

(2018) 03 GAU CK 0138
In the Gauhati High Court
Case No : WA 59 of 2018

DHRUBA JYOTI BORAH AND ANR

APPELLANT

Vs

KHANIJ SAIKIA AND 4 ORS

RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0138

Hon'ble Judges : MANOJIT BHUYAN, AJIT SINGH C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Heard Mr. S.K. Talukdar, learned counsel for the appellants as well as Ms. S. Chutia, learned counsel for the respondent nos. 2, 3, 4 and 5.

Having regard to the facts in issue, this appeal is taken up for final disposal at the admission stage itself and service of notice on respondent no. 1/ writ

petitioner is not deemed necessary.

This appeal is directed against the Order dated 06.02.2018 passed in WP(C) 398/2015 wherein the two appellants here were arrayed as respondent

nos. 5 and 6 respectively.

Following Advertisement dated 14.06.2013, a selection process was initiated for filling up 5 posts of Section Assistants under the establishment of the

Executive Engineer, Dhakuakhana Water Resource Division. As against the two posts meant for unreserved category, the two appellants herein were

selected offered appointment. The respondent no. 1/writ petitioner Sri Khanij Saikia applied for copies of the answer scripts of the appellants as well

as his own answer scripts. On perusal of the answer scripts Sri Khanij Saikia came to learn that marks awarded by the Examiner to him and the

appellants were not uniform. Aggrieved, he filed the related writ petition contending that if marks had been rightly awarded by the Examiner, he would have secured higher marks than the appellants.

To reach a definite conclusion, the learned Single Judge had perused the answer sheets of Khanij Saikia and the appellants herein, which were

available on record. The findings rendered on perusal of the answer scripts have been succinctly elaborated at paragraphs 6, 7 and 8 of the order

under challenge dated 06.02.2018, which are reproduced hereunder:

6. On perusing the answer sheets of the parties herein, I find that the petitioner, respondent nos. 5 and 6 had all given the same answer to the

Question No. 4 of Part III (General Knowledge), which is Bongaigaon and Goalpara. The examiner, however, has awarded only 1 mark to the

petitioner, while awarding 2 marks to the respondent nos. 5 and 6.

7. In respect of Question No. 13 of Part III (General Knowledge) the question was "What is the chemical name and formula of Baking

Powder?" The petitioner had given wrong chemical name but right formula, which is NaHCO_3 . The petitioner was awarded 1 mark. The

respondent nos. 5 and 6 had both given the right chemical name but wrong formula. However, the respondent nos. 5 and 6 were both given 2 marks,

even though one part of the answer was wrong.

8. In respect of Question No. 5 of Part IV (Mathematics), the question was "Find the volume and the surface area of a cuboid of length 8 cm,

breadth 6 cm and height 3 cm." The respondent no. 5 gave the wrong answer for the volume,

inasmuch as, he stated that it was 144 cm instead of the correct answer 144 cm³. However, the answer given for the surface area was correct. The

respondent no. 5 was awarded 2 out of 4 marks. The respondent no. 6, on the other hand, gave the correct volume and surface area of the cuboid.

The respondent no. 6 was given 3 out of the total 4 marks. The petitioner, on the other hand, gave the correct

volume of the cuboid as 144 cm³, but the wrong surface area of the cuboid. However, no mark was given to the petitioner though he had given the

correct answers for the volume of the cuboid. A bare perusal of the answers mentioned herein goes to show that the examiner has not been

consistent in awarding marks for the same answers. He has also failed to award

marks when right answers were given. The above are not disputed questions of fact as the same are apparent on the face of the demounts. Accordingly, in the opinion of this Court, ends of justice would be best served if the answer sheets of the petitioner and the respondent nos. 5 and 6 are sent for re-evaluation to the examiner in question, with respect to the marks allotted to the petitioner and the respondent nos. 5 and 6, in respect of Question Nos. 4 and 13 of Part III and Question No. 5 of Part IV of the examination. This Court is aware of the law laid down by the Apex Court that Courts cannot take upon itself task of an examiner or Selection Board and examine discrepancies and inconsistencies in question papers and evaluation thereof, as held in *Himachal Pradesh Public Service Commission v. Mukesh Thakur and another*, reported in (2010) 6 SCC 759. However, the manner in which the examiner has awarded marks to different persons giving the same answer is apparent on the face of the records and as such, this Court cannot turn a blind eye to the inconsistencies made by the examiner.â??

On the above findings, the learned Single Judge directed the Commissioner & Secretary, Department of Water Resources as well as the Selection Committee to send the answer sheets of Sri Khanij Saikia i.e. the writ petitioner as well as that of the appellants to the concerned examiner for re-evaluation of the answers and marks given in respect of Question Nos. 4 and 13 of Part III and in respect of Question No. 5 of Part IV. An observation was also made that alternative arrangements for sending the answer sheets to another Examiner, preferably from the Gauhati University, may be made in the event it was not possible to send the answer sheets to the same Examiner. A time-bound period was specified for giving marks by the Examiner and thereafter for publishing the same by the State Respondents and for passing consequential orders. It was made clear that the selection of the appellants and their appointments would be subject to the outcome of the re-evaluation to be done by the State Respondents.

On our own, we have perused the answer scripts of all the three candidates in fray, particularly the answers and marks awarded by the Examiner against Question No. 4 and 13 of Part III and question No 5 of Part IV. Having perused the same, we are in complete agreement with the findings recorded by the learned Single Judge. The error in the award of marks as against

the questions nos. above are apparent on the very face of the records, which cannot be ignored.

Counsel representing the appellants is unable to pinpoint any infirmity in the findings of the learned Single Judge. We affirm the findings and decisions made in the Order dated 06.02.2018 and dismiss the present appeal as being devoid of any merits, however, without any order as to costs.