

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WRIT PETITION(C) NO. 163 OF 2009

Shri Ningthoujam Devdas Singh, aged about 31 yrs.
s/o N.Ibochouba Singh, a resident of Keiranphabi Village,
P.O. & P.S. Moirang, Bishnupru District, Manipur..

.....Petitioner.

-Versus-

1. The State of Manipur through the Principal Secretary (Home), to the Government of Manipur, Manipur Secretariat Building, P.O & P.S. Imphal West District, Manipur.
2. The Jt. Secretary (Home), to the Government of Manipur, Manipur Secretariat Building, P.O & P.S. Imphal West District, Manipur.
3. The Director General of Police, Manipur, P.O & P.S. Imphal West District, Manipur.

.....Respondents

4. Shri Huidrom Sukumar.
5. Shri Punsiba Kabrambam
6. Shri Karam Budhachandra Khuman
7. Shri Potshangbam Dineshkanta Singh.
8. Shri Anilchandra Motum
9. Shri Aribam Nabakanta Sharma
10. Md. Abash Khan
11. Shri Moirangthem Gobardhon Singh.
12. Shri Chungkham Nabakumar Singh
13. Shri Heigrujam Darwin
14. Shri Laishram Sushil Singh
15. Shri Maimom Jiten Singh
16. Md. Shahid Khan
17. Shri Sagolsem Sanju
18. Shri Nongthombam Premjit Singh
19. Shri Ningombam Suresh Singh
20. Md. Zahir Shah
21. Shri Nongthombam Samson Singh
22. Shri Subachandra Konthoujam
23. Shri Waikhom Dhiraj Kumar Singh
24. Shri Nandeibam Jatishwar Singh
25. Shri Toijam Khogen Singh
26. Shri Laishram Bikramjit Singh
27. Shri Ongnam Premchand Singh
28. Shri Thounaojam Kiran Kumar Singh
29. Md. Salauddin
30. Mr. Nehgoulein Kipgen
31. Mr. Kilong Seiminthang Brandon
32. Mr. Haotingmang Vaiphei
33. Mr. Thangpu Kipgen
34. Mr. Palmei Palmeichung
35. Mr. Shialloa Khupneisong Aimol
36. Mr. T.Johnson Suantak
37. Mr. Anempu Kamson
38. Mr. L.L.Tezi
39. Mr. Chuingam Ningshen
40. Mr. Ngamgoulun Kipgen
41. Mr. Demark Telen
42. Mr. Thaimei Dominique Gaiphunlung

43. Mr. D.K.Angrung
44. Mr. Sharubam Joykumar Singh
45. Mr. Lourembam Hemchand Singh
46. Mr. Khangembam Sushil Kumar Singh
47. Shri Philem Bulbul Singh
48. Shri Kshetrimayum Uttam Kumar Singh
49. Shri Ningthoujam Karnakanta Singh
50. Shri Ngairangbam Johnson Singh
51. Shri Potshangbam Surajkumar Singh
52. Shri Heisnam Sanjoy Meitei
53. Shri Khumukcham Bedajit Singh
54. Mr. Lallun S.Gangte,
55. Mr. Jonah Raphuba Chawang,
56. Mr. T.Lian Khansang.
57. Mr. T.Thangtinlun Haokip

...Private Respondents

BEFORE
THE HON'BLE MR.JUSTICE N.KOTISWAR SINGH

For the Petitioner	:: Mr. Kh.Mani, Advocate
For the Respondents	:: Mr. S.Nepolean, Govt.Advocate Mr. Ajoy Pebam, Advocate
Date of hearing	
and Judgment & Order	:: 17.12.2013

JUDGMENT AND ORDER
(ORAL)

Heard Mr. Kh. Mani, learned counsel for the petitioner.
Heard also Mr. S.Nepolean, learned Government Advocate for the respondents No. 1, 2 and 3 and Mr. Ajoy Pebam, learned counsel for the private respondents No. 4, 11, 24, 25, 30, 40 and 57. The other private respondents have not appeared inspite of proper service of notice.

