

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8960 OF 2021**

Manisha Ramkisan Kandekar ...Petitioner
Versus
Maharashtra Public Service Commission through ...Respondent
Joint Secretary (Pre Examination)

Mr Sugandh Deshmukh, for the Petitioner.
Mr SS Panchpor, AGP, for the Respondent No.1-State (MPSC).
Mr Sagar Bhongade, Law Officer, with Smita Kudtarkar, Desk
Officer from MPSC, is present.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 17th December 2021

PC:-

1. Heard.
2. The Petitioner seeks a direction to allow her to appear for the Maharashtra Civil Engineering Services Main Examination 2020.
3. There is an Affidavit in Reply filed on behalf of the Maharashtra Public Service Commission (“MPSC”). We take this on record.

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4. The Petitioner says that her name has been wrongly excluded from the list of categories of persons with benchmark disabilities in this examination.

5. The Petitioner is presently employed as an Assistant Engineer, Grade-II in Nashik with the Public Works Department (“PWD”).

6. In 2017, she applied for the post of Assistant Executive Engineer,; Assistant Engineer Grade-I and Assistant Engineer Grade-II. She was selected for the post of Assistant Engineer Grade-II. That appointment was under a 4% disability reservation. She claims that she is eligible for the higher post of Assistant Executive Engineer and Assistant Engineer Grade-I.

7. On 18th March 2020, an advertisement was issued for a Common Preliminary Examination 2020. MPSC started the selection and recruitment process with this advertisement. The Petitioner applied in the category of persons with benchmark disabilities. There was a specific reservation for persons entitled to this reservation.

8. The Petitioner claims that there was no intimation provided at that time to upload a Disability Certificate. Paragraphs 9 to 13, 18 and 21 of the Petition at pages 5 and 6 read thus:

“9. The Petitioner submits that at the time of the 2017 examination as well as at the time of the instruction which is given at the time of Preliminary Examination 2020 **there**

was no intimation was given for submitting disability Certificate by the person with benchmark disabilities.

10. The Petitioner submits that the key answer sheet of the Petitioner was given to the Petitioner and on the basis of the said answer sheet the Petitioner is securing 34.5 marks in the preliminary examination.

11. **The Petitioner submits that it appears that the without giving sending any message or mail to the Petitioner that the Respondent has given notice on the website of the MPSC thereby asked to submit disability certificate from the candidates who appeared for preliminary examination.**

12. **The Petitioner submits that the Petitioner has not come across the said notice and because of that the Petitioner has not submitted the disability certificate.** The Petitioner submits that there is no any mala fide intention on the part of the Petitioner since the Petitioner itself is appointed on the post of Assistant Engineer Grade 2, from the reservation for disabled person as well as the Petitioner is having the valid Disability Certificate also.

13. **The Petitioner submits that since there was no any communication from the Respondent to submit the disability certificate nor it was the condition precedent in any earlier notification or advertisement to the Petitioner hence the Petitioner has not given said details. The Petitioner submits that it appears that because of the Petitioner has not submitted the disability certificate the Petitioner was not qualified for the main examination and the name of the Petitioner is not included in the main examination, of Maharashtra Civil Engineering Services which will be conducted by the Respondent.**

18. The Petitioner submits that the Petitioner applied for the selection and MCES examination 2020 by online

application. The Petitioner submits that in the said online application process there was no any requirement for submitting the disability certificate. The Petitioner submits that as a matter of fact and as per the practice that the said disability certificate is required when the candidate is successful in main examination and when he is going for the oral interview or after the selection at the time of the scrutiny of the documents when the said documents are called by the Respondent Commission.

20. The Petitioner submits that the Petitioner immediately written a letter to the Respondent on 8.9.2021 and also sent email and pointed out that the Petitioner has not received any SMS or any communication in respect of the submission of the Divyang (Disability) Certificate. It is also pointed out that before the main examination not any point of time earlier there is a demand for the disability certificate. The Petitioner submits that it is also pointed out that because of the said reason the Petitioner is not selected for the main examination. The copy of the representation made by the Petitioner is enclosed herewith and is marked as **EXHIBIT-J**.

(Emphasis added)

9. The Petitioner says that on 3rd September 2021, the result of the preliminary examination was declared. The Petitioner's name is not included in the list published by MPSC.

10. The Affidavit in Reply points out that a first announcement of 20th January 2021 was published on the MPSC website. This informed all candidates to submit a Disability Certificate by email, attaching a scanned copy. Time was given until 23rd February 2021. A second announcement followed on 19th July 2021. This

communication said that Disability Certificates had been scrutinized and the declaration of this was in the annexed schedule. If any candidate had any objections, these were to be filed by 25th July 2021.

11. Then there was a third announcement issued on 11th August 2021 extending the period. The third announcement said that those candidates who did not submit their Disability Certificate would not be considered.

12. These announcements were published by the MPSC on the official website, according to instruction No. 2.9.1 captioned “Instructions to Candidates”. Other instructions put all candidates to notice that any changes would be declared periodically on the official website. Other candidates with disabilities did submit their certificates. MPSC, therefore, maintains that the Petitioner had more than ample opportunity to submit a Disability Certificate. The announcements and timelines were clearly mentioned on the official website. Also, the Petitioner is not the only one who failed to produce a Disability Certificate. Others have also not submitted and have not been considered. It is not as if there is a discrimination being made against this Petitioner.

13. Equally, it is not possible to make a special exception for this Petitioner. That would be unreasonable, unfair and would discriminate against other rejected candidates or those who have not been considered.

14. The Affidavit correctly points out that merely because the Petitioner did not care to look at the announcements on the website, this will not entitle the Petitioner to any discretionary relief. The Petition itself accepts that the Petitioner did not monitor or check the official website.

15. As to the grievance that the Petitioner did not receive an email or SMS, we do not believe that there is any such right or entitlement. A similar question came up before a Division Bench of this Court in Writ Petition No. 8595 of 2015. By its order of 26th August 2015, a copy of which is at Exhibit-5 to the Affidavit in Reply, this Court declined to accept the reason that non-receipt of a SMS would entitle a Petitioner to a writ remedy.

16. It is impossible in these circumstances to hold that the action of the MPSC is arbitrary, irrational or constitutes any kind of hostile discrimination against the Petitioner. On the contrary, the Petitioner has failed to show that there has been any legal right that has been violated by the action of the MPSC. She has not been able to show that the MPSC failed in performance of a legal duty. An oversight, inadvertence or neglect on the part of the Petitioner will not entitle her to a writ remedy.

17. We do not see any merit in the Petition. It is rejected. In the facts and circumstances of the case, there will be no order as to costs.

18. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)