



2023/KER/71417

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 15TH DAY OF NOVEMBER 2023 / 24TH KARTHIKA, 1945

WA NO. 1435 OF 2023

WP(C) 3947/2021 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN WPC

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BY ADV BONNY BENNY

RESPONDENTS/RESPONDENTS IN WPC

- 1 UNION OF INDIA
REP BY ITS SECRETARY, MINISTRY OF SOCIAL JUSTICE AND
EMPOWERMENT, DEPARTMENT OF DISABILITY AFFAIRS, NEW
DELHI, PIN - 110001
- 2 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3 SPECIAL SECRETARY
SOCIAL JUSTICE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 4 THE STATE COMMISSIONER FOR PERSONS WITH DISABILITIES
TRIVANDRUM-KERALA, PIN - 695004
- 5 KERALA STATE PUBLIC SERVICE COMMISSION
REP.BY ITS SECRETARY, PATTOM, THIRUVANANTHAPURAM,
KERALA, PIN - 695004

BY ADVS.

SRI,S.MANU(DSGI) (B/O) FOR R1

SRI.B.UNNIKRISHNA KAIMAL-SR.GP

SRI.P.C.SASIDHARAN(STANDING COUNSEL)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
15.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**C.R.****ANU SIVARAMAN & C.PRATHEEP KUMAR, JJ.**

W.A.1435 of 2023
in
W.P.(C).3947 of 2021

Dated : 15th November, 2023

JUDGMENT**C.Pratheep Kumar, J.**

This writ appeal has been preferred by the petitioner in the writ petition W.P.(C).No.3947 of 2021 against the judgment dated 25.07.2022 of the learned Single Judge. The appellant is a visually challenged person having 100% disability as declared by the Medical Board. In spite of the disabilities, he had acquired post graduation in MBA and M.Com in Business Operations, qualified NET (National Eligibility Test) with JRF in Management and Commerce Streams and pursuing Ph.D in Management and Commerce Streams. He had also published papers and book chapters. He has valuable industry experience as a Project Consultant and served as a Visiting faculty member at the esteemed MCA Department of Kannur University.

2. He had filed the writ petition in the light of the experience during the Kerala Administrative Examination (KAS), where he encountered some difficulties with the scribe provided to him. Two



main grievances were raised by him in the writ petition; one is that no extra time was allotted to persons with disabilities (In short, PwD candidates) in objective examination conducted by the Kerala Public Service Commission (KPSC), for the post of Assistant Professor in Business Administration. The second grievance is that adequate assistance was not received from the scribe appointed, during the examination. During the pendency of the writ petition, the examination for the post of Assistant Professor was conducted on 6.4.2021 and as such, the writ petition became infructuous. Even then, the learned Single Judge proceeded to dispose of the writ petition on merits, as the decision on the point noted by the appellant will be of general benefit to PwD candidates. By that time, the KPSC has decided to give extra time for objective examination for candidates with visual disability and as such, that part of the grievance also no more exists. In the examination, the appellant was provided the service of a scribe from a panel prepared by the KPSC. The appellant is not satisfied with the assistance given by the scribe appointed by the KPSC and his demand is that a PwD candidate is to be given full freedom to bring his own scribe, for all competitive examinations.

3. After evaluating the rival contentions raised by both sides and discussing various decisions and the law on the point, the learned



Single Judge had disposed of the writ petition holding that the fifth respondent (KPSC) shall provide opportunity to candidates with visual disability above 40% to interact with the scribe provided by the Commission at least two days in advance. If, after such interaction, the candidate finds the scribe to be unsuitable, the fifth respondent shall provide the assistance of another scribe from the panel of scribes prepared for the particular examination.

4. Dissatisfied with the above judgment of the learned Single Judge, the appellant preferred this appeal raising various grounds. According to the appellant, in the light of the provisions in the Rights of Persons with Disabilities Act, 2016 (In short, RPwD Act), and various Circulars issued by the Government of India, PwD candidates are to be given discretion to bring his own scribe. Now the points that arise for consideration are the following :-

(i) Whether the PwD candidates are entitled to bring a scribe of their own choice, while attending competitive examinations conducted by KPSC ?.

(ii) Whether the service of a scribe provided from a panel prepared by the KPSC to such candidates will serve the requirement of Rights of Persons With Disabilities Act, 2016?

