

WP(C) No. 392 of 2013
BEFORE
HON'BLE MR JUSTICE UJJAL BHUYAN

01.04.2013

By this petition under Article 226 of the Constitution of India, the four petitioners seek a direction to the respondents to call 1120 candidates for the viva-voce test of the Combined Competitive Examination, 2009, being four times the number of advertised vacancies i.e. 280 of Assam Civil Service and other Allied Services to be filled up through the said examination.

2. Assam Public Service Commission (APSC) issued advertisement on 16.02.2009 for a total of 122 posts of Assam Civil Service and other Allied Services to be filled up through the Combined Competitive Examination, 2009. Thereafter, by addendum dated 20.05.2009 and 24.12.2009, additional 75 and 83 posts respectively were included within the purview of the Combined Competitive Examination, 2009. Thus, a total of 280 posts of Assam Civil Service and other Allied Services were advertised to be filled up through the Combined Competitive Examination, 2009.

3. Petitioners applied pursuant to the said advertisement. Preliminary examination was held on 11.12.2011. Petitioners came out successful in the said examination. Thereafter, they were admitted to the written (main) examination held from 27.05.2012 to 24.06.2012. According to the petitioners, they performed well in the said examination.

4. Notification dated 31.12.2012 was issued by Principal Controller of Examination, APSC (Respondent No. 5) declaring the result of the main (written) examination. A total of 582 candidates were called to appear in the viva-voce test to

be held from 18.01.2013 to 14.02.2013. But the petitioners were not included in the list of 582 candidates.

5. According to the petitioners, the number of candidates called for the interview would be in the ratio of 1:2 or slightly more whereas in the earlier examinations, APSC had followed the ratio of 1:4. Petitioners have further contended that in an affidavit filed by APSC in WP(C) No. 2755/2009 (Ratul Kumar Das & Ors -vs- State of Assam & Ors), APSC had taken the stand that for the viva-voce test relating to Combined Competitive Examination, 2006 conducted by the APSC for filling up 116 posts of Assam Civil Service and other Allied Services, though it had called 600 candidates, it ought to have interviewed 464 candidates being in the ratio of 1:4. Accordingly, petitioners have contended that four times the number of vacancies should be called for the interview, in which case, there is a reasonable possibility of them being included in the short-listed candidates for the interview.

6. Considering the subject matter of the writ petition, this Court by order dated 07.02.2013 directed the learned Standing counsel, APSC to file affidavit at the motion stage itself. He was also directed to produce before the Court in sealed cover the cut off marks of the different categories of candidates who were called for the interview and the marks obtained by the four petitioners in the written (main) examination.

7. APSC has filed affidavit on 19.02.2013. Stand taken in the said affidavit is that APSC had conducted the process of selection for filling up a total of 280 posts in the Assam Civil Service and other Allied Services through the Combined Competitive Examination, 2009. After result of written (main) examination was declared on 31.12.2012, a total of 582 candidates were called to appear in the interview against 280 posts in the ratio of 1:2 or slightly higher under the provisions of APSC Combined

Competitive Examination Rules, 1989 (1989 Rules) framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. For the written (main) examination and the interview, the procedure followed is that candidates who obtain minimum qualifying marks in the written test as may be fixed by the APSC shall be called for the interview. The number of candidates to be called for the interview will be about twice the number of vacancies to be filled up, having regard to the provisions of Assam Scheduled Caste and Scheduled Tribe (Reservation of Vacancies in Services and Posts) Act, 1978. The interview segment carries 200 marks with no qualifying marks. Accordingly, a total of 582 candidates were called for the interview against 280 posts which was slightly higher than the ratio of 1:2 as some candidates had secured equal marks. Interview programme started from 18.01.2013 and was completed on 14.02.2013. APSC has stated that though it had called candidates for interview for recruitment to Assam Civil Service and other Allied Services through the Combined Competitive Examination, 2006 in the ratio of 1:4, the same was not in accordance with the 1989 Rules. It was a mistake on the part of the APSC which the APSC would not like to repeat in the present examination.

