

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 350 OF 2023

The Arunachal Pradesh Public Service Commission
& Another ...Appellants

Versus

Miss Hage Mamung & Others ...Respondents

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.02.2022 passed by the Gauhati High Court (Itanagar Bench) in Writ Appeal No.12/2019, by which the Division Bench of the High Court has allowed the said appeal preferred by respondent No.1 herein and has directed the Arunachal Pradesh Public Service Commission (hereinafter referred to as the 'Public Service Commission') for re-evaluation of the papers of respondent No.1 and respondent No.4 herein by quashing and setting aside the judgment and order dated

05.10.2018 passed by the learned Single Judge in Writ Petition No. 62/2018, the Public Service Commission has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

That the Public Service Commission issued an advertisement on 21.09.2016 for filling up of 22 posts of Agriculture Development Officer. Respondent Nos.1, 4 and 5 herein applied for the said posts. They successfully cleared the written examination and were called for viva-voce test. However thereafter when the Public Service Commission published the result by shortlisting 22 candidates, the name of the original writ petitioner – respondent No.1 did not figure in the said list. Respondent No.1 – original writ petitioner filed one RTI application and was furnished the answer sheet and statement of marks. As per the information furnished, the original writ petitioner got 268.45 marks in the written examination. It was found that respondent No.4 herein – original respondent No.5 was awarded 268.75 marks and was placed at serial No. 21 in the select list. It appears that the answer keys with respect to question No.12 and question No. 31 were found to be wrong and therefore it was decided by the Public Service Commission to cancel the said question Nos. 12 & 31 and it was decided to give marks to all the candidates on pro-rata basis for the said two questions in respect of which answer keys were found to be wrong.

2.1 Respondent No. 1 herein – original writ petitioner thereafter filed a writ petition before the learned Single Judge of the High Court contending, *inter alia*, that she gave correct answers to both the questions, namely, question Nos. 12 & 31 and respondent No. 4 herein – original respondent No. 5 answered correctly only question No. 31 and she admittedly answered question No. 12 wrongly and therefore she could not have been awarded two marks for question No. 12 and question No. 31 and if that would have been done, in that case, she would have secured more marks than respondent No. 4 herein – original respondent No.5 and therefore she ought to have been placed in the merit list at serial No. 21 in place of original respondent No. 5 – respondent No. 4 herein.

2.2 The learned Single Judge dismissed the said writ petition. However, by the impugned judgment and order, the Division Bench of the High Court has allowed the writ appeal and has quashed and set aside the judgment and order passed by the learned Single Judge, by ordering re-evaluation of the papers of respondent No.1 herein – original writ petitioner and respondent No. 4 herein – original respondent No. 5 accepting the case/submission on behalf of respondent No.1 - original writ petitioner that as original respondent No. 5 wrongly answered question No. 12 and correctly answered question No. 31 only, she would

be entitled to only one mark instead of two marks allotted by the Public Service Commission.

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court ordering re-evaluation of the papers of respondent No.1 herein – original writ petitioner and original respondent No. 5, the Public Service Commission has preferred the present appeal.

3. Shri Anil Srivastav, learned counsel appearing on behalf of the Public Service Commission has vehemently submitted that in the facts and circumstances of the case and in the absence of any provision for re-evaluation of the papers, the Division Bench of the High Court has materially erred in ordering re-evaluation of the papers of the original writ petitioner and original respondent No. 5. Reliance is placed upon the decision of this Court in the case of ***Dr. NTR University of Health Sciences v. Dr. Yerra Trinadh & Others (Civil Appeal No. 8037/2022, decided on 04.11.2022)***. He has also relied upon and taken us to the relevant provisions in the Manual for Arunachal Pradesh Public Service Commission and the Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines, 2017 (for short, 'Guidelines 2017'), in support of his submission that there is no provision for the re-evaluation of the papers.

3.1 It is further submitted that in the present case as the answer keys with respect to both the questions were found to be wrong, it was decided to cancel the said questions and to allot the marks on pro-rata basis to all the candidates with respect to each question. It is submitted that the same was in consonance with clause 38(v) of the Guidelines 2017.

4. The present appeal is vehemently opposed by Shri Manish Goswami, learned counsel appearing on behalf of respondent No.1 – original writ petitioner.

4.1 It is vehemently submitted that in the peculiar facts and circumstances of the case, the Division Bench of the High Court has not committed any error in ordering re-evaluation of the papers of original writ petitioner as well as original respondent No. 5.