In the present petition, the petitioner has sought for quashing the order dated 26.2.2007 by which the result for appointment to 41 posts of Sub-Inspector of Police advertised was declared in which the name of the petitioner does not find place and for a direction to the respondents for re-evaluation of the answer sheets of the successful candidates.

The relevant facts as pleaded by the petitioner may be briefly stated as follows.

According to the petitioner, the petitioner being eligible for appointment to the post of Sub-Inspector of Police applied for appointment in terms of the public notice issued by the authorities on 8.10.2006 to 41 posts of Sub-Inspector of Police and accordingly, the petitioner participated in the recruitment process. The said

recruitment process consisted of Physical Efficiency Test carrying 20 marks, written tests for English and General Knowledge each carrying 30 marks and Viva-voce carrying 20 marks, thus, in all 100 marks. According to the petitioner, the petitioner had successfully passed in the Physical Efficiency Test and also had done very well in the written tests and also called for in the viva-voce. However, when the result was declared by the impugned order dated 26.2.2007, the name of the petitioner did not figure in the list of the successful candidates. According to the petitioner, even though the petitioner had performed extremely well in the aforesaid competition, he was not selected and being suspicious of the said tests, more particularly of the written tests, the petitioner applied for copies of the answer sheets which were duly furnished to the petitioner. According to the petitioner, on perusal of the copies of the answer sheets furnished to him, it has been found that though the petitioner had answered correctly in respect of Question Nos.1, 3, 6, 10, 11 and 28 for which he ought to have been awarded one mark each for each of these questions, it was found that he had been either given $\frac{1}{2}$ marks or none at all, thus, he was awarded less mark than he deserved. It is also the case of the petitioner that apart from award of less marks as mentioned above, in the Essay writing in the English subject, the petitioner, even though was given $3\frac{1}{2}$ marks, it was subsequently reduced to $2\frac{1}{2}$ marks without any proper authentication from the examiner. Therefore, according to the petitioner, the petitioner has been unduly deprived of marks which he deserved. In view of the above, the petitioner has contended that if the petitioner had been awarded the full marks for the correct answers he had given and if the said marks in the Essay writing had not been reduced, the petitioner would have been included amongst the successful candidates and accordingly, has sought for a direction to the respondents to declare him as a successful candidate so that he may be appointed to the post of Sub-Inspector of Police.

The State respondents have contested the writ petition and filed the affidavit-in-opposition. The main contention of the State respondents is that the marks have been given to the petitioner strictly in terms of the key answers, which have been prepared by the experts, provided to the examiners and as such, does not call for

any interference from this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

Mr. Kh.Mani, learned counsel for the petitioner has, however, argued that merely because of some wrong answer had been given in the key answer provided to the examiner, the petitioner cannot be deprived of the marks if the petitioner had indeed given the correct answers for the questions mentioned above.

In order to appreciate the rival contentions, it may be appropriate to reproduce the relevant questions and the answers given by the petitioner and also the answers as per the key answer.

"Question No.1. The term 'carat' is used to express the ____ of gold and the purest form of gold is _____.

Answer given by the petitioner : The term carat, is used to express the purity of gold and the purest form of gold is 24 carat.

Key Answer :- The term carat is used to express the purity of gold and the purest form of gold is 24 carats.

Question No.3. The disease which poses a serious threat to the whole world is _____.

Answer given by the petitioner : The disease which poses a serious threat to the whole world is HIV/AIDS.

Key Answer:- The disease which poses a serious threat to the whole world is AIDS.

Question No. 6. Dialysis is used to correct the functioning of _____.

Answer given by the petitioner : Dialysis is used to correct the functioning of Kidney.

Key Answer:- Dialysis is used to correct the functioning of Kidneys.

Question No.10. Who was the founder of the Indian National Army?.

Answer given by the petitioner : Netaji Subhas Chandra Bose was the founder of the Indian National Army.

Key Answer :- Subhas Chandra Bose was the founder of the Indian National Army.

Question No.11. Manipur got merged with the Indian Union on _____.

Answer given by the petitioner : Manipur got merged with the Indian Union on 15th October, 1949.

Key Answer:- Manipur got merged with the Indian Union on 2nd September, 1949.

