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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3919/2014

SAMBHAVANA

..... Petitioner

Through: Mr. Pankaj Sinha, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Arun Bhardwaj, Adv. for UOI.

Mr. Naresh Kaushik, Adv. for UPSC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.08.2014**

CM Nos.7898/2014 (Stay) & 9583/2014 (Interim Directions)

1. The Notice dated 31.05.2014 issued by the Union Public Service Commission for Civil Services Examination – 2014 proposing to conduct Preliminary Examination on 24.08.2014 for recruitment to about 23 Services and Posts mentioned thereunder has been assailed in the main writ petition primarily on two grounds, viz.;

- (i) that the number of vacancies shown as reserved for Visually Impaired Category is not in compliance with Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'Disabilities Act, 1995'); and
- (ii) that the extra time of 20 minutes allowed for each paper, i.e. 10

minutes per hour is not in conformity with the guidelines dated 26.02.2013 issued by the Ministry of Social Justice and Empowerment for conducting the Written Examinations for Persons with Disabilities under which it is mandatory to provide compensatory time of 20 minutes per hour of examination for persons who are making use of scribe/reader/lab assistant.

2. In CM No.7898/2014, the petitioner seeks stay of operation of the impugned Notice till the disposal of the writ petition whereas CM No.9583/2014 is filed seeking a direction to the UPSC to provide an extra time of 20 minutes per hour to the Visually Impaired candidates in the Preliminary Examination as well as in the Main Examination, 2014.

3. We have heard the learned counsel for both the parties. It is contended by Shri Pankaj Sinha, the learned counsel appearing for the petitioner that as per Section 33 of the Disabilities Act, 1995, three percent reservation is provided for persons with disabilities, of which 1% shall be reserved for Visually Impaired Category. It is pointed out that the impugned Notice under which 1291 vacancies were proposed to be filled up including 26 vacancies reserved for Physically Handicapped category, only 02 vacancies were reserved for the Visually Impaired candidates whereas for the Hearing Impaired candidates and Loco Motor disabled candidates, 12 vacancies each are reserved. Thus, it is sought to be contended that the number of vacancies reserved for Visually Impaired category being far less than one percent provided under Section 33 of the Disabilities Act, 1995, the respondents cannot be allowed to conduct the examination as proposed in

the impugned notice.

4. With regard to his contention that the respondents are bound to allow additional time of 20 minutes per hour to the visually disabled candidates, the learned counsel for the petitioner relied upon the Office Memorandum dated 26.02.2013 issued by Government of India, Ministry of Social Justice & Empowerment, Department of Disabilities Affairs. while submitting that the said guidelines have been adopted by the Delhi University and Punjab National Bank, the learned counsel would contend that the respondents ought not to have ignored the guidelines issued by the Ministry of Social Justice and Empowerment in terms of the directions of the Chief Commissioner of Persons with Disabilities (CCPD) to ensure uniform and comprehensive policy across the country.

5. In the counter affidavit filed by the Union Public Service Commission/Respondent No.2, it is submitted that the indication of 26 vacancies reserved for Physically Disabled categories was based on the information gathered from the Cadre Controlling Authority of the services participating in this examination. It is also stated that the Cadre Controlling Authorities maintain relevant vacancy rosters for Physically Handicapped categories and based on the number of vacancies available in different categories of Physically Handicapped in a particular year of recruitment, indents are placed with the UPSC. It is further explained that the UPSC obtains the vacancy figures meant for physically handicapped from the Cadre Controlling Authorities of the services participating in the Civil Services Examinations and based on the information gathered, tentative indication is made in the examination notice in which itself, it was

mentioned that the final number of vacancies may undergo changes subsequently. It is also explained that while asking for submission of vacancy indents for physically handicapped categories, the Cadre Controlling Authorities are requested to certify that 1% of the vacancies are reserved for each of the three sub-categories of physically handicapped while reporting the relevant vacancies to UPSC.

6. With regard to the provision of extra time to the Visually Impaired candidates, it is explained in the counter affidavit filed by the UPSC that an extra time of 10 minutes per hour is allowed to the Visually Impaired candidates apart from providing the assistance of a Scribe. It is explained that the same is in terms of the Rules notified by the Department of Personnel & Training and the UPSC cannot *suo motu* on its own adopt the guidelines issued on 26.02.2013 by the Ministry of Social Justice and Empowerment.

