

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1356 OF 2014

Mr. Kranti Goyal ... Petitioner.

Versus

Union of India
and others ... Respondents

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Mr. Yuvraj Patil i/b. Mr. Sameer Prabhakar Khedekar for the
Petitioner.

Mr. Neel Helekar a/w Mr. Dhanesh R. Shah for Respondent No.1.
Mr. Nikhil Sakhardande a/w Mr. Parag Sharma and Ms. Mansi
Patel i/b. Udawadia & Co. for Respondent Nos. 2 and 3 (RBI).

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**CORAM : NARESH H. PATIL AND
Z.A. HAQ, JJ.**

ORDER RESERVED ON : 18th September, 2017

ORDER PRONOUNCED ON : 27th September, 2017

ORDER (Per: Z.A. Haq, J.)

1. Heard. Rule. Rule made returnable forthwith.
2. The Petitioner seeks writ of mandamus directing the Respondent Nos. 2 and 3 to appoint him on the post of Research Officer, Grade B in Department of Economic and Policy Research reserved for visually handicapped candidate.

3. By the advertisement issued in May, 2013, the Respondent Nos. 2 and 3 advertised several posts out of which one post of Research Officer in Grade B in Department of Economic and Policy Research was shown as reserved for visually handicapped person. The Petitioner submitted his application on-line, participated in the process and after the interviews were conducted, the results were published on website of the Respondent No.2 on 30th December, 2013. The name of the Petitioner did not appear in the list published by the Respondent No.2. According to the Petitioner, the mark-lists of the candidates from various categories were published by the Respondent No.2 on its website on 30th January, 2014. The Respondent Nos. 2 and 3 had fixed benchmark / cut-off marks for various categories. According to the Petitioner, the Respondent Nos. 2 and 3 had not fixed any separate benchmark for the candidates staking claim for the post reserved for visually handicapped person and nobody from the category of visually handicapped person was shown as selected for being appointed on that post. The Petitioner made a representation to the Respondent No.3 which was rejected in March, 2014. After the representation of the Petitioner came to be rejected, he has approached this Court for redressal of his grievance.

4. In response to the notice issued by this Court, the Respondent Nos. 2 and 3 have filed their affidavit in reply. According to the Respondent Nos. 2 and 3, the cut-off for open category was fixed at 210 marks out of 350 marks and the same cut-off was fixed for the persons from visually handicapped category, however, as per the Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions DOPT on 29th December, 2005 and as per the circular issued by the Ministry of Finance, Department of Economic Affairs, Banking Division on 7th March, 2006, the candidates from visually handicapped category were given 7% grace marks. According to the Respondent Nos. 2 and 3, the Petitioner got 137 marks in written examination and interview and after adding 7% grace marks, the score of the petitioner was 161.5 marks. According to the Respondent Nos. 2 and 3, two other candidates Siddhi Desai and Vikas Dixit are above the Petitioner amongst the visually handicapped persons having scored 196.5 and 179.5 marks after addition of 7% grace marks. According to the Respondent Nos. 2 and 3, none of the candidates from amongst the visually handicapped persons got 210 marks and therefore they were not appointed and the post remained vacant.

5. After hearing the learned Advocates for the respective parties and examining the submissions made by them and the documents placed on record of the Petition, we find that the Respondent Nos. 2 and 3 committed an error in fixing the benchmark / cut-off marks for the visually handicapped persons. The benchmark / cut-off of 210 marks is fixed by the Respondent Nos. 2 and 3 by considering the performance of the general category candidates. The fixing of the same benchmark / cut-off marks for the visually handicapped persons and granting them 7% grace marks is not a sustainable criteria and as has happened in the present case, it deprives the persons with disabilities from their legitimate statutory right conferred by the provisions of the Rights of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'Act of 1995'). The Respondent Nos. 2 and 3 relied on the Office Memorandum dated 29th December, 2005 to substantiate their action. We would have deliberated on the legality of the relevant clauses of Office Memorandum dated 29th December, 2005, however by the Judgment given in the case of ***Rajeev Kumar Gupta and others Vs. Union of India and others*** reported in ***(2016) 13 SCC 153***, the Hon'ble Supreme Court has declared that the Office

Memorandum dated 29th December, 2005 as illegal and unsustainable. We are of the view that, we need not again undertake the exercise of examining whether the action of the Respondent Nos. 2 and 3 based on the clauses of Office Memorandum dated 29th December, 2005, is sustainable.

