
(2018) 10 GAU CK 0009
In the Gauhati High Court

Case No : Civil Writ Petition No.1814 Of 2018, I.A.(Civil) 1216, 1235 Of 2018

Pranab Das And Anr

APPELLANT

Vs

Assam Public Service Commission And Ors

RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:

Assam Industries Service Rules, 1997 — Rule 6(1)(c)
APSC (Procedure & Conduct of Business) Rules, 2010 — Rule 19

Citation : (2018) 10 GAU CK 0009

Hon'ble Judges : L.S. Jamir, J

Bench : Single Bench

Advocate : B. Bhuyan, B. Ahmed, D. Das, P.N. Goswami, S.K. Talukdar

Final Decision : Dismissed

Judgement

”

1. Heard Ms. B. Bhuyan, learned counsel for the petitioners. Also heard Mr. C. Baruah, learned Standing Counsel, APSC appearing for the”,,

respondent Nos. 1 to 5 Dr. B. Ahmed, learned Standing Counsel, Industries and Commerce Department appearing for the respondent Nos. 6 and 7”,,

Mr. D. Das, learned senior counsel assisted by Mr. P.N. Goswami, learned counsel appearing for the respondent Nos. 14, 16, 19, 21, 22, 23, 28, 33”,,

38, 39 and 40, Mr. S.K. Talukdar, learned counsel appearing for the respondent Nos. 8, 12, 13, 15, 17, 27, 32 and 41 and Mr. S. Choudhury, learned”,,

counsel appearing for the respondent Nos. 10, 11, 18, 20, 25, 30, 35, 36 and 37.”,,

2. Ms. B. Bhuyan, learned counsel for the petitioner submits that the Assam Public Service Commission (APSC) published an advertisement dated”,,

11-08-2016 inviting application from Indian citizens for recruitment to various

posts under different Departments of Assam. Amongst the posts,,
 advertised, 34 posts of Assistant Manager/Superintendent of Industries/Assistant Industries Officer etc under the Industries & Commerce",,,
 Department, Assam were also advertised. The required educational qualification for the said posts was a Bachelor's Degree in any Branch of",,,
 Engineering or in Arts/Science/Commerce of a University or any other institution in India or abroad recognized by the Government for the purpose,,
 with minimum Second Class in any specified subject or distinction in Degree course. Pursuant to the advertisement, the petitioners also applied for the",,,
 said posts. Clause C of the advertisement dated 11-08-2016 provides that if the number of applications received is large, the Commission may short-",,,
 list the number of candidates either on the basis of their marks obtained in the qualifying academic examination required for the post in terms of the,,
 advertisement or by holding Screening Test (Multiple choice objective type written examination) which will be notified in due course.,,
 By a Notification dated 17-11-2017, the APSC informed for holding of Multiple Choice Objective Type Screening Test (OMR) for the post of",,,
 Assistant Manager/Superintendent of Industries/Assistant Industries Officer under the Industries & Commerce Department and the date of Screening,,
 Test was notified as 26-11-2017. The petitioners were called for the OMR based Objective Type Screening Test by letter dated 17-11-2017 for the,,
 subject of General Studies and the marks allotted was 200. Both the petitioners appeared for the Screening Test on 26-11-2017. Thereafter, based on",,,
 the qualifying marks, 145 candidates were short-listed for appearing Viva-Voce/ interview. It is submitted that the petitioners were called to appear in",,,
 the Viva-Voce test by call letter dated 19-01-2018 to be held on 14-02-2018. The petitioners accordingly appeared in the Viva-Voce and they did well,,
 in the interview and were looking forward for a positive result. The APSC declared the result for the post of Assistant Manager/Superintendent of,,
 Industries/Assistant Industries Officer under the Industries & Commerce, Department on 16-02-2018 wherein, the names of the petitioners did not",,,
 appear.,,

3. Learned counsel for the petitioners submits that not being satisfied with the result declared on 16-02-2018, the petitioner No. 1 made an RTI",,,

Application on 17-02-2018 and 19-02-2018 seeking information with regard to

the total marks obtained by each candidate, copy of the",,,

Government/APSC Rules/Order on the assessment criteria used in the selection process, pattern of awarding of marks and relevant details of each",,,

candidate appearing in the viva-voce test. The said inquiry made by the petitioner No.1 was furnished by a communication dated 09-03-2018 wherein",,,

the petitioner came to learn that the break-up of marks allotted to them were in sheer deviation from the norms of the advertisement dated 11-08-2016,,

inasmuch as, it is specifically provided in the advertisement dated 11-08-2016 that there will be either written test or interview and that if the APSC",,,

receives large number of applications, the Commission may short-list the number of candidates either on the basis of their marks obtained in the",,,

qualifying academic examination required for the post in terms of the advertisement or by holding screening test.,,

