

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9346 OF 2024

Rohit Vishnu Gaikwad

Age : 21 years, Occ.: Student

Residing at : 202/2, Purandar Building,
Gokhalenagar, Pune

and

Also Residing at : Post Shivrai

Tal.: Vaijapur, Dist.: Sambhajinagar

... Petitioner

V/s.

1. State of Maharashtra through Secretary,
Social Welfare and Justice Department
Having office at : Mantralaya, Mumbai

2. Maharashtra Public Service Commission
through its Secretary,
Having office at : Trishul Gold Field,
Plot No.34, Sector 11, Opp. Sarovar Vihar,
Belapur CBD, Navi Mumbai – 400 614

... Respondents

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NANOSKAR

Dr. Uday P. Warunjikar with Mr. Siddhesh Pilankar
for the Petitioner.

Ms. Pooja Joshi Deshpande, AGP for Respondent No. 1.

Mr. Ashutosh Kulkarni for Respondent No.2.

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 22 August 2024.

JUDGMENT: (Per Nitin Jamdar, J.)

The Maharashtra Public Service Commission allows the facility of a scribe for the candidate with a disability during the examination on the condition that the education qualification of the scribe should be one step below the minimum qualification prescribed for the post the candidate has applied for. The Commission has rejected the request of the Petitioner for a scribe of his choice, as the qualification of his scribe is Second Year of Bachelor of Science, which is higher than Higher Secondary, the 12th Standard, and thus not one step below the graduate degree which is the minimum qualification for the post. The Commission advised the Petitioner to choose another scribe with requisite qualifications and has also offered to appoint a scribe from its panel. Not satisfied, the Petitioner sought a direction to the Commission to permit the scribe selected by him to assist him in the examination.

2. The Rights of Persons with Disabilities Act enacted in 2016 brought about several reforms such as the expansion of the definition and the classification of disabilities. A person with benchmark disability is defined as a person with not less than 40% of

a specified disability where a specified disability has not been defined in measurable terms and includes a person with a disability where a specified disability has been defined in measurable terms, as certified by the certifying authority. The Act of 2016 recognises that persons with disabilities have high support needs and that they require intensive support from others for their daily activities. This Act was passed to give effect to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which India has ratified. Article 2 of UNCRPD refers to the concept of Reasonable Accommodation meaning necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden. Where needed in a particular case to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The Act of 2016 has incorporated this principle. Section 3 of the Act of 2016 lays down that the appropriate Government shall ensure that persons with disabilities enjoy the right to equality, life with dignity, and respect for their integrity equally with others. The Government shall take steps to utilize the capacity of persons with disabilities by providing an appropriate environment. No person with a disability shall be discriminated against on the grounds of disability unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim. No person shall be deprived of his or her personal liberty only on the grounds of disability. The Government is required to take necessary steps to ensure reasonable

accommodation for persons with disabilities. Section 2(y) defines “reasonable accommodation” to mean necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure that persons with disabilities the enjoyment or exercise of rights equally with others. The facility of providing a scribe is relatable to the concept of reasonable accommodation.

3. The issue of providing a scribe with persons with disabilities during the competitive examination was considered in *extentio* by the Hon’ble Supreme Court in the case of *Vikash Kumar v. Union Public Service Commission*¹. The Supreme Court, upon reviewing the law on the subject, held that that the facility of a scribe is not limited solely to those individuals who meet the criteria for benchmark disabilities. The Supreme Court laid that persons with disabilities, even those who do not reach the 40% threshold might require reasonable accommodation to ensure their equal participation in competitive examinations. The Supreme Court expanded the scope of support available to candidates acknowledging that the nature and severity of a disability could significantly hinder the ability to write, thereby necessitating the provision of a scribe. The Supreme Court directed the Union Government, specifically to the Ministry of Social Justice and Empowerment mandating the formulation of comprehensive guidelines. It was directed that these guidelines should govern the provision of scribes to persons with

¹ (2021) 5 SCC 370

disabilities under the Act of 2016, particularly for those whose disabilities create barriers to their ability to write during examinations. The Court emphasised the importance of these guidelines to be inclusive, ensuring that candidates with genuine needs are provided with the necessary assistance.

