

GAHC010162642022



2026:GAU-AS:606

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

Case No. : WP(C)/5335/2022

KISHORE SAIKIA
S/O- SRI HEMANTA SAIKIA,
DHEMAJI TOWN, WARD NO. 3, RAILWAY STATION ROAD,
P.O.- DHEMAJI,
PINCODE- 787057,
DISTRICT- DHEMAJI,
ASSAM.

VERSUS

ASSAM PUBLIC SERVICE COMMISSION AND 7 ORS.
REPRESENTED BY ITS CHAIRMAN, JAWAHAR NAGAR, GUWAHATI-
781022.

2:SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHAR NAGAR
KHANAPARA- 781022.

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

4:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
DEPARTMENT OF PERSONNEL-A
DISPUR
GUWAHATI- 781006.

5:LABOUR COMMISSIONER

OFFICE OF THE LABOUR COMMISSIONER
ASSAM
GOPINATH NAGAR
GUWAHATI-16.

6:COMMISSIONER AND SECRETARY TO THE FINANCE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR- 781006.

7:UTTAM PEGU
LABOUR INSPECTOR
THROUGH THE LABOUR COMMISSIONER
ASSAM
GOPINATH NAGAR
GUWAHATI- 16.

8:NIRAB KUMAR DEURI
LABOUR INSPECTOR
THROUGH THE LABOUR COMMISSIONER
ASSAM
GOPINATH NAGAR
GUWAHATI- 16

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner(s) : Mr. A. Phukan, Advocate

For the Respondent(s) : Mr. T.J. Mahanta, Sr. Advocate
Ms. M. Bhattacharjee, Govt. Advocate
Ms. P. Sarma, Advocate
Mr. S.K. Deori, Advocate

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **20.01.2026**

Whether the pronouncement is of the
Operative part of the judgment? : **NA**

Whether the full judgment has been
pronounced? : **Yes**

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. Phukan, the learned counsel appearing on behalf of the petitioner. Mr. T.J. Mahanta, the learned Senior Counsel assisted by Ms. P. Sarma, the learned counsel appears on behalf of the Assam Public Service Commission; Ms. M. Bhattacharjee, the learned Government Advocate appears on behalf of the State of Assam and Mr. S.K. Deori, the learned counsel appears on behalf of the respondent Nos. 7 and 8.

2. The petitioner herein is aggrieved by the selection and appointment of the respondent Nos. 7 and 8 to the post of Labour Inspector pursuant to the Combined Competitive Services Examinations held in the year 2015. It is under such circumstances, the petitioner has filed the instant writ petition on 12.08.2022 seeking the following reliefs:

- “i. A declaration that the evaluation undertaken and done by the respondent authorities is bad in law and is liable to be re-evaluated, re- checked and to award to the petitioner correct marks to the question under scrutiny.*
- ii. a writ in the nature of Certiorari shall not be issued to set aside/quash the impugned evaluation and under marking meted out towards the petitioner.*
- iii. To issue a writ in the nature of Certiorari and /or other appropriate writ, order or direction of like nature to set aside and quash the selection and appointments of the respondents no. 7 and 8 as Labour Inspectors.*
- iv. A writ in the nature of Mandamus shall not be issued directing the Respondents*

to allow appropriate appointment to the petitioner in the cadre of Labour Inspector in the Scheduled Tribes (Plains) Category (Male) or any other appropriate category in accordance with law and /or

- v. Alternatively, a writ in the nature of Mandamus shall not be issued directing the Respondents to create a supernumerary post for appointment to the petitioner in the cadre of Labour Inspector in the Schedule Tribes (Plains) (Male) category or any other appropriate category in accordance with law*
- vi. A writ in the nature of Mandamus shall not be issued directing the Respondents to forthwith cancel/recall/ rescind and/or otherwise forbear from giving effect to the impugned evaluation."*

3. Let this Court at the outset deal with the facts which led to the filing of the instant writ petition.

4. The Assam Public Service Commission (for short, "the APSC") issued an advertisement bearing No. 13/2015 dated 03.07.2015 inviting candidates for recruitment to various posts in accordance with the Assam Public Services (Combined Competitive Examination) Rules, 1989. It is pertinent to take note of the various posts which were advertised. It included the posts of Assam Civil Service (Jr. Grade), Assam Land & Revenue Service (Jr. Grade), Assistant Registrar of Co-operative Societies, Labour Inspector, Inspector of Taxes and Inspector of Excise.

