sri Dhruba Hazarika and Sri P. K. Bora (wrongly mentioned as P.K. Baruah in the order dated 13.3.2008)..In the affidavit of Sri Dhruba Hazarika and Sri P. K. Bora, it has been stated that the said officers had conducted the examination and selection of the kind involved in the present cases for the first time in their service career and that the mistakes, if any, may have been occasioned by their lack of experience and exposure. Insofar as Sri Dhruba Hazarika is concerned, the said officer in the affidavit filed has stated that it is difficult for him to comprehend the reasons as to why over writing in the marks were made by him insofar as the candidate bearing Roll No. 131 is concerned. In respect of the forty four candidates who were initially awarded 1 marks each but were subsequently given 1/2 mark and the excess already awarded in the above manner were added to the marks awarded against the essay, explanations have been offered by Sri Hazarika that the first part of the exercise was a bona fide mistake on his part and the second part i.e. award of excess marks against the essay was to maintain the total marks already awarded. In so far as Sri P. K. Bora is concerned, the explanations offered by him regarding the change of marks in respect of the candidates bearing Roll Nos. 003, 006, 012, 021, 022, 048 and 085, is that such change of marks is the result of reevaluation reappreciation of the answers given by the candidates. The said officer has also contended that such change of marks was an exercise carried out almost simultaneously with the initial award of marks.

10. It will now be necessary for the court to notice that seeking vacation/modification/alteration of the order dated 13.3.2008, Mr. P.K. Bora and Sri Dhruba Hazarika, as applicants, had filed a Misc. case before this being Misc. Case No. 898/2008. While the details of the said Misc. application need not detain the court, what would be required to be noticed is the relief sought therein, i.e., for modification of the order dated 13.3.2008 passed by the court for publication of the select list of successful candidates. What must also be noticed herein is the following statement which appears in paragraph 3 of Misc. Case No. 898/2008:

"That the findings and opinion expressed by this hon"ble court in the order dated 13.3.2008 indeed reveals the mistakes that had occurred in most of the answer scripts placed before the hon"ble court. The applicants have also realized that mistakes in the award of marks have taken place and the Select List so prepared does not reflect a correct picture visavis the merit of the candidates appearing in the written test. The Select List in question has not yet been published. Respectfully stated, the publication of the Select List without first rectifying the mistakes would cause further complications. As such, the applicants pray that this hon"ble court would please allow the applicants to redo the exercise and/or reevaluate all the answer scripts so that a correct assessment is made on the interse merit of the candidates and a Select List prepared accordingly and in order that the corrected position can be placed before the hon"ble court for further orders."

11. The recitation of the facts that will be required for an effective adjudication of the issues involved in the writ petitions being complete, the may now turn to the arguments advanced on behalf of the parties.

12. Mr. A.S. Choudhury, learned senior counsel for the writ petitioner in WP(C) No. 166/08, who had offered the lead argument, contends that the findings recorded by the court in the order dated 13.3.2008 and the facts stated in para 3 of Misc. Case No. 898/2008 amply vindicates the pleaded case of the writ petitioners that the selection held is vitiated by serious lapses and irregularities going to the root of the matter. Marks have been tempered with and the same have been increased or decreased to suit particular candidates. Excess marks have been awarded to as many as forty four selected candidates in the Essay without there being any justification and only to maintain the total marks that were initially awarded. Mr. Choudhury has also argued that candidates like the respondent No. 4 have been allowed to participate in the selection, though they were not qualified on the date of the advertisement. On the aforesaid broad basis, the learned counsel for the petitioners has submitted that interference of the court in the facts of the present cases would be wholly justified.

