



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

% Date of decision: 11th December, 2023

+ W.P.(C) 15848/2023 & CM APPL. 63791/2023, 63792/2023

(62) UNION PUBLIC SERVICE COMMISSION Petitioner
Through: Mr. R. V. Sinha, Mr. A. S. Singh and
Mr. Amit Sinha, Advs.

versus

VIKASH KUMAR & ORS. Respondents
Through: Mr. Rajan Mani, Adv. for
R-1/Caveator
Ms. Pratima N. Lakra, CGSC for R-2
to R-4

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 63792/2023

Allowed, subject to just exceptions.

Application disposed of.

W.P.(C) 15848/2023 & CM APPL. 63791/2023

1. The challenge in this writ petition is to an order dated May 31, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA 2075/2018, whereby the Tribunal has allowed the OA filed by the respondent No.1 herein by stating in paragraphs 21 to 27, as under:-



“21. From the above facts coupled with the decision of the Apex Court in Vikash Kumar (supra), it necessarily follows that the applicant need not possess the disability certificate specifying 40% or more locomotor disability for having availed the assistance of scribe for CMSE, 2017. The medical certificate dated 21.03.2015 relied upon by the applicant and issued by NIMHANS, Bangalore is sufficient to establish his entitlement to a scribe.

22. Now, we will proceed to consider the various submissions of Mr. Sinha to contest this Application. Insofar as the first submission of Mr. Sinha that the applicant is estopped from claiming that he applied as a person with disability and not as a person with benchmark disability, is concerned, same is not legally sustainable. We find that despite the mandate of the Act of 2016, as interpreted by the Apex Court in Vikash Kumar (supra), no scribe was provided to the persons with the disability mentioned hereinabove in the CMSE, 2017. The same is counter to the object sought to be achieved by the Act of 2016. The applicant asserted his entitlement for scribe by writing e-mail/communication to the respondent Nos.1 and 3. However, the said e-mail/communication were not responded to. We have already referred to the circumstances under which the applicant was constrained to apply under PH category, though he, as a matter of fact, never intended to apply under the said category. In Raj Kumar & others (supra), the Apex Court held that when there is an illegality in the selection process, the principle of estoppel has no application. The Apex Court in para 16 held as follows:

“16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it



exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.”

23. As earlier referred, in the CMSE, 2017 results published on 23.12.2017, though the applicant was declared successful, his candidature was kept provisional by the respondent No.1, and he was required to submit a disability certificate showing 40% or more locomotor disability. It is a matter of record that the applicant thereafter with bona fide intention approached the competent authority at Ram Manohar Lohia Hospital,



respondent No.4, on 12.02.2018, but was refused a disability certificate, which is evident from the document annexed at page 23 of the OA. The applicant in these circumstances was constrained to challenge the said denial in the present OA, and consequently prayed for a direction to the respondent No.4 Hospital to issue disability certificate to him. During the pendency of the present OA, on 11.02.2021, the decision of the Hon'ble Supreme Court in *Vikash Kumar (supra)* came, wherein it was held that the certificate of disability to the extent of 40% or more is not a pre-condition for obtaining a scribe. It is settled position that the declaration of law by the Apex Court is always retrospective and it would apply from 19.04.2017, the date on which the Act of 2016 came into force. In view of this, we are of the opinion that the applicant need not submit a disability certificate to UPSC as he was successful in OBC category, and is not seeking relaxation or reservation in persons with benchmark disabilities category. We also agree with the submission of the applicant that the reliefs as prayed for in clauses (a) to (c) in the instant OA are not required in the light of the decision of the Apex Court in *Vikash Kumar (supra)*. 24. The decisions of the Hon'ble Supreme Court in *Bharat Amratlal Kothari (supra)*; *Manohar Lal (supra)*; *Kalyan Singh Chauhan (supra)*; *Ranjit Constructions (supra)*; and *Bachhaj Nahar (supra)*, deal with the pleadings of the parties vis-a-vis grant of relief which is not even prayed for. There is no dispute about the proposition laid down by the Apex Court. These judgments, however, have no application to the facts and circumstances of the present case, in the light of the applicant's pleadings in para 4(vii) and Ground 5(A), which are reproduced hereunder for ready reference:

