



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6706 OF 2025

Shabana Rashid Pinjari

Age 41 years, Occ. Nil.

R/at 302, Al Sufiyan Flat,

Savera Hotel, Amber Tower,

Ahmedabad, Gujarat – 380 055

... Petitioner

Versus

Maharashtra Public Service Commission,

Through its Chairman,

having office at – Trishul Gold Field,

Opp. Sarovar Vihar, CBD Belapur,

Navi Mumbai, Dist. Thane – 400 614.

... Respondent

.....
Dr. Uday P. Warunjikar a/w Mr. Sumit Kate for the petitioner

Mr. Siddharth Shitole i/b Mr. Ashutosh Kulkarni for the Respondent

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Coram : **M. S. Karnik &
N.R. Borkar, JJ.**

Dated : September 11, 2025.

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

1. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, challenging the provisional selection list published on 16th April 2025 by the Respondent –

Maharashtra Public Service Commission (for short “**MPSC**”) in respect of Advertisement No. 01/2023 and supplementary Advertisement No. 111/2023, alleging that the said list was drawn without implementing the salutary provisions of the Rights of Persons with Disabilities Act, 2016 (for short “**Disabilities Act**”), leading to the rejection of the candidature of the petitioner.

2. The brief facts pleaded as stated are thus: The petitioner suffers from visual impairment with 100% permanent blindness and has been issued a Disability Certificate to that effect. Pursuant to the publication of Advertisement by the MPSC, the petitioner applied for the post of Clerk-cum-typist (Class C Grade). The petitioner cleared the preliminary and mains examination with a total score of 192.48. The provisional selection list published on 16th April 2025 did not include the name of the petitioner. It is the case of the petitioner that the manner in which the petitioner’s name has been excluded contravenes the reservation scheme for persons with disabilities as per the Disabilities Act. It is submitted that 119 out of total 125 vacancies reserved for visually impaired persons are filled and 6 posts still lie vacant. According to the petitioner, approximately 39 candidates securing fewer marks than the petitioner have been selected from the visually impaired category. The petitioner

approached the Respondents on several occasions requesting that the post be allocated to the petitioner. The petitioner has been denied a fair opportunity to modify the preference form and hence compelled to exercise only the option of applying against an unreserved post, thereby denying her the valuable right available as per the provisions of the Disabilities Act.

3. Mr. Kulkarni, learned Counsel for the Respondent – MPSC raised a preliminary objection regarding maintainability of the Writ Petition. According to him, the remedy of the petitioner is to approach the Maharashtra Administrative Tribunal in view of the provisions of the Administrative Tribunals Act in the first instance. Reliance is placed on the judgment of this Court in the case of *Gaurav Daga Vs. State of Maharashtra & Ors.* in Writ Petition No. 2270 of 2021, decided on 4th March 2022.

4. Mr. Kulkarni, further objected to the fact that the affected candidates in the provisional select list are not impleaded as Respondents. The stand of the Respondent is that the petitioner having exercised her preference for the post available with the Maharashtra State Hindi, Sindhi and Gujarati Sahitya Academy, Mumbai that had made

a requisition for a single post under unreserved open category, that the petitioner cannot claim the said vacancy through reservation for persons with disability. Mr. Kulkarni submitted that the posts meant for persons with disability have been filled up and now the petitioner cannot be accommodated. Mr. Kulkarni submitted that the present case is purely a service matter and the provisions of Disabilities Act are being relied upon only with a view to bring the present case within the ambit of Article 226 of the Constitution of India. He submits that Section 34 of the Disabilities Act does not provide for reservation on isolated post which disentitles the petitioner from seeking any relief. The petitioner had voluntarily selected only one preference to the said post, despite being aware of the fact that the said post was an isolated post. Learned Counsel for the Respondent has placed reliance on the following decisions in support of his submissions:-

- (i) ***Gaurav Ganesh Daga & Ors. Vs. Maharashtra Public Service Commission & Anr.*** 2021 SCC Online Bom 8700.
- (ii) ***Godrej Sara Lee Ltd Vs. Excise and Taxation Officer-cum-Assessing Authority & Ors.*** 2023 SCC online SC 95.
- (iii) ***Chetan Gulabrao Pawar & Ors. Vs. The Secretary to the Hon'ble Governor of Maharashtra & Ors.*** in Writ Petition No. 7369 of 2023 decided on 17.10.2024.

5. Heard learned Counsel for the parties.

6. No doubt the post on which the petitioner seeks appointment is a post in the service of the State Government. In ordinary course, therefore, appropriate remedy for the petitioner would have been to approach the Maharashtra Administrative Tribunal seeking appropriate relief. We would not have entertained the Writ Petition under Article 226 of the Constitution of India.

7. However, the petitioner in the present case, is seeking to give effect to the provisions of the Disabilities Act. Chapter II of the Disabilities Act deals with Rights and Entitlements. Sub-section (1) of Section 3 provides that appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. Chapter VI of the Disabilities Act deals with the Special Provisions for Persons with Benchmark Disabilities. Section 33 of the Disabilities Act provides that appropriate Government shall identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of Section 34.

