

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.430/2017

SHRI NIGEL ANTHONY S.
FERNANDES, aged 25 years,
Indian National, resident of Jairam
Complex, Building C-1, Flat X-2,
Neugi Nagar, 11 Panaji, Tiswadi,
Goa-403 001.

... PETITIONER

Versus

1) STATE OF GOA,
through its Chief Secretary,
having Office at Secretariat
Porvorim, Bardez-Goa.

2) SUPERINTENDENT OF POLICE,
Government of Goa, having Office at
Police Headquarters, Panaji-Goa.

3) DIRECTOR GENERAL OF POLICE,
State of Goa, having Office at
Police Headquarters, Panaji-Goa.

4) GOA MEDICAL COLLEGE,
through its Dean, Government of Goa,
having Office at Bambolim-Goa.

...RESPONDENTS

Mr. Gaurish Agni with Mr. T. Gawas, Advocates for the Petitioner.

Mr. Prashil Arolkar, Additional Government Advocate for the State.

**WITH
WRIT PETITION NO.437/2017**

SHRI DIPTESH M. RANE,
aged 28 years, Indian National,
resident of Saligao
H.No-2/67, Cotulla Wado,
Bardez, Goa - 403 511.

... PETITIONER

Versus

1) STATE OF GOA,
through its Chief Secretary,
having Office at Secretariat
Porvorim, Bardez-Goa.

2) SUPERINTENDENT OF POLICE,
Government of Goa, having Office at
Police Headquarters, Panaji-Goa.

3) DIRECTOR GENERAL OF POLICE,
State of Goa, having Office at
Police Headquarters, Panaji-Goa.

4) GOA MEDICAL COLLEGE,
through its Dean, Government of Goa,
having Office at Bambolim-Goa.

...RESPONDENTS

Mr. Parikshit Sawant, Advocate for the Petitioner.

**Ms. Sapna Mordekar, Additional Government Advocate for
the State.**

**CORAM: M. S. SONAK &
 R. N. LADDHA, JJ.**

Reserved on: 21st March 2022

Pronounced on: 28th March 2022

JUDGMENT: (Per M. S. Sonak, J.)

1. Mr. Gaurish Agni and Mr. Tanmai Gawas appear for the petitioner in Writ Petition No.430/2017 and Mr. Parikshit Sawant appears for the petitioner in Writ Petition No.437/2017.

2. Mr. Prashil Arolkar and Ms. Sapna Mordekar, learned Additional Government Advocates appear for the respondents in Writ Petition No.430/2017 and Writ Petition No.437/2017, respectively.

3. Learned counsel for the parties agree that both these petitions can be disposed of by a common judgment and order since substantially common issues of law and fact arise therein.

4. The petitioners in both these petitions challenge *inter alia* Memorandum dated 16.03.2017 (impugned memorandum) by which respondent no.2 (Superintendent of Police) withdrew offers of appointment to the posts of Scientific Assistant (Documents) and Scientific Assistant (Computer Forensics) in the Forensic Science Laboratory given to the petitioners vide Memoranda dated 18.10.2016 on the ground that the petitioners were "*medically unfit*" for the appointment to the said posts.

5. Mr. Agni and Mr. Sawant, in unison, submitted that the action of the respondents violates Articles 14, 16, and 21 of the Constitution of India. They submitted that the action of the respondents is also violative of the provisions of the Rights of Persons with Disabilities Act, 2016 (RPwD Act). They submitted that even otherwise the action of the respondents is vitiated by non-application of mind because reliance was placed upon inconclusive medical opinion and the most relevant document i.e. the note dated 17.01.2018 was attempted to be suppressed from this Court and in any case the same was completely ignored. They submitted that the relevant and valid material on record was ignored by the respondents and the action reflected in the impugned memoranda is contrary to several decisions of the Hon'ble Supreme Court *inter alia* on the aspect of discrimination against the differently-abled and the principle of reasonable accommodation i.e. now statutorily incorporated in the RPwD Act. They relied on several decisions that shall be referred to in the course of this judgment and order.

6. For all the aforesaid reasons Mr. Agni and Mr. Sawant submitted that these petitions may be allowed and the respondents be directed to appoint the petitioners as Scientific Assistant (Documents) and Scientific Assistant (Computer Forensics) together with all consequential benefits.

7. Mr. Arolkar and Ms. Mordekar learned Additional Government Advocates defended the impugned memoranda by submitting that this Court should ordinarily not second guess the medical reports given by an expert. They pointed out that this was not a case of appointment against reserved posts for the disabled as contemplated under Chapters VI and VII of the RPwD Act. They pointed out that the advertisement, the selection procedures, and the offer to the appointment made it clear that the entire process was in the context of the selection of general category candidates. They submitted that in such a situation there was no question of the petitioners claiming any special concessions or relaxations. They pointed out that the posts involved the discharge of duties of a very sensitive nature concerning criminal administration of justice and therefore the medical opinion that the petitioners were not quite fit to discharge these duties ought not to be overruled. They pointed out that the respondents had collected data from other States which also supported the action of the respondents.

8. Mr. Arolkar and Ms. Mordekar also pointed out that this is not a matter where the petitioners had obtained any disability certificate or any report of non-disability from the medical authority prescribed under the RPwD Act or the rules made thereunder. They submitted that there was no intention of

suppressing any document from this Court and the final decision about unfitness of the petitioners was duly communicated to this Court. They relied on the list of duties that the Scientific Assistants are required to discharge and based upon the same submitted that there was no error much less any infraction of the constitutional provisions involved. They submitted that since the posts in question were not the posts reserved for the disabled, there was no question of the applicability of RPwD Act involved. They attempted to distinguish the decisions relied upon by the learned counsel for the petitioners by pointing out that such decisions turned on their own facts and were consequently inapplicable to the present matters.

