

(2017) 03 BOM CK 0208
In the Bombay High Court
Case No : 6597 of 2016

Nikhil Prabhakar Shedge

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

[Persons With Disabilities \(Equal Opportunities, Protection of Rights and Full Participation\) Act, 1995](#), [Section 33](#) - Reservation of posts

Citation : (2017) 03 BOM CK 0208

Hon'ble Judges : Manjula Chellur, M.S. Sonak

Bench : DIVISON BENCH

Advocate : Abhijeet Desai, Parag Vyas, P.M. Palshikar, Vinod Joshi

Judgement

1. The petitioner - a Mechanical Engineer by qualification, is before us. The first respondent - Ministry of Social Justice and Empowerment, Department of Disability Affairs, is in charge of, or instrumental in devising the guidelines for conducting the written examination for persons with disabilities. The second respondent is Union Public Service Commission (UPSC) which holds civil services examination. Apparently, such civil service examinations were declared by advertisement dated 27th April 2016 annexed at Exhibit-B. The third respondent is the Department of Personnel and Training which is responsible in devising the rules with regard to fixing the reservation of physically handicapped persons.

2. As per the advertisement, the proposal was to fill up vacancies of 1079 (3% of the same to be earmarked for PWDs). According to the petitioner, it would come to 34 vacancies in terms of Section 33 of Persons with Disabilities Act, 1995 (for short "PWDs Act") so far as blind/low vision candidates, 7 posts were earmarked. Similarly, for Locomotor Disability and Cerebral Palsy (LDGP), 14 posts were earmarked and 13 posts for candidates with hearing impairment. It is also indicated in the advertisement that number of vacancies may undergo change after ascertaining the clear vacancies from different departments i.e. through

Cadre Controlling Authorities.

3. Apparently, the petitioner applied online for appearing in the examination under Visually impaired quota with disability of 40% and above. On 23rd May 2015, an advertisement was published in view of the proposed guidelines of the first respondent for conducting written examination for persons with disabilities wherein out of the total posts of 1129, 29 vacancies were reserved for physically handicapped category, 13 vacancies for LDCP and 5 vacancies for blind/low vision, apart from 11 vacancies for hearing impairment. In this advertisement, reference is made to office memorandum dated 26th February 2013 issued by the first respondent, indicating guidelines proposed to offer to the candidates who are visually handicapped i.e. such candidates could take assistance of a scribe/reader. This office memorandum of 2013 indicates that persons of physical disabilities are given an advantage of choosing their own scribe/reader/lab assistant. Choice of such assistant can be selected by the applicant from the Government recognised panels or the applicant can also choose a person of his choice for the above purpose. According to the petitioner, any supplementary certificate of a candidate may vitiate their complete rescheduling procedure. This supplementary certificate, unless reverified by subjecting such candidates to the Apex Medical Institutes by constituting a Special Board, there may be possibility of candidates undeserving getting into the streamline under the special reserved category, debarring the genuine candidates. Therefore, he contends that reverification of supplementary certificates must be implemented. So far as the petitioner is concerned, he has undergone the test for assessment disability for his visual disability in District Hospital, Satara. The petitioner is certified with the 75% visual disability certified by Medical Board constituted for the purpose comprising of the Civil Surgeon, and Medical Officer of the Government recognised hospital as per Exhibit-F. According to the petitioner, around 14 posts are reserved for LDCP, 7 posts are reserved for blind/low vision and 13 posts are reserved for hearing impairment as per the latest chart indicating tentative vacancies for civil service examination in the year 2016.

4. The petitioner contends that to the knowledge of the petitioner apparently admitted by the respondents in their affidavit-in-reply, an expert committee was constituted by respondent no.1 on 13th April 2015 to review the guidelines for conducting written examination for candidates belonging to the physically handicapped category. The minutes of the preliminary discussion were reduced to writing on 15th May 2015. Clause 12 of the said minutes is relevant. According to the petitioner, the said minutes clearly indicate more number of irregularities so far as private scribe when compared to scribes from government panel. Mentioning is made that Government scribes are more authentic and genuine than private scribes. According to him, using private scribes is leading to number of malpractices which includes improving the answers to be written by the candidates.