8. APSC has filed additional counter affidavit on 12.03.2013. It is stated that a meeting of APSC was held on 07.03.2013 which once again perused the minutes of the APSC meeting held on 29.12.2012 and 31.12.2012. APSC noted that the APSC (Procedure and Conduct of Business) Rules, 1986, particularly Rule 38 thereof, lays down necessary guidelines as to how many candidates may be considered for being admitted to viva-voce interview. Though the provision of the 1989 Rules were discussed, those were not mentioned in the minutes but through inadvertance reference was made to APSC (Procedure and Conduct of Business) Rules, 2010 (2010 Rules). It is stated that this error occurred as because in conducting the day to

day business, reference is frequently made to the 2010 Rules. As per the 1989 Rules, selection of candidates for the main examination from the preliminary examination was taken in the ratio of 1:11-12 against the number of vacancies. Though the Rule is silent about the number of candidates to be selected for the viva-voce interview, a formula / ratio was incorporated in the first advertisement issued on the basis of the aforesaid 1989 Rules where the ratio was 1:2. APSC also perused the Assam Fiscal Responsibility and Budget Management Act, 2005 which provides for making recommendation for appointment in the ratio of 1:1. Though previously the number of candidates called for interview was more than the ratio of 1:2 and the number of candidates recommended for appointment was also more than the ratio of 1:1, but in view of the aforesaid Act now in force, APSC decided to call candidates for viva-voce test in the ratio of 1:2. APSC also perused the pattern followed by Union Public Service Commission (UPSC) and a few Public Service Commissions of other States. It was found that most Public Service Commissions follow the ratio of 1:2. Rule 38 of the 1986 Rules provides that as soon as tabulation is complete and submitted to the APSC, it will decide as to how many candidates are considered fit for being admitted to personality test / interview. Accordingly, in the present case, APSC decided to call candidates in the ratio of 1:2. APSC has stated that going by past experience, it is desirable to limit the interview segment to only the best candidates and not to have a large pool of candidates.

9. Petitioners have filed rejoinder affidavit. They have contended that no such ratio or procedure as contended by the respondents are prescribed in the 1989 Rules. Therefore, decision of APSC not to invite candidates for viva-voce test in the ratio of 1:4 is unjustified and illegal. In the rejoinder affidavit, petitioners have raised a few new grounds. One such ground is that 3 out of the 4 APSC members are not

qualified as per Regulation 4 of the APSC Regulations, 1951 as they did not hold office under the Government of India or under the Government of Assam for at least 10 years. Therefore, on 29.12.2012 and 31.12.2012, when the APSC met and finalized the candidates for the interview, it was not properly constituted as per mandate of Regulation 4 of the APSC Regulations, 1951. It is further contended that the total strength of APSC is 7 members including its Chairman as per Rule 5 of the APSC (Procedure and Conduct of Business) Rules, 1986. Two-third of the total strength i.e. 5 members would form the quorum. As APSC had only 4 members including the Chairman on 29.12.2012 and 31.12.2012, there was no quorum and, consequently, there was no valid meeting of APSC on those two dates.

10. Mr. P.D. Nair, learned counsel for the petitioners submits that recommendation of candidates for the interview in the ratio of 1:2 is neither reasonable nor justified. APSC has made departure from past practice without any reasonable basis, causing prejudice to the petitioners as in the event of a higher ratio, perhaps the petitioners would have been included in the short-listed candidates for the interview. He also submits that there was no valid meeting of APSC on 29.12.2012 and 31.12.2012 and, therefore, the notification issued on 31.12.2012 notifying 582 candidates for the interview would be of no legal consequence.

11. Mr. C. Baruah, learned Standing counsel, APSC submits that APSC has acted in accordance with law and in a fair manner. The process of selection has been completed and now only the results are to be declared.

12. Mr. H.K. Mahanta, learned counsel appearing for the Personnel Department, Government of Assam submits that there is no merit in the writ petition. APSC has conducted itself as per Rules.