4. Following this decision the Central Government issued office memorandums providing and regulating the facility of a scribe during the examinations. The State of Maharashtra issued a Government Resolution on 5 October 2021 laying down Guidelines for Written Examinations for Persons with Benchmark Disabilities (Guidelines of 2021). These guidelines have been adopted by the Maharashtra Public Service Commission (MPSC). Under the Guidelines of 2021, candidates with disabilities can apply for a scribe. MPSC has to maintain a list of available scribes and can provide a scribe as required. The scribe provided by the MPSC must have an educational qualification of at least 10th Standard. If the candidate chooses to bring their own scribe, the scribe's educational qualification must be one step below the minimum qualification required for the candidate's eligibility for the examination. This is in brief the background in which the facility of a scribe has been introduced in competitive examinations where candidates from disabilities participate.

5. The Petitioner is a resident of Pune. He is certified by the District Hospital, Aurangabad as being 100% visually impaired. The Petitioner possesses a degree as Bachelor of Arts degree and is desirous of applying for public posts.

6. An advertisement No.4/2023 was issued by the Respondent- MPSC to fill up 274 posts from the General Administration Department, Soil and Conservation Department and Revenue and Forest Department. The Advertisement stipulated that the applications have to be made from 5 January 2024 till 25 January 2024. The last date for payment of examination fees was 29 January 2024. The minimum qualification prescribed for the posts as advertised, as a degree in the respective field. As regards the persons with disabilities, Clause-6.21 of advertisement No.4/2023 referred to the Government Resolution dated 5 October 2021, that is, the Guidelines of 2021. Clause-6.21.3 stated that if a person with a disability requires the help of the scribe or additional time, the concerned candidate has to apply online within seven days of submitting the application with the necessary documents. The request would specify whether the candidate desires to have the scribe provided by the MPSC or if he will make arrangements to engage his own scribe.

7. On 13 February 2024, MPSC published a declaration for scribe and/or compensatory time on its official website. The

Petitioner applied for scribe and compensatory time by email on 27 May 2024 and 30 May 2024. The scribe selected by the Petitioner had passed the Second Year B.Sc. MPSC replied to the Petitioner on 4 June 2024 that as per the advertisement following the Guidelines of 2021, since the Petitioner is a graduate and the minimum qualification for the post is a degree, the educational qualification of the scribe exceeded 12th Standard (HSC) not being one step below the degree, the scribe cannot be accepted. MPSC advised the Petitioner either to resubmit the application for a scribe possessing HSC qualification or the MPSC would provide a scribe if the Petitioner so desires. The Petitioner did not accept either of these courses of action suggested by the MPSC and has filed this writ petition for a direction to the Respondent- MPSC that he may be permitted to engage a scribe of his choice who has the qualification having Second-year B.Sc. Reply affidavit is filed on behalf of the Respondent- MPSC.

8. We have heard Mr. Uday Warunjikar, learned counsel for the Petitioner and Mr. Ashutosh Kulkarni, learned counsel for Respondent No.2- MPSC and the learned AGP.

9. Mr. Warunjikar, the learned counsel for the Petitioner, submitted that the Guidelines of 2021 are similar to the Office Memorandum issued by the Ministry of Social Justice and Empowerment dated 10 August 2022 which, in turn, came to be framed in view of the decision of the Hon'ble Supreme Court in the

case of *Vikash Kumar*. The Guidelines of 2021 permit the candidate to engage the scribe whose educational qualification should be one step below the educational qualification of the candidate. It was submitted that as long as the educational qualification of the scribe is below that of the qualification of the candidate, it should be considered as one step below, and there is no rationale to restrict it to HSC when the candidate possesses a graduate degree. It was contended that the interpretation of the MPSC is contrary to the decision of the Supreme Court in the case of *Vikash Kumar* which is followed by the Hon'ble Supreme Court in the case of *Arnab Roy v. Consortium of National Law Universities*².

10. Mr. Kulkarni, the learned counsel for the Respondent-MPSC submitted that the Guidelines of 2021 are in consonance with the decision of the Hon'ble Supreme Court and a fair and just methodology is adopted to extend full assistance to the persons with benchmark disabilities while providing a scribe and at the same time maintaining the integrity of the examination. The learned counsel submitted that the MPSC has consistently taken a view that the phrase "one step below" would be understood as per the commonly known education pattern of 10+2+3 in the State of Maharashtra and, therefore, for a candidate with a graduate degree, the maximum qualification for the scribe is 12th Standard. He also submitted that Clauses- 5 and 6 of the Guidelines of 2021 would show that the educational criteria for the scribe to be provided by the MPSC and

² (2024) 5 SCC 793

candidate's own scribe is the same and the MPSC has mandated that in no circumstances the educational qualification of the scribe should be below 10th Standard.