9. Ms. Mordekar also pointed out that there was no material on record to establish that the petitioners were persons with the benchmark disability meaning disability of not less than 40% to entitle the petitioners to any of the benefits under the RPwD Act. She pointed out that this was simply a case where the petitioners were found to be medically unfit to be appointed to the posts of Scientific Assistants and therefore the offers of appointment, which were conditional, were withdrawn. She reiterated that this was not at all a case of any discrimination, breach of statutory or constitutional provisions.

10. For all the aforesaid reasons Mr. Arolkar and Ms. Mordekar submitted that these petitions be dismissed.

11. The rival contentions now fall for our determination.

12. The Goa Public Service Commission (GPSC) by an advertisement dated 10.07.2015 invited applications, *inter alia* for the posts of Scientific Assistant (Documents) and Scientific Assistant (Computer Forensics) in the Forensic Science Laboratory of the Goa Police Department. There was no indication in the said advertisement about these two posts being reserved *inter alia* for the differently-abled. The advertisement was based on the Government of Goa, Office of the Director-General of Police, Group 'B', Non-Gazetted, Non-Ministerial post, Recruitment Rules, 2014 (said Rules).

13. The said Rules provided that the aforesaid posts were to be filled in by 'direct recruitment'. Further, the said Rules provided the following essential and desirable qualifications:-

Scientific Assistant (Documents)

a) Masters Degree in Science with at least second class from a recognized university in Physics/Chemistry/Forensic Science; and

b) Knowledge of Konkani

Desirable:

i) Should be computer literate;

ii) Knowledge of Marathi

Scientific Assistant (Computer Forensic)

a) Masters Degree in Science/ Masters Degree in Computer Applications, with at least second class from a recognized university in the discipline of information technology/computer science/computer applications; and

b) Knowledge of Konkani

Desirable:

i) Should be computer literate;

ii) Knowledge of Marathi

14. The petitioner in Writ Petition No.430/2017 possesses the following qualifications about which there is no dispute whatsoever:-

a) Bachelor's Degree in Science (Bio-Technology) with First Class from Goa University obtained in April 2012-2013;

b) Master's Degree in M.Sc. in Forensic Biology (Bio-Technology) from Gujarat Forensic Science University in the year 2014-2015 after attending regular classes, lectures, and practicals for two years. The petitioner secured a First Class with Distinction for the M.Sc. Course;

c) Knowledge of Konkani and computer literacy.

15. The petitioner in Writ Petition No.437/2017 possesses the following qualifications about which, there is no dispute:

a) Master's Degree in Computer Applications (MCA) from Vishweshwaraiya Technological University Belgaum with First Class Distinction obtained in July 2012;

b) Knowledge of Konkani and Marathi and computer literate.

16. The petitioner in Writ Petition No.437/2017 has also pleaded and there is no denial from the respondents that he was working as a Senior Engineer with WIPRO from 29.10.2012 till 11.03.2016 and again as a Senior Engineer with Tech-Mahindra from 12.03.2016 to 08.08.2016. He has also pleaded that after he was offered the post of Scientific Assistant, he resigned from his earlier service.

17. The candidatures of both the petitioners were considered by the GPSC and both the petitioners were selected and recommended for appointment to the posts of Scientific Assistant (Documents) and Scientific Assistant (Computer Forensics). This was after the GPSC panel comprising experts interviewed all the eligible candidates including the petitioners. This is evident from the communications dated 02.08.2016 addressed by the GPSC to each of the petitioners.

18. Based on the GPSC recommendations, the Director-General of Police vide two separate memoranda dated 18.10.2016 offered each of the petitioners the posts for which they were selected and recommended. Clause 3(i) of the said memoranda reads as follows:-

“i) Production of certificate of fitness from the competent authority viz. ~~Medical Board/Civil Surgeon/D.M.O./Authorised Medical Attendant/Police Medical Officer, Panaji/GMC, Bambolim.~~”

19. To enable the petitioners to comply with the above condition, the Superintendent of Police, vide separate communication dated 18.10.2016 requested the Medical Superintendent, GMC to medically examine the petitioners and report whether they are medically fit for the appointment to the posts offered.

20. The petitioners accordingly attended the GMC and were medically examined. Dr. Edwin Gomes, Professor in Medicine, GMC vide communication dated 31.10.2016, informed the Superintendent of Police that the petitioner Nigel Fernandes was having severe amblyopia in the right eye, with normal vision in the left eye. In fact, for binocular vision, he was using the left eye for vision. Similarly, the petitioner Diptesh Rane was having no vision in the right eye and normal vision in the left eye.

21. The communication dated 31.10.2016 further added that the doctor felt that the work of Scientific Assistant in Forensic Laboratory being sensitive, the same will have to be done cautiously requiring vision in both eyes. The doctor also opined that if there was a need for use of a microscope, then uniocular vision would definitely hamper their interpretation and precision of giving their opinion as compared to a person with normal vision in both eyes. The doctor, therefore, opined that before taking any decision to declare the petitioners unfit, opinion from the office of the Director-General of Police would be necessary as to the job requirements of the posts for which the petitioners are offered the appointment. Thus, the communication dated 31.10.2016 expresses only a tentative opinion pending inputs from the office of the Director-General of Police on the job requirements of the posts offered to the petitioners.