“(vii) The Applicant was desirous of appearing for the said examination with the help of a scribe. In the online application form for CMS 2017, the Applicant therefore



declared himself to be a person with disability. It is pertinent to note that in the CMS 2017, there was no mention of Specific Learning Disabilities including Dysgraphia. This was clearly an oversight of the Respondents, and may have happened because the Rights of Persons with Disabilities Act, 2016, which specified Dysgraphia as a disability, came into force only a week earlier on 19th April 2017. The Applicant immediately on 27.04.2017 sent an email to the Respondent No.3, being the competent authority which had issued the Combined Medical Services Examination, 2017 Rules, informing them of this difficulty. However, the Applicant did not receive any response from the said Ministry. The true copy of the email sent by the Applicant to the Respondent No.3 is annexed herewith as “Annexure A6”.”

“A. Because the Applicant is a person with disability within the meaning of Section 2(s) of the Right of Persons with Disabilities Act, 2016, having the permanent disability of Writer’s Cramp, also known as Dysgraphia, which is a specified disability according to the said Act. In Clause 2(a) of the Schedule to the said Act, Dysgraphia has been mentioned as a Specific Learning Disability.”

25. In Shankarsan Dash (supra) The Apex Court held that a selectee does not have an indefeasible right of appointment and the competent authority has got power not to fill up the post or to cancel the candidature of the candidate. In Ekta Shakti Foundation (supra), the Apex Court held that in the absence of violation of any condition of rules of examination, the indulgence of the Tribunal as an appellate court against the action/decision of the selection body is not permissible. In Mahendra Singh (supra) the Hon’ble Supreme Court held that a



thing which is required to be done in a particular manner has to be done in that manner only. Respectfully, however, these decisions of the Hon'ble Supreme Court have no application in the peculiar facts and circumstances of the present case.

26. This takes us to consider the relief which we can grant to the applicant in the light of the facts and circumstances narrated hereinabove. Under prayer clause (d), reproduced hereinabove, the applicant has sought direction to respondent Nos.1 and 3 to confirm the selection and extend an offer of appointment to him to the post of Medical Officer pursuant to his being declared meritorious in PH and OBC categories in the CMSE, 2017, on submission of the required disability certificate. Since the applicant is a meritorious candidate in the OBC category having obtained 326 marks, which were higher in the merit list than several other OBC category candidates, and when we accepted the submission that the applicant's intention was to apply from OBC category and not from PH category, the relief claimed by him is required to be moulded. In this regard, we are fortified by the decision of the Apex Court in Rameshwar (supra). The relevant observations of the Apex court contained in para 9 read as follows:

"9. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its impotence to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Patterson [Patterson v. State of Alabama, (1934) 294 US 600, 607] illustrates this position. It is important that the party claiming the relief or change of



relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage. Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [1940 FCR 84 : AIR 1941 FC 5] falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs — cannot deny rights — to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact Venkateswarlu, read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in cause of action or relief. The primary concern of the Court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable



doctrine (See Chokalingam Chetty [54 MLJ 88 (PC)]). The law stated in Ramji Lal v. State of Punjab [AIR 1966 Punj 374 : ILR (1966) 2 Punj 125] is sound:

“Courts, do very often take notice of events that happen subsequent to the filing of suits and at times even those that have occurred during the appellate stage and permit pleadings to be amended for including a prayer for relief on the basis of such events but this is ordinarily done to avoid multiplicity of proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate and not when the plaintiff's suit would be wholly displaced by the proposed amendment (see Steward v. North Metropolitan Tramways Company [(1885) 16 QBD 178]) and a fresh suit by him would be so barred by limitation.”

One may as well add that while taking cautious judicial cognisance of “post-natal” events, even for the limited and exceptional purposes explained earlier, no court will countenance a party altering, by his own manipulation, a change in situation and plead for relief on the altered basis.” 27. In the light of the above discussion, we allow the present OA, and direct the respondent No.1, UPSC, to remove the provisional status of the applicant and declare his result in CMSE, 2017 in the OBC category. The respondent No.3 thereafter shall take appropriate action in the matter. There shall be no order as to costs.

27. In the light of the above discussion, we allow the present OA, and direct the Respondent No.1, UPSC, to remove the provisional status of the applicant and declare his result in CMSE, 2017 in the OBC category. The respondent No.3



thereafter shall take appropriate action in the matter. There shall be no order as to costs.”