5. According to the petitioner, clause 17 of the minutes rules out the possibility of

using private scribes. The said minutes is at Exhibit H. On 13th February 2016, the Staff Selection Commission (SSC) issued a notice for holding Combined Graduate level examination on 8th and 22nd May 2016 so far as selecting candidates for the purpose of filling up different categories in various ministries/departments/organization. Clause 5(k) of the said notice clearly indicate that the applicant cannot avail the service of a private scribe and strictly mandates to opt for government scribe in view of the malpractices discussed above. On 3rd November 2015, one Sujeet Shinde - an applicant for civil services examination scheduled in December 2015 sought availing the services of a private scribe for visually impaired candidate, and the reply was to avail the services of private scribe in a particular format. Therefore, according to the petitioner, the Central Government has still kept the option of obtaining a private scribe.

6. Immediately, on 18th April 2016, the petitioner's mother sent an Advocate's notice to the respondents to cease and desist from allowing the candidates to avail the services of a private scribe for appearing in the civil service examination wherein possibility and also instances of malpractices were clearly brought to the notice of the authorities. They also indicated the restriction and the restraint made by the Staff Selection Commission so far as private scribe. In the said notice, it was also indicated that the distribution of seats are not properly done and the seats allocated to the visually handicapped persons are much less than the required number. In spite of repeated letters, there seems to be no intention on the part of respondent no.1 to desist from implementing the guidelines of 2013. According to the petitioner, the cutoff marks obtained by physically handicapped persons with the assistance of private scribes, are increasing day by day which clearly indicates malpractices adopted by the students. This is causing great disadvantage and depression to the candidates belonging to physically handicapped categories. The table or the chart indicating such cutoff marks obtained by the candidates who have employed private scribe, clearly indicates such rise in the cutoff marks. This is very clear when compared to the result of 2015 Staff Selection Commission Examination wherein the success of visually handicapped candidates is much lesser in number compared to the results of civil services examination.

7. The petitioner also points out difficulty in implementing the mandate of identifying the post of each of the physically handicapped categories. As a matter of fact, a chart was prepared by the respondents in 2015 as per Exhibit-O. According to them, the second respondent's assurance of revising for the physically handicapped quota is completely sham and moonshine. In order to prevent submission of false certificates for a particular post, precautions have to be taken. Even for applying online, the candidate shall be subject to examination by Government medical hospital by duly constituted Medical Board. He also relied upon the judgment of the High Court of Delhi in the matter of Sambhavana v. Union of India (Writ Petition No.3919 of 2014) wherein there was a direction for distribution of the vacancies in equivalence to 3% of total posts earmarked for physically handicapped category only after identifying each of such posts. This

was in the light of the provisions of section 33 of the PWD Act which is at Exhibit R. He also refers to recruitment process adopted in the State Bank of India while recruiting Probationary Officers. 60 vacancies out of 2200 were reserved for physically handicapped in terms of the rules and regulations of such recruitment.

8. As against this, the respondents have placed their affidavit-in-reply. According to the first respondent, the department of Empowerment of Persons with Disabilities has issued guidelines way back in 2013 laying down the procedure for conducting written examination for persons with disabilities which provides facility for scribe/reader/lab assistant. A person would fall within the definition of Section 2(t) of the Persons with Disabilities Act only if he is having 40% disability or more. Rules do not provide securing supplementary disability certificate. Even otherwise, such certificates are the concern of the Union Public Service Commission and Department of Persons with disabilities.

9. So far as the meeting held on 13th April 2015 by the Expert Committee to review the guidelines for conducting written examination for candidates or persons with disabilities, preliminary discussion were held and paragraphs 12 and 17 referred to the Writ Petition would reflect only the views expressed by representatives of Union Public Service Commission, Staff Selection Commission in the said meeting. It is not a final conclusion or a decision. Expert committee is yet to take a decision.

10. The first respondent further narrates the practise followed by the recruiting agency whether UPSC or SSC, etc how official scribes are provided for persons with disabilities. They also submit that the provision of providing a panel of official scribes for persons with disabilities is not adequate to meet all situations for e.g. a scribe who is proficient in English for persons with disabilities opts to reply in Hindi, may not be able to do justice. Similarly, if scribe who is not conversant with Science and Mathematics may not be able to take care of the concerns of persons with disabilities while writing mathematics and science based papers. The examining bodies definitely have no pool of official scribes which meet the requirement of individual or paper based need.

11. On 10th August 2016, while taking note of the fact that there is need to have the provision of own scribe, the expert committee was of the view that it would be appropriate to put reasonable restrictions so far as use of own scribe so that integrity of the examination is not compromised. In this regard, they took decision as under : "While provision may be retained, the Committee felt that there should be some reasonable criteria/restrictions on use of own scribes by the candidates with disabilities so that this provision is not misused and the integrity of the examination is not compromised. The Members will submit their views on the criteria/restrictions/qualification of such scribes so that the same could be incorporated in the guidelines."