13. Mr. N. Dutta, learned senior counsel who has offered the lead argument on behalf of the selected candidates, has submitted that the anomalies noticed by the court, as recorded in the order dated 13.3.2008, will necessarily have to be probed further to determine whether such anomalies had actually affected the selection process and if so, the extent thereof. Mr. Dutta has submitted that in the event such anomalies are found by the court to have affected the core of the selections, three options are open to the court. The first is to have the answer scripts of the written examination reevaluated and the marks freshly awarded added to the total marks against the physical test and the interview in respect of which there is little or no complaint. The second option, according to Mr. Dutta, would be to have the written segment of the selection redone and the marks secured by the candidates added in similar manner to those already secured by the candidates in the other two segments. The third option, according to Mr.

Dutta, learned senior counsel, is to cancel the entire selection and issue a fresh advertisement for the posts in question. The said third option, according to Mr. Dutta, should be avoided in the present case as only one segment of the selection i.e. the written test has been affected.

14. Unconnected to the merits of the dispute, Mr. P.K. Goswami, learned senior counsel appearing for Sri Dhruba Hazarika and Sri P.K. Bora has submitted that the anomalies in the marks awarded, as noticed by the court in the order dated 13.3.2008, is the result of a serious error of judgment On the part of Sri Dhruba Hazarika and Sri P.K. Bora who had evaluated the answer scripts of the written examination. Mr. Goswami has contended that in the facts of the present cases, no ill motive or intention to help one or more candidates or to cause harm to any particular candidate can be attributed to the aforesaid persons. They were not well versed with the duties of an examiner and it was for the first time in their service career that the two persons were called upon to evaluate answer scripts. Consequently, mistakes had crept in. Such mistakes, being without any ill intention or ill motive, may be suitably condoned by the court.

15. The arguments advanced by the learned counsels for all the parties have received the most anxious consideration of the court. Interference with the selection of a large number of candidates ought to be made by the court only after reaching the highest degree of satisfaction that the selections if allowed to remain on record will amount to a travesty of justice. Any doubt in the matter has to go in favour of the selected candidates. Even if the selections are found to be marred by gross irregularities an attempt must be made by the court to identify and separate the good part of the selection from the bad and salvage the acceptable part. Only in a situation where severance is not possible the court will proceed to nullify the selection as a whole.

16. This is precisely why in spite of the statements made in paragraph 3 of Misc. Case No. 898/2008, wherein the members of the Selection Committee had virtually agreed that the conduct of the written test was vitiated by gross irregularities and why despite the submission of Mr. N. Dutta, learned senior counsel for the selected candidates, as already noticed, the court had thought it fit to impose upon itself the responsibility of making a detailed scrutiny of the answer scripts of all the candidates and the result of the selection as a whole i.e. in all the three segments and the cumulative effect thereof. Such an exercise had become indispensable in the present case on account of the facts and events that had confronted the court". The task also appeared to be possible because the required scrutiny had to be confined only to one hundred eighty six candidates. The court had, accordingly, called for the answer scripts of all the candidates who had appeared in the selection. The said answer scripts have been duly perused by the court along with the cumulative result of the selection as made available.

17. A consideration of the pleadings of the parties and the oral arguments offered indicates the written test/examination to be the only area of serious complaint. No grievance of any substantial kind has been made with regard to

the conduct of the other two segments of the selection. Nor any irregularity has been noticed by the court in this regard.

18. Insofar as the written test is concerned the anomalies found can be categorised under 4 (four) broad heads. Firstly, there appears to be wrong computation of the total marks secured by twenty four candidates in the written test. Secondly, in respect of seven candidates bearing Roll Nos. 003, 006, 012, 021, 022, 048 and 085, whose answer scripts were evaluated by Sri P.K. Bora, the has found that the initial marks awarded have been erased and subsequently fresh marks have been awarded. The fresh marks awarded in some cases are in excess of the original marks whereas in some other cases it is less than the original marks. In respect of the answer script of the candidate bearing Roll No. 131 examined by Sri Dhruba Hazarika, the total marks awarded after deduction of the excess 1/2 marks given against the Question No. 3 was 23. Subsequently, as against 5 marks secured against the Essay, the examiner Sn Dhruba Hazarika has awarded 28 marks, raising the total from 23 to 46.