5. From a perusal of the said advertisement, it is apparent that the candidates applying were required to give their preference in respect

to the posts advertised. The petitioner herein who is a Schedule Tribe (Plain) applied and gave preference to various posts including the post of Labour Inspector which was his fourth preference. In the year 2017, more particularly, on 28.08.2017, the petitioner was informed upon filing an application under the Right to Information Act, 2005 that he had secured 901 marks in the Combined Competitive (Main) Examination. In the said communication issued by the State Public Information Officer of the APSC, the detailed marks so obtained by the petitioner in each subject were duly mentioned. The materials on records clearly show that for the post of Labour Inspector for a ST(P) candidate the cut off mark was 901. The petitioner knew that he had secured 901 marks but for reasons best known did not take any steps till filing of the writ petition on 12.08.2022.

6. At this stage it is very pertinent to take note of an interesting development during this period. A candidate namely Shri Hrishikesh Das being aggrieved in not granting marks in respect to certain questions in the Main Examination approached this Court by filing a writ petition which was registered and numbered as WP(C) No. 5576/2017. The learned Coordinate Bench of this Court vide the judgment and order dated 20.08.2018 allowed the said writ petition thereby directing re-evaluation of the competitive examination paper of the said Shri Hrishikesh Das and award additional marks in respect of certain indisputably correct answers given by the said Shri

Hrishikesh Das, for which, no marks were awarded by the examiner.

7. Being aggrieved by the judgment and order dated 20.08.2018 passed in WP(C) No. 5576/2017, the APSC preferred a Writ Appeal before the learned Division Bench of this Court which was registered and numbered as Writ Appeal No. 61/2019. The learned Division Bench of this Court vide an elaborate judgment dated 07.10.2021 dismissed the said Writ Appeal thereby confirming the judgment of the learned Coordinate Bench. An Appeal thereagainst was filed before the Supreme Court which was registered and numbered as Special Leave to Appeal (C) No. 2946/2022. The Supreme Court vide an order dated 28.02.2022 dismissed the said Special Leave Petition by keeping the question of law open.

8. It appears that the dismissal of the Special Leave Petition by the Supreme Court might have encouraged the petitioner herein to file the present writ petition on 12.08.2022, in spite of the fact that the petitioner had due knowledge that the respondent Nos. 7 and 8 were selected, recommended and appointed as far back as in the year 2017.

9. The petitioner herein has filed the instant writ petition primarily on 2 (two) grounds.

First, the petitioner was not awarded marks in respect to

question No. 6(d)(v) in the General English Paper. The petitioner submitted a representation on 27.09.2019 which was not considered.

The second ground is that there was an illegality committed by the examiner while awarding marks to the petitioner in terms with Rule 56 of the Assam Public Service Commission (Procedure and Conduct of Business) Rules, 2010 (for short, "the Rules of 2010"). It was the specific case of the petitioner that this particular Rule mandated that no marks should be overwritten and marks should be given clearly and legibly and if necessary it may be cut by a line across it and the new mark allotted may be written over it by putting signature of the Invigilator. It is the case of the petitioner on the basis of the answer scripts which the petitioner received as far back as in the year 2017 that while awarding the marks there was overwriting and also there were no signatures.

10. The respondent APSC filed an affidavit-in-opposition on 25.08.2023. The filing of the affidavit-in-opposition and, more particularly, the contents of paragraph No. 8 of the said affidavit-in-opposition led to the third ground on which the petitioner has attacked the selection, recommendation and appointment of the respondent No. 8. It was submitted that there was a violation of Rule 68 of the Rules of 2010 inasmuch as both the petitioner and the respondent No. 8 secured 901 marks, but as the petitioner secured

more marks in the main subjects which the petitioner came to learn subsequent to another affidavit being filed by the APSC on 07.01.2026, the petitioner ought to have been selected, recommended and appointed in place of the respondent No. 8. It is noteworthy to reiterate that the petitioner knew that he secured 901 marks and the cut off for the ST(P) candidate for the post of Labour Inspector was 901 marks as far back as on 28.08.2017.

SUBMISSIONS BY THE LEARNED COUNSELS

11. Mr. A. Phukan, the learned counsel appearing on behalf of the petitioner submitted that non-granting of marks in respect to the question No. 6(d)(v) of the General English Paper was a mistake/error committed by the examiner of the APSC which is apparent and as such if the 2 (two) marks are given then the petitioner would secure 903 marks and thereby the petitioner's marks would be higher than that of the respondent No. 8 who secured 901 marks.

12. The learned counsel for the petitioner further submitted that Rule 56 of the Rules of 2010 was violated and in that regard referred to the tabulation of the marks given to the petitioner which is at page No. 50 of the writ petition. The learned counsel submitted that the petitioner initially was awarded 200 marks which were struck off and made 198 and thereafter again struck off and reduced to 196, but there were no signatures against such striking off thereby violating

Rule 56 of the Rules of 2010.