4. Learned counsel for the petitioners submits that the respondents had selected the candidature of the private respondents by taking into account the,,

marks obtained in the written test i.e the Screening Test as well as the marks obtained in the qualifying examination which is apparently clear from the,,

communication dated 09-03-2018. She submits that the APSC could not have changed the rule of the game in the mid way by adopting a separate,,

yardstick dehors the stipulation as provided in the advertisement dated 11-08-2016. She, therefore, submits that the APSC had committed grave error",,,

and the select list dated 16-02-2018 should be set aside and a direction be issued to the APSC to declare the result by strictly following the selection,,

procedure as stipulated in the advertisement dated 11-08-2016 by taking into account only the marks obtained in the interview. It is submitted that due,,

to the action of the respondents, the petitioners have been deprived of being selected though they fared well in the interview and were under the",,,

legitimate expectation that their names will be empanelled in the final result. It is also submitted that the purpose of taking screening test is only to,,

short-list the large number of candidates and therefore, the action of the APSC in adding the marks obtained by the candidates in the screening test is",,,

in violation of the APSC (Procedure & Conduct of Business) Rules, 2010 (APSC Rules of 2010 in short). Therefore, learned counsel for the",,,

petitioners submits that when the APSC has carried out an action not provided under the APSC Rules of 2010 as well as the advertisement dated 11-,,

08-2016, the merit list dated 16-06-2018 stands vitiated and therefore, the APSC should re-declare the result only after counting the marks obtained in",,,
the viva-voce/interview.,,,

Learned counsel for the petitioners places reliance in the (i) Judgment dated 13/06/2017 passed by this Court in W.P (C) 5480/2016 (Smti Nabanita,,

Das & 5 Others â?" vs- State of Asam & 17 Ors), (ii) Mohd. Sohrab Khan-vs- Aligarh Muslim University and Others, reported in (2009) 4 SCC 555",,,

and (iii) Tej Prakash Pathak and Others-vs-Rajasthan High Court and Others, reported in (2013) 4 SCC 540.",,,

5. Mr. C. Baruah, learned Standing Counsel, APSC appearing for the respondent Nos. 1 to 5 submits that on requisition being made by the",,,

Government of Assam, Industries & Commerce, Department, the APSC had made the advertisement dated 11-08-2016 for various posts under",,,

different departments including the 34 number of posts of Assistant Manager/ Superintendent of Industries/Assistant Industries Officer. After,,

receiving applications from the applicants, the Commission issued the Notification dated 17-11-2017 informing that the APSC will hold multiple choice",,,

objective type screening test (OMR) for the post of Assistant Manager/ Superintendent of Industries/Assistant Industries Officer under the Industries,,

& Commerce, Department to be held on 26-11-2017 for general studies with total marks of 200. In the Notification dated 17-11-2017, the word â?"",,,

screening testâ? was inadvertently used in place of â?? written testâ?. The result of the written test was declared on 10-01-2018 and thereafter, the",,,

qualified candidates were called for viva-voce on 13th, 14th and 15th February, 2018. The petitioners being successful in the written test were called",,,

for the viva-voce to be held on 14-02-2018. Thereafter, the final merit list was prepared based on the marks obtained in the written test, academic",,,

performance in HSLC, HSSLC and Degree examination and viva-voce conducted with the help of experts deputed by the Government as per the",,,

scheme of selection. The Commission declared/recommended a list of 34 candidates on 16-02-2018 for final appointment wherein, the petitioners",,,

failed to find a place.,,,

6. Learned Standing Counsel, APSC submits that after the requisition made by the Department of Industries & Commerce was received by the",,,