Question No.28. The newly elected UN General Secretary Ban Kimoon is a diplomat from _____.

Answer given by the petitioner : The newly elected UN General Secretary Ban Kimoom is a diplomat from South Koreas.

Key Answer:- The newly elected UN General Secretary Ban Kimoon is a diplomat from South Korea."

In respect of Question No.1, it has been stated by Mr. S.Nepolean, learned Government Advocate that the petitioner has been awarded $\frac{1}{2}$ mark as the petitioner had given an incomplete answer in as much as the correct answer will be "24 carats" whereas the petitioner had written "24 carat", thus, because of the grammatical mistake in using singular form, he was given only $\frac{1}{2}$ mark. As regard this issue, this Court is of the view that deduction of $\frac{1}{2}$ marks by the authorities cannot be questioned in as much as it is a fact that there was a grammatical error on the part of the petitioner while writing the answer. Coming to Question No.3 with reference to which, as evident, the petitioner had given the answer "HIV/AIDS" whereas he ought to have given a single answer. Therefore, awarding $\frac{1}{2}$ marks for giving two alternative answers also cannot be faulted. Again, coming to Question No.6, the petitioner had been given only $\frac{1}{2}$ marks on the ground that his answer does not conform to the correct answer given in the key answer, which is "kidneys". This, however, this Court is not able to accept this as correct, in view of the fact that Dialysis can be also for treating malfunctioning of only one kidney and not necessarily both the kidneys. Therefore, it cannot be insisted that the correct answer should be "Kidneys". In view of the above, this Court is of the opinion that deduction of $\frac{1}{2}$ marks is not proper and he ought to have been awarded full mark for answering the said question.

Coming to Question No.10, it has been stated by Mr. S.Nepolean that the petitioner was given only $\frac{1}{2}$ marks as he had used the word "Netaji" prefixing the name of Subhas Chandra Bose though the correct answer as per the key answer is only "Subhas Chandra Bose". This Court is not able to agree with such a proposition in as much as it cannot be denied that it is a historical fact and common knowledge to everybody that "Subhas Chandra Bose" is also known as "Netaji Subhas Chandra Bose". Therefore, penalising the petitioner for using the word the "Netaji" cannot be considered correct and accordingly, this Court is of the opinion that the petitioner would be entitled to get full mark in relation to the aforesaid Question. Again, coming to the next Question No.11, the petitioner had given answer of the date of merger of Manipur with

the Indian Union as "15th October, 1949" for which he was not given any mark contending that the correct answer as per the key answer is "2nd September, 1949". However, it has been subsequently clarified by Mr. S.Nepolean, learned Government Advocate that as per the instruction received, the authorities themselves had revised the said correct answer as "21st September, 1949" in view of the fact that as per the "white paper on Indian States printed in India by the Manager Govt. of India Press, New Delhi and published by the Manager of Publication Delhi, 1950, the Instrument of Merger (Appendix XXXII) was signed by the Ruler on 21st September, 1949 and the administration was taken over by a Chief Commissioner on behalf of the Dominion Government on 15th October, 1949" as contained in the letter dated 6th November, 2013 from the I.G. Police Department, Manipur. Accordingly, Mr. Nepolean, learned Government Advocate submits that the correct answer would be "21.9.1949" as per the instruction received.

In this regard, Mr. Mani, learned counsel for the petitioner has drawn attention of this Court to documents enclosed as Annexure-D/1 to the additional affidavit filed by the petitioner, which is a copy of the Merger Agreement made between the Governor General of India and His Highness the Maharaja of Manipur, Annexure-D/2, which is a copy of the order dated 15th October, 1949 issued by the Ministry of States, Government of India and also Annexure-D/3, which is the notification issued by the Government of Manipur to show that the date of merger of the State of Manipur with the Union of India was 15.10.1949. In this connection, it may be observed that this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India would not normally go into the veracity, correctness or otherwise of the dates of historical events. However, a perusal of the aforesaid copies of the documents would clearly show that even though the agreement was signed on 21.9.1949, it has been specifically provided in Article I of the said Agreement that ceding of authority, jurisdiction and powers in relation to the governance of the State of his Highness of Maharaja of Manipur will be with effect from 15th October, 1949, from which date, the Dominion Government will be competent to exercise of powers, authority and jurisdiction. Further, the order