2. The facts which can be noted from the record are that the respondent No.1 had claimed to be a person with disability (‘PWD’, for short) within the meaning of Section 2(s) of the Rights of Persons with Disabilities Act, 2016 (‘Act of 2016’, for short), having permanent disability of writer’s cramp, which is also known as Dysgraphia, before the Tribunal.

3. It was the case of the respondent No.1, that between March, 2015 and July 2015, the respondent No.1 underwent medical treatment at JIPMER, Puducherry; NIMHANS, Bangalore; and AIIMS, New Delhi for condition of writer’s cramp causing progressive difficulty in writing.

4. On March 21, 2015, the respondent No.1 obtained a medical certificate from NIMHANS, Bangalore, wherein it was stated that the respondent No.1 has the writer’s cramp and would require a scribe, i.e., a writer or extra-time, during an examination.

5. On April 26, 2017, the UPSC / petitioner herein, issued a notification for the Combined Medical Service Examination (‘CMSE’, or short). The respondent No.1, applied for the same as PWD from OBC category and appeared in the examination on August 13, 2017 with the assistance of a scribe. Thereafter, the respondent No.1 was called for the interview on December 15, 2017 and was declared successful and recommended for selection in both physically handicapped (‘PH’, for short) and OBC categories, on December 23,



2017. However, his selection was kept provisional pending submission of disability certificate by the respondent No.1.

6. It is stated that the Ministry of Social Justice and Empowerment / respondent No.2 herein issued guidelines dated January 14, 2018 for assessment and certification of various disabilities specified in the schedule to the Act of 2016, including the specific disability of Dysgraphia. Thereafter, on February 12, 2018, the Ram Manohar Lohia Hospital / respondent No.4 herein, rejected the application of the respondent No.1 for grant of disability certificate of Dysgraphia.

7. Pursuant thereto, the respondent No.1 sent a letter to the respondent No.2, requesting that a clarification be issued to the Medical Board of the respondent No.4. However, no response was given by the respondent No.2 and as such, apprehending that his candidature may get cancelled without the submission of disability certificate after June 22, 2018, he approached the Tribunal and filed the OA, seeking the following reliefs:-

"(a) Quash the decision of the Respondent No.4 Ram Manohar Lohia Hospital dated 12.02.2018 that a disability certificate cannot be issued to the Applicant herein.

(b) Direct the Respondent No.2 Ministry of Social Justice and Empowerment and Respondent No.3 Ministry of Health and Family Welfare to issue a clarification to Respondent No.4 Ram Manohar Lohia Hospital that the Applicant's disability of Writer's Cramp, being the same medical condition as Dysgraphia, should be evaluated according to the guidelines for certification of Dysgraphia, already issued by the Government of India on January 4, 2018.



(c) Direct the Respondent No.4 Ram Manohar Lohia Hospital to evaluate the disability of the Applicant herein according to the guidelines for certification of Dysgraphia, already issued by the Government of India on January 4, 2018, and to issue a disability certificate to the Applicant accordingly.

(d) Direct the Respondents No.1 and 3 to confirm the selection and extend an offer of appointment to the Applicant herein to the post of Medical Officer pursuant to his being declared meritorious in PH and OBC categories in Combined Medical Services Examination, 2017, on submission of the required disability certificate."

8. The Tribunal after hearing the parties made the following *interim* arrangement in favour of the respondent No.1:-

"Counter has not been filed as yet by the respondents. Learned counsel for the applicant presses for interim relief on the apprehension that the candidature of the applicant may be cancelled by the UPSC. However, we are not inclined to grant the interim order, at this stage. The same may be taken care of by observing that in the event the candidature being cancelled, the same shall not affect the right of the applicant, in case he succeeds in the OA.

List the OA for hearing on 15.10.2018. In the meanwhile, the respondents shall file counter."

9. It was the case of Mr. Rajan Mani, learned counsel for the respondent No.1 herein / applicant before the Tribunal, that in the CMSE online application form, the petitioner had provided scribe facility only to those candidates having certificate depicting 40% or



more locomotor disability. However, no option was given to provide scribe for persons with neurological disability of writer's cramp.