22. Thereafter, in the case of the petitioner Nigel Fernandes, the authorized medical attendant, Dr. Edwin Gomes issued a medical fitness certificate in the prescribed format. Therein, he stated that the petitioner Nigel Fernandes is fit for the job. However, this appears to be an inadvertent error, because on the face of this medical fitness certificate itself there appear the following endorsements:-

“LDW HOD

Fitness is withheld till the time job profile is known and whether use of microscope is reqd.

sd/-

Dr. Rukhmina

UNFIT as per letter from Police Dept.

sd/-

Edwin Gomes

03/01/2017”

23. Since the medical fitness certificate dated 26.10.2016 issued to the petitioner Nigel Fernandes had referred to "*letter from Police Department*", the petitioner, invoking the RTI requested the PIO to furnish a copy of such letter, if any. By response dated 04.04.2017, Dr. Savio Rodrigues, Medical Superintendent/PIO

informed the petitioner Nigel Fernandes that no such letter was sent to the Goa Police Department declaring him to be unfit.

24. Mr. Arolkar and Ms. Mordekar however explained that the Superintendent of Police (HQ) by communication dated 21.12.2016 addressed to the Medical Superintendent, GMC had forwarded a photocopy of a report dated 08.12.2016 which, in turn, had stated that uniocular vision would definitely hamper expert interpretation, accuracy, and precision of giving an opinion as compared to a person with normal vision in both eyes. Now this communication dated 21.12.2016 and the report that accompanies it, are on record. This report is signed by Dr. N.P. Waghmare, Director, Forensic Science Laboratory, Verna Goa, Mr. G. V. Mapari, Scientific Officer, and Mr. S. M. Naik, Scientific Officer, Forensic Science Laboratory, Verna Goa on 08.12.2016.

25. Mr. Arolkar and Ms. Mordekar, therefore, submitted that the endorsement of the petitioner Nigel Fernandes being unfit at the foot of the medical fitness certificate dated 26.10.2016 is based on the above communication dated 21.12.2016. This appears incongruous. But again, the learned Additional Government Advocates explained that the endorsement of Dr. Edwin Gomes is dated 03.01.2017.

26. The medical fitness certificate dated 26.10.2016 or 03.01.2017 as the case may be, therefore proceeds based on an endorsement made by Dr. Rukhmina who has merely recorded that fitness was withheld till the job profile is known and whether the use of a microscope is required. Similarly, the endorsement of unfitness recorded by Dr. Edwin Gomes entirely proceeds on the opinion expressed by Dr. Waghmare and the two scientific officers under his charge on 08.12.2016. At least the medical certificate does not reflect any serious consideration of the medical status of petitioner Nigel Fernandes or any independent application of mind by the doctor who has issued the same. The doctor has only gone by the report of Dr. Waghmare and the two scientific officers under his charge.

27. Now in these petitions, on 12.12.2017, this Court, (Coram: N. M. Jamdar and Prithviraj Chavan, JJ.) made the following Order:-

“It appears from the arguments advanced at the Bar that the Petitioners are not being considered for appointment even though they are otherwise eligible because of their uniocular vision. According to the Respondent-State, the work in the Forensic Science Laboratory will require proper binocular vision and the persons having uniocular vision will not be able to perform the duties effectively.

2. On the other hand, it is contended by the Petitioners that though they have uniocular vision, the Petitioners are trained in forensic science and have secured Distinction. According to them, they will be able to perform their duties effectively as they have shown in their academics, though there is some degree of defect in the vision.

*3. An affidavit in reply has been filed by the Superintendent of Police, opposing the reliefs sought, which is more or less a routine reply. **We find that the issue needs to be handled with sensitivity and it will be appropriate that the same is looked at by the Head of the Department. We would request the Director General of Police to call the Petitioners for interaction to ascertain whether any via-media can be found out. We expect the response of the Director General of Police by next date. S.O. to 22 January 2018.***

28. On 22.01.2018, the learned Government Advocate who then appeared on behalf of the respondents sought time to produce on record the outcome of interaction in pursuance to the above order dated 12.12.2017. Accordingly, two weeks as prayed for was granted.

29. On 12.02.2018, once again the learned Additional Government Advocate who then appeared on behalf of the respondents submitted that the Director-General of Police has interacted with the petitioners and the report of such interaction

would be filed within two weeks. This statement was accepted and the matter was stood over to 26.02.2018.

30. On 09.04.2018, the learned Additional Government Advocate who then appeared on behalf of the respondents made a statement that the respondents were exploring the possibility regards the resolution of queries put by this Court and the matter was then stood over to 11.06.2018.

31. On 11.06.2018, the learned Additional Government Advocate submitted that the Inspector General of Police had sought information from various laboratories. Accordingly, Rule was re-issued in the petitions, and liberty was granted to the petitioners to apply for interim relief if they come across any positive material in their support.

32. On 23.12.2021, when an attempt was made to advertise posts of Scientific Assistants, the petitioners applied for and were granted interim relief that the selection process could go on but the results should not be declared. On 26.02.2022 these petitions were posted for final hearing in the week commencing from 07.03.2022 subject to overnight part-heard matters.

33. The final hearing commenced on 16.03.2022, on which date Mr. Agni placed on record the note dated 17.01.2018 containing the outcome of interaction which the DGP held with the petitioners, in terms of this Court's order dated 12.12.2017. He submitted that this note was obtained through RTI. Though at least on two to three occasions time was applied for by the respondents to produce the outcome, this note dated 17.01.2018 was never produced by the respondents on record. There was no proper explanation as to why this note was not produced on record except for the submissions that the present Additional Government Advocates were not at that time appearing for the respondents. This cannot be any explanation for the non-production of the note dated 17.01.2018 particularly when this Court was desirous of knowing the status of the interaction between the petitioners and the DGP and further, the learned Additional Government Advocates on behalf of the respondents had made solemn statements before this Court that the outcome would be produced.