5. Heard all the parties.



6. From the Preamble of RPwD Act, it can be seen that the Parliament enacted the above law mainly to give effect to the United Nations Convention on the Rights of Persons with Disabilities. The above Convention adopted on 13.12.2006, lays down the following principles for empowerment of persons with disabilities :-

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons.
- (b) non-discrimination.
- (c) full and effective participation and inclusion in society.
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.
- (e) equality of opportunity.
- (f) accessibility.
- (g) equality between men and women.
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

7. Section 3 of RPWD Act directs the appropriate government to ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. It also prohibits discrimination on the ground of disability. Sub section (5) of section 3 directs appropriate governments to take necessary steps to ensure reasonable accommodation for persons with



disabilities.

8. Section 2(y) defines the term 'reasonable accommodation' as follows:

“reasonable accommodation” means 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. “

9. Section 5 protects their community life while Section 6 protects them from being subjected to torture, cruel, inhuman or degrading treatment. Section 7 protects them from all forms of abuse, violation and exploitation. Section 8 states that persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters. Section 9 prohibits separation of child with disabilities from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child. Section 10 protects their reproductive rights and Section 11 protects their voting rights. Section 12 is intended to ensure justice to persons with disabilities and Section 13 is intended to own or inherit property, movable or immovable, equally with others. Section 14 makes provision for providing further support to such persons of a limited guardian to take legally binding decisions



on his behalf in consultation with such persons. Section 15 directs the appropriate Government to designate one or more authorities to mobilise the community and create social awareness to support persons with disabilities in exercise of their legal capacity. Sections 16, 17 and 18 are intended to provide proper education to persons with disabilities. Section 19 says that the appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment. Section 20 prohibits discrimination of such persons in any manner relating to employment. Section 21 deals with equal opportunity policy while Section 22 deals with maintenance of records of the persons with disabilities in relation to the matter of employment etc. and Section 23 deals with appointment of Grievance Redressal Officer for the purpose of section 19 and its functioning.

10. On a perusal of the above principles for empowerment laid down in the Convention as well as the provisions of the RPwD Act, it can be seen that the main objective behind the RPwD Act is to treat persons with disabilities in equal footing in all respects along with other persons and also to ensure that such persons are not discriminated for the reason that they are suffering from any such



disabilities. It is the duty of everyone to ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

11. Now the only question that subsists in this writ appeal is whether a PwD candidate is entitled to bring a scribe of his own choice, while attending any competitive examinations, in order to satisfy the laudable object sought to be achieved through the provisions of RPwD Act. At the same time, it is also to be considered whether the service of a scribe provided from a panel prepared by the KPSC, will be sufficient to meet the above object.

12. According to the learned counsel for the appellant, a scribe provided from a panel prepared by the KPSC will find it difficult to communicate freely with PwD candidates and as such, such a scribe will not be able to do justice to such candidates. According to him, certain agencies are already providing the facility of own scribe and hence KPSC also can be directed to adopt the same procedure. On the other hand, the learned Senior Government Pleader Sri.B.Unnikrishna Kaimal and the learned Standing Counsel for the KPSC Sri.P.C.Sasidharan would argue that, the free hand given to such candidates to bring scribes of their own choice may lead to malpractice. According to him, the provisions made in that respect by



KPSC, a constitutional body, is sufficient to protect the interest of all the stakeholders.

13. On behalf of the fifth respondent/KPSC, its Under Secretary, Regional Office, Ernakulam, filed a counter affidavit stating that with regard to posting of scribe by the KPSC in accordance with the Rules and Regulations framed by the State Government in the matter, Circular No.1/2013 was issued and it deals with appointments of scribe to assist the candidates in the examination. In the examinations conducted by the KPSC, scribes are posted based on the application obtained from candidates with 75% disability. However, if any candidate with 40% to 74% disability applies for scribe along with disability certificate and another certificate of 'unable to write' from the speciality doctor, as per the Office Memorandum dated 26.2.2013 of the Central Government, scribes will be given to such candidates also. Circular No.1/2013 provides instructions to be followed by the scribe and they have to strictly adhere to the duties prescribed therein. If a scribe, according to the choice of the candidate, is appointed, it is akin to giving assent to manipulations and extraneous considerations. Further, as per decision No.7 dated 28.9.2020 of the KPSC, directions were issued to post scribes with requisite qualification for OMR test. In the case of examinations for posts with



special qualification, a panel of scribe will be prepared by including those with lesser qualification, than the prescribed qualification for the post in the specified stream. 15 minutes extra time for OMR test shall be granted for those candidates availing the benefit of scribe and compensatory time of 20 minutes for one hour is also granted for candidates availing scribe for written test.