10. It was further his case that the inaction on the part of the petitioner to do the same was counter to the judgment of the Supreme Court passed in the respondent No.1's own case, i.e., **Vikas Kumar v. Union Public Service Commission, (2021) 5 SCC 370**, and as such, the respondent No.1 had no option but to apply as person with 40% or more locomotor disability in order to avail a scribe and this fact was duly informed by the respondent No.1 to the respondent No.3 / Ministry of Health and Family Welfare vide e-mail dated April 27, 2017 as well as to petitioner on May 2, 2017, that because of neurological disability of writer's cramp, the respondent No.1 is in need of a scribe to appear in CMSE, 2017, however, no option is provided in the online application to opt for scribe for persons with the said disability.

11. It was further his case that the respondent No.1 had not sought the benefit of reservation available for person with benchmark disabilities ('PWBD', for short) in CMSE, 2017, as the respondent No.1 is meritorious in OBC category having obtained 326 marks, which were higher in the merit list than several other OBC candidates and as such in view of the judgment in **Vikas Kumar (supra)**, the respondent No.1 did not require the need to have a disability certificate specifying 40% or more of a specified disability for availing the assistance of a scribe in CMSE, 2017. Apart from **Vikas Kumar (supra)**, reliance was also placed on the judgment of the Supreme Court in **Rameswar v. Jotram, (1976) 1 SCC 194** to contend the same.



12. Whereas, it was the case of Mr. R.V. Sinha, learned counsel appearing for the petitioner herein/ respondent No.1 before the Tribunal, that the CMSE, 2017 was conducted strictly in accordance with the Rules or advertisement and conditions prescribed therein and as such there was no violation of any of the conditions or Rules. It was also his case that a selectee does not have an indefeasible right of appointment and the competent authority always has the power not to fill up the post or cancel the select list or the candidature of any candidate, in a non-arbitrary manner. He submitted that the respondent No.1 was aware that he did not possess the PH certificate and also that he will not be able to produce the same at the time of interview, still applied under the PH category and failed to produce the same despite being afforded opportunity of six months in terms of the examination notification.

13. It was his case that it is a settled position of law that a candidate having participated in the selection process without demur and subsequently found to be unsuccessful, cannot turn around and challenge the selection process. To contend this reliance was placed upon the following judgments:

- (1) *Shankarsan Dash v Union of India [(1991) 3 SCC 47];*
- (2) *Ekta Shakti Foundation v Government of NCT of Delhi [(2006) 10 SCC 337];*
- (3) *Union of India v Mahendra Singh [2022 SCC OnLine SC 909]*

14. Reliance was also placed on the judgments of the Supreme Court as well as of this Court in the following cases, to contend that the



relief claimed by the respondent No.1 was not supported by the pleadings and no prayer has been made in respect of the relief pressed by the respondent No.1 and as such OA should be dismissed:

- (1) *Bharat Amratlal Kothari & others v Dosukhan Samadkhan Sindhi & others [(2010) 1 SCC 234];*
- (2) *Manohar Lai v Ugrasen [(2010) 11 SCC 557];*
- (3) *Kalyan Singh Chauhan v C. P. Joshi [(2011) 11SCC786];*
- (4) *Ranjit Constructions v NHAI [2003 SCC OnLine Del 934];*
- (5) *Bachhaj Nahar v Nilima Mandal & another [(2008) 17 SCC 491]*

15. Whereas in the rejoinder submissions, Mr. Mani had relied upon the judgment of the Supreme Court in *Raj Kumar and Ors. v. Shakti Raj and Ors., (1997) 9 SCC 527*, to submit that where there is an illegality in the selection procedure, the principle of estoppel does not have any application.

16. After noting down the aforesaid submissions made by Mr. Mani as well as Mr. Sinha, the Tribunal allowed the OA in favour of the respondent No.1 herein.

17. It is stated that aggrieved by the findings of the Tribunal as reproduced in paragraph 1 above, the petitioner has preferred the present petition challenging the impugned order dated May 31, 2023 passed by the Tribunal, *inter alia*, on the following grounds:

- i. The Tribunal failed to appreciate that the OA was not maintainable and respondent No.1 was estopped in law to raise the contention in view of



his conduct and declaration of law in *Ashok Kumar and Ors. v. State of Bihar, (2017) 4 SCC 357*.

