

GAHC010118882019



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/3581/2019**

ARIF AHMED CHOUDHURY  
S/O MUKTAR HUSSAIN AHMED CHOUDHURY, R/O F.A. AHMED ROAD, SIX  
MILE, GUWAHATI, DIST.-KAMRUP (METRO), ASSAM, PIN-781022

VERSUS

THE ASSAM PUBLIC SERVICE COMMISSION AND 2 ORS.  
REP. BY ITS CHAIRMAN, HAVING HIS OFFICE AT JAWAHARNAGAR  
KHANAPARA, GUWAHATI, DIST.-KAMRUP (METRO), ASSAM, PIN-781022

2:THE SECRETARY  
ASSAM PUBLIC SERVICE COMMISSION  
HAVING HIS OFFICE AT JAWAHARNAGAR KHANAPARA  
GUWAHATI  
DIST.-KAMRUP (METRO)  
ASSAM  
PIN-781022

3:THE PRINCIPAL CONTROLLER OF EXAMINATIONS  
ASSAM PUBLIC SERVICE COMMISSION  
HAVING HIS OFFICE AT JAWAHARNAGAR KHANAPARA  
GUWAHATI  
DIST.-KAMRUP (METRO)  
ASSAM  
PIN-78102

**Advocate for the Petitioner : MR G Z AHMED**

**Advocate for the Respondent : SC, APSC**

Linked Case : WP(C)/1555/2019

UTPAL PACHANI  
S/O. INDRESWAR PACHANI  
RESIDENT OF VILLAGE JELENGI TOOP  
P.O. JELENGI TOOP  
DISTRICT- JORHAT  
ASSAM. PIN- 785682.

VERSUS

THE STATE OF ASSAM AND 3 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
EDUCATION (HIGHER) DEPARTMENT  
DISPUR  
GUWAHATI-781006.

2:THE CHAIRMAN  
ASSAM PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR  
GUWAHATI-781022.  
3:THE SECRETARY

ASSAM PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR  
GUWAHATI-781022.  
4:THE PRINCIPAL CONTROLLER OF EXAMINATION

ASSAM PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR  
GUWAHATI-781022.

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Advocate for : MR. P K ROYCHOUDHURY  
Advocate for : SC  
HIGHER EDU appearing for THE STATE OF ASSAM AND 3 ORS.

Linked Case : WP(C)/1374/2019

DEBAJYOTI BISWAS  
S/O LATE SANTI KR. BISWAS  
R/O HOUSE NO. 49  
WARD NO. 7  
ARANYAK

BARPETA ROAD

P.O. BARPETA

P.S. BARPETA  
DIST. BARPETA  
ASSAM  
PIN -781315

VERSUS

THE STATE OF ASSAM AND 3 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
EDUCATION HIGHER DEPARTMENT  
DISPUR  
GUWAHATI - 781006.

2:THE CHAIRMAN

ASSAM PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR  
GUWAHATI - 781022.

3:THE SECRETARY

ASSAM PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR  
GUWAHATI- 781022.

4:THE PRINCIPAL CONTROLLER OF EXAMINATION

ASSAM  
PUBLIC SERVICE COMMISSION  
JAWAHAR NAGAR  
GUWAHATI  
ASSAM  
PIN -781022.

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BEFORE

**THE HON'BLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

Advocates for petitioner in  
W.P.(C) 3581/2019  
Advocates for petitioner in

: Mr. G.Z. Ahmed, Mr. A.H. Hussain.

WP(C) 1374/i9 & WP(C) 1555/19 : Mr. P.K. Roy Choudhury, Mr. N.G. Kundu,  
 : Mr. G. Deka.  
 Advocates for respondents (APSC) : Mr. T.J. Mahanta, Senior Advocate.  
 : Mr. P.P. Dutta.  
 Advocates for Higher Education  
 Department: : Standing Counsel, Higher Education.  
 Date of hearing : 25.03.2021.  
 Date of judgment : 18.06.2021.

### **JUDGMENT AND ORDER**

Heard Mr. P.K. Roy Choudhury and Mr. G.Z. Ahmed, learned counsel for the petitioners. Also heard Mr. T.J. Mahanta, learned senior counsel, assisted by Mr. P.P. Dutta, standing counsel for APSC and Mr. G. Bordoloi, learned Govt. Advocate.