Section 34 provides for Reservation that every appropriate Government shall appoint in every Government establishment, not less than 4% percent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, 2% shall be reserved for persons with benchmark disabilities.

8. The Disabilities Act is a special law. The Disabilities Act is enacted with the laudable object of ensuring persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. The respondent has to ensure that the persons with disabilities not only are not deprived of the laudable object for which the Disabilities Act is enacted but have a duty to ensure that every possible effort has to be made and a proactive approach is adopted reaching out to persons with disabilities and help them avail what is rightfully due to them as per the Disabilities Act. It is only then the salutary object in enacting this Act can be achieved.

9. The Disabilities Act is concerned exclusively with the rights of the disabled, ensuring empowerment of the disabled by promising equality and removal of discrimination in the spirit of the United Nations

Conventions on the rights of the disabled and would override the provisions of any overlapping provision as contained in any general law.

This is so held in *Nipun Malhotra Vs. State (NCT of Delhi) 2018 SCC Online Del. 12005*.

10. This Court in *Shanta Sonawane Vs. Union of India, 2024 SCC Online Bom. 662* in para 15 has discussed the concept of fairness in dealing with persons with disabilities, which reads thus :-

“15. The concept of fairness in dealing with person with disabilities is not only of treating them equal with others but of an affirmative action. The Supreme Court observed in Jeeja Ghosh v. Union of India (2016) 761—that the key aspect of fairness is understanding that different individuals have varying needs, particularly those with disabilities. The Supreme Court, in the case of Vikash Kumar v. Union Public Service Commission (2021) 5 SCC 370, elaborated the principle of Reasonable Accommodation, which entails providing additional support and facilities to persons with disabilities. Simply stating that discrimination against persons with disabilities is prohibited is insufficient. Additional support is required to mitigate the impact of disabilities. The principle of Reasonable Accommodation in Section 3 of the Rights of Persons with Disabilities Act, 2016 (the Act of 2016) mandates both supplementary support to individuals with disabilities and facilitating their complete integration into society. This principle rises above the mere prohibition of discrimination. It means the proactive creation of conditions conducive to the person with disabilities. Reasonable Accommodation implies that the needs of individuals with disabilities must be acknowledged and remedied to a reasonable extent, respecting their differences and facilitating their full participation in all facets of life. The accommodations provided by law must be

“reasonable” and tailored to the specific needs of each individual. Failing to meet the unique requirements of individuals with disabilities would contravene the principle of reasonable accommodation.”

11. In para 17, this Court observed that the approach and attitude of the executive must be liberal and relief-oriented and not obstructive or lethargic. The observations made in para 17 reads thus :-

“17. We therefore find that the rigid stand taken by the Respondents is unduly oppressive and harsh and violates the objective of the Act of 2016. The Hon'ble Supreme Court, in the decision in Justice Sunanda Bhandare Foundation v. Union of India (2014) 14 SCC 383 has commented on the lack of sensitivity in implementing the provisions of the Act (then of 1995), as under:-

*“9. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. 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. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.
(emphasis supplied)”*

12. We may then refer to para 19, where this Court has clearly held that the petitioner is not only raising a dispute regarding services with the Union of India but also seeking enforcement of the rights and obligations under the Disabilities Act. Para 19 reads thus :-

“19. As an extension of the pedantic stand, Respondents also contended that the matter is related to service with the Union of India, and the Petition should be dismissed on the grounds of an alternate remedy to approach the Central Administrative Tribunal. The Respondents have relied on the decision of this Court in the case of Gaurav Ganesh Das Daga v. Maharashtra Public Services Commission in WP 2270 of 2021 dated 4th March 2022 following the decision in the case of L.Chandra Kumar v. Union of India (1997) 3 SCC 261. Even this argument does not make any reference to the Act of 2016. The petitioner is not only raising a dispute regarding services with the Union of India but also seeking enforcement of the rights and obligations under the Act of 2016. Furthermore, it is as far back as August 2023 that this Court entertained the Petition and directed that one post be kept vacant. This order has not been challenged by the Respondents-Authorities. The result is that the Petition has remained pending after taking cognizance by this Court, and the interim order has continued for almost six months. Even if the Petition is to be dismissed for the petitioner to approach the Central Administrative Tribunal, this Court may continue the direction to keep the post vacant, and this position would not enure to the benefit of either party. No decision is placed before us by the Respondents-Authorities even in such a situation, the Court should not exercise jurisdiction under Article 226 of the Constitution of India. In the facts and circumstances of the case, declining to exercise writ jurisdiction would result in failure of justice and would defeat the spirit behind the Act of 2016.”

13. In our considered opinion, having regard to the avowed object for

which Disabilities Act was brought into force, the spirit behind the Disabilities Act cannot be allowed to be defeated by declining to exercise the Writ Jurisdiction under Article 226 of the Constitution of India, as in our opinion, that would result in failure of justice. The petitioner is seeking the enforcement of rights and obligations under the Disabilities Act. We, therefore, hold that this Petition under Article 226 of the Constitution of India for enforcement of rights and obligations by the State Government under the provisions of the Disabilities Act is maintainable and we would be failing in our duty if this petition is not entertained.