Thirdly, in respect of forty four candidates, initially 1 mark for each subquestion of Question No. 3 against the 1/2 mark allotted was awarded by the examiner, Sri Dhruba Hazarika. Subsequently, the excess marks (1/2 against each subquestion) awarded was deleted and corresponding number of marks that were deleted were added against the Essay marks maintaining the total marks secured by the candidates.

The fourth anomaly that has been noticed by the court is that though 100 marks were awarded for the written test, 40 marks for the physical aptitude test and 10 marks for the interview, i.e., a total of 150 marks, in the actual working of the marks secured by a candidate, the marks against each segment secured by the candidates was converted to percentage i.e., out of 100 and the average of the three percentages was calculated to determine the result of the candidates. The effect of the above is that against the total 150 marks which was to be awarded for the selection, 100 marks was awarded for each segment raising the total to 300 marks.

19. The question that will be required to be answered is whether the aforesaid anomalies or any of them have the affect of vitiating the selections to such an extent that the court is left with no alternative but cause interference with the same.

20. Insofar as the totalling of the marks of the twenty four candidates is concerned, the retotalling of the marks by the Director by giving the benefit denied or taking away the benefit wrongly given, as may be, makes it clear that the discrepancies in question did not have any effect on the final selections made. This is because, the correct marks as determined by the Director does not have the effect of making any unselected candidated entitled to selection.

21. Insofar as excess/less marks given by Sri P.K. Bora after erasing the original marks awarded is concerned, on due consideration, the court has found that in

respect of the candidate bearing Roll No. 021, the marks originally awarded was 36. The marks subsequently allowed, upon alteration, was 46. The excess 10 marks were awarded against the Essay. Having scrutinized the answer script of the aforesaid candidate, the court finds no ground whatsoever for the grant of the excess 10 marks. By virtue of the excess 10 marks granted the candidate in question secured a total of 164 marks, which made him eligible to be selected. A scrutiny of the compilation of the marks of the candidates, as made available to the court, would go to show that there is a candidate with Roll No. 042 who secured 39 marks in the written test and a total of 160 marks. If the marks awarded to the candidate with Roll No. 021 is to be maintained at 36, the total marks secured by the said candidate comes down to 154, in which event, the candidate with Roll No. 042 becomes eligible for selection. On the said facts, the court is of the view that the selection of the candidate with Roll No. 021 should receive the court's interference. The said selection, therefore, is being set aside.

22. The court would hasten to add that it is aware that in reaching the above conclusion there has been a departure from the restraints that the court normally exercises in evaluating the merits of a selection for appointments in public office. Restraints in the contours of the jurisdiction of the higher judiciary that are normally visualised and expected are always selfimposed. The sheer number of job seekers who apply for the handful of posts that may be available and the absence of adequate "judicial tools" to judge the inter se merit of the candidates are amongst the primary reasons for the judicial reluctance to eliminate inaccessible areas of scrutiny. However, in the present case, where only 186 candidates were involved, a more in depth exercise was possible. Such an exercise had been felt necessary as the elasticity of the writ power would have to depend on the existing ground realities. It is prompted by such needs that the court had thought it proper to scrutinize the Essay written by the candidate with Roll No. 021. Such scrutiny had been made keeping in mind that award of marks is a wholly subjective process and lies within the exclusive domain of the examiner. Even proceeding on the said basis, the result of the exercise performed is that the subsequent increase of 10 marks after earsing the original marks given, has to be held to be a wholly perverse exercise on the part of the examiner in the present case.

23. Insofar as the remaining six answer scripts examined by Sri P.K. Bora are concerned, i.e., in respect of the candidates bearing Roll No. 003, 006, 012, 022, 048 and 085, the court finds that the candidate with Roll No. 003 had initially secured 37 marks with 10 marks in the Essay. The marks against the Essay was subsequently increased to 25. The total marks received by the candidate bearing Roll No. 003 is 151. Even if the excess 15 marks is to be deleted, the candidate gets 136 marks, which will still make him eligible for selection as a OBC candidate. Similar is the position with the candidate bearing Roll No. 085 who was awarded 5 excess marks by Sri P.K. Bora. Even if the said marks are to be deleted, the candidate gets 152 marks, which makes him eligible for selection as a ST(P) candidate..The remaining candidates, i.e., candidates with Roll Nos. 006,

012 and 022 actually suffered deletion of the marks originally awarded, in spite of which deletion, they have still been selected. In respect of the candidate bearing Roll No. 048, 10 excess marks have been given, which if excluded, brings the total to 173, which will still make him eligible for selection.