- ii. The Tribunal did not appreciate the submission of the petitioner herein that the provisions of Act of 2016 as amended were misconceived and misunderstood by the respondent No.1. In fact, the respondent No.1 was confused with the provisions of Section 2 (r) and 2 (s) of the Act of 2016 which define PWBD and PWD. The same have to be read in the context of Sections 33 and 34 of the Act of 2016. In terms of Section 34, persons with PWBD only in terms of Section 2 (r) are entitled to claim reservation and the respondent No.1 herein did not have the benchmark disability which he had initially claimed in the application.
- iii. The Tribunal has failed to appreciate that the respondent No.1 herein had no right of appointment and he was only provisionally selected for the post under PH category as he availed the benefits of a scribe and extra time in examination, being a PH candidate and as such he could not have compared himself with other OBC or general candidates as he was not having the disability certificate and also failed to produce the same at the time of interview. Therefore, his



candidature was rightly cancelled by the petitioner after affording him adequate opportunity for producing the disability certificate. Even more, the respondent No.1 was also not found to be a candidate with benchmark disability before the Supreme Court.

- iv. The Tribunal also failed to appreciate that the examination in question pertains to 2017 and subsequent thereto multiple examinations, i.e., CMSEs for period of 2018 – 2022 have already been conducted and as such affected persons were not made party in the OA.

18. On the other hand Mr. Mani has reiterated the submissions as advanced by him before the Tribunal.

19. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the Tribunal is justified in directing the petitioner herein to remove the provisional status of the respondent No.1 herein and declare his result in CMSE, 2017 in the OBC category.

20. At the outset, we may state here that merely because the respondent No.1 has been provided the scribe, it cannot be construed that he had applied under the PWD category. This we say so, in view of the judgment of the Supreme Court in the case of respondent No.1 herein viz. **Vikas Kumar (supra)** wherein the Supreme Court has held that possessing a certificate of disability to the extent of 40% or more, is not a precondition for obtaining a scribe.



21. Having said that, further question that would arise is whether the respondent No.1 had in fact applied as a disabled candidate. In support of his submission, Mr. Sinha has drawn our attention to application form submitted by the respondent No.1. No doubt, the application form does reveal that the respondent No.1 has stated locomotive disability with 40% or above; however, the justification given by Mr. Mani is that the respondent No.1 was constrained to say so because as a matter of fact he never indented to apply under the said category, as Dysgraphia as a disability was notified only few days before the advertisement was issued by the petitioner and the petitioner had failed to update the application form stipulating the said disability, and as such, the respondent No.1 could not apply under the category of Dysgraphia as a disability.

22. Suffice to state, Mr. Sinha, during the course of the hearing, has relied upon multiple judgments of the Supreme Court as well as of this Court to further his case, however, the said judgments have been duly considered by the Tribunal in paragraphs 24 and 25 of the impugned judgment, which we have also reproduced in paragraphs 13 and 14 above. We concur with the conclusion arrived at by the Tribunal qua the non-applicability of the said judgments in the facts of this case.

23. Be that as it may, it is the submission of Mr. Mani, that in the absence any option being provided by the petitioner in the application form to the effect that a scribe shall be provided to a candidate with Dysgraphia, the respondent No.1 was constrained to apply under the PH category, despite not having the disability certificate depicting 40 % or more disability.



24. We agree with this submission of Mr. Mani, more so, when the respondent No.1 had also approached the Ram Manohar Lohia Hospital/respondent No.4, for getting the disability certificate but the same was denied to him. So, it must follow that the case of the respondent No.1 cannot be considered under the OBC (PH) category as sought to be urged by Mr. Sinha because he does not have the benchmark disability to qualify for a benefit as a disabled candidate. Therefore, the respondent No.1 having secured 326 marks in the OBC category, which marks are higher in the merit than several other OBC candidates, we are of the view that the Tribunal has rightly granted the relief in the manner it did in the impugned order.

25. No doubt, there was no specific prayer in the O.A. qua the relief granted to the respondent No.1, but in the peculiar facts of this case, if such a relief has been granted to the respondent No.1, we are of the view, that in exercise of our powers under Article 226, the same need not be interfered with. Therefore, the impugned order passed by the Tribunal do not require any interference. The writ petition is dismissed. No Cost.

CM APPL. 63791/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 11, 2023/ds/jg