It is submitted that the total marks secured by respondent No. 1 herein were 268.45 and that of original respondent No. 5 were 268.75. It is submitted that therefore the difference in the marks between two of them was 0.30 marks only. It is submitted that each objective question carried one mark. It is submitted that even the Public Service Commission has admitted two wrong answer keys to question Nos. 12 & 31. It is submitted that respondent No.1 herein – original writ petitioner correctly answered both question Nos. 12 & 31 and therefore entitled to two marks (one mark each for each question). It is submitted that

however original respondent No. 5 who has been allotted two marks on pro-rata basis correctly answered only question No. 31 and answered question No. 12 wrongly. It is submitted that therefore only one mark should have been awarded to her, instead she has been awarded two marks on pro-rata basis, thereby causing injustice to the original writ petitioner.

4.2 It is submitted that original respondent No. 5 is placed at serial No. 21 in the select list and on the basis of the total marks, original writ petitioner – respondent No.1 herein will be at serial No. 23. It is submitted that therefore if original respondent No.5, who is placed at serial No. 21, would have been allotted only one mark for giving correct answer to only one question, i.e, question No. 31 only and in that case, the original writ petitioner would have been at serial No. 21. It is submitted that therefore in the facts and circumstances of the case, the Division Bench of the High Court has rightly ordered re-evaluation to do complete justice to the original writ petitioner.

4.3 It is submitted that giving pro-rata marks to all the candidates irrespective of whether the said two questions were correctly answered or not by them would mean putting a premium on wrong answers.

4.4 It is further submitted that as such Clause 38(v) of the Guidelines 2017, which has been heavily relied upon by the Public Service Commission shall not be applicable at all. It is submitted that the same

shall be applicable only in a case where the questions are found to be wrong and not the answer keys are found to be wrong.

4.5 Relying upon the decision of this Court in the case of ***High Court of Tripura through the Registrar General v. Tirtha Sarathi Mukherjee and others, reported in (2019) 16 SCC 663***, it is vehemently submitted by Shri Manish Goswami, learned counsel appearing on behalf of respondent No.1 herein – original writ petitioner that as observed and held by this Court, the re-evaluation of the papers even in absence of any specific provision is permissible.

4.6 Making above submissions, it is prayed to dismiss the present appeal.

5. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that as the answer keys with respect to two questions, namely, question No. 12 and question No. 31 of the General Knowledge Paper were found to be wrong, a conscious decision was taken by the Public Service Commission to cancel the aforesaid two questions and with a view to see that no candidate should be penalised for the mistakes in the answer keys provided by the resource persons, it was decided to award marks against question No. 12 and question No. 31 to all the candidates on pro-rata basis. The original writ petitioner including original respondent

No. 5 and all the candidates therefore were awarded two marks each on pro-rata basis. Therefore, after such process with corresponding increase in the marks of all the candidates, the rank/merit would remain the same and in fact remained the same. In fact, the original writ petitioner is also allotted two marks on pro-rata basis with respect to question Nos. 12 & 31 along with all the candidates. Merely because, according to the original writ petitioner, she correctly answered both question Nos. 12 & 31 and original respondent No. 5 answered one question correctly and one question wrongly, the Division Bench of the High Court is not justified in ordering re-evaluation of the papers of only two candidates, namely, the original writ petitioner and original respondent No. 5, against a conscious decision taken by the Public Service Commission to award two marks to each candidate on pro-rata basis with respect to two questions of which the answer keys were found to be wrong.

6. As per clause 38(v) of the Guidelines 2017, where in the question in the examination paper itself is wrong and thus could not possible be evaluated to have correct answer, there may be deletion of such incorrect questions and the consequent pro-rata distribution of the marks allocated to them. Applying the same analogy with respect to wrong answer keys and thereafter when a conscious decision was taken to allocate the marks on pro-rata basis with respect to two questions whose

answer keys were found to be wrong and when all the candidates were awarded two marks (one mark each for the aforesaid two questions), it cannot be said that the Public Service Commission acted illegally and/or arbitrarily and/or committed any wrong. Therefore, in the facts and circumstances of the case, the Division Bench of the High Court has committed a very serious error in ordering re-evaluation of only two candidates, namely, the original writ petitioner and original respondent No. 5 only.

7. In view of the above and for the reasons stated above, the impugned judgment order passed by the Division Bench of the High Court is unsustainable and the same deserves to be quashed and set aside. Accordingly, the present appeal is allowed. The impugned judgment and order passed by the Division Bench of the High Court ordering re-evaluation of the papers of respondent No.1 and respondent No. 4 herein is hereby quashed and set aside and the judgment and order passed by the learned Single Judge dismissing the writ petition preferred by respondent No.1 herein is hereby restored. No costs.

.....J.
[M.R. SHAH]

NEW DELHI;
JANUARY 20, 2023.

.....J.
[C.T. RAVIKUMAR]