#### **W.P.(C) 3581/2019**

2) The petitioner states that he is a post graduate in law and that having qualified in the Combined Competitive Examination, 2009 conducted by APSC, he was appointed as Inspector of Taxes w.e.f. 19.08.2003 and at the time of filing the writ petition, he was posted as Inspector of Taxes, Unit-C, Guwahati, which is a Pay Band-3 post. The case of the petitioner is that being eligible, he applied for Assam Civil Services and Allied Services under Combined Competitive Examination, 2016 conducted by APSC for section to Pay-Band-4 posts. The petitioner was allotted Roll No. 091900124. The preliminary examination was held on 02.07.2017, wherein he had qualified and he appeared in the Main Examination on 18.02.2018 for General Studies, on 27.02.2018 for Persian-I and II, on 10.03.2018 for Political Science-I and II and on 18.03.2018 for General English. The petitioner qualified the Main Examination and was given a call letter dated 15.10.2018 for appearing in viva-voce interview for Assam Civil Services and Allied Services under Combined Competitive Examination, 2016, which was scheduled on 30.10.2018. However, the name of the petitioner did not figure in the select list. Thereafter, by submitting a RTI application dated 21.11.2018 before the State Public Information Officer, APSC, the petitioner had applied for marks obtained by him in his papers of General Studies, Persian-I and II, Political Science-I and II and General English as well as in viva-voce examination along with photocopy of answer scripts and the grand total marks obtained by all successful candidates of Combined Competitive Examination, 2016.

However, the Secretary, APSC had uploaded the impugned notification no. 230PSC/GRC-1/2017-18 dated 27.12.2018 in its website, *inter alia*, providing that in terms of order dated 06.09.2018, passed by the Supreme Court of India in the case of *Angesh Kumar & Ors. Vs. Union Public Service Commission & Anr., Review Petition (Civil) Diary No. 24763/2018 in Civil Appeal Nos. 6159-6162 of 2013 decided on 06.09.2018*, [hereinafter referred to as *Angesh Kumar (II)*] no photocopy of the answer scripts of candidates of Combined Competitive Examination, 2016 can be issued. However, subsequently, the marks obtained by the petitioner were uploaded on 14.02.2019, and he had obtained 839 marks, but the marks obtained by successful candidates were not uploaded.

**W.P.(C) 1374/2019**

3) The case of the petitioner is that he had secured M.A. (English) degree with first class from Jawaharlal Nehru University in the in the year 2002. Thereafter, he had cleared his Ph.D. (English) in the year 2017 from Gauhati University. The petitioner had also cleared the National Eligibility Test (NET) for Lectureship in the year 2014. The petitioner is working as Assistant Professor in the Department of English in Bodoland University from 24.09.2012 onwards. The petitioner applied for APSC Combined Competitive Examination (Prelims), 2016 and results were declared vide notification dated 25.10.2017, wherein the petitioner with Roll No. 131200042 was declared qualified. The petitioner appeared in APSC Combined Competitive Examination (Mains), 2016 from 18.02.2018 to 25.03.2018 and the petitioner was declared successful vide notification dated 01.10.2018. The petitioner was called for viva-voce examination on 03.11.2018. The final results were declared vide notification dated 16.11.2018 and the petitioner's roll number did not figure as successful candidate. Accordingly, on 17.11.2018, the petitioner sought for the following information by his RTI application, viz., (a) Marks allotted to Roll No. 131200042 in each paper, (b) Marks awarded to Roll No. 131200042 in viva, (c) Cut off marks of each category (Gen/OBC/SC/ST/PH, etc.) in Mains and Final List, (d) Marks allotted to qualified candidates and their category (Gen/OBC/SC/ST/PH, etc.), and (e) Photocopies of OMR Answer Sheet of English, General Studies, English (Optional), Education (Optional) (Roll No. 131200042). The APSC declared the marks of the candidates who had appeared in the viva-voce test by publishing it in the website of APSC and the petitioner secured the following marks, viz.,

General Study (158), General English (160), Edu-I (122), Edu-II (150), Eng-I (154), Eng-II (140), Grand Total- (864).