12. The allegation of the petitioner that representation of petitioner's mother was not taken, is incorrect. The subject was discussed in the meeting held on

10th August 2016.

13. Respondent no.1 has also placed on record so far as the format for the issuance of disability certificate in terms of Rules of PWDs amended by Persons with Disabilities (Amendment) Rules 2009. Notified medical authorities are required to issue disability certificate in the prescribed format after evaluating the disability in terms of the guidelines prescribed by the Ministry. Whether to accept or not to accept the said certificate is the prerogative of the recruitment agency. As a matter of fact, the Ministry concerned is in the process of implementing universal Identification project for the PWDs which envisages creation of a national data base for PWDs and also to issue Unique ID Card to them. They are also providing an online platform for issuance of disabilities certificates. The said project further envisages that each disability certificate to be issued through web portal will bear an 18 digit Unique ID number which can be verified through the web portal. The project is scheduled to be completed by 2018.

14. So far as section 33 of the PWDs Act, they submitted that it is for the recruitment agency to adhere to the said provision and any deviation has to be answered by the concerned respondent. The expert committee is envisaging more stringent process so far as appointment of private scribes. However, the checks and balances are already in place to prevent misuse of guidelines dated 26th February 2013.

15. So far as second respondent from the department of Personnel and Training, New Delhi, they contend that the action of the second respondent is neither violative of any statutory provision nor in contravention of any guidelines. According to them, civil service examination is conducted by Union Public Service Commission as per the rules notified every year. Cadre Controlling Authority calculates vacancies for a particular service. The physical requirement and functional classification requirement is taken into consideration by the Cadre Controlling Authority in consultation with Ministry of Social Justice. The vacancies reported for physically handicapped candidates for civil services examination of 2016 is in conformity with the provision. After receiving the report of vacancies, the second respondent compiles all the vacancies reported by the Cadre Controlling Authority and the same is forwarded to UPSC. Guidelines are prescribed by first respondent. The role of the third respondent is only limited to notifying the guidelines as mentioned in Civil Service examination which is carefully described in paragraph 5.5 of the affidavit in reply of the third respondent.

16. As a matter of fact, the second respondent who conducts Civil Services Examination raised certain issues before the expert committee and the same were being looked into relating to implementation of guidelines for conducting written examination of PWDs.

17. There are technical and nontechnical services participating in Civil Service

Examination. Among technical services, police services are exempted for persons with disabilities. Out of three subcategory of disabilities, only locomotors disability candidates are eligible for Indian Railway Traffic service. Some nontechnical services are also exempted from particular sub category of PH. For eg. IRS (C&CE) is not available for blind candidates. While calculating 1% for particular service keeping in view of its physical requirement and functional classification, 1% vacancy should be identified. Union of India would comply with the provisions of law so as to necessitate reservation for the physically handicapped.

18. With the above material and arguments on record, we have to analyse the same in order to arrive at a conclusion whether the petitioner is entitled for the reliefs sought. Ministry of Social Justice and Empowerment, Department of Disabilities Affairs is in charge of devising the guidelines so far as welfare of the people who are suffering from one or the other kind of disability. In order to encourage the persons with disabilities, from time to time, various guidelines are devised including the guidelines for conducting the written examination for persons with disabilities. The second respondent - Union Public Service Commission is in charge of conducting such examinations. What procedure has to be adopted is indicated by devising rules with regard to the reservation of posts earmarked for physically handicapped persons. Respondent nos.1 and 3 are actually in charge of setting out parameters with regard to percentage of reservation for physically handicapped persons, identification of posts visavis the nature of disability of the candidates. In other words, each post will be looked into from the point of nature of work such post is required to be discharged by the person appointed, and then decide which category of physically handicapped persons would fit in such posts. As a matter of fact, PWDs Act provides various measures for the welfare of the candidates suffering from physical disability.

19. Apparently, initially advertisement was only a proposal to fill up vacancies of different categories of posts and 3% of the total vacancies was reserved for physically handicapped persons. Physically handicapped candidates could be Locomotor Disability, Cerebral Palsy, blind/low vision etc, depending upon the demand of the posts i.e. the nature of work those posts would be requiring. Ideally, the distribution has to be between different categories 1:1:1. However, it may not be possible to arrive at a precise distribution of reserved posts with reference to nature of disability because the nature of work attached to each post could fit in only a particular nature of disability of the candidate. Therefore, there cannot be ideal distribution. The Cadre Controlling Authorities indicate clear vacancies for different posts and after identifying the nature of the posts, the distribution of 3% earmarked quota for PWDs would be decided indicating who will fit in which posts. Accordingly, the same will be advertised.