14. In this context it is also to be noted that the KPSC is a body constituted under Chapter II of the Constitution of India. As per Article 320(1) of the Constitution, it shall be the duty of the Union and the State PSCs to conduct examinations for appointments to the services of the Union and the services of the States respectively. As per the provisions of the Kerala Public Service Commission Rules of Procedure also it is the duty of KPSC to make all arrangements for the conduct of the examination for the candidates whose applications are found to be in order. It was by virtue of that power, Ext.P6 Circular was issued making specific provision for providing the assistance of a scribe to PwD candidates.

15. The learned counsel for the appellant relied upon the decision of the Hon'ble Apex Court in **Vikash Kumar v. Union Public Service Commission & Ors. (2021 (5) SCC 370)** in support of his argument of a scribe of the choice of PwD candidates. In the above



decision, the appellant had a disability in the form of dysgraphia, commonly known as a Writer's Cramp. He had applied for Civil Services Examination 2018 and also applied for providing a scribe. The request was rejected on the ground that a scribe could be provided only to blind candidates and candidates with locomotor disability or cerebral palsy with an impairment of at least 40% and the appellant did not meet this criterion. Aggrieved by the denial of service of a scribe he moved the Tribunal, which, as per an interim order, directed the UPSC to provide him a scribe. He had written the examination with the aid of a scribe. However, his result was withheld by the UPSC. Subsequently the Tribunal dismissed the application filed by the appellant on the ground that no disability certificate was issued to him from Ram Manohar Lohia Hospital.

16. The appellant approached the High Court of Delhi along with a medical certificate he obtained in the meantime. The Division Bench of Delhi High Court, by order dated 25.9.2018 declined to interfere with the order of the Tribunal. It was in the above context he approached the Hon'ble Apex Court. The Hon'ble Apex Court held that the appellant is entitled to the facility of a scribe for appearing in the examination and any other competitive selection conducted under the authority of the Government. A direction was also issued to the Union



Government in the Ministry of Social Justice and Empowerment to ensure the framing of proper guidelines which would regulate and facilitate the grant of a facility of a scribe to persons with disability within the meaning of Section 2(s) where the nature of the disability operates to impose a barrier to the candidate writing an examination.

17. In the above decision, the Hon'ble Apex Court upheld the right of persons with disabilities including those having 40% or more in the form of 'dysgraphia' also known as 'writer's cramp', to have the assistance of a scribe for writing competitive examinations, at a time when such facility was provided only to persons with benchmark disabilities. In paragraph 48 of the above judgment, the Hon'ble Apex Court observed that :

"48. 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 undimensional. Reasonable accommodation requires the policy makers to comprehend disability in all its dimensions and to design measures which are proportionate to needs, inclusive in their reach and respecting of 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.”

18. In paragraph 75 of the above judgment, the Apex Court directed the Union Government to ensure the framing of proper guidelines to regulate and facilitate the grant of a facility of a scribe to persons with disability where the nature of disability operates to impose a barrier to the candidate writing an examination in the following words :-

“In formulating the procedures, the Ministry of Social Justice and Empowerment may lay down appropriate norms to ensure that the condition of the candidate is duly certified by such competent medical authority as may be prescribed so as to ensure that only genuine candidates in need of the facility are able to avail of it. This exercise shall be completed within a period of three months of the receipt of a certified copy of this



judgment and a copy of the guidelines shall be transmitted to the Registrar (Judicial) of this Court. Upon receipt of the guidelines the Registrar (Judicial) shall place it on the record upon which the proceeding shall be listed under the caption of directions.”

19. Thereafter, the Ministry of Social Justice and Empowerment, Government of India, issued Exts.P4 and P5 office memoranda providing guidelines for conducting written examinations for persons with disabilities. In Ext.P4 and P5 the candidates were allowed to bring their own scribe. Clause IV of Ext.P4 relied upon by the appellant states that :

“(iv) The candidate should have the discretion of opting for his own scribe/reader/lab assistant or request the Examination Body for the same. The examining body may also identify the scribe/reader/lab assistant to make panels at the District/Division/State level as per the requirements of the examination. In such instances the candidates should be allowed to meet the scribe a day before the examination so that the candidates get a chance to check and verify whether the scribe is suitable or not.”