34. Be that as it may, the note/outcome dated 17.01.2018 now turns out to be one of the most significant documents in this case, and therefore, we requested the Additional Government Advocates to obtain instructions on such note/outcome dated 17.01.2018. After the hearing in these petitions resumed on

21.03.2022, the learned Additional Government Advocates acknowledged that the note/outcome dated 17.01.2018 was indeed made by Dr. N. P. Waghmare, Director, Goa Forensic Science Laboratory, Verna Goa setting out accurately what transpired in the course of interaction between the petitioners, the DGP, Dr. Ugam P. S. Usgaonkar, Head of the Department of Ophthalmology, GMC, Bambolim Goa and Dr. Waghmare himself.

35. The above note/outcome dated 17.01.2018 is one of the most crucial documents in this matter and therefore, the same is transcribed below in its entirety, for convenience of reference:-

“NOTE

With reference to your Office Note dated 26.12.2017, I have attended the meeting in the chamber of the Hon'ble D.G.P., Goa on 15.01.2018 at 11:00 hours. The meeting was also attended by Dr. Ugam P. S. Usgaonkar, Head of Department, Ophthalmology, G.M.C., Bambolim, Goa. The two petitioners viz. Shri Nigel Anthony S. Fernandes and Shri Diptesh Mahadev Rane were called one by one by Hon'ble D.G.P., Goa in his chamber. Accordingly, I am submitting herewith the report in view of your Office Note dated 17.01.2018 as under:

1. The candidate namely, Shri Nigel Anthony Savio Fernandes who has been selected for the post of Scientific

Assistant in the field of Document can assist in identification of printed matter, Computer printouts and other mechanical impressions by instruments, credit cards and travel documents by using sophisticated instruments, examination of lottery tickets, counterfeit currency for security printing, general printing and paper examination, examination of typewriting, printed matter, computer printouts in respect of nature and design of printing, alignment and printing defects, individual characteristics and examination of charred documents by its physical examination and retrieval of data, examination of writing characteristics.

2. The candidate namely, Shri Diptesh Mahadev Rane who has been selected for the post of Scientific Assistant in the field of Computer Forensic can assist in examination, analysis and retrieval of digital data from various electronic storage media, physical evidences received in the laboratory, in comparison, enhancement and analysis of digital evidence/ photographs of colour, black and white images, videos by using dual monitors, software, hardware, etc., and retrieval and analysis of various digital evidence from broken, embedded nano and micro chips, SIM cards, memory cards etc. He can also assist in verification and record the micro-printed material on electronic, devices with regards to their serial numbers, make, model, etc.

2. In view of the facts mentioned above, the Hon'ble Director General of Police, Dr. Ugam P. S. Usgaonkar and the undersigned are of the opinion that S/Shri Nigel Anthony Savio Fernandes and Diptesh Mahadev Rane can be considered for appointed to the posts of Scientific Assistant in the field of Documents and Computer Forensic, respectively.

Sd/-

*(Dr. N. P. Waghmare)
Director,
Goa State Forensic Science Laboratory,
Verna-Goa*

To

The Superintendent of Police (HQ),
Panaji-Goa.”

36. Thus, from the aforesaid, it is quite clear that Dr. Waghmare who had earlier, together with the scientific officers under his charge made a report dated 08.12.2016, at a later stage, in the presence of Dr. Ugam P. S. Usgaonkar and the DGP reviewed his position and declared in no uncertain terms, together with the DGP and Dr. Usgaonkar that both the petitioners can be considered for the appointment to the posts offered to them. It is quite unfortunate that this crucial document was not even placed before the Court by the respondents even though on at least three occasions time was sought to place the same on record.

37. As noted earlier. Dr. Gomes while issuing the medical certificate had entirely relied on the report dated 08.12.2016 made by Dr. Waghmare. On 15.01.2018, the two petitioners were examined not only by Dr. Ugam Usgaonkar who was the

Head of Department, Ophthalmology, GMC but also the DGP and Dr. Waghmare himself. All three of them in unison declared that the petitioners were fit to be appointed to the posts that were offered to them. This meeting in the chamber of the DGP was in the pursuance of an order made by this Court on 12.12.2017. If this note/outcome dated 17.01.2018 were to be produced before this Court in the year 2018 itself, in all probabilities the petitioners would have got the relief that they have prayed for in these petitions. However, we are sorry to record that this note/outcome dated 17.01.2018 was not even placed on record before this Court by the respondents despite making statements that the same would be placed.

38. Mr. Arolkar and Ms. Mordekar however tried to explain that this note was thereafter sent for the consideration of the Government. They explained that the Government then called for information from other States and laboratories. They stated that finally by communication dated 15.10.2019, the Government conveyed to the DGP that the appointment of the petitioners with visual disabilities would be detrimental to the work of the Forensic Science Laboratory of the State of Goa. They submitted that this communication dated 15.10.2019 reflecting the opinion of the Government was placed before this Court at a later point in time.

39. Since the affidavits filed by the respondents do not refer to this communication dated 15.10.2019, the learned Additional Government Advocates placed before the Court the official file leading to the decision reflected in the communication dated 15.10.2019. This file, again, makes very sorry reading. One Pratap D. Sawant, a UDC has regularly followed up this matter by putting up no less than ten to fifteen reminders that this is a court matter upon which the Government needs to make some decision at the earliest. Every time, the bureaucrats who dealt with the file avoided taking any decision in this matter, even though, this Court, in its order dated 12.12.2017 had in terms opined that this issue needs to be handled with sensitivity.

40. The notings reflect that ultimately the information from other States was collated, and a cursory reference was made to the note/outcome dated 17.01.2018 and based on this material there was an omnibus clause in noting that reads as follows:-

“In view of the information received from CFSLs and SFSLs and the opinion of their Directors, the Goa Police Department had come to the conclusion that appointing the candidates with the visual disability (uniocular vision) is detrimental to the work of the Forensic Science Laboratory of the State of Goa and the decision taken was informed to the Department of Home (General), Government of Goa, Secretariat Porvorim-Goa vide this

office letter dated 22.05.2018 (page 224/C) to convey approval of the Competent Authority.”