14. So far as the merits are concerned, it is pertinent to mention that the petitioner on the earlier occasion had filed Writ Petition No. 4032 of 2025 before this Court, seeking an opportunity to modify the preference form to correct an inadvertent mistake made by a person from the Cyber Cafe while assisting the petitioner in submitting an Online Application for availing benefits provided under the reservation scheme for the persons with disabilities. This Court vide order dated 8th April 2025 allowed the Petition and issued directions, permitting the petitioner to modify the preference form to correct the inadvertent mistake.

15. The Respondent – MPSC in compliance of the directions of this Court, opened only a single option of appointing authority viz. the Maharashtra Rajya Hindi, Sindhi, Gujrati Sahitya Academy, Mumbai, which had only one post available for unreserved open category, thus restricting her to only one preference of appointing authorities. In our opinion, in order to effectuate the policy behind the benevolent object for which the Disabilities Act was enacted, it is the Respondent – MPSC which should have adopted a proactive approach, assisting the petitioner by giving more than one preference of appointing authorities in the posts meant for visually impaired in the reserved category. By opening a preference of only one post, which was available for unreserved category, the Respondent – MPSC has virtually defeated the object for which Disabilities Act has been brought into force.

16. In *Vikash Kumar Vs. Union Public Commission & Ors. (2021) 5 SCC 370*, the Hon'ble Supreme Court has observed that when persons with disabilities are unable to realize their full potential due to the barriers posed in their path, our society suffers, as much, if not more, as do the disabled people involved. In their blooming and blossoming, we all bloom and blossom.

17. The principle of reasonable accommodation in Section 2(y) refers to appropriate modification and adjustment to ensure that persons with disabilities enjoy their rights equally with others. In para 52 of the *Vikash Kumar* (supra) 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. The concept of reasonable accommodation will not be meaningful if the persons with disabilities are not given additional support that helps to make their rights meaningful. As observed by the Hon'ble Supreme Court, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if persons with disabilities are not given this additional support that helps make these rights.

18. Further in para 51 and 52, Their Lordships held thus :-

“51. The general principle of reasonable accommodation did not find a place in the 1995 Act. The provision for taking aid of a scribe was limited to blind students or students with low vision in educational institutions. Section 31 of the 1995 Act provided:

“All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision.”

52. The principle of reasonable accommodation has found a more expansive manifestation in the Rpwd Act 2016. Section 3

of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on 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 PART G enjoyment or exercise of rights equally with others.” Equality, non-discrimination and dignity are the essence of the protective ambit of the RpwD Act 2016.”

19. The Hon’ble Supreme Court in *Sunanda Bhandare Foundation Vs. Union of India & Anr. AIR 2014 SC 2869* observed that in the matter of providing reliefs to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. The Disabilities Act, 2016 was a land mark legislation which repealed the 1995 Act and brought Indian legislation on disability in line with the United Nations Convention on the Rights of Persons with Disabilities. A “barrier” is defined under Section 2(c) of the Disabilities Act, which reads thus :-

“2. (c) “barrier” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;”

20. In the present case, the Respondent by providing only a single option of appointing authority and that too in a post available for unreserved open category virtually obstructed the petitioner enforcing what is rightfully due to her under the Disabilities Act. The approach of the Respondent in this case should have been more liberal and proactive that too for a petitioner who is suffering 100% blindness. To provide an option of unreserved open category post when there are several options available which the petitioner could have exercised to be considered for appointment in the post reserved for persons with visual impairment, is nothing but a travesty of justice. The petitioner has taken a categorical stand that of all the 125 posts that are reserved for candidates with visual impairment, several candidates who secured scores lesser than that of the petitioner have been selected in the reserved posts. Had the Respondent properly applied the concept of reasonable accommodation envisaged by the provisions of Disabilities Act in this case, the petitioner would have been in a position to properly exercise the option of applying for the reserved post meant for visually impaired candidates. This was that extra effort expected of the Respondent, which would have helped achieve the object for which the Disabilities Act, 2016 came to be enacted.

21. We, therefore, have no hesitation in holding that providing single option to the petitioner by the Respondent - MPSC in the posts available for unreserved open category is unjustified and falls foul of the provisions of the Disabilities Act, 2016. The stand of the petitioner that several candidates with visual impairment who have scored lesser marks than that of the petitioner are selected has not been controverted by the Respondent. We do not want to disturb the selection of the candidates with visual impairment to the posts which they are recommended.

22. However, we direct the Respondent – MPSC to recommend the petitioner against any of the post falling vacant henceforth in the selection process meant for visually impaired candidates.

23. In case, the Respondent – MPSC is not in a position to recommend the petitioner in the present selection process, the Respondent - MPSC is directed to recommend the petitioner in the immediately next selection process due to be held, in the very first post available which is reserved for visually impaired candidates. The State is expected to do the needful. Being a welfare state, the State however, is requested to look into the matter and consider issuing appropriate guidelines to ensure that such instances are not repeated.

24. The Petition is allowed in the above terms. However, we refrain from imposing costs.

[N.R. Borkar, J.]

[M. S. Karnik]