dated 15.10.1949 issued by the Ministry of States, Government of India also clearly indicates that from 15.10.1949, the Ministers in Manipur State shall cease to function and the Legislature of the State shall stand dissolved. Similarly, in the notification dated 15.10.1949 issued by the Chief Commissioner, Government of Manipur, it has been stated that with effect from midday of Saturday the 15th October, 1949, the Minister of Manipur shall cease to function and shall relinquish charge of the portfolios held by them and with immediate effect from all the portfolios were taken over by the Chief Commissioner and the legislature of Manipur shall also stand dissolved with effect from midday of Saturday, the 10th October, 1949. Therefore, perusal of the aforesaid documents would clearly show that the merger of State of Manipur was to take effect 15.10.1949 even though the Agreement was signed on 21st September, 1949. In view of the aforesaid irrefutable documents whose veracity has not been denied by the State respondents, this Court also could come to the conclusion that it was on 15.10.1949 that the State of Manipur got merged with the Union of India and accordingly, this Court would take the view that the date of "15.10.1949", which has been given as the correct answer by the petitioner for Question No.11 would be the correct one and accordingly, the petitioner ought to have been awarded with full marks in respect of the said Question No.11. This Court however, would hasten to add that this finding is based on the documents so produced by the petitioner and not controverted by the State respondents for the purpose of consideration of the issue involved in this petition. Otherwise also, as the respondents authorities have admitted that the answer given in the key answers is not correct, all those candidates who had attempted the said question ought to be awarded full one mark for the same.

Coming to the Question No.28, the authorities had deducted ½ mark as the petitioner had given the answer as "South Korea". The respondents have stated that the petitioner had been awarded only ½ mark as it was grammatically wrong to mention "South Korea" as "South Koreas". In view of the above, this Court finds the marking as reasonable.

Coming to the issue of marking in the essay writing, it is clearly evident and apparent on the face of record that the marks "3½" is clearly visible on the answer script which had been subsequently altered to "2 ½" marks. It is also seen that there is no authentication by any of the examiners or by the competent authority for the reduction of the marks to 2 ½ and discrepancy in the aforesaid marking. Therefore, this Court is of the view that since the said deduction was unauthorised, the petitioner could not have been deprived of the original marks of 3½ awarded to the petitioner.

This Court would like to observe that normally this Court in exercise of jurisdiction under Article 226 of the Constitution would not embark upon the exercise of verifying the correctness of answers in a competitive examination conducted by experts, yet, it may be noted that when such mistakes are too eliminatory and basic and apparent which do not require any extensive and elaborate scrutiny requiring expert knowledge and detail investigation, the hands of the Court may not be tied and could proceed to undertake the said exercise itself as being done in the present case.

Accordingly, this Court is of the view that the authorities would be required to re-evaluate the answers given by the petitioner in the light of the observations made above and if it is found that the petitioner has secured more marks than any of the successful candidates who have been appointed, the petitioner would also be entitled to be included in the Select List for the purpose of appointment to the post of Sub-Inspector of Police.

It has been submitted by Mr. S.Nepolean, learned Government Advocate that all the 41 posts have already been duly filled up and as such, it may not be possible to appoint the petitioner at this stage.

As regards this contention, this Court is of the view that that said contention cannot come in the way of the right of the petitioner for, if the petitioner had been wrongly deprived of marks which he had rightfully deserved, it was not his fault and he cannot be penalised for the same, and it would be for the authorities to take necessary steps to ensure that the petitioner is given his due and given appointment, if he is found more meritorious than any of the appointed candidates on the basis of the exercise so undertaken as directed above. In such an event, it would be open to the State

authorities either to appoint the petitioner against any existing vacant post of Sub-Inspector of Police or by replacing the last candidate who had secured less mark than the petitioner in the said selection process.

Accordingly, the present petition stands allowed to the extent indicated above and it is clarified that the aforesaid exercise will be undertaken by the authorities within a period of two months from today.

JUDGE

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Opendro(rt)