13. The learned counsel for the petitioner further submitted that a perusal of Rule 68 of the Rules of 2010 would make it apparently clear that in case of a tie, the candidate who has secured more marks in the main subjects would be given preference. The learned counsel drew the attention of this Court to the affidavit filed by the APSC on 07.01.2026 and, more particularly, to paragraph No. 2 wherein it would be seen that the petitioner secured more marks in the General Studies and General English (combined together) to that of the respondent No. 8. The learned counsel further referring to the Assam Public Services (Combined Competitive Examination) Rules, 1989 referred to Clause 2 of Appendix-I and submitted that which would be the main subjects. He therefore submitted that if Rule 68 of the Rules of 2010 would have been applied then in that case the petitioner ought to have been selected, recommended and appointed to the post of Labour Inspector.

14. Mr. T.J. Mahanta, the learned Senior Counsel appearing on behalf of the APSC submitted that the writ petition is completely baseless and it should be dismissed on the ground of delay and laches. The learned Senior Counsel submitted that the instant writ petition has been filed seeking a fishing and roving enquiry. Referring to the judgment of the learned Division Bench of this Court in the case of

Assam Public Service Commission & Others Vs. Hrishikesh Das & Another reported in ***2021 (4) GLT 788***, the learned Senior Counsel submitted that the said candidate Shri Hrishikesh Das immediately approached the Court in the year 2017 itself and certain interim directions were passed therein. However, in the instant case the petitioner is a classic example of a fence sitter who awaited the outcome of the judgment in the case of ***Hrishikesh Das (supra)*** which was confirmed by the Supreme Court on 28.02.2022 and approached this Court on 12.08.2022. The explanation provided for the delay in approaching this Court as regards COVID pandemic and all have no legs to stand taking into account that these appointments were made much prior to the COVID pandemic. The learned Senior Counsel further submitted that the petitioner had all the materials available as far back as on 10.12.2017 itself and the petitioner approached this Court almost after 5 (five) years. In the meantime, the learned Senior Counsel submitted that the respondent Nos. 7 and 8 were duly appointed in the year 2017 and subsequent to certain departmental examination held in the year 2021 they have also been confirmed as far back as in the year 2023. He therefore submitted that the instant writ petition ought to be dismissed purely on the ground of delay and laches.

15. It must be noted herein that the learned Senior Counsel with all fairness submitted that there appears to be a mistake in applying Rule

68 of the Rules of 2010, but in the present facts and circumstances, this Court may not exercise its extraordinary jurisdiction for the reason that the petitioner had approached this Court so late.

16. The learned Senior Counsel further submitted that the question of re-evaluation is not permitted as per Rule 70 of the Rules of 2010 and further there is no infraction to Rule 56 of the Rules of 2010 inasmuch the signature duly appears. The learned Senior Counsel further referred to the judgment of the Supreme Court in the case of ***Mrinmoy Maity Vs. Chhanda Koley & Others*** reported in **(2024) 15 SCC 215** as well as another judgment of the Supreme Court in the case of ***Sankar Mondal Vs. State of West Bengal & Others*** reported in **(2022) SCC OnLine SC 1800**.

17. Mr. S.K. Deori, the learned counsel appearing on behalf of the respondent Nos. 7 and 8 submitted that as regards the respondent No. 7, the petitioner has no case at all taking into account that the respondent No. 7 had secured 907 marks and even if there is a re-evaluation ordered, then also it would not affect the selection, recommendation and appointment of the respondent No. 7. As regards the respondent No. 8, the learned counsel submitted that the question of re-evaluation is not permitted as per Rule 70 of the Rules of 2010. The learned counsel further submitted that the principle of law laid down by the learned Division Bench of this Court in the case

of ***Hrishikesh Das (supra)*** cannot also be applied to the facts of the instant case, taking into account that the petitioner has approached this Court after 5 (five) years seeking re-evaluation in respect to question No. 6(d)(v) of the General English Paper. The learned counsel further referred to the judgment of the Supreme Court in the case of ***State of M.P. & Others Vs. Nandlal Jaiswal & Others*** reported in ***(1986) 4 SCC 566*** and submitted that as third party rights have already been created by the appointment of the respondent Nos. 7 and 8 as far back as in the year 2017 and the services of the respondent Nos. 7 and 8 in the meantime have also been confirmed, any exercise of the writ jurisdiction in the present case may have the effect of inflicting not only hardship and inconvenience, but also injustice to the respondent Nos. 7 and 8 inasmuch as on today they have put in 8 (eight) years of service.