**W.P.(C) 1555/2019:**

4) The case of the petitioner is that he is a MA in Arts (English) from Institute of Open and Distance Learning in the year 2010. The petitioner is working as Post Graduate Teacher in the English subject at Lakhganj H.S. School, Dhubri from 02.11.2017. The petitioner applied for APSC Combined Competitive Examination (Prelims), 2016 and results were declared vide notification dated 25.10.2017, wherein the petitioner with Roll No. 112500545 was declared qualified. The petitioner appeared in APSC Combined Competitive Examination (Mains), 2016 from 18.02.2018 to 25.03.2018 and the petitioner was declared successful vide notification dated 01.10.2018. The petitioner was called for viva-voce examination on 03.11.2018. The final results were declared vide notification dated 16.11.2018 but his roll number did not figure as successful candidate. Accordingly, on 11.02.2019, the petitioner had submitted a representation to the APSC authorities for furnishing him photocopy of the answer sheet, cut off mark for CCE, 2016, cut of marks of each category (Gen/OBC/SC/ST/PH, etc.) in mains and final exams, photocopy of his answer sheets of General English, General Study, English (Optional) and Education (Optional). Subsequently, the APSC declared the marks of the candidates who had appeared in the viva-voce test by publishing it in the website of APSC and the petitioner secured the following marks, viz., General Study (218), General English (125), Edu-I (156), Edu-II (143), PSc-I (108), PSc-II (106), Grand Total- (856).

5) Thus, by filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for setting aside and quashing of notification no. 230PSC/GRC-1/2017-18 dated 27.12.2018 issued by the Secretary, Assam Public Service Commission (hereinafter referred to as 'APSC' for short) to the extent it declares that the APSC cannot furnish photocopy of answer scripts to the candidates of Competitive (Main) Examination, 2016, for a direction to the APSC to furnish photocopy of answer scripts to the petitioner and fro a direction to the APSC to disclose to the petitioner the marks obtained by candidates who were recommended for appointment by the APSC in its website as per

notification dated 27.12.2018.

6) The learned counsel for the petitioners have submitted that the petitioners are meritorious and are well placed in the society. It is also submitted that the petitioners are Master Degree holders. It is submitted that vide notification no. 165PSC/RR-1/87-88 dated 02.08.2010, the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 was notified by the APSC which was holding the field as on the date when the petitioners had submitted their application for being furnished with a copy of their answer scripts. It is submitted that this writ petition would be maintainable to enforce the said Rules. It is submitted that as per Clause 70 thereof, provides for preservation of answer scripts, which is not for nothing, but the underlying purpose would be to provide copy of answer scripts. Moreover, it is submitted that by an interim order dated 18.03.2019, passed in W.P.(C) 1555/2019, the respondent nos. 2 and 3 were directed not to destroy the answer scripts of the petitioner. Relying on paragraphs 9 and 10 of the case of *Union of India Vs. Angesh Kumar, (2018) 4 SCC 530* [hereinafter referred to as *Angesh Kumar (I)*] it is submitted that the answer scripts of the petitioners do not contain any sensitive information. It is further submitted that in the present case in hand, the APSC does not do scaling of marks as is being done by UPSC and therefore, there was no impediment in providing copy of answer scripts. It is submitted that the Division Bench of this Court in the case of *Hamen Bharali & Ors. Vs. State of Assam & Ors., (2010) 4 GLT 522: (2009) 0 Supreme(Gau) 722*, had allowed the writ petition by directing the APSC to furnish copy of answer scripts and accordingly, it is submitted that the said ratio would be binding on this Single Bench. It is also submitted that in the case the Court is of the view that providing of copy of answer scripts would expose the identity of the examiners, orders may be passed to enable the APSC to mask the portion containing signatures or marking by paper examiners. In this regard, reliance is placed on the case of *Kerala Public Service Commission & Ors. Vs. State Information Commission & Ors., (2016) 3 SCC 417*.

