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

+ W.P.(C) 9942/2018 and CM Nos. 38723-724/2018

VIKASH KUMAR Petitioner
Through: Mr. Rajan Mani, Advocate.

versus

UNION PUBLIC SERVICE COMMISSION & ORS Respondents
Through: Mr. Naresh Kaushik, Advocate for R-1/
UPSC.
Mr. Ajay Digpaul, CGSC with Mr. S. Kumar,
Advocate for R-2 and R-3.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **25.09.2018**

1. This order is in continuation of the order dated 24.09.2018 wherein, we had recorded as follows:-

“1. The petitioner is aggrieved by the order dated 07.08.2018 passed by the Tribunal, dismissing O.A. No.2232/2018, wherein he had prayed for directions to the respondent No.1/UPSC and the respondent No.2/DOPT to provide him with a scribe as he is a candidate with specific learning disability of dysgraphia. Further, the petitioner had sought quashing of the order dated 15.03.2018 communicated by the respondent No.1/UPSC to him, declining his request for a scribe, for the CSE, 2018.

2. Counsel for the respondent No.1/UPSC states that the petitioner was given the benefit of a scribe by the Tribunal, as an interim measure and his result of the Preliminary Examination, CSE-2018 has been withheld. He seeks permission to produce the said results in a sealed cover for the perusal of the Court.

3. *At the request of the counsel for the respondent No.1/UPSC, renotify on 25.09.2018. An officer competent to assist learned counsel for the respondent No.1/UPSC shall remain present tomorrow.”*

2. Pursuant to the aforesaid order, learned counsel for the respondent No.1/UPSC has handed over three sealed envelopes, which have been opened by the Court Master. The first envelope contains an affidavit filed by the Chairman, UPSC claiming privilege from disclosure, the second envelope contains a document titled “*Cut Off Marks For Civil Services (Preliminary) Examination-2018*” and the third envelope contains a document dated 25.09.2018, signed by the Analyst with reference to the information in respect of the petitioner bearing Roll No.5902495, for Civil Services (Preliminary) Examination-2018.

3. On comparing the marks scored by the petitioner in paper –1 and 2 with the cut off marks for Civil Services (Preliminary) Examination 2018, furnished in a separate sheet, it transpires that the petitioner has not qualified the Preliminary Examination for CSE-2018.

4. In view of the aforesaid result of the petitioner, we are of the opinion that no useful purpose would be served in proceeding further with the present petition particularly, when the main relief prayed for by the petitioner before the Tribunal, at prayer clause (a) was for issuing directions to the respondent No.1/UPSC and the respondent No.2/DoPT to amend the CSE 2018 Notification and Rules to provide scribes for candidates with specific learning disability, which is dysgraphia in the case of the petitioner.

5. Learned counsel for the petitioner submits that even if the matter is not examined by the Court w.r.t. the relief for providing a scribe to the petitioner who is suffering from dysgraphia, the second prayer made in the O.A. before the Tribunal to the effect that the respondents be directed to apply “*the amendment sought in prayer (a) above to all subsequent Civil Services Examinations*” ought to be examined by this Court in the light of the observations made by the Tribunal in para -9 of the impugned order.

6. In para 9 of the impugned order, the Tribunal has observed as follows:-

“9. Coming to the nature of reliefs claimed in the OA, the applicant sought a direction to the respondents to amend the relevant notification. It is difficult to understand the legal basis for this. In case the applicant felt aggrieved by any particular clause in the notification, what was expected of him was to seek a declaration to the effect that the clause impugned is violative of any specific provision of law, if any, and as a sequel to that, the relief as to a direction should have been to amend the rules in accordance with law. That not having been done, we find it difficult to grant any relief to the applicant.”

7. Learned counsel states that the legislature has amended Section 34 of the Right of Persons with Disability Act, 2016 that deals with reservation for persons with disability wherein, sub-section 1(d) has been incorporated to include “*autism, intellectual disability, specific learning disability and mental illness*”. He further submits that while issuing the Gazette Notification dated 07.02.2018, in respect of Examination Notice No. 04/2018-CSP, which states in the General Instructions (Preliminary as

well as Main Examination) at page 108 of the paper book that “*blind candidates and candidates with Locomotor Disability and Cerebral Palsy where dominant (writing) extremity is effected to the extent of slowing the performance of function (minimum of 40% disability impairment) will be allowed to write the examination with the help of a scribe in both the Civil Services (Preliminary) as well as in the Civil Services (Main) Examination*”, irrespective of whether the petitioner’s condition is treated by the respondents as one that deserves reservation under the Statute, even if he is treated as a general candidate, he ought to be permitted a scribe.

8. It is deemed appropriate to grant liberty to the petitioner to highlight the aforesaid issue in a fresh Original Application that he may file before the Tribunal for future purposes. While granting liberty to the petitioner to the aforesaid extent, it is made clear that if the petitioner does prefer a fresh application, then the observations made by the Tribunal in para 9 of the impugned order dated 07.08.2018, shall not come in his way.

9. The documents handed over by learned counsel for the respondent No.1/UPSC in three sealed covers are returned to him across the Board.

10. The present petition is disposed of alongwith the pending applications with liberty granted as noted above.

HIMA KOHLI, J

REKHA PALLI, J

SEPTEMBER 25, 2018

na/ap

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