41. Based on the aforesaid, the concerned bureaucrats signed the noting and conveyed their opinion about the petitioners being unfit to be appointed to the posts that they were offered.

42. As noted earlier, the note/outcome dated 17.01.2018 was entirely in favor of the petitioners. The note reflected that the DGP, Dr. Ugam Usgaonkar, Head of Department, Ophthalmology, GMC, and Dr. N. P. Waghmare, Director of Goa State Forensic Science Laboratory, Verna-Goa had, in unison opined that the petitioners were fit to be appointed to the posts that were offered to them. This opinion was reversed by the Government bureaucrats based almost entirely on the information received by them from the CFSLs and SFSLs from other States.

43. Even this information from other States is on record and the same is not what the note purports to say it is. The information merely speaks about there being no such precedent or proceeds to advise the Goa Government about how to proceed in the matter. Based on such information and by overlooking the most relevant and crucial material in the form of the note/outcome dated 17.01.2018, the Government, could not

have concluded that the petitioners were unfit for the appointment to the posts that were offered to them.

44. The bureaucrats, in this case, have ignored the opinion of Dr. Ugam Usgaonkar, Head of Department, Ophthalmology, GMC which is the authorized institution for issuing medical certificates of fitness. The bureaucrats have also ignored the opinion of the DGP and Dr. Waghmare, the two persons most intimately concerned with the functioning of the Goa State Forensic Laboratory where the petitioners were offered appointments as Scientific Assistants based entirely on their merit as determined by the constitutional authority i.e. the GPSC. This is, according to us, quite sufficient for quashing the impugned memoranda. The impugned memoranda or for that matter the decision of the Government is quite unreasonable because it ignores the vital and relevant material and acts based on material that was quite irrelevant.

45. This is not a case where the Court is attempting to second guess the opinion rendered by the medical experts. As noted earlier, the medical certificates issued by Dr. Gomes proceed *inter alia* on the lack of information provided by the Police Department to the GMC about the nature of functions required to be discharged by the scientific assistants and the opinion of Dr.

Waghmare dated 08.12.2016 which, Dr. Waghmare subsequently retracted. Rather, this is a case where the expert opinion rendered by none other than Dr. Ugam Usgaonkar, Head of Department, Ophthalmology, GMC, the DGP, and Dr. N. P. Waghmare, Director of Goa State Forensic Science Laboratory, Verna-Goa is sought to be not just second-guessed but discarded without any sufficient cause and based on some cursory information obtained from other States. Therefore, this is a case where the bureaucrats have attempted to ignore the expert opinion and thereby deny the petitioners the appointments for the posts to which they were selected by an expert agency i.e. the GPSC.

46. The learned Additional Government Advocates have placed on record duties and responsibilities of a Scientific Assistant. There is a list of about twenty such duties and responsibilities. To our query as to which of these duties and responsibilities the petitioners might not be able to handle, the learned Additional Government Advocates pointed out to clauses 5, 11, and 12 meaning thereby that the petitioners were quite competent to discharge or bear the remaining seventeen duties and responsibilities. Clauses 5, 11, and 12 read as follows:-

“5. Forensic examination of writing materials i.e. ink and paper by using stereo microscope, infra rays and ultra violet rays techniques.

11. To distinguish the variety of toner particles in printer identification.

12. Examination of stamp impression and seal impression by physical and microscopic examination.”

47. Now in the first place, the DGP, Dr. Usgaonkar, and Dr. Waghmare, Director of the Forensic Science Laboratory had assessed the petitioners precisely in the context of the twenty duties and responsibilities now referred to by the learned Additional Government Advocates. After such assessment, they found the petitioners to be fit for appointment to the posts of scientific assistants. Secondly, it is a little far-fetched to submit that the petitioners would not be in a position to discharge the aforesaid duties and responsibilities. The petitioner Nigel Fernandes is afflicted with amblyopia in the right eye but has perfect normal vision in the left eye. Similarly, the petitioner Diptesh Rane was having no vision in the right eye but a perfectly normal vision in the left eye.

48. Despite the above disabilities, the petitioners secured M.Sc. in Forensic Bio-Technology in first class with distinction and the Master's Decree in Computer Applications in first class with distinction. The petitioner Diptesh Rane has worked as a Senior Engineer with WIPRO and Tech-Mahindra for almost four years

and such a statement regards experience was not even denied in the returns filed. Further, the learned counsel for the petitioners have placed on record the curriculum of the graduation and post-graduation degrees obtained by the Petitioners and stressed how the same involved significant practical courses. The petitioners despite the aforesaid disabilities were assessed by the GPSC panel comprising experts and were selected and recommended for appointment, based entirely on their merit. All these significant aspects were completely overlooked by the Respondents. Therefore, the action of the respondents in canceling the offer of appointment and thereby denying the petitioners appointment to the posts offered does appear to be arbitrary and thereby violative of Articles 14 and 16 of the Constitution of India.

49. Upon our query, the learned Additional Government Advocates produced on record the hierarchy of officers in the Forensic Science Laboratory at Goa. The lowest post in the scientific or technical cadre is that of Scientific Assistant which is the post offered to the petitioners. Above the scientific assistants, there are posts of Scientific Officer, Assistant Director, and Director. Therefore, the apprehension expressed by the Superintendent of Police in paragraph 10 of his affidavit in reply dated 27.08.2017, can no longer be regarded as valid. In any case, the apprehension expressed in the affidavit was before the

interaction of the petitioners with his superior i.e. the DGP, Dr. Usgaonkar, and Dr. Waghmare. In the context of what is set out in the note/outcome dated 17.01.2018 no affidavit is filed in this Court explaining why the opinion of these experts should be or was bypassed.