13. Submissions made have been considered.
14. Short point for consideration is whether APSC committed any illegality in calling candidates in the ratio of 1:2 for the interview.
15. The explanation given by the APSC for calling candidates for the interview in the ratio of 1:2 does not appear to be unreasonable or arbitrary. The views of the APSC is reflected in the minutes of the meeting held on 07.03.2013. The relevant portion of the minutes is as under:-

“The Commission recalls the reasons for considerations of fixing the ratio at 1:2. The C.C. Examination is conducted as per provision of the Assam Public Services Combined Competitive Examination Rules 1989. The Rule provides for selection of candidates for the Main examination from the Preliminary examination at the ratio of 1:11-12 against the number of vacancies which the Commission adhered to. But the Rule is silent about the number of candidates to be selected for the viva voce interview. However, a formula/ratio was incorporated in the first advertisement issued on the basis of the aforesaid Rule which tantamounts to have become a part and parcel of the Rules framed as aforesaid. It is almost identical to the ratio of 1:2.

The Commission has also gone through the provisions of the AFRBM Act, 2005 which envisages for making recommendation for appointment at the ratio of 1:1. Previously, the number of candidates called for viva voce interview from the written part of the C.C. (Main) Examination was more than the ratio of 1:2. Also the number of candidates recommended for appointment was more than the ratio of 1:1. But in view of the AFRBM Act, 2005 now in force, it was considered justified to call candidates for viva voce interview in the ratio of 1:2.

The Commission also perused the pattern of UPSC and few more State PSCs in the matter of selection of candidates for viva-voce interview. UPSC selects at the rate of 1:2, Andhra Pradesh PSC selects at the rate of 1:2. In case of Arunachal Pradesh PSC, the rule provides for selection at the rate between 1:2 and 1:3. In case of Tamil Nadu Judicial Service, the ratio is 1:2.

The Commission sincerely desired that only the best of the best candidates figure in the viva-voce interview and selected for the premier services of the State Government. If the no of candidates is very high, there will be a huge gap between the marks obtained by the topper and the last position holder. It may so happen that hypothetically even if the entire 200 marks meant for viva-voce interview is awarded to such candidates, the candidates will not even come up to the level of only the written marks of the candidates in the front line. In WP(C) No. 2755/2009 before the Hon'ble Gauhati High Court, one of the contentions of a respondent was that though the UPSC follows the ratio of 1:2 while calling candidates for interview, the APSC had called four times the number of posts. The Hon'ble Court held that calling of such excess candidates would be an empty formality even if they are given full credit in interview. The Commission considered that enhancing the No. of candidates, would not only be futile exercise but also cause mental commotion to hundreds of young candidates who would have appeared the viva-voce interview in expectation but without any prospect for selection.

In view of above, the Commission justifies its decision of calling candidates for the viva voce interview from the written part of C.C. (Main) Examination in the ratio of 1:2.”

16. This Court finds no infirmity in the decision of the APSC. In the absence of any statutory requirement, APSC has decided to limit the number of candidates in the interview segment in the ratio of 1:2, which appears reasonable and justified. Having a large pool of candidates may result in losing of the competitive edge in the final round of selection.

17. Regarding the other grounds raised by the petitioners in the rejoinder affidavit, the Court would not like to enter into an examination of the same. Firstly, those grounds have not been pleaded in the writ petition but raised in the rejoinder affidavit for the first time. Secondly, petitioners had appeared in the preliminary examination as well as in the written examination knowing fully well about the composition of the APSC. They took a calculated chance. Had they qualified for the interview, this issue perhaps might not have been raised, that too, in the rejoinder affidavit without amending the main writ petition. Petitioners could not qualify in the written test as can be seen from the marks obtained by them as furnished by the learned Standing counsel, APSC in sealed cover. The Court is therefore of the view that aforesaid grounds need not be gone into at the instance of the petitioners, who are unsuccessful candidates.

18. For the aforesaid reasons, this Court finds no merit in the writ petition, which is accordingly dismissed.

19. The sealed cover, which was opened, is re-sealed and returned back to Mr. C. Baruah, learned Standing counsel, APSC.