11. The analysis of the Guidelines of 2021 would show that it furthers the object of the Act of 2016 of providing reasonable accommodation to persons with disabilities. The State Government took a review of the various difficulties that arise in providing a scribe during the examination and framed the Guidelines of 2021. Clauses- 5 and 6 of the Guidelines of 2021 constitute a scheme which is relevant to the matter at hand. Under Clause- 5, the candidate is permitted to make an application for a scribe. The Examination Board, as per the requirement, would keep the list of scribes ready. Once a scribe is provided by the Examination Board (in this case, the MPSC), the candidate can interact with the scribe for two days before the examination to establish compatibility. The first part of Clause-6 of the Guidelines of 2021 states that the education qualification of the scribe provided by the Authority shall not be below the 10th Standard (SSC). The second part of Clause-6 states that in case the scribe is of the candidate's own choice, he should have an educational qualification one step below the minimum education qualification of the candidate required as an eligibility. The candidate has to give an undertaking as per Appendix II appended to the Guidelines of 2021 if he desires to use his own scribe. The undertaking requires the candidate to disclose the

educational qualification of the scribe and if it is found that the scribe's qualification is not as declared by the candidate or is higher or more than or equal to the minimum qualification for the examination, the candidate would forfeit his right to the post.

12. According to the Petitioner, as long as the educational qualification of the scribe is below the prescribed educational eligibility/qualification of the candidate, it should be treated as one step below. The interpretation of the MPSC is that 'one step below' for degree holders is HSC. Clause-6 of the Guidelines of 2021 is not under challenge before us. As pointed out to us, the stipulation of the scribe selected by the candidate should have an educational qualification one step below the eligibility criteria, commonly found in various departmental examinations.

13. The Petitioner firstly sought to argue that all along and except for this examination, the MPSC has interpreted the phrase 'one step below' differently. This is denied by the MPSC, which states that it is uniformly applied. The Petitioner's argument is only an oral contention across the bar without any specific pleading and cannot be considered. We have not been shown any decision which has taken a view that supports the Petitioner's interpretation.

14. The judicial pronouncements relied upon by the Petitioner will not assist the Petitioner. In the decision of *Vikash*

Kumar, the Hon'ble Supreme Court considered the rights of persons with disabilities and invoked the principle of Reasonable Accommodation as provided under the Act of 2016. The appellant before the Supreme Court was a candidate suffering from writer's cramp, a chronic neurological condition that severely impairs the ability to write. The candidate had applied for the Civil Services Exam in 2018 and requested the assistance of a scribe. However, this request was rejected by the Union Public Service Commission on the grounds that the candidate did not fall within the definition of a person with a benchmark disability as per the Act of 2016. It is in this context the Supreme Court directed the formulation of a new policy concerning access to scribes. The Union Government was directed to ensure proper guidelines to regulate and facilitate the grant of a facility of a scribe to persons with disabilities within the meaning of Section 2(s). In the case of *Arnab Roy*, the issue arose in the context of the Common Law Admission Test where a disability rights activist had challenged certain conditions which were imposed for the conduct of the common law admission test. The Petitioner sought to cull out a proposition of law from this decision to contend that in this case, the guidelines contained the stipulation of the education qualification of the scribe that of 11th standard and, therefore, qualification of Second Year BSc. would be proper. The learned counsel for the Petitioner had to accept that there is no direct finding in the decision of *Arnab Roy* interpreting the requirement of the qualification being 'one step below'. Similarly, in the case before

the learned Single Judge of Gujarat High Court in the case of *National Association for the Blind v. the State of Gujarat*³, the petitioner therein had challenged the stipulation that the scribe to be selected by the candidate could not be beyond 9th standard. The respondents therein did not have a panel of scribes. It is in this context the learned Single Judge observed that the stipulation that the scribe selected by the candidate should have the qualification of 9th standard was contrary to the Office Memorandum and the decision of the Hon'ble Supreme Court in the case of *Vikash Kumar*. These decisions, therefore, do not apply to the facts of the present case.