24. Insofar as the candidate bearing Roll No. 131, whose answer script was examined by Sri Dhruba Hazarika, is concerned, the candidate was awarded 23 excess marks. The said excess marks is again in respect of the Essay. By application of the same yardstick as indicated above, the benevolence shown is the product of a perverse exercise. If the aforesaid 23 marks are to be deleted, the candidate will still secure marks above the cut off marks (123) worked out for the OBC candidates. He will, therefore, be entitled to be selected. The net result of the aforesaid anomalies that have occurred does not, therefore, materially affect the result of the selection so as to justify this court's interference.

25. Insofar as the award of 1 mark for each of the subquestions of Question No. 3; the subsequent deletion and parallel increase of the same number of marks against the Essay answer in respect of forty four candidates is concerned, the court on a detailed scrutiny of the marks secured and the cut off marks to be eligible for selection, finds, that the aforesaid exercise, misdirected though it was, does not in any way fundamentally affect the entitlement of the unselected candidates or the placement of the selected candidates in the select list in question.

26. This will bring the court to a consideration of the manner in which the final marks secured by the candidates were worked out on the basis of percentage. The total marks for the three segments of the selection was 150. What was the difficulty in working out the percentage, if such percentage was required to be worked out at all, from the marks secured by a candidate out of the total of 150 defies a logical explanation. Yet, the Selection Committee proceeded on a very strange basis by which the marks secured in the physical aptitude test out of 40 and in the interview out of 10 was converted to percentage i.e., out of 100 and the percentages secured in the three segments were added as if each percentage represented the marks secured on a scale of 100. The reafter, the average percentage was worked out and the interse merit of the candidates was determined. In the process some candidates who had secured more marks in the written test were overshadowed by those who secured less marks in that segment by virtue of the higher percentage secured by them in the other two segments of the selection. The procedure adopted, strange and illogical though it may have been, what has to be noticed by the court is that the effect of the same was to allot 100 marks to each of the segment of the selection process. The physical aptitude test was an objective test for determination of the physical ability of the candidates. 100 marks that was eventually awarded for the interview constitutes 33% of the total marks involved in the selection. Award of 33% marks for the interview cannot be held to be so highly excessive that the

interference of the must be made. The court, therefore, is inclined to take the view that though a very curious procedure had been adopted by the Selection Committee, yet, as the same was applied uniformly to all the candidates and the result thereof is not abhorrent to what can be reasonably contemplated in law, the selection itself should not be set aside merely on account of defects in the procedure adopted. Another fact that has been taken into account in arriving at the above conclusion is that the procedure, though wrong, was decided to be adopted in the minutes of the meeting of the Selection Committee dated 21.5.2007 i.e., even before the commencement of the selection process.

27. Before proceeding any further, the court must now consider the two specific anomalies in the conduct of the selection as pleaded by the writ petitioners, i.e., the performance of the respondent Nos. 5 to 8 in WP(C) No. 166/2008 in the physical aptitude test and the irregularities i.e. use of mobile phones by the candidates in the course of the written examination. Both of the said allegations remain unsubstantiated by the materials available and, therefore, will not require any further attention of the court. Regarding the action of the respondents in allowing candidates who had not acquired the requisite eligibility on the date of the advertisement, it is the pleaded case of the respondents that 5/6 candidates who had applied, though were not eligible on the date of the advertisement, had acquired such eligibility before the commencement of the selection process. If that was so, in view of the very limited number of applications received, the court will not find any fault with the action of the respondents in allowing 5/6 candidates who had become eligible, in the meantime, to appear in the selection.