APSC for 34 number of posts of Assistant Manager/Superintendent of Industries/

Assistant Industries Officer, the Commission by a communication",,,
dated 05-07-2014 requested the Government to intimate the Commission whether the Government has any prescribed scheme of selection for the said,,
posts as per the provision of Rule 6 (1)(c) of the Assam Industries Service Rules, 1997 (the Rules of 1997 in short). Several communications took",,,
place and finally the Government vide letter dated 23-02-2016 informed that the
â??Schemeâ? under Rule-6(1) (C) of the Assam Industries Service,,
Rules, 1989 for recruitment of officers to the post of Assistant Manager/
Superintendent of Industries/Assistant Industries Officer may be modified by",,
having 100 marks for the written test (OMR), academic performance 70 marks
totaling to 170 marks and viva-voce 25 marks with 195 marks as",,
Grand total. It was also informed by the same letter inter-alia that the merit list
towards selection for viva-voce would comprise of (a) marks carried,,
from OMR test plus (b) marks carried out from the academic performance. It was
in terms of the scheme provided by the Government by the letter,,
dated 23-02-2016 that the APSC had conducted the examination pursuant to the
advertisement dated 11-08-2016.,,
7. Learned Standing Counsel, APSC further referring to the additional-affidavit
filed on 21-08-2018 as permitted by this Court by order dated 16-08-",,
2018 passed in I.A (C) 2630/2018 however submits that in the meantime, the
Commission had detected distinct discrepancies in at least 11 questions",,
asked in the written test of the Assistant Manager/Superintendent of Industries/
Assistant Industries Officer under the Industries & Commerce,,
Department, Government of Assam. He submits that the said discrepancies arose
due to incorrect input by the paper setters regarding the responses",,
against the 11 questions and therefore, the Commission feels that despite the
names being recommended to the Government, there is a scope for",,
review and the said review will put into place the entire matter in its proper
perspective so that the candidates who were actually qualified can be,,
adjusted accordingly. He also submits that due to the error committed by the
paper setters, the image of the Commission should not be allowed to",,
suffer and therefore, the APSC may be allowed for re-verification of marks in
terms of the discrepancies in the answer keys in the written test",,
conducted by the APSC.,,

8. Dr. B. Ahmed, learned Standing Counsel, Industries & Commerce Department

submits that recruitment to the post of Assistant",,

Manager/Superintendent of Industries/Assistant Industries Officer are covered by the Rules of 1997 more particularly Rule 6 (1) (c) which provides,,

that the Commission shall make a selection in accordance with the scheme of selection prescribed by the Government in consultation with the,,

Commission. The Commission may hold such test or interview and undertake scrutiny of publication and other documents as may be considered,,

necessary. In terms of Rule 6 (1) (c) of the Rules of 1997, the Government by communication dated 23-02-2016 had provided the scheme to the",,

Commission and accordingly, the selection process was held in terms of the scheme provided to the Commission and thereafter, the final result was",,

declared on 16-02-2018.,,

9. Mr. D. Das, learned senior counsel appearing for the respondent Nos. 14, 16, 19, 21, 22, 23, 28, 33, 38 to 40 submits that the petitioners are",,

aggrieved by inclusion of the marks secured by the candidates in the written test (OMR) while preparing the merit list/select list of the candidates. The,,

petitioners have failed to establish that the selection in question is vitiated for manifest illegality violating any statutory provision governing the,,

selection. The petitioners have also failed to show that the selection suffers from the vice of unfairness as the procedure adopted by the APSC is,,

arbitrary and discriminatory. It is also submitted that no pleadings have been made by the petitioner establishing prejudice arising out of the procedure,,

adopted in the selection. He, therefore, submits that the petitioner having participated in the selection process and being unsuccessful are precluded",,

from challenging the same at this stage.,,

Learned senior counsel submits that the provision of the APSC Rules of 2010 particularly Rule 19 provides that the advertisement for selection to,,

various posts by direct recruitment shall be issued and application from eligible candidate invited by the Commission in accordance with the provision,,

of the Service Rules or ad-hoc principles agreed to by the Commission where there are no Service Rules. He submits that Rule 19 of the APSC Rules,,

of 2010 provides that the Commission is to be guided by the Rules regarding recruitment of the respective departments and in the present case, the",,

Rules of 1997 governs the field. He submits that in terms of Rule 6 (1) (c) of the Rules of 1997, the Industries & Commerce Department by letter",,

dated 23-02-2016 had prescribed the scheme of selection. Further, under the APSC Rules of 2010, Rule 67 provides that after completion of the",,,

interview /personality test, the marks obtained in interview/personality test shall be added to the marks obtained by the candidates in the written",,,

examination. In that view of the matter, the action of the APSC cannot be faulted inasmuch as, they have acted within the APSC Rules of 2010 as",,,

well as the scheme contained in the letter dated 23-02-2016. Learned senior counsel also submits that Clause C to the advertisement dated 11-08-2016,,,

is only for the purpose of indicating that in case the number of applications received from candidates are large, the Commission may short-list the",,,

number of candidates either on the basis of marks obtained in the qualifying academic examination or in the written test.,,,

