



W.P.(MD)No.15584 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15584 of 2022

and

W.M.P(MD)Nos.11225 & 11227 of 2022

Vijayalakshmi

... Petitioner

Vs

1.The Chairman, Staff Selection Commission,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel and Training,
Block No.12, CGO Complex,
Lodhi road, New Delhi – 110003.

2.The Dean, Government Rajaji Hospital,
Madurai.

3.The Chairman, Medical Board,
Government Rajaji Hospital, Madurai.

4.Assistant Professor cum Clinical Psychologist,
Government Rajaji Hospital, Madurai.

5.The Commissioner,
State Commissionerate for Welfare
of the Differently Abled,
No.5, Kamarajar Salai,
Lady Wellington College Campus,
Chennai – 600 005.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relates to the order issued by the fourth respondent, dated 09.07.2022 and quash the same and consequently, direct the respondents 2 to 4 to issue Medical Certificate to the daughter of the petitioner, namely, DB, for getting scribe permission with consequential direction to the first respondent to permit the daughter of the petitioner, namely, DB, having Registration Number 10005671761 to re-appear for the computer based examination for Multi Tasking (Non Technical) Staff and Havaladar (CBIC and CBN) Examination 2021 (Tier - 1) which is to be held from 18th to 22nd July, 2022 with the help of Scribe.

For Petitioner : Mr.K.Samidurai

For Respondents : Mr.V.B.Sundareshwar for R.1

Mr.V.Om Prakash
Government Advocate for R.2 to R.5

ORDER

Heard the learned counsel appearing for the writ petitioner, the learned Standing Counsel appearing for the first respondent and the learned Government Advocate appearing for the respondents 2 to 5.



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2.The writ petitioner's daughter DB is a person with benchmark disability. The certificate issued by the competent authority indicates that she is 60 % intellectually challenged. She is a matriculate. She wanted to apply for the post of Multi Tasking (Non-Technical) staff. The first respondent had issued notification proposing to hold the examination in the month of July. After downloading the hallticket on 07.07.2022 from the website maintained by the first respondent, the writ petitioner approached the District Differently Abled Officer who issued a letter to the second respondent to issue medical certificate so that the petitioner's daughter can avail the facility of scribe. The second respondent in turn referred the petitioner's daughter to the Medical Board/third respondent. The third respondent in turn referred the petitioner's daughter for assessment by a Psychiatrist doctor. The fourth respondent rejected the request on the ground that “a person suffering from intellectual disability is not eligible for scribe as per the Government Order”. Challenging the same, this writ petition came to be filed.

3.Since the petitioner's daughter was not armed with the necessary certificate, the examination invigilators made it clear that the petitioner's daughter will have to necessarily write the examination on her own without any assistance/Scribe on 11.07.2022. This writ petition was filed only thereafter.



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4. When the matter was taken up for hearing, the standing counsel appearing for the first respondent expressed his helplessness. According to him, when once a candidate had taken part in the examination, there is no scope for permitting her to reappear in the very same examination. It is true that the examinations were held on daily basis for different batches from 05.07.2022 to 08.07.2022, 11.07.2022 to 15.07.2022 and from 18.07.2022 to 22.07.2022. I originally thought that I could permit the petitioner's daughter to take part in the examination to be held on 22.07.2022. The learned counsel appearing for the first respondent would state that apart from the fact that there is a very little time left to generate a fresh hallticket, in the very nature of things, there is no provision for permitting a candidate who already sat for an examination to once again reappear for the very same examination.

5. The learned counsel appearing for the petitioner fairly brought to my notice the order dated 23.11.2021 passed by the Hon'ble Supreme Court in *Avni Prakash vs. National Testing Agency* [Civil Appeal No. 7000 of 2021 (Arising Out of SLP (C) No.18591 of 2021)]. It has been held that there is no scope for reappearance. I, therefore, have to reluctantly say “no” to the writ petitioner's daughter to sit for the examination that is to be held on 22.07.2022.



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6. But that cannot be the end of the matter. The petitioner's daughter is aged about 26 years. She can definitely take part in competitive examinations that may be held in future. She cannot be made to undergo the agony she suffered in the present case. I can only express my sense of shock at the way the fourth respondent had dealt with the issue. The brochure issued by the first respondent provides for compensatory time and assistance of scribe. Clauses 8.1 and 8.2 would read as follows :

“8.1 In case of persons with benchmark disabilities in the category of blindness, locomotor disability (both arms affected-BA) and cerebral palsy, the facility of scribe is provided, if desired by the candidate.

8.2 In case of remaining categories of persons with benchmark disabilities, the provision of scribe will be available only on production of a certificate at the time of examination to the effect that the person concerned has physical limitation to write, scribe is essential to write examination on his behalf, from the Chief Medical Officer/Civil Surgeon/Medical Superintendent of a Government health care institution as per proforma at Annexure-I.”

Of course, the petitioner's daughter may not fall under clause 8.1 but she would definitely fall within the scope of clause 8.2. The pass book issued by the



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District Disabilities Rehabilitation Officer, Virudhunagar indicates that the petitioner's daughter is suffering from 60% intellectual disability. Section 2(r) of the Rights of Persons with Disabilities Act, 2016 defines “the person with benchmark disability” as a person with not less than 40% of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms as certified by the certifying authority. Since the petitioner's daughter is a person with benchmark disability, she is obviously entitled to provision of scribe. Of course, clause 8.2 stipulates that the provision of the scribe will be available only on production of a certificate at the time of examination to the effect that the person concerned has physical limitation to write and that scribe is essential to write examination on his behalf from the concerned authority.

7.A person with 60 % mental retardation obviously would have physical limitation to write and hence scribe is essential for such a person to write the examination. I fail to understand as to how the clinical Psychologist / the fourth respondent came to the conclusion that the petitioner cannot be granted such a facility. I can understand if the fourth respondent after examination of the petitioner's daughter had come to the conclusion that the candidate is not having any physical limitation and therefore she can very well write on her



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own. That is not the conclusion of the fourth respondent. Instead, the fourth respondent had come to a mechanical conclusion that she is not eligible as per the Government Order. The fourth respondent appears to have been swayed by the categories mentioned in clause 8.1 alone. He had forgotten that there is another clause, namely, 8.2. The expression to be construed is “physical limitation to write”. A person with intellectual disability also can suffer from physical limitation to write. I, therefore, hold that denial of the certificate contemplated under clause 8.2 has prevented the petitioner from taking part in the examination in question with the assistance of scribe. The petitioner's rights have been seriously affected. I, therefore, fit and appropriate to award compensation.

8.The second respondent is directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as compensation to the writ petitioner for having denied the certificate sought for in the first instance. The impugned rejection order is quashed. The second respondent is directed to issue certificate that the petitioner's daughter is having physical limitation to write the examination and that she is entitled to assistance of a scribe. Such certificate will hold good for any future examinations in which the petitioner’s daughter is proposing to take part.



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9. This writ petition is allowed on these terms. Consequently, connected

miscellaneous petitions are closed. No costs.

20.07.2022

Index : Yes / No

Internet : Yes/ No

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Note: Issue Order Copy on 29.03.2023.

The Registry is directed to suppress the name of the petitioner's daughter while issuing order copy.

To

- 1.The Chairman, Staff Selection Commission,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel and Training,
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Lodhi road, New Delhi – 110003.
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G.R.SWAMINATHAN, J.

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