20. Ext.P5 is an Office Memorandum dated 29.8.2018 issued by the Ministry of Social Justice & Empowerment, Government of India. Clause V of Ext.P5 relied upon by the appellant also contain a similar



provision, as in Ext.P4. The appellant produced Ext.P9 instructions issued by CBSE, Ext.P10 guidelines issued by the Reserve Bank of India. Ext.P11 notification issued by the Nuclear Power Corporation of India Limited and Ext.P12 instructions published by the UPSC, in which also the PwD candidates were allowed to bring their own scribe.

21. It is true that in the Circular dated 10.5.2019 issued by the KPSC, such an option was not given to PwD candidates. Instead, to candidates with 40% to 74% visual impairment and 40% above disability due to cerebral palsy and orthopedic categories will be provided the service of a scribe on their request. For availing the said facility, they should bring a medical certificate showing 'difficulty in writing' issued by a Doctor in the concerned speciality, along with the disability certificate of the Medical Board.

22. In this context it is to be noted that in Exts.P4, P5,P9, P10, P11 and P12, there is no facility to provide the service of a scribe from the agency conducting the examinations. It was in the above context that they have allowed the candidates to bring their own scribe. In Vikash Singh's case (supra) also the request for scribe was outrightly turned down. On the other hand, in Ext.P6 circular KPSC has formulated specific scheme for preparing panel of scribes with lesser



qualification than the prescribed qualification for the post in the specified stream, well in advance. The candidates will be allowed to interact with the scribe allotted to them at least two days in advance. If the candidates find the scribe so allotted to be unsuitable, the service of another scribe will be provided to them.

23. As contended by the fifth respondent in the counter affidavit filed by them, if the candidates are given full freedom to bring their own scribe, the same may lead to manipulations. At the same time, in order to protect the legitimate rights of the persons with disabilities, they are to be provided a suitable scribe for writing competitive examinations conducted by the KPSC. Therefore, a procedure capable of protecting the legitimate rights and interests of PwD candidates and at the same time, ruling out the possibility of malpractice will be an ideal one. The circular issued by KPSC is to be evaluated in the above background.

24. The purpose for which the assistance of a scribe is given to a PwD candidate is to help them in understanding the questions and to mark or write down the answers as per the directions of the candidates. The circular issued by KPSC contains provision for providing the service of a suitable scribe from a panel prepared by them to PwD candidates on request. Since the scribes are provided



from the panel prepared by KPSC, it is also capable of ensuring the purity of competitive examinations and to rule out any manipulations. Therefore, it is to be held that the above circular issued by KPSC is capable of protecting the rights of persons with disabilities and to rule out the possibility of misuse of own scribe. In the above circumstance, the conduct of the fifth respondent in declining the prayer of the appellant to chose his own scribe and providing a scribe from the panel prepared by them cannot be said to be arbitrary or unreasonable.

25. In addition to the same, in order to ensure the quality of the scribe provided, in the impugned judgment the learned Single Judge has given a direction to the 5th respondent to provide opportunity to candidates with visual disability above 40% to interact with the scribe provided by the Commission at least two days in advance. If, after such interaction, the candidate finds the scribe to be unsuitable, the fifth respondent shall provide the assistance of another scribe from the panel of scribes prepared for that particular examination.

26. In the above circumstances, we are of the considered view that the scribe provided to the candidates belonging to PwD candidates from a panel prepared by the KPSC will serve the requirements of RPwD Act. We do not find any illegality or irregularity



in the impugned judgment of the learned Single Judge so as to call for any interference. Points answered accordingly.

In the result, the writ appeal stands dismissed.

Sd/-

Anu Sivaraman, Judge

Sd/-

C.Pratheep Kumar, Judge

Mrcs/2.11.



APPENDIX OF WA 1435/2023

PETITIONER ANNEXURES

- Annexure A1 THE TRUE COPY OF THE WRIT PETITION WP(C) NO. 3947 OF 2021 FILED BY THE PETITIONER ALONG WITH EXHIBITS
- Annexure A2 THE TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 5TH RESPONDENT IN WP(C) NO. 3947 OF 2021 DATED 24. 03. 2021
- Annexure A3 THE CERTIFIED COPY OF THE JUDGEMENT IN WP(C) NO. 3947 OF 2021 DATED 25. 07. 2021 IS PRODUCED HEREIN AND MARKED AS ANNEXURE A3.
- Annexure A4 THE TRUE COPY OF THE PETITION TO ACCEPT ADDITIONAL DOCUMENTS AS EXHIBITS P9 TO P12 DATED 24/03/2021