20. The main grievance of the petitioner seems to be that provision to obtain private scribe may lead to malpractices and he refers to examinations conducted by State Bank of India as well as Staff Selection Commission. He has also given

the incidents how the malpractices has come to light. He also gives a comparative statement that more number of cutoff marks which are secured by physically handicapped/blind and low vision candidates in public service examination when compared to other examinations, wherein private scribe is barred. Straightway, one cannot arrive at a conclusion that the candidates with low vision and blind are securing more percentage of cutoff marks in UPSC only on account of obtaining a private scribe. One cannot totally ignore the possibility of malpractices as well. So far as the stand of the respondents, the Department of Empowerment of Persons with disabilities has come out with guidelines in 2013 indicating the procedure for conducting written examination for persons with disabilities wherein provision is made for facility of scribe/lab assistant. Whether supplementary disability certificate is to be prescribed or not, as suggested by the petitioner, is totally a policy decision which has to be considered by the concerned respondent i.e. the Department of Persons with disabilities. We cannot opine that there is total lack of concern and anxiety shown on behalf of the respondents.

21. A preliminary meeting was held by the expert committee constituted for the purpose in the month of April 2015 to review the guidelines for conducting written examination. The discussions clearly narrate that everyone took active participation and expressed their individual opinion. There was no finality to the discussion. The minutes clearly indicate the proposals made from different quarters who were representing different departments. It is seen that there is shortage of scribes from the government panel and there are certain practical difficulties on account of language since a scribe from the panel may not be acquainted with different languages and conversant with different subjects. Unless the panel consists of scribes who are conversant with different languages, different subjects, they may not be doing justice to the candidate who chooses them from the panel for assisting them in the examination. Being satisfied with the need o have a scribe, the expert committee was of the opinion that with reasonable restrictions so far as use of own scribe without compromising with the integrity of the examination should be indicated. One of the subject matters for such discussion was the representation of the mother of the petitioner. The rules of 2009 concerning the issue before us do prescribe the format how the disability certificate is to be issued. This again is with reference to guidelines prescribed by the Ministry. The expert committee is at the moment in the process of coming out with a stringent process so far as appointment of private scribe in order to remove the socalled malpractices or irregularities. As a matter of fact, the role of the third respondent is to notify the guidelines indicated by the expert committee, approved by the first respondent and the role of the 3rd respondent is to ascertain the vacancies and distribute the vacancies for a particular service on the basis of physical requirement and functional classification. This is also done in consultation with Ministry of Social Justice. The second respondent who conducts examination, has also suggested certain measures before the Expert committee. Technical and nontechnical services are also part of the vacancies for

which civil service examination is conducted depending upon the nature of jobs, physical handicapped persons may not be recommended for such technical posts. Therefore, there may not be perfect distribution of vacancies meant for physically handicapped persons. In the absence of conclusion of procedure/guidelines or norms by the expert committee, one cannot postpone conducting the civil service examination. The procedure which is in practise till new guidelines are prescribed, has to be followed. What is ideal in the thinking of the petitioner may not be suitable so far as the policy of the Government. The policy making involves consideration of various suggestions, deficit of required experts to work as scribe/ reader/lab assistant. Taking into totality of the situation, they must evolve a best policy with the available infrastructure. It is also laudable that the Ministry concerned is in the process of implementing universal identification project of PWDs which results in creation of a national data base for PWDs. With the introduction of ID Card to large extent, the malpractices now aggrieved would be reduced. One can go through the web portal and find out who is who, and who is the disabled. However, the said project is likely to be completed in the year 2018. Securing view from the experts across the world, the respective departments concerned are in the process of making the system function better and better in the future.

22. The grievance of the petitioner seems to be apprehension and the belief that every private scribe opted with an intention only to secure more marks by following malpractices or illegal method. The restrictions and the restraints so far as these private scribes would definitely check the malpractices or illegality to a large extent. If it has not come to the notice of the authorities, anyone can bring the same to the notice of the authorities and suitable action can be taken. The entire material would indicate that the departments concerned are not sleeping over the matter, but are in the process of coming out with a definite solution and are in the process of arriving at proper checks and balances.

23. In that view of the matter, since the reliefs sought clearly indicate more of a policy decision which is already initiated by the concerned departments, we decline to grant any positive directions except saying that the respondents must speed up their conclusions with regard to various measures and guidelines in the offing touching the contention of civil service examinations vis-a-vis PWDs.

24. With these observations, petition is disposed of.