18. Mr. A. Phukan, the learned counsel appearing on behalf of the petitioner, however, replying to the submission of delay and laches submitted that if the illegality is apparent, the petitioner cannot be ousted on the ground of delay and laches and in that regard had referred to a judgment dated 04.12.2024 of the Supreme Court in the case of ***Ram Autar Singh Yadav Vs. The State of Uttar Pradesh & Others*** and referred to paragraph Nos. 20 and 22 of the said judgment. He further referred to the judgment of the Supreme Court in the case of ***Inder Singh Vs. The State of Madhya Pradesh*** reported in

(2025) INSC 382 and referred to paragraph No. 14.

ANALYSIS AND DETERMINATION

19. In the foregoing paragraphs of the instant judgment, this Court has referred to the fact that the case of the petitioner hinges upon the 3 (three) grounds. The question however arises, taking into account the submissions so made by the learned counsels appearing on behalf of the parties is, as to whether, this Court at this stage should entertain the instant writ petition taking into account that the petitioner has approached this Court after a delay of almost 5 (five) years.

20. The materials on record, more particularly, Annexure-4 series would show that on 28.08.2017 the petitioner was informed about the marks which he has obtained in the Combined Competitive (Main) Examination, 2015 against each subject. Thereupon, the petitioner submitted the challans and was provided with all other documents which forms a part of Annexure-4 series in the year 2017 itself. The petitioner thereupon remained silent till submission of a representation on 27.09.2019 requesting a re-evaluation of the question No. 6(d)(v) so that 2 (two) marks can be awarded to him. The petitioner thereupon did not take any steps till filing of the writ petition on 12.08.2022. It is very pertinent to take note of that in the meantime both the respondent Nos. 7 and 8 were appointed in the

year 2017 and subsequently their services have also been confirmed after passing the departmental examination held in the year 2021. The respondent Nos. 7 and 8 in the meantime as on date have been confirmed and they have put in 8 (eight) years of service.

21. This Court now finds it pertinent to take note of the observations made by the Supreme Court in the case of **Nandlal Jaiswal (supra)** and in that regard reproduces paragraph No. 24 herein under:

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.

We may only mention in the passing two decisions of this Court one in Ramana Dayaram Shetty v. International Airport Authority of India and the other in Ashok Kumar Mishra v. Collector. We may point out that in R.D. Shetty case, even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.

22. A perusal of the above quoted paragraph would show that when there is an unexplained delay coupled with the creation of third party rights in the meanwhile, it acts as an important factor in deciding whether the Court should exercise its jurisdiction or not. In the instant case, it would be seen that not only rights were created in favour of the respondent Nos. 7 and 8 as far back as in the year 2017 but also the respondent Nos. 7 and 8 upon participation in the departmental examinations have also been confirmed. The explanation so provided by the petitioner does not appear to be bona fide and reasonable.

23. The learned counsel appearing on behalf of the petitioner

though had relied upon the judgment of the Supreme Court in the case of **Ram Autar Singh Yadav (supra)** but the said judgment in the opinion of this Court would not aid the case of the petitioner inasmuch as in that case neither there was any accrual of any parallel right of third party nor grant of relief would cause confusion and public inconvenience. In this regard, this Court finds it pertinent to take note of paragraph No. 21 of the said judgment, which in the opinion of this Court squarely applies to the facts of the instant case and the same being relevant is reproduced herein under:

“21. Taking a cue from the above, we can safely conclude that the foremost factor based whereon relief could be declined in a case of unexplained delay and laches is the accrual of a parallel right in favour of a third party. The other vital factor to be borne in mind is whether grant of relief in a belated claim is likely to cause confusion and public inconvenience like unsettling matters which have long settled. Relief could also be denied if by reason of the delay, the official respondents are hopelessly inconvenienced in defending their action for lack of the relevant records and to establish their defence to the full satisfaction of the court.”

24. This Court has also taken note of that the Rules of 2010 do not permit re-evaluation. The judgment in the case of **Hrishikesh Das (supra)** and the observations made therein in the opinion of this Court cannot be applied to the facts of the instant case, taking into account that the said candidate, namely Shri Hrishikesh Das, had approached this Court promptly in the year 2017 itself unlike the petitioner who approached after 5 (five) years.

25. Considering the above, this Court therefore is not inclined to exercise the jurisdiction under Article 226 of the Constitution of India, even though there is an apparent irregularity in the application of Rule 68 of the Rules of 2010.

26. Accordingly, the instant writ petition stands dismissed. No costs.

JUDGE

Comparing Assistant