15. The condition of the scribe having education qualification 'one step below', is also used in the Office Memorandum dated 10 August 2022 and by various other Authorities and Institutions. In this Petition, there is no challenge to the stipulation that the scribe must have an education qualification 'one step below' below the minimum education qualification for the post. The only debate before us is the manner of applicability of the said stipulation. The object of the scribe is to assist the candidate to be informed of the questions and communicate the answers. It is in that context the concept of 'one step below' has been introduced to maintain the integrity of the examination. The decision to allow only those scribes who have qualifications one step below, is a deliberate policy choice. It serves the dual purpose of extending reasonable

3 R/Special Civil Application No.4834/2024 decided on 26 March 2024

accommodation to the persons with disabilities, while maintaining the integrity of the recruitment process.

16. The Hon'ble Supreme Court in the case of *Vikash Kumar* had directed the framing of regulations. What should be the qualification of a scribe is a matter of regulation. These Guidelines have been in force since 2021. The Guidelines of 2021 provide the same standard for the scribe provided by MPSC and the candidate's own scribe. A minimum qualification of 10th standard is provided. While interpreting the condition, MPSC has followed the educational pattern of 10+2+3, that is: SSC (10), HSC (12) and Graduate degree. This criteria adopted by the MPSC for interpreting the phrase 'one step below' for graduate candidates as 12th standard is neither violative of any statutory provision nor is absurd. Even in Clause- 6, while referring to the minimum qualification of the scribe, a reference is made to 10th Standard. The interpretation of MPSC is not logical and in consonance with the established educational framework. The educational system follows a well-recognized hierarchy of Secondary School Certificate (SSC), Higher Secondary Certificate (HSC), and then a degree at the graduate level. In many cases, SSC, HSC, and degree are specified as qualifications for certain posts. The SSC, HSC and Degree are settled phrases used as steps. Therefore in the context of a degree, the immediately preceding qualification of HSC would logically be considered "one step below," just as SSC would be considered "one step below" HSC.

This interpretation is consistent with the common understanding of the educational framework. We, therefore, agree with the contention of the MPSC that interpreting the phrase 'one step below' with reference to the 10+2+3 pattern will bring certainty and avoid any confusion.

17. However, we need to place a caveat. Though we find that the stand of MPSC of interpreting the phrase 'one step below' is correct, this stipulation is to be treated as a basic norm, but not an inflexible position. That is because the concept of reasonable accommodation cannot be fixed in rigid formulas and can differ from case to case depending on the circumstances. However, the candidate will have to make out a strong case as to why this basic norm needs to be deviated from in his case and how the position is inequitable, failing which this basic norm must govern. This decision will have to be left to the authorities to take on due consideration.

18. In the present case, we do not find that the Petitioner has established any special circumstances to permit the scribe having qualifications above HSC and deviate from the basic norm. It is not the case of the Petitioner that for genuine reasons it is not possible for him to get a scribe with the requisite qualifications. It is also not his case that he faces any unique difficulties not faced by other visually impaired candidates. The MPSC was and even today is ready to provide a scribe to the Petitioner. The Petitioner's argument

that the scribe provided by the MPSC may not be compatible is hypothetical. Hon'ble Supreme Court in the case of *Arnab Roy* has laid down that compatibility time of at least two days before the examination be given to the candidate to interact with the scribe. This stipulation of two days is also provided in the Guidelines of 2021. MPSC has already informed the Petitioner in June 2024 that MPSC is ready to provide a scribe as per Clause- 6 of the Guidelines of 2021. The learned counsel for the MPSC has reiterated, which is also the stand taken on the affidavit, that MPSC is ready even today to provide a scribe to the Petitioner which will give sufficient time to the Petitioner.

19. Considering the matter in totality, it is clear that the Petitioner's case has been dealt with fairly by the MPSC. The MPSC had allowed the Petitioner to get his scribe provided his qualifications are as per the Guidelines of 2021. The MPSC was and is still ready to provide a scribe from the panel. In these circumstances, the writ as sought by the Petitioner to direct the MPSC to allow the Petitioner to be assisted by a scribe whose qualifications are above HSC, cannot be issued.

20. No case is made out for interference. We, however, observe that if the Petitioner so desires, the Petitioner may approach/contact the Respondent- MPSC immediately to provide a scribe so that the Petitioner has two days to coordinate with the

scribe for the examination, which is stated to be scheduled on 25 August 2024. The learned counsel for the Petitioner and the learned counsel for the MPSC state that they will inform their clients accordingly.

21. With aforesaid observations, the writ petition stands disposed of.

22. The operative part of the judgment, paragraphs 20 and 21 was issued earlier in view of the urgency. Thereafter this reasoned judgment.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)