The said stipulation having regard to the scheme of selection and the Rules governing the selection cannot be said that the select list should be,,,

prepared only on the basis of marks obtained in the interview alone. It is also submitted that a contrary understanding would led to a situation where,,,

the selection would be held in violation of the scheme and the rules. He also submits that the procedure adopted by the APSC has been applied,,,

uniformly to all the candidates including the petitioners and therefore, it is not a case that the petitioners were treated differently thereby causing",,,

prejudice to them. As the selection has been made and the select list being prepared in conformity with the rules holding the field, there is no deviation",,,

from the advertisement dated 11-08-2016 nor is there any violation of the rules governing the selection in question. Therefore, the APSC has not",,,

committed any error while adopting the procedure in question and in fact, the same is in conformity with the rules holding the field. He, therefore,",,,

submits that there is no merit in the writ petition and the same deserves to be dismissed.,,,

Learned senior counsel for the private respondents has also placed reliance in the case of (i) Malik Mazhar Sultan and Another-vs-U.P Public Service,,,

Commission and Others, reported in (2006) 9 SCC 507 (ii) Ashish Kumar-vs-State of Uttar Pradesh and Others, reported in (2018) 3 SCC 55.",,,

10. Mr. S.K. Talukdar, learned counsel appearing for the respondent Nos. 8, 12, 13, 15, 17, 27, 32 and 41 and Mr. S. Choudhury, learned counsel",,,

appearing for the respondent Nos. 10, 11, 18, 20, 25, 30, 35, 36 and 37 adopts the submissions made by Mr. Das, learned senior counsel.",,,

11. I have considered the submission forwarded by the learned counsel for the parties. This Court has also perused the records produced by the,,
learned Standing Counsel, APSC.",,

12. Before entering into the merits of the case, this Court proposes to examine the relevant provisions of the APSC Rules of 2010 as well as the Rules",,,
of 1997. The relevant provisions of the APSC Rules of 2010 are reproduced herein below:-,,

â?? 19. The advertisement for selection to various posts by Direct Recruitment shall be issued and applications from eligible candidates invited by the,,

Commission in accordance with the provision of the Service Rules or ad-hoc principles agreed to by the Commission where there are no Service,,

Rules.â??,,

â??67. After completion of the interview/Personality Test, the marks obtained in Interview/Personality Test shall be added to the marks obtained by",,,

the candidates in the written examination. Thereafter, on the basis of total so obtained the merit list shall be prepared and placed before the",,,

Commission by the Principal Controller of Examination for final preparation of the select list service/postwise, on the basis of order of preference",,,

given by the candidates and Reservation Rules in force.â??,,

â??72. The provision of Rule 67 shall apply to Direct recruitment cases also so far as preparation of mark sheets is concerned.â??,,

Rule 6 (1) (c) of the Rules of 1997 reads as under:-,,

â?? 6. (1) (c) the Commissioner shall make a selection in accordance with the schemes of selection prescribed by the Government in consultation,,

with the Commission. The Commission may hold such test or interview and undertake scrutiny of publications and other documents as may be,,

considered necessary.â??,,

Sl. No,Particulars,Marks

1,"Written Test (OMR) (50% of 200

i.e 50% of mark ear-marked for

written test would virtually be

countable as mark for written test.

Accordingly, 50% of the marks

secured by candidates in the written examination of 200 marks would be counted towards merit)",100

2,"A c a d e m i c Performance (HSLC+HSSLC+ Graduation with 20+20++3- marks respectively)",70

,Total,170

3,Viva-voce (15% of 170),25

,Grand Total,195

the same has been done uniformly for all the candidates including the petitioners and therefore, this Court is of the considered view that no prejudice",,

has been caused to the petitioners. Therefore, the ground taken by the learned counsel for the petitioners that APSC could not have changed the rule",,

of the game in the midway holds no water.,,

16. The additional-affidavit filed by the APSC on 21-08-2018 in terms of the order dated 16-08-2018 passed by this Court in I.A (C) 2360/2018 has,,

also been considered by this Court. The discrepancies in the 11 questions asked in the written test was uniform to all the candidates and therefore, the",,

same would not prejudice any of the candidates. Accordingly, this Court does not deem it appropriate to permit the APSC to have a review of the",,

written examination at this stage. Accordingly, the prayer of the APSC for review of the written test is rejected. However, the APSC is cautioned to",,

be more vigilant and careful in future.,,

17. It is also to be borne in mind that the petitioners who have taken part in the selection process knowing fully well the procedures contained therein,,

are not entitled to question the same upon being declared to be unsuccessful. The petitioners have appeared in the examination without objection and,,

subsequently, not being successful, challenge to the selection process stands precluded. The petitioners having participated in the selection process",,

cannot contend that the selection process was unfair or that there was lacuna therein merely because the result is not palatable to them.,,

18. In the facts and circumstances of what has been discussed herein above, there is no merit in the writ petition and the same is accordingly",,

dismissed.,,

19. No costs. Return the records to Mr. C. Baruah, learned Standing Counsel, APSC forthwith.",,