6. At the time when the advertisement was issued and selection process was undertaken, the Act of 1995 was in force. Section 32 (a) of the Act of 1995 provided that the appropriate Government should identify posts in the establishments declared to be reserved for the persons with disability. One post of Research Officer in Grade B in Department of Economic and Policy Research was shown as reserved for the visually handicapped person. In our view, once the post for which the Petitioner is making claim was identified and reserved for the visually handicapped person, then again fixing the cut-off marks for selection of the visually handicapped person for that post was impermissible. It is not the case of the Respondent Nos. 2 and 3 that the Petitioner was not physically fit to perform the duties of the post. The Petitioner and other candidates who applied for this post reserved for visually handicapped persons participated in the process of selection are

not considered only because of the arbitrary fixing of the benchmark / cut-off marks.

In the Judgment given in the case of *Union of India and Another Vs. National Federation of the Blind and others* reported in (2013) 10 SCC 772, the Hon'ble Supreme Court has concluded that the reservation policy stipulated under the Act of 1995 is vacancy based reservation.

7. Considering the provisions of the Act of 1995 and the proposition laid down in the Judgment given in the case of *National Federation of the Blind* (cited supra) and after examining the submissions made by the respective parties, we are of the view that it was incumbent for the Respondent Nos.2 and 3 to prepare separate merit list of the visually handicapped persons and consider the candidates from this list according to merit without fixing benchmark / cut-off marks as done in the present case i.e. fixing the benchmark / cut-off marks fixed for the general candidates. By fixing the benchmark / cut-off marks for the visually handicapped persons, on par with the general candidates, the Respondent Nos. 2 and 3 have acted arbitrarily and contrary to the object of the Act of 1995.

8. The learned advocate for the Respondent Nos. 2 and 3 and the Respondent No.1 has submitted that as two candidates i.e. Siddhi Desai and Vikas Dixit are above the Petitioner having more marks than the Petitioner in the category of visually handicapped persons, the Petitioner would not get relief and therefore the Writ Petition need not be entertained.

The learned advocate for the Petitioner has submitted that the above named two candidates have been sleeping over their right and have not approached either the Respondents or this Court to enforce their right and therefore they are not entitled to be considered for the post and as the Petitioner had been vigilant about his right and has approached this Court, the Petitioner is entitled for the relief as prayed for. To support the submission, the learned advocate has relied on the following judgments:

- (a) Judgment given in the case of ***Miss Neelima Shangla Vs. State of Haryana and others*** reported in ***(1986) 4 SCC 268***.
- (b) Judgment given in the case of ***K. Sathya Narayana Vs. The State of Tamil Nadu*** passed by the Madras High Court in WP No.5097 of 2009.

As far as the technical objections raised by the Respondents regarding the maintainability of the Petition at the behest of the Petitioner who is down in the merit list is concerned, considering

the subject matter and the nature of issue involved in the Petition, we thought it appropriate to consider the Writ Petition on merits. As far as the contention of the petitioner, relying on the judgments given in the case of *Miss Neelima Shangla* (cited supra) and *K. Satya Narayana* (cited supra) are concerned, we are of the view that the proposition laid down in the above judgments will not be of any help to the Petitioner.

9. Hence the following order:

ORDER

A) It is declared that the decision of the Respondent Nos. 2 and 3 to fix the benchmark / cut-off marks at 210 marks for the visually handicapped persons, on par with the general category persons and granting 7% grace marks to the visually handicapped persons, is arbitrary and is unsustainable in law.

(B) The Respondent Nos. 2 and 3 are directed to prepare separate merit list of visually handicapped persons and to appoint the visually handicapped person on the post of Research Officer in Grade B in Department of Economic and Policy Research advertised in May, 2013, by operating the merit list of visually handicapped persons which will be prepared as per the directions

given by this judgment.

This process shall be completed within three months.

10. Rule made absolute in the above terms. In the circumstances, the parties to bear their own costs.

(Z.A. HAQ, J)

(NARESH H. PATIL, J)