7) Per contra, the learned senior counsel for the APSC has heavily relied on para 5 of the case of *Angesh Kumar (I) (supra)*. It is submitted that the petitioners in W.P.(C) 3581/2019 and 1374/2019 had submitted their RTI applications on 21.11.2018 and

17.11.2018 respectively and the petitioner in W.P.(C) 1555/2019 had submitted a representation on 11.02.2019. However, the case of *Angesh Kumar (I) (supra)* was decided on 20.02.2018, which was followed by the order dated 06.09.2018 passed by the Supreme Court of India in the review petition, being *Angesh Kumar (II)*, which was the basis of issuing the impugned APSC notification dated 27.12.2018.

8) At the outset, it is deemed appropriate to mention herein that it is the admitted case of the petitioners that the marks obtained by them in the APSC CCE, 2016 had been uploaded by the APSC in their website. Moreover, as per the order sheet dated 18.03.2021, this Court had recorded that pursuant to the order dated 22.02.2021, passed by this Court, the learned standing counsel for the APSC had produced the extract of marks obtained by the petitioners herein in the viva voce test. However, the learned counsel for the petitioners were not ready to be satisfied with the disclosure of marks obtained by the petitioner in the viva voce test and had made their respective submissions in support of the prayers made in these writ petitions.

9) It is seen that the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 does not contain any Rules relating to providing of copy of answer script to the candidates. Rule 70 thereof, on which the petitioners have relied is quoted below:-

*“70. Preservation of scripts*

*(i) The used answer scripts shall be preserved atleast for six months from the date of declaration of results.*

*(ii) In case of candidates whose results are challenged in the Court, their scripts shall be preserved till the final disposal of the case or cases.*

*(iii) When the scripts are destroyed, it shall be done so in presence of the Secretary and the Principal Controller of Examinations in the office premises and records of such matters shall be maintained.*

*(iv) The Commissioner shall not entertain any request for re-examination of answer scripts form candidates or form any other person.”*



10) From the aforesaid Rule 70, it appears that generally the answer scripts is to be preserved till 6 (six) months, and if the result of any candidate is challenged before the Court, Rule 70(ii) provides for preserving the answer scripts till final disposal of the case(s). Therefore, from Rule 70 of the aforesaid Rules, it cannot be culled out that the purpose of preserving answer scripts is to facilitate issuance of copy under RTI Act.

11) From the scheme of RTI Act, it appears that Sections 3 and 6 of the RTI Act confer right to information, apart from statutory obligation to provide specified information under Section 4. However, Sections 8, 9 and 11 provide for exemption from giving of information as stipulated therein.

12) In the case of *Angesh Kumar (I) (supra)*, the Supreme Court of India had observed as follows:-

*10. Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. If rules or practice so require, certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters.*

13) It is not disputed by the learned senior standing counsel for APSC that unlike UPSC, the APSC does not practice scaling of marks. However, the other problems in showing evaluated answer sheets would be similar to those morefully referred in paragraph 8 of the case of *Angesh Kumar (I) (supra)*, where the Supreme Court of India had extracted the relevant paragraph of the case of *Prashant Kumar Chakkarwar Vs. UPSC, (2013) 12 SCC 489*. The learned counsel for the petitioner had submitted that paragraph-10 of the case of

*Angesh Kumar (I)* had made an exception to exams other than UPSC. The Court is unable to accept the said contention because in paragraph-10, reference is made to exams conducted by other academic bodies and there is nothing on record to show that APSC is an academic body.

14) Under the circumstances, as the impugned notification dated 27.12.2018 is based on the ratio laid down in the case of *Angesh Kumar (I) (supra)* and *Angesh Kumar (II) (supra)*, the cases cited by the learned counsel for the petitioner is distinguishable on facts. Therefore, following the case of *Angesh Kumar (I) (supra)*, where direction by High Court for issuance of answer script was interfered with, the present writ petition fails and are dismissed. No interference is called for in respect of the APSC notification no. 230PSC/GRC-1/2017-18 dated 27.12.2018.

15) The parties are left to bear their own cost.

16) Before parting with the records, the Court is inclined to provide that the APSC and its authorities, officials and staff shall not destroy the answer scripts of the petitioners in these three writ petition for a period of 6 (six) weeks from the date of this order.

**JUDGE**

**Comparing Assistant**