50. The contentions of Mr. Arolkar and Ms. Mordekar do not appeal to us having regard to the factual material on record as also the legal position in such matters. True, the petitioners had never applied against any posts reserved for persons with disabilities. Ms. Mordekar's submission that the petitioners have not demonstrated that they are persons with benchmark disability as defined under Section 2(r) of the RPwD Act, may also be perhaps correct. But surely, having regard to the material placed on record by the respondents themselves, the petitioners are persons with disabilities as defined under Section 2(s) of the RPwD Act.

51. Section 2(s) of the RPwD Act provides that a person with a disability means a person with long-term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. It is based on such disability that the respondents have sought to deny the appointments to the petitioners. Since there is no material on record to say that the

extent of disability exceeds 40 percent, at least *prima facie*, the petitioners may not be entitled to the benefits of the special persons contained in Chapter VI of the RPwD Act. However, that does not mean that the petitioners are not even entitled to the protection of Section 3 or Sections 20 and 21 of the RPwD Act.

52. Section 3 of the RPwD Act deals with equality and non-discrimination and provides that the appropriate Government shall ensure that persons with disabilities enjoy the right to equality, life with dignity, and respect for his or her dignity equally with others. This Section requires the appropriate Government to take steps to utilize the capacity of persons with disabilities by providing an appropriate environment. Section 3(3) is quite important and provides that no person with a disability shall be discriminated against on the ground of disability unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim. Section 3(5) is also important and provides that the appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

53. Section 20 of the RPwD Act deals with non-discrimination in employment. Section 20(1) provides that no Government

establishment shall discriminate against any person with a disability in any matter relating to employment. The Proviso to this clause empowers the appropriate Government, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this clause. Admittedly, no such notification has been issued by the appropriate Government when it comes to the Forensic Science Laboratory of the Police Department.

54. In the context of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1995 Act) the Hon'ble Supreme Court in the case of *Union of India vs. Sanjay Kumar Jain – (2004) 6 SCC 708* has interpreted a similar Proviso to Section 47(1) which had imposed an embargo upon an establishment to dispense with or reduce in rank, an employee who acquires a disability during his service. The Court held that the exclusion can be done only under certain specified circumstances i.e. (i) Issuance of notification; and (ii) Prescription of requisite conditions in the notification. In the absence of any such notification, there is no question of non-compliance with the substantive mandate of Section 20(1) of the RPwD Act.

55. Section 20(2) provides that every Government establishment shall provide reasonable accommodation and an appropriate barrier-free and conducive environment to employees with disability. Thus, both in Sections 3 and 20 of the RPwD Act there is a reference to the appropriate Government taking necessary steps to ensure reasonable accommodation for persons with disability.

56. Section 2(y) of the RPwD Act defines “*reasonable accommodation*” to mean necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

57. In *Vikash Kumar vs. Union Public Service Commission & Ors. - (2021) 5 SCC 370* the issue before the Hon'ble Supreme Court was whether the appellant who had a disability in the form of dysgraphia, commonly known as a writer's cramp, was entitled to the services of a scribe to answer the combined medical service examination conducted under the auspices of UPSC for selection to the post of medical officer. The respondents including the Central Government contended that the facility of a scribe could be allowed only to a person with a

disability of 40% or more and for certain specified categories of candidates affected with a locomotor disability or cerebral palsy.

58. The Court after adverting to the definition of “*person with disability*” in Section 2(s) and the “*person with benchmark disability*” in Section 2(r) of the RPwD Act rejected this contention and held that a benchmark disability cannot be held to be a pre-condition for obtaining reasonable accommodation by way of a scribe to write the competitive examination. The Court held that both as a matter of textual construction and bearing in mind the purpose and object of the underlying term, it was necessary to emphasize that the definition of Section 2(s) cannot be constricted with the measurable quantifications tagged with the definition under Section 2(r). The Court further held that conflating the rights and entitlements which inhere in persons with disabilities with the notion of benchmark disabilities does disservice to the salutary purpose underlying the enactment of the RPwD Act. Worse still, to deny the rights and entitlements recognized for persons with disabilities on the ground that they do not fulfill a benchmark disability would be plainly *ultra vires* the RPwD Act.

59. The Court in *Vikash Kumar (supra)* also held that the principle of reasonable accommodation captures the positive

obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. For a person with a disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms, and the right to life under Article 21 will ring hollow if they are not given this additional support that helps makes these rights real and meaningful for them. A reasonable accommodation is the instrumentality - are an obligation as a society - to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. The Court referred to its earlier decision in ***Sunanda Bandare Foundation vs. Union of India – (2014) 14 SCC 383*** wherein it was held that in the matters of providing relief to those who are differently-abled, the approach and attitude of the executive must *be liberal and relief oriented and not obstructive or lethargic*.

60. The Court held that the principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act. Section 3 of the RPwD Act goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on the Government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "*by providing appropriate environment*". Among the obligations which are cast on the Government is the duty to take

necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making “*necessary and appropriate modification and adjustments*” so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others. Equality, non-discrimination, and dignity are the essence of the protective ambit of the RPwD Act. The Court also held that the definition of “*discrimination*” under Section 2(h) of the RPwD Act includes denial of reasonable accommodation.

