

GAHC010127262017



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

**Case No. : WP(C)/2345/2017**

PRANAB KUMAR SAHA

VERSUS

THE STATE OF ASSAM and 3 ORS.  
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,  
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS, SACHIVALAYA,  
DISPUR, GUWAHATI-781006.

2:THE DIRECTOR

FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS  
ASSAM BHANGAGARH. GUWAHATI-781005.

3:THE SELECTION COMMITTEE  
CONSTITUTED FOR SELECTING INCUMBENTS FOR APPOINTMENT TO  
THE POST OF SUB-INSPECTOR

FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS. IN PURSUANCE TO THE  
ADVERTISEMENT NOTIFIED UNDER MEMO NO. DSE.05/2008/112 DTD.  
16/08/2008. C/O. THE DIRECTOR

FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS  
ASSAM  
BHANGAGARH  
GUWAHATI-781005.

4:SRI SURAJIT CHAKRABORTY

**Advocate for the Petitioner** : MR.B D GOSWAMI

**Advocate for the Respondent** : MS.S DASR-4

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**JUDGMENT & ORDER (ORAL)**

**Date : 13-12-2023**

Heard Mr. B.D. Goswami, learned counsel for the petitioner. Also heard Mr. D. Mazumdar, learned Additional Advocate General for the State authorities and Mr. F.U. Borbhuiya, learned counsel for the respondent No. 4.

2. The petitioner participated in a selection process pursuant to an advertisement dated 16.08.2008 amongst others, for the post of Sub-Inspector in the Food and Civil Supplies Department. Without going into much detail and to put the matter in its proper perspective, the allegation of the petitioner is that the selection comprises of two stages of written test and viva voce and the answer scripts of the petitioner which were submitted by him later on came to be known that it had contained two tick marks in respect of one answer and accordingly, the entire answer scripts of the petitioner stood invalidated.

3. To progress with the matter further we heard the respondents and it was the stand of the respondents that it is the petitioner who was responsible for giving two tick marks for one answer. To decide the rival contentions we required the matter to be enquired by the CID by our earlier order dated

30.03.2023.

4. The result of the enquiry by the CID is made available before the Court by means of a report dated 11.04.2023 which is extracted as below:

*“During enquiry, I have approached Sri Dipankar Nath, Senior Advocate, Assam, Guwahati High Court and collected the original answer script of Roll No. 7301, which belongs to the petitioner Sri Pranab Kr. Saha and also collected two copies of FSL, Kahilipara examination reports. After going through the answer scripts I got to know that the paper was objective and the candidates have to tick the right option. I found out that in most of the cases two tick marks using blue ink are there whereas in some question only one option was ticked using blue ink. The examiner who checked the answer script used red colour ink, but the tick mark, used to mark the right answer, by the examiner was over written and made a cross to show them as wrong. The examiner has used red ink to write the marks obtained as 66, which is however not over written.*

*Moreover, I perused both the FSL reports and compared them with original answer script of Roll No.7310 and got to know that the ink used in writing the 'Roll No.' and the 'Name of Centre' in that answer script and one of the answers ticked was of same pen. After going through all the answers ticked by the said ink (as per FSL Report), the candidate with Roll No. 7310 would have secured more than 66. Hence, it can be ascertained that the other ticks in blue colour was not written by the petitioner. We can assume that the written script of petitioner was tempered by someone else during examination of the answer script after collection of the answer scripts at examination centre.*

*Dr. Daya Nanda Pathak, the then Principal of Pragjyotish College, Guwahati distributed the said answer scripts amongst 67 persons under his disposal and Dr. Ajit Kr. Tamuli, the then Reader of Assam University, Diphu Campus distributed the answer scripts amongst 04 persons, namely, Sri Rabindar Teron, the then Asst. Professor of Assam University, Diphu Campus, Sri Riajur Rahman, Senior Lecturer of Diphu Govt. College, Sri Debasish Bezbaruah, the then Faculty (Journalism) of Diphu Govt. College, Sri Nilutpal Barthakur, the then Faculty cum System Administrator of Diphu Govt. College for examination.*