28. From the materials on record, it appears that there has been a mix up of the marks awarded to the candidates bearing Roll Nos. 127 and 128. The candidate with Roll No. 127 secured 30 marks in the written test but in the result sheet he was shown to have secured 55 marks. On that basis, the said candidate has been selected. On the other hand, the candidate with Roll No. 128 who secured 53 marks in the written test was shown to have secured 30 marks which was actually the marks secured by the candidate bearing Roll No. 127. The aforesaid position has been admitted by the respondents, if not in the affidavit, at least in the written instructions dated 10.3.2008 submitted to the court (marked with the letter "Y"). In such a situation, the conclusion that the court has to reach, insofar as the candidate with Roll No. 127 is concerned, is that his selection appears to have been vitiated by award of wrong marks. The said selection, therefore, is being set aside.

29. This will bring the court to a consideration of the action, if any, that would be justified in law against the two persons i.e., Sri Dhruba Hazarika and Sri P.K. Bora who had evaluated the answer scripts. The detail analysis of the evaluation done by the aforesaid two officers, as contained in the earlier part of this order, not only reflects negligence and error of judgment on their part, but perhaps even a conscious attempt to award excess or less marks, as the case may be. Award of such excess or less marks could have been fatal to the fortunes of

certain candidates though in the present case such result has, fortunately, not been occasioned. The inexperience claimed by Sri Dhruba Hazarika cannot also be accepted by the court, inasmuch as, in some of the answer scripts, i.e., Roll Nos. 106 and 107, Sri Hazarika had awarded 1/2 mark against Question No. 3 correctly. Similarly, in respect of the candidate with Roll No. 139, Sri Hazarika has reduced the excess marks awarded against Question No. 3 but had maintained the original marks in the Essay and, therefore, the total marks awarded. Insofar as Sri P.K. Bora is concerned, abuse of the powers vested in him as an examiner is even more apparent. He had erased the marks awarded to some of the candidates and thereafter had awarded excess or less marks to such candidates. While it is correct that marks to be awarded by an examiner must be on his subjective satisfaction and independent judgment, which ought not to be fettered, the said principle cannot be an absolute one capable of being stretched to unreasonable limits or to cover perverse exercise of discretion in award of marks as had happened in the present case.

30. A court not only has the power, but, more importantly, the duty to ensure that public functionaries perform their duties within the well settled parameters of law and powers are exercised for public good. Abuse of the powers cannot be tolerated in a system governed by the rule of law. In a situation where the two officers, i.e., Sri Dhruba Hazarika and Sri P.K. Bora have been found to have blatantly abused the powers vested in them, the court cannot remain a silent spectator. However, notwithstanding the notice issued by this court on 13.3.2008 contemplating even directions for launching a criminal proceeding against them, on due consideration, the court is of the view that the aforesaid aspect of the matter should be left to the wise decision of the disciplinary authority of the two officers. The court has thought it appropriate to vest the aforesaid responsibility in the disciplinary authority on the principle that, normally, the court itself should not be instrumental in launching a prosecution against a public servant except in cases where the offence alleged has been committed in connection with a court proceeding or otherwise. The disciplinary authority of the two officers will, therefore, decide what further action including criminal and departmental proceeding, that should be initiated against Sri Dhruba Hazarika and Sri P.K. Bora and, thereafter, take such action as may be considered appropriate. The report of the action taken will be submitted to the Registrar General of this court by the disciplinary authority within a period of 45 (fortyfive) days from the date of receipt of this order or a certified copy thereof.

31. Consequently and in the light of the discussions that have preceded, except for interference with the selection of the candidates bearing Roll Nos. 021 and 127 who have been impleaded as respondent Nos. 45 and 61 in WP(C) 1892/08, no further relief should be afforded. The selection of the aforesaid two candidates (Roll Nos. 021 and 127) are set aside. All the writ petitions are disposed of subject to the above.