61. The Court held that the RPwD Act is fundamentally premised on the recognition that there are many ways to be, none more “*normal*” or “*better*” than the other. It seeks to provide the disabled a sense of comfort and empowerment in their difference. Recognizing the state of affairs created by centuries of sequestering and discrimination that this discrete and insular minority has faced for no fault on its part, the RPwD Act aims to provide them an even platform to thrive, to flourish, and offer their unique contribution to the world. It is based on the simple idea with profound implications that each of us has: “*unique powers to share with the world and make it interesting and richer*”. By opening doors for them and attenuating the barriers

thwarting the realization of their full potential, it seeks to ensure that they are no longer treated as second-class citizens.

62. The Court also held that the RPwD Act gives a powerful voice to the disabled people who, by dint of the way their impairment interacts with society, hitherto felt muted and silenced. The Act tells them that they belong, that they matter, that they are assets, not liabilities and that they make us stronger, not weaker. The Court also held that at the heart of this case lies the principle of reasonable accommodation. Individual dignity undergirds the RPwD Act. Intrinsic to its realization is recognizing the worth of every person as an equal member of society. Respect for the dignity of others and fostering conditions in which every individual can evolve according to their capacities are key elements of a legal order which protects, respects, and facilitates individual autonomy. In seeking to project these values as inalienable rights of the disabled, the RPwD Act travels beyond being merely a charter of non-discrimination. It travels beyond imposing restraints on discrimination against the disabled. The law does this by imposing a positive obligation on the State to secure the realization of rights. It does so by mandating that the State must create conditions in which the barriers posed by disability can be overcome. The creation of an appropriate environment in which the disabled can pursue the full range of

entitlements that are encompassed within human liberty is enforceable at law. In its emphasis on substantive equality, the enactment of the legislation is a watershed event providing a legal foundation for equality of opportunity to the disabled.

63. The Court held in the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society that accepts difference, respects their needs, and facilitates the creation of an environment in which the societal barriers to disability are progressively answered. Accommodation implies a positive obligation to create conditions conducive to the growth and fulfillment of the disabled in every aspect of their existence - whether as students, members of the workplace, participants in governance, or, on a personal plane, in realizing the fulfilling privacies of family life.

64. The Court held that the accommodation that the law mandates is “*reasonable*” because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence. *For instance, for a visually*

impaired person, the reasonable accommodation she requires might consist of screen magnification software or a screen reader which can speak out the content on a computer screen in a mechanical voice. It might also consist of content being made available in Braille and a sighted assistant. In the same way, for someone with a hearing impairment, reasonable accommodation could consist of speech-to-text converters, access to sign language interpreters, sound amplification systems, rooms in which echo is eliminated and lip-reading is possible. Similarly, for a person with dyslexia, reasonable accommodation could consist of access to computer programmes suited to meet their needs and compensatory time.

65. The Court further held that failure to meet the individual needs of every disabled person will breach the norm of reasonable accommodation. Flexibility in answering individual needs and requirements is essential to reasonable accommodation. The principle contains an aspiration to meet the needs of the class of persons facing a particular disability. Going beyond the needs of the class, the specific requirement of individuals who belong to the class must also be accommodated. The principle of reasonable accommodation must also account for the fact that disability-based discrimination is intersectional in nature. The intersectional features arise in particular contexts due to the presence of

multiple disabilities and multiple consequences arising from disability. Disability therefore cannot be truly understood by regarding it as unidimensional. Reasonable accommodation requires the policy-makers to comprehend disability in all its dimensions and to design measures that are proportionate to needs, inclusive in their reach, and respect differences and aspirations. Reasonable accommodation cannot be construed in a way that denies to each disabled person the customization she seeks. Even if she is in a class of her own, her needs must be met. While assessing the reasonableness of an accommodation, regard must also be had to the benefit that the accommodation can have, not just for the disabled person concerned, but also for other disabled people similarly placed in future.

66. The reason why we have so extensively quoted from *Vikash Kumar* (supra) and referred to the obligation cast on the State for reasonable accommodation is that the petitioners have placed material on record to point out that their disability, can quite easily be overcome if the State considers their predicament with even some minimum level of sensitivity. They have pointed out how, despite their disability, they succeeded in obtaining high post-graduate qualifications in first class with distinction. They have pointed out how they have been working in private establishments in fields quite similar to that which they are

expected to work in terms of the offer of appointment. They pointed out how several devices are now applicable to magnify not just the computer screens but also microscopic observations. *Vikash Kumar (supra)* has given instances of visually impaired persons requiring reasonable accommodation in the form of screen magnification software or screen readers. In the present case, all these were not just relevant factors that the State was required to take into consideration but all these were both statutory and constitutional obligations that the State was required to comply with.

67. However, the material on record, establishes that the executive, in this case, has approached the issue of providing relief to those who are differently-abled by adopting not a liberal or relief oriented approach but an obstructive or lethargic approach, even though such approach was condemned by the Hon'ble Supreme Court in *Sunanda Bhandare Foundation (supra)*.

68. In *Union of India & Anr. vs. National Federation of the Blind & Ors. - (2013) 10 SCC 772* the Hon'ble Supreme Court has held that employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that disabled people are out of jobs not because their disability comes in the way of their functioning rather it is

social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and deplorable conditions. They are denied the right to make a useful contribution to their own lives and the lives of their families and community.

69. In *Syed Bashir-Ud-Din Qadri vs. Nazir Ahmed Shah & Ors. - (2010) 3 SCC 603*, the Hon'ble Supreme Court held that a person having cerebral palsy must be given access to an external electronic aid as a reasonable accommodation which could eliminate the need to write on the blackboard. The Court, in *Vikash Kumar (supra)*, reiterated that a failure to provide reasonable accommodation constitutes discrimination. Reasonable accommodation determinations must be based on a case-to-case basis in consultation with the disabled person concerned. Instead of making assumptions about how the relevant barriers can be tackled, the principle of reasonable accommodation requires dialogue with the individual concerned to determine how to tackle the barriers.

70. It was precisely with this spirit that this Court made the order dated 12.12.2017 requiring the DGP to interact with the petitioners because this Court felt and expressed that the issue raised in these petitions had to be handled with due sensitivity.

We must say that at least the D.G.P. and Dr. Usgaokar, the H.O.D ophthalmology, GMC did act with due sensitivity as was expected from these high-ranking officers and made a unanimous report that the petitioners were fit to be appointed as Scientific Assistants. The bureaucracy, however, completely ignored this report by adopting, what was described in *Sunanda Bhandare Foundation (supra)* that an attitude that was far from liberal and relief oriented but rather, an attitude that was obstructive and lethargic.

71. In *Amita vs. Union of India & Anr. - (2005) 13 SCC 721* the Hon'ble Supreme Court held that a visually impaired person has a right if she chooses to appear as a general candidate to sit and write the examination for selection of Probationary Officer of a bank, and if selected, she has a right to be appointed as a Probationary Officer subject to her satisfying other terms and conditions of appointment in the said post. That was a case where the petitioner was denied an opportunity of even answering the Probationary bank Officer's examination with a terse order: "*As we do not recruit blind candidates for the post of Probationary Officers, your application is rejected.*"

72. The Court emphatically ruled that the expression "matters relating to employment or appointment" in Article 16(1) of the

Constitution of India includes all matters in relation to employment both prior and subsequent to employments, which are incidental to employment and form part of the terms and conditions of such employment. The court held that both Articles 14 and 16(1) had been infringed since the petitioner was denied the equal opportunity as was given to other applicants from appearing in the entrance examination on the ground of disability which was not mentioned as a condition in the advertisement. Secondly, the petitioner was denied her right to be considered for public employment as guaranteed by Article 16(1) of the Constitution.

73. In *Ravi Kumar Arora vs. Union of India – 2004 SCC OnLine Del 280*, the learned Single Judge of the Delhi High Court (Sanjay Kishan Kaul, J. as His Lordship then was), in circumstances, quite similar to the present case directed the Union of India to appoint the Petitioner to a post in the category of 'A' Services based on the result of the Civil Services Examination 2001 held by the UPSC. The petitioner, despite securing a meritorious position in the general category was denied appointment because, during his medical examination, he was certified as afflicted with *myopia*. The Union of India had contended that the petitioner did not suffer from a benchmark disability i.e. disability above 40% and further, the petitioner, had

not applied to any post reserved for the differently-abled and therefore, the petitioner was not entitled to any of the benefits or protections under the 1995 Act. This contention is almost identical to the one raised by the State in the present Petitions.

74. Learned Single Judge of the Delhi High Court opened his Judgment by observing that the ingenuity of bureaucratic system can set at naught implementation of the best-intended legislations. The Court referred to the decision of the Hon'ble Supreme Court in *Nandkumar Narayanrao Ghodmare vs. State of Maharashtra – JT 1995 (8) S.C. 156* wherein the petitioner was successful in the examination and was selected to the post of Agricultural Officer Class-II, but was not appointed because he was found to be color blind. The Hon'ble Supreme Court granted relief to this petitioner. The Court turned down the submissions that the petitioner could not claim for any benefits under the 1995 Act because his disability was not more than 40% but at the same time, was denied appointment despite being fully eligible and obtaining a merit position in the selection procedures. The Court held that it can by no stretch of imagination be said that, on one hand, the petitioner is not entitled to any reservation and, on the other hand, he is not eligible to be appointed even as a General candidate. The Court noted that the petitioner, without any aid, completed his various

courses, appeared for written examination, and was successful without any aid. The Court finally held that to deny the benefit of appointment to such a petitioner would be a travesty of justice.

75. The aforesaid rulings that we have referred to completely answer the submissions made by Mr. Arolkar and Ms. Mordekar based on the applicability or otherwise to the provisions of the RPwD Act to the facts of the present case. The respondents in this case, on one hand, seek to urge that because the petitioners do not have benchmark disability as defined under Section 2(r), they are not entitled to any of the benefits or the protection under the RPwD Act. On the other hand, the respondents, seek to deny the petitioners' appointment which they have secured on merit after competing with the several "*able candidates*". To borrow the expression from the Learned Single Judge, this amounts to a travesty of justice.

76. This is a case where the two petitioners have been denied appointments for the last over six years in virtual defiance of the provisions of the RPwD Act as well as the constitutional mandate enshrined in Articles 14 and 16. To our query, Mr. Agni and Mr. Sawant, based on instructions from the petitioners admitted that for the last few years the petitioners have managed to secure employment in private establishments, which was necessary to

enable them to eke out a living for themselves and their family members. Learned counsel have stated that the petitioners are still very much interested in the appointment as Scientific Assistants and therefore applied and secured a final hearing in these Petitions.

77. For all the aforesaid reasons we allow these petitions, quash and set aside the impugned memoranda dated 08.12.2016 and direct the respondents to appoint the petitioners to the post of Scientific Assistant (Documents) and Scientific Assistant (Computer Forensics) within four weeks from today. We also direct the respondents to consider whether any deemed date can be granted to the petitioners, based on which the petitioners will perhaps be entitled to certain notional benefits like additional increments, seniority, etc. However, in the facts of the present case, no directions can be made for the grant of any actual financial benefits like back-wages, etc. The petitioners are also granted liberty to represent to the respondents for grant of notional benefits and if the petitioners make such representation, the same shall be disposed of by the respondents within three months from the receipt.

78. The Rule is made absolute in the aforesaid terms. The respondents shall pay costs of **₹15,000/-** to each of the petitioners within four weeks from today.

R. N. LADDHA, J.

M. S. SONAK, J.

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