7. In the counter affidavit filed on behalf of the Union of India, Department of Personnel & Training, it is stated:

“5.3 In this connection, it is stated that Civil Services Examination (CSE) is the combined examination held annually by UPSC, for recruitment to about 23 services/posts which include Indian Administrative Service, Indian Foreign Service, Indian Police Service, Central Service, Indian Foreign Service, Indian Police Service, Central Services, Group ‘A’ and Central Services Group ‘B’ posts. The cadre controlling authorities for the said services are various Ministries/Departments under the Government of India. It is

submitted that the concerned cadre controlling authorities determine number of vacancies to be filled in the respective services/posts during a particular CSE year and intimate the same to UPSC directly, which in turn, intimates the service wise, category wise vacancy position including those meant for PH category to this respondent along with the final result of the Civil Services Examination.

5.4 This Respondent is Cadre Controlling Authority (CCA) only for IAS. This Department vide its letter number 13011/25/1998-AIS-I dated 22.05.2014 has already intimated that altogether 180 vacancies will be filled up in IAS on the basis of CSE-2014 and out of that 6 vacancies, are reserved for candidates belonging to Physically handicapped category, i.e., 2 each for visually impaired, hearing impaired and locomotor disability sub category. This is strictly in accordance with the provisions of Section 33 of the Persons with Disabilities Act, 1995 and also in accordance with the directions of Hon'ble Supreme Court.”

8. Sh.Arun Bharadwaj, the learned counsel for Union of India and Sh.Naresh Kaushik, the learned counsel for UPSC reiterated the stand taken in their respective counter affidavits and submitted that the matter warrants no interference by this Court at this stage.

9. So far as the petitioner's prayer to stay the Preliminary Examination scheduled to be held on 24.08.2014 is concerned, prima facie it appears to us that reservation of only two vacancies for visually impaired candidates out

of 26 vacancies reserved for physically handicapped category is not based on proper assessment of the vacancies available in all the Services participating in the examination.

10. We have also taken note of the fact that in the counter affidavit filed on behalf of Ministry of Personnel, Public Grievances & Pension, it is stated that the said Ministry is a Cadre Controlling Authority only for IAS and that out of 180 vacancies sought to be filled up in IAS on the basis of Civil Services Examination – 2014, six vacancies are reserved for candidates belonging to physically handicapped category, i.e., 2 each for visually impaired, hearing impaired and locomotor disability. Thus, for IAS itself two vacancies are reserved for visually impaired. What is the vacancy position in the other 19 Services that are identified suitable for physically disabled category is not known. The counter affidavit filed on behalf of UPSC is silent on this aspect and no particulars have been furnished about the number of vacancies furnished by the other Cadre Controlling Authorities. Under these circumstances, prima facie we find substance in the contention of the writ petitioner that the reservation for visually impaired candidates is not in conformity with Section 33 of the Disabilities Act, 1995. However, we are not inclined to stay the Preliminary Examination on that ground.

11. It is to be noticed that the UPSC in its counter affidavit has categorically stated that whatever figures that have been shown in the impugned Notice are only a tentative indication. In fact it is specifically mentioned in the impugned Notice itself that the final number of vacancies may undergo change after getting firm number of vacancies from Cadre

Controlling Authorities. Therefore, we deem it appropriate to allow UPSC to proceed with the Preliminary Examination as per the schedule making it clear that the UPSC shall ensure proper assessment of actual number of vacancies reserved for visually impaired candidates before conducting the Main Examination.

12. Coming to the other interim relief sought, i.e., provision of 20 minutes per hour additional time to the Visually Impaired candidates, the learned counsel for the UPSC has placed before this Court a set of Rules issued by the Ministry of Personnel, Public Grievances & Pension by Notification dated 31.05.2014. It is contended by the learned counsel that the said Rules are meant for following the uniform procedure while conducting the competitive examinations by the UPSC in 2014 in 23 services specified therein and UPSC is bound to follow the said Rules.

13. Section II (A)(iv) of the said Rules which deals with Preliminary Examination reads as under:

“(iv) Each paper will be of two hours duration. Blind candidates will however, be allowed an extra time of twenty minutes for each paper.”

So far as Main Examination is concerned, Section II(B) provides:

“(i) Candidates must write the papers in their own hand. In no circumstances will they be allowed the help of a scribe to write the answers for them. However, blind candidates will be allowed to write the examination with the help of a scribe. Blind candidates will also be allowed an extra time of thirty minutes at each paper @ ten minutes per hour.”

14. Per contra, the learned counsel for the petitioner places reliance upon the Guidelines issued by the Ministry of Social Justice and Empowerment which provides for 20 minutes additional time per one hour.

15. We have carefully gone through the Office Memorandum (OM) dated 26.02.2013 issued by the Government of India, Ministry of Social Justice and Empowerment, Department of Disabilities Affairs, New Delhi under which guidelines were issued for conducting written examination for persons with disabilities. It is evident from the said OM that the guidelines were issued as per the directions of the CCPD to circulate uniform and comprehensive guidelines for conducting examinations for the persons with disabilities for compliance by all concerned. Clause-XI of the said guidelines reads as under:-

“XI The word “extra time or additional time” that is being currently used should be changed to “compensatory time” and the same should not be less than 20 minutes per hour of examination for persons who are making use of scribe/reader/lab assistant. All the candidates with disability not availing the facility of scribe may be allowed additional time of minimum of one hour for examination of 3 hours duration which could further be increased on case to case basis.

16. It is also observed that the said guidelines were circulated to the Secretaries of all Ministries/Departments as well as the Secretary, UPSC requesting to ensure compliance of implementation of the same.

17. It may be added that the Chief Commissioner for Persons with Disabilities (CCPD) is an authority appointed under Section 57(1) of the Disabilities Act, 1995 for the purposes of the said Act. Section 58 of the

Disabilities Act, 1995 provided for the functions of the CCPD which included taking steps to safeguard the rights and facilities made available to persons with disabilities.

18. That being so, the guidelines dated 26.02.2013 issued by the Ministry of Social Justice and Empowerment on the recommendation of CCPD apparently for the purpose of safeguarding the rights and facilities made available to persons with disabilities, cannot be treated as mere executive instructions as sought to be contended by the respondents. According to us, the guidelines dated 26.02.2013 which are issued for effective implementation of the provisions of the Disabilities Act, 1995, have statutory force and are bound to be implemented by all the departments and authorities.

19. It is no doubt true that UPSC is a Constitutional and independent body, however the Civil Services Examination Rules – 2014 are not made by UPSC but according to their own counter affidavit, the Commission is merely implementing the Rules notified by the Department of Personnel and Training, Government of India. The counter affidavit filed on behalf of the Department of Personnel and Training is silent as to why the guidelines dated 26.02.2013 issued by the Ministry of Social Justice and Empowerment were not complied with while issuing the Rules for Civil Services Examinations, 2014 vide Notification dated 31.05.2014.

20. Be that as it may, the Civil Services Examination Rules, 2014 issued by the Department of Personnel & Training vide notification dated 31.05.2014 which are only in the nature of executive instructions, cannot

override the statutory guidelines dated 26.02.2013 issued in terms of the provisions of the Disabilities Act, 1995 to ensure that a uniform and comprehensive procedure is prescribed for conducting examination for persons with disabilities.

21. For the aforesaid reasons, we find force in the submission of the learned counsel for the petitioner that the respondents are bound to allow additional time of 20 minutes per hour to the visually disabled candidates in the Civil Services Examination, 2014, as provided in the guidelines dated 26.03.2013.

22. Accordingly, both the CMs are disposed of with the following directions:-

- i. The Preliminary Examination in pursuance of the impugned notice dated 31.05.2014 may be conducted and the results be declared as per the schedule.
- ii. However, none of the visually impaired candidates should be disqualified in Preliminary Examination on the ground that only 2 vacancies are reserved for the visually impaired candidates out of 26 vacancies reserved for physically handicapped category.
- iii. Before the schedule for Main Examination is fixed, the respondents shall ensure proper assessment of number of vacancies reserved for visually impaired candidates in conformity with 1% reservation provided under Section 33 of the Disabilities Act, 1995 and notify the same.
- iv. The visually impaired candidates shall be allowed additional

time/compensatory time of 20 minutes per hour in both Preliminary and Main Examinations, apart from extending the help of scribe as provided under the guidelines dated 26.02.2013 issued by the Ministry of Social Justice and Empowerment.

W.P.(C) 3919/2014

The respondent No.1 shall file an additional counter affidavit within two weeks furnishing the details of the vacancy particulars received from the Cadre Controlling Authorities of all the Services.

Re-notify on 03.09.2014.

Dasti under signature of the Court Master.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

AUGUST 19, 2014
pmc/anb