*It is worth mentioning that the copy of the petitioner of this instant case Sri Pranab Kr. Saha was sent to Dr. Ajit Kr. Tamuli as he belongs from Barpeta Centre.*

*I have also verified the signatures of the examiners under Dr. Ajit Kr. Tamuli but found three signatures which are unidentified. The signature of the examiner found in the answer script of petitioner Sri Pranab Kr. Saha is also not identified. Dr. Ajit Kr. Tamuli, being the head examiner of the said answer script also failed to identify the person who examined it. Despite my regular questioning, he failed to recognize the examiner who had examined and signed the said answer script.*

*That Sir, after concluding my Preliminary enquiry within fixed stipulated time, I*

*come into a conclusion that there were a whole lot of anomalies in the said requirement process particularly during the examination of answer scripts. It can also be concluded that on the answer script of the petitioner Sri Pranab Kr. Saha, two blue colour ticks in the answers has been found using two different inks/pen. The petitioner has submitted the answer script at the examination hall after ticking single ticks as per his knowledge. The answer script was first examined by an unidentified examiner under Dr. Ajit Kumar Tamuli, who examined the answer script and found 71 seventy one questions correct (as per the provided answer key), which he/she marked as correct tick using red ink/pen, and 29 questions wrong (as per the provided answer key), which he/she marked as cross using red ink/pen, which comes to a total of 106.5 marks. But surprisingly he/she put the full marks secured as 66 and also put his/her signature. Later, some unknown person, who has the authority to access the answer sheets, put an extra tick using different blue ink/pen and also the correct ticks was again crossed as wrong using a different red ink/pen, other than the one used by the said unknown examiner and brought the full marks secured by the petitioner to 66 to deselect his name from successful candidates. The same type of anomaly was also seen in some of the other answer scripts during a through scrutiny.*

*The actual motive and the person behind this anomaly could not be ascertained as most of the people associated with this selection committee unable to memorize with facts and circumstances and moreover the documents associated with this is also not available at the office of Food and Civil Supplies, Consumer Affairs and Legal Metrology.*

*However, it can be concluded that the double ticks using blue ink/pen in the answer scripts of the petitioner Sri Pranab Kr. Saha cannot be attributed by the petitioner as it was done by some other person who have not been identified yet and were associated with examination of answer scripts."*

5. A reading the report of the CID makes it discernible that the double tick marks against the single question in the answer scripts of the petitioner was not done by the petitioner himself but it may have been done subsequently when the answer scripts were deposited in the custody of the respondents. As the petitioner had not been called for in any further selection process as because his answer scripts in the written test itself was rejected and upon having the materials before us that the reasons for rejection is a result of certain acts on the part of the officials under the respondent authorities, we cannot hold that the petitioner to be responsible for the same.

6. As the answer scripts of the petitioner stood rejected on the ground of

there being two tick marks against one single question and having arrived at such that the petitioner was not responsible, which in other words would mean that some officials under the respondents must be responsible for it, the principle of equity would be applicable and the rejection of the answer scripts of the petitioner cannot be faulted with the petitioner.

7. Invoking the principles of equity we accordingly provide that it shall be deemed that the petitioner has successfully completed the stage of written test. Accordingly, although a number of years have passed by the petitioner be now be subjected to the subsequent viva voce examination.

8. On the other hand, Mr. D. Mazumdar, learned Additional Senior Government Advocate submits that in view of the CID report, the matter has been processed by the Government which is leading to the stage that the Commissioner and Secretary to the Government of Assam in the Food and Civil Supplies Department has now decided that the aspect shall be decided by another higher authority.

9. As we are invoking the principle of equity and in furtherance of the principle that wrong doer cannot be given the advantage, we accordingly pass our order as indicated above that let the petitioner be now be subjected to the next process of selection i.e. allow him to participate in the viva voce examination.

10. The requirement be done within a period of one month from the date of receipt of certified copy of this order.

Writ petition stands disposed of in the above terms.

**